

SAN FRANCISCO BAY AREA WATER EMERGENCY TRANSPORTATION AUTHORITY

**REQUEST FOR PROPOSALS FOR WATER TRANSIT SERVICES
RFP #21-014**

ISSUED: July 15, 2021

PART A: INSTRUCTIONS

1. BACKGROUND

WETA, a local agency with multi-county jurisdiction, was established by the California Legislature to expand regional ferry service and coordinate waterborne emergency response activities on San Francisco Bay. WETA's vision is to develop, operate and manage an expanded and enhanced region-wide ferry system that provides a reliable, state-of-the-art and attractive transportation option for the Bay Area, and to play a critical role in coordinating and providing water transportation to serve emergency response and economic recovery needs.

WETA is seeking qualified firms (Proposers) to assist WETA in planning and operating weekday ferry service between the WETA Oyster Point Terminal in South San Francisco and Gates E, F, or G at the Downtown San Francisco Ferry Terminal on a pilot project basis (Services). The ferry service will be operated under the WETA brand. The firm selected pursuant to this solicitation (Selected Proposer) will be expected to begin ferry service on January 3, 2022. The pilot project shall be operational through June 30, 2022.

The Selected Proposer will be required to provide the vessel(s), fuel, supervision, machinery, equipment, materials, supplies and crew labor required to operate this service, including monitoring and acknowledging fares using WETA fare media and according to WETA's fare schedule, for the duration of the project. The Selected Proposer must also support and provide marketing and customer relations for the service. Proposers will be responsible for determining the total cost to plan and operate the service and project the amount of fare revenue that will be generated. WETA will retain sole authority over determining service schedule and fares.

The Selected Proposer must assume minimum fare revenues based on its projection of monthly ridership (Total Monthly Revenue Assumption) and assumes all risk of insufficient ridership to meet the Total Monthly Revenue Assumption. WETA will compensate the Selected Proposer by paying a monthly amount equal to the Total Monthly Price (Pay Item A of the Price Proposal Form), less the difference between the actual fare revenue collected for the month and the Total Monthly Revenue Assumption (Pay Item B of the Price Proposal Form). By way of example, if actual fare revenue is greater than or equal to the Total Monthly Revenue Assumption in any month, WETA will pay the Total Monthly Price. If actual fare revenue is less than the Total Monthly Revenue Assumption in any month, WETA will pay the Total Monthly Price, less the difference between the actual fare revenue and the Total Monthly Revenue Assumption. In no event will WETA pay more in any month than the Total Monthly Price.

The components of this Request for Proposals (RFP) are as follows:

Part A, Instructions

Part B, Scope of Services

Part C, Sample Agreement

Part D, Forms and Attachments

For detailed information regarding the required Services, please refer to Part B, Scope of Services. The Selected Proposer must provide any and all Services in compliance with applicable local, state, and federal laws, rules and regulations.

For reference documents on terminal specifications, general arrangement drawings and landing rights, please refer to Part D, Forms and Attachments, Attachment D.

2. SOLICITATION TIMELINE

Listed below is the anticipated schedule that outlines pertinent dates of which Proposers should be aware—all dates are subject to revision at WETA's sole discretion:

July 15, 2021	Issuance of RFP
July 22, 2021, at 2:00 pm	Pre-Proposal Conference (Virtual)
July 30, 2021 at 2:00 pm	Written requests for clarifications are due
September 9, 2021, at 2:00 pm	Proposals due
Week of September 13, 2021	Proposer interviews, if held
October 7, 2021 (Tentative)	Board Action for Contract Award
January 3, 2022	Start of Pilot Service

3. PRE-PROPOSAL CONFERENCE

WETA will conduct a Pre-Proposal Conference. Attendance is not mandatory but is strongly encouraged. The Pre-Proposal Conference will take place virtually on the date and time listed in Section 2, Solicitation Timeline.

Instructions to participate in the Pre-Proposal Conference will be listed on weta.sanfranciscobayferry.com prior to the date of the Conference.

The purpose of the Pre-Proposal Conference will be to answer questions about the RFP. All statements and interpretations provided by WETA representatives at the Pre-Proposal Conference are non-binding unless contained in a subsequent written Addendum.

4. REQUESTS FOR CLARIFICATION OF RFP; ADDENDA

All requests for clarification regarding the meaning or interpretation of any part of this RFP should be in writing and sent to Rachel Rodriguez at Rodriguez@watertransit.org. All requests must be submitted by the date and time set forth in Part A, Section 2.

Should WETA determine that a clarification of the RFP is in order, WETA will issue a written addendum clarifying the matter, which will be posted on WETA's website (<https://weta.sanfranciscobayferry.com/>). Each Proposer has an on-going responsibility to check WETA's website for addenda. WETA has no obligation to provide any other notice of addenda being issued. WETA's failure to respond to a request for clarification or modification will be deemed to be a rejection of such request. Any WETA determination on any Proposer

request will be final. Addenda issued for this RFP, if any, must be expressly acknowledged in Proposer's cover letter.

5. EX PARTE COMMUNICATIONS

Proposers and Proposers' representatives may not communicate orally with an officer, director, employee, or agent of WETA, outside the procedures set forth in this RFP, until after a final agreement between the Selected Proposer and WETA has been executed. Proposers and their representatives are not prohibited, however, from making oral statements or presentations in public to one or more representatives of WETA during a public meeting. Any written communication regarding the RFP between a Proposer (or the Proposer's representative) and WETA's Executive Director, Board Member, officer, employee or consultant, regardless of who initiates the communication, other than as part of the procurement process set forth in this RFP, before WETA issues a Notice to Proceed, will be available for disclosure to the general public.

6. CONFIDENTIALITY

The California Public Records Act (CPRA) (Government Code Sections 6250 et seq.) mandates public access to public records not exempt from disclosure under the CPRA. Therefore, unless the information is exempt from disclosure by law, the content of the proposal, as well as any other written communication between WETA and a Proposer, is a public record that must be made available to the public upon request.

A. Confidentiality Index and Waiver of Claims

If the Proposer believes its proposal, any other communications with WETA, or any documents or materials of any kind provided to WETA to supplement or explain its proposal, or in response to any WETA inquiry or request in connection with this RFP ("supplemental materials"), contains information exempt from disclosure under the CPRA, including trade secrets or other proprietary information that the Proposer believes would cause substantial injury to the Proposer's competitive position if disclosed, the Proposer must request that WETA withhold from disclosure the exempt information by submitting:

- (1) An unredacted copy of the proposal, communication and/or supplemental materials marking each page containing such exempt information as confidential; and
- (2) A redacted copy of the proposal, communication and/or supplemental materials that redacts the purportedly exempt information; and
- (3) A "confidentiality index" that complies with the following requirements:
 - i. For proposals, the confidentiality index must include: (i) the section and page number of the proposal where the information except from disclosure is located; and (ii) an explanation of why the information is exempt from disclosure under the CPRA.
 - ii. For communications and supplemental materials, the confidentiality index must include: (i) the section and page number of the communication or supplemental document where the information except from disclosure is located, as appropriate; and (ii) an explanation of why the information is exempt from disclosure under the CPRA.

- (4) A signed letter with the following statement: "By submitting this [proposal/communication/supplemental material], Proposer agrees to indemnify, defend, and hold harmless WETA, its directors, officers, employees and agents, from any and against all damages (including but not limited to attorneys' fees that may be awarded to the party requesting the Proposer information), and pay any and all cost and expenses, including attorneys' fees, related to the withholding of the information included in the confidentiality index. If Proposer fails to accept a tender of a defense, WETA reserves the right to resolve all claims at its sole discretion, without limiting any rights stated herein."

By submitting a proposal, communication, or supplemental material, Proposer:

- (1) Consents to the release of the redacted version of the proposal, communication, or supplemental material; and
- (2) Consents to the release of any portion of its proposal, communication, or supplemental material not included in the confidentiality index; and
- (3) Waives all claims against WETA, its directors, officers, employees and agents, for the disclosure of such information.

If the Proposer does not include an unredacted copy, redacted copy, confidentiality index and signed indemnification statement, with its proposal, communication, or supplemental material in accordance with the requirements of this section, WETA will have no obligation to withhold any information in the proposal, communication, or supplemental material from disclosure and may release the proposal, communication, or supplemental material without liability to WETA.

A Proposer may not designate its entire proposal or major portions of its Proposal as confidential. A Proposer may not designate WETA forms as confidential. WETA will not honor such designations and will disclose submittals so designated to the public.

B. Review of Confidentiality Index

Upon receipt of a request pursuant to the CPRA seeking a proposal, communication or supplemental material relating to this RFP, WETA may provide the redacted version of the requested record or may withhold information designated in the confidentiality index that is exempt from disclosure. If WETA determines that information in the confidentiality index is not exempt from disclosure, WETA will give reasonable notice to the Proposer prior to releasing any material listed in the confidentiality index.

In the event of a conflict between the redacted version of a record, the confidentiality index, and confidentiality designations in the body of the record, the redacted version of the record prevails.

C. Confidentiality Indemnity

Proposers agree to indemnify, defend, and hold harmless WETA, its directors, officers, employees and agents, from any and against all damages (including but not limited to attorneys' fees that may be awarded to the party requesting the Proposer information), and pay any and all cost and expenses, including attorneys' fees, related to the withholding of the information included in a confidentiality index. If Proposer fails to accept a tender of a defense, WETA reserves the right to resolve all claims at its sole discretion, without limiting any rights stated herein.

7. LEVINE ACT

The Levine Act (Government Code 84308) is part of the Political Reform Act of 1974 and applies to elected officials who serve on appointed boards such as the WETA Board of Directors (Board). The Levine Act prohibits any Board Member from participating in or influencing the decision on awarding a contract with WETA to anyone who has contributed \$250.00 or more to the Board Member within the previous twelve months. The Levine Act also requires a member of the Board who has received such a contribution to disclose the contribution on the record of the proceeding. In addition, Board Members are prohibited from soliciting or accepting a contribution from a party applying for a contract while the matter of awarding the contract is pending before WETA or for three months following the date a final decision concerning the contract has been made.

Proposers must disclose on the record any contribution of \$250.00 or more that they have made to a WETA Board Member within the twelve-month period preceding submission of their response to this RFP. This duty applies to the Proposer, any member of Proposer's team, any agents for the Proposer other team members, and to the major shareholders of any closed corporation that is part of the Proposer's team.

Proposers must indicate in the cover letter submitted with their proposal whether any contribution(s) must be disclosed pursuant to the Levine Act. If the Proposer has made a contribution that needs to be disclosed, the Proposer must include with its proposal a separate written document stating the date, amount, and receipt of the contribution(s).

8. CONFLICTS OF INTEREST

By submitting a proposal, the Proposer represents and warrants that no director, officer, or employee of WETA is in any manner interested directly or indirectly in the proposal or in the Agreement which may be made under it or in any expected profits to arise there from, as set forth in Article 4, Division 4, Title I (commencing with Sec. 1090) of the Government Code of the State of California.

The Proposer warrants and represents that it presently has no interest and agrees that it will not acquire any interest which would present a conflict of interest under California Government Code Sections 1090 et seq. or Sections 87100 et seq. during the performance of services under this Agreement. The Proposer further covenants that it will not knowingly employ any person having such an interest in the performance of this Agreement. Violation of this provision may result in this Agreement being deemed void and unenforceable.

Depending on the nature of the work performed, the Proposer may be required to publicly disclose financial interests under WETA's Conflict of Interest Code. The Proposer agrees to promptly submit a Statement of Economic Interest on the form provided by WETA upon receipt. No person previously in the position of director, officer, employee or agent of WETA may act as an agent or attorney for, or otherwise represent, the Proposer by making any formal or informal appearance, or any oral or written communication, before WETA, or any officer or employee of WETA, for a period of twelve (12) months after leaving office or employment with WETA if the appearance or communication is made for the purpose of influencing any action involving the issuance, amendment, awards or revocation of a permit, license, grant or contract.

The Proposer warrants that it has no organizational conflicts of interest at this time. Alternatively, the Proposer must disclose all known organizational conflicts of interest. An organizational conflict of interest occurs when, due to other activities, relationships, or contracts, a firm or person is unable, or potentially unable, to render impartial assistance or advice to WETA; a firm or person's objectivity in performing the contract work is or might be impaired; or a firm or person has an unfair competitive advantage in proposing for award of a contract as a result of information gained in performance of this or some other agreement.

See the Sample Agreement in Part C of the RFP for additional conflict of interest provisions that will be in effect during the contract term.

9. NON-COLLUSION

By submitting a proposal in response to this RFP, each Proposer certifies that its proposal is genuine and not a sham or collusive or made in the interest of or on behalf of any person not named therein; that the Proposer has not, directly or indirectly, induced or solicited any other person to submit a sham proposal or any other person to refrain from responding to this RFP; and that the Proposer has not in any manner sought collusion to secure any improper advantage over any other person submitting a response to this RFP.

10. SAMPLE AGREEMENT; EXCEPTIONS

The Selected Proposer will be required to execute a contract with WETA, a sample of which is included in Part C of this RFP. Proposers must review all of the terms and conditions set forth in the Sample Agreement. Submittal of a proposal will be deemed acceptance of all of the terms set forth in this RFP and the Sample Agreement unless the Proposer includes any modifications requested to the Sample Agreement in its cover letter, or in an attachment thereto. All requests for exceptions must be in writing, separately identified, and delineated for each section of the Sample Agreement. WETA reserves the right to request further clarification of any requested exception during negotiations and to exclude unacceptable exception(s). No exceptions may be requested after the deadline for the submittal of proposals.

11. PERFORMANCE BOND

Not Applicable.

12. FEDERAL REQUIREMENTS

Not Applicable.

13. DIVERSITY PROGRAM FOR CONTRACTS

Not Applicable.

14. PROPOSAL CONTENT AND FORMAT

Each proposal submitted in response to this RFP must respond fully to the requirements of this RFP and include the following elements in the sequence listed below. It is expected that proposals submitted to WETA be of professional caliber in context and appearance. All descriptions and materials should be clear, concise, and provide sufficient information to

minimize questions and assumptions. Proposals should be limited to 25 pages, excluding cover letter, table of contents, resumes, required forms, and the Price Proposal.

WETA, at its option, may require a Proposer to provide additional information and/or clarify submitted information.

A. Cover Letter

The cover letter must be on company letterhead, be signed by an individual who is legally authorized to bind the firm to the proposal (including the Price Proposal) and must include all of the following information:

- Proposer's name, including all firms involved in a joint venture and any subcontractors.
- If the Proposer is a joint venture: (1) provide an executed copy of the Joint Venture contract with the proposal; and (2) outline the specific areas of responsibility (including administrative, technical, and financial) for each member of the Joint Venture.
- Proposer's business address, telephone numbers, and e-mail address.
- Introduce the firm and summarize its qualifications.
- Name(s) of authorized principals with authority to negotiate and contractually bind the firm.
- A statement that binds the Proposer to its proposal and Price Proposal Form for 90 calendar days.
- Include an express acknowledgement of the receipt of a complete set of RFP documents and all Addenda issued for this RFP, if any.
- If Proposer submits a confidentiality index, the statement required in Part A, Section 6.A of this RFP. Alternatively, if the Proposer does not submit a confidentiality index in accordance with Part A, Section 6.A, a statement confirming that the Proposal does not contain any confidential information and may be released, in its entirety, by WETA in response to a request made pursuant to the California Public Records Act.
- Indicate whether there are any required disclosures pursuant to the Levine Act. See Part A, Section 7. Include any such disclosure in a separate document as per Part A, Section 7.
- Indicate whether there are any conflicts of interest that would limit the Proposer's ability to provide the requested services. See Part A, Section 8.
- Requests for exceptions to the Sample Agreement must be stated in the cover letter, or in an attachment thereto. All requests for exceptions to the Sample Agreement must be in writing, separately identified, and delineated for each section of the Sample Agreement. See Part A, Section 10 and Part C of this RFP.
- A statement that the Proposer has reviewed, is familiar with, and agrees to comply with Attachment E, WETA's License with the Port of San Francisco, and Attachment F, WETA's Lease with the San Mateo County Harbor District.

B. Project Understanding and Approach

In this section, provide the following information:

- A discussion demonstrating the Proposer's understanding of the Services and their significance to WETA's provision of water transportation services in the San Francisco Bay Area. Proposer shall include its level of familiarity with local conditions that may affect cost, permitting, and performance of the Services. If a Proposer determines additional information is necessary to evaluate the price, permitting, and performance of the Services, Proposer should, prior to submitting a Proposal make or obtain any additional examinations, investigations, and studies, and obtain any additional information at its own expense.
- Demonstrate an understanding of, and explain how you will comply with, all WETA operational requirements and restrictions related to safety.
- An organization chart that clearly identifies the proposed team composition. The job titles listed on the chart shall clearly define the role and responsibilities of each job title.
- A staffing plan by task listed in the Scope of Services in Part B: with level of effort (e.g., person hours per staff). Discuss workload for all Key Personnel other than Captains and Deckhands. For Captains and Deckhands, it is assumed they will be 100% devoted to operating the service. For Marketing, Planning, Administration and other jobs of team members on the organizational chart, indicate their expected availability, the percentage of their time that will be devoted to this Service and any other assurances as to their ability to provide the Services in a responsive and timely manner. Include an explanation of how Key Personnel will be managed.
- A detailed breakdown of staffing, including job descriptions and wage scales/salaries and benefits package for all proposed staff members. Include narrative if appropriate. Explain how you will minimize the risk of labor disputes and satisfy any applicable living wage standards.
- Address how unanticipated staffing shortfalls will be handled.

C. Service Enhancements and Efficiency

- WETA is interested in innovative, practical and effective uses of labor and resources to (i) meet service demands with improved efficiency; (ii) promote service between South San Francisco and the Downtown San Francisco Ferry Terminal; (iii) provide additional trips between South San Francisco and the Downtown San Francisco Ferry Terminal beyond the minimum service level required by the Scope of Services; and (iv) provide service between WETA's temporary landing site at the south side of Pier 48 ½ located near Chase Center in Mission Bay and the Downtown San Francisco Ferry Terminal, in addition to the minimum service level required by the Scope of Services.
- Proposers may be offered up to 15 points (see Evaluation Criteria in Section 19.C) for demonstrating their ability to provide the service enhancements described above.
- If applicable, Proposers should describe all proposed plans for service enhancements in detail and provide a service plan and schedule for additional trips between South San Francisco and the Downtown San Francisco Ferry Terminal, and/or service between WETA's temporary landing site at the south side of Pier 48 ½ and the Downtown San Francisco Ferry Terminal.

- At WETA's option, WETA may negotiate with the Selected Proposer to add service enhancements to the Scope of Services prior to execution of the Contract.

D. Technical Approach to Services

In this section, provide the following information:

- 1) Ridership Demand, Fare Revenue Projections, and Marketing
 - a) Provide ridership demand estimate by month for the Service.
 - b) Describe understanding of market potential for the Service and discuss methodology for estimating ridership demand.
 - c) Proposers are responsible for a minimum monthly fare revenue (Total Monthly Revenue Assumption)—see Price Proposal Form, Pay Item B and the instructions in Section 15. Discuss the methodology used for estimating ridership and explain how you arrived at the Total Monthly Revenue Assumption amount.
 - d) Describe plans and strategies that the Proposer will use to market and promote service to potential riders. WETA may supplement the Selected Proposer's marketing efforts in coordination with the Selected Proposer.
- 2) Service Plan and Schedule
 - a. Provide timetable schedule for proposed service, including arrival and departure times by terminal. Proposed Service may not interfere with WETA operations. Proposed schedule shall give WETA the priority and shall not permit landings 15 minutes before and 5 minutes after WETA regular ferry landings at the South San Francisco Ferry Terminal as discussed Part B.
 - b. Discuss approach to developing service schedule, including opportunities and constraints presented in accommodating potential market demand for service.
 - c. Discuss approach to ensuring service quality, including on-time performance and service reliability. Explain your commitment to customer service and how you will provide a positive customer experience that is comparable to that provided already by WETA.
 - d. Discuss whether one (1) or more backup vessel(s) is available if needed.
- 3) Vessel Profile and Specifications. For each vessel the Proposer intends to use to provide the Services, provide the following:
 - a. An overview of vessel specifications as shown in Part D, Attachment B, including, but not limited to passenger capacity, engine horsepower, speed, and fuel burn.
 - b. A copy of the vessel's most recently issued Certificate of Inspection ("COI") from the United States Coast Guard (USCG).

- c. A general arrangement drawing of proposed vessel as an attachment to proposal.
- d. Photos of proposed vessel including clear visibility of Port and Starboard sides, Bow and Stern.
- e. Service and vessels should meet accessibility standards equivalent to those that WETA applies to its services and facilities. These standards may exceed the minimum legal requirements in particular circumstances. Indicate how vessel access will be provided to passengers with disabilities or mobility constraints in accordance with applicable local, state and federal laws and regulations.
- f. Describe other vessel amenities available to passengers during revenue service operation.

E. Proposer's Qualifications and Experience

In this section, Proposers must demonstrate a verifiable history of safe operations and an ability to meet WETA safety and security standards by providing (i) evidence of any required USCG certifications, (ii) a WETA-approved safety plan for operations, (iii) demonstrated ability to meet all Maritime Transportation Security Act requirements, including but not limited to the requirement that at least one crew member on board a vessel landing at a WETA facility must have a Transportation Security Worker Credential (TWIC). In addition, the Proposer must provide all of the following information so that WETA can evaluate Proposer's stability and ability to support the commitments in their proposal:

- Proposer's compliance with all federal, state, and local laws, regulations and ordinances addressing the operation, safety, security, environmental, licensing, and certification requirements associated with the operation and maintenance of the Services, or otherwise applicable to the Contractor.
- Knowledge and understanding of applicable regulations, codes and local conditions relating to the Services.
- Quality assurance system to check analyses, calculations, drawings, specifications, cost estimates, reports and other supporting documentation required to perform the Services.
- A description of all training programs and any USCG-required operation manuals.
- List any awards, recognitions, commendations, etc. for overall marine operating excellence and environmental responsibility.

F. Proposer's Business and Financial Qualifications

In this section, Proposers must provide pertinent information to allow WETA to reasonably formulate a determination about the financial stability and strength of the Proposer. Proposers must provide annual revenue statements and balance sheets for the prior two years. Proposers may include other relevant documentation such as a reference letter of good standing from its bank or financial institution. Describe any administrative proceedings, claims lawsuits, settlements, or other exposures pending against the Proposer.

G. Qualifications and Experience of Key Personnel

"Key Personnel" are those individuals who are essential to the successful completion and execution of the Services. Key Personnel must be available for the duration of the engagement and may not be substituted by the Selected Proposer without WETA's prior written approval.

Substitution of Key Personnel without WETA's prior written approval will constitute a breach of the Agreement awarded pursuant to this RFP. WETA reserves the right to direct the removal of any individual, including Key Personnel. In this section, Proposers must provide the following for all Key Personnel:

- Name and title
- A description of their qualifications and experience relevant to performing the services in Part B, Scope of Services
- Number of years of experience performing work similar to those services in Part B, Scope of Services
- A resume

H. References

Proposers must provide at least one reference for a client for whom, within the past five years, the Proposer has provided the same or similar services as those called for in this RFP. For each reference include:

- Entity name
- Contact name, email address and phone number
- A brief description of the service and the roles of the respective team members in successfully completing the service.

I. All Required Forms

Proposers must submit all the required forms listed in Part D of the RFP, including the Price Proposal Form pursuant to the instructions in Section 15 below. Failure to execute and submit all the required forms and provide all the requested information may result in the Proposal being rejected as nonresponsive.

15. PRICE PROPOSAL FORM

Submit with the Proposal a completed Attachment A, "Price Proposal Form." Total Monthly Price (Pay Item A) must include all costs to perform all services described in Part B, Scope of Services, including but not limited to, providing the minimum service level, applicable fees, taxes, costs for maintenance, fuel, insurance, overhead and profit, labor, materials and all other costs to perform the Scope of Services.

Total Monthly Revenue Assumption (Pay Item B) is to be calculated by multiplying 21 days per month by projected total number of passengers per day by the Clipper/ Hopthru Fare of \$4.50 (not the discounted Fare).

For purposes of scoring the Price Proposal, WETA will evaluate the Total Price (Pay Item C), which is the Total Monthly Revenue Assumption (Pay Item B) subtracted from the Total Monthly Price (Pay Item A).

Total Monthly Price for Optional Service Enhancements (Pay Item D) must include all applicable fees, taxes, maintenance, fuel, insurance, overhead and profit, labor, materials and all other costs associated with performing all of the service enhancements proposed by the Proposer in response to Part A, Section 14.C. The Total Monthly Price for Optional Service Enhancements (Pay Item D) will not be considered for purposes of scoring the Price Proposal pursuant to Part

A, Section 19. This information will be used for negotiations between WETA and the Proposer, if applicable.

In addition to submitting a completed Price Proposal Form, Proposers must provide a detailed cost breakdown of the Total Monthly Price (Pay Item A) and, if applicable, the Total Monthly Price for Optional Service Enhancements (Pay Item D). The detailed cost breakdown of the Total Monthly Price must all applicable fees, taxes, maintenance, fuel, insurance, overhead and profit, labor, materials and all costs associated with performing all of the services in Part B, Scope of Services. The detailed cost breakdown for the Total Monthly Price for Optional Service Enhancements must include all applicable fees, taxes, maintenance, fuel, insurance, overhead and profit, labor, materials and all other costs associated with performing all of the service enhancements proposed by the Proposer in response to Part A, Section 14.C.

16. PROPOSAL SUBMISSION INSTRUCTIONS

Submit the Proposal and all required forms, in PDF format, to Rachel Rodriguez at Rodriguez@watertransit.org. The Proposal should be titled "South San Francisco Pilot Program RFP #21-014" and include the Proposer's name. WETA will not accept Proposals submitted in any other format; no hardcopy proposals will be accepted. It is each Proposer's responsibility to make sure WETA receives and is able to open the Proposal at the time Proposals are due.

Proposals received after the date and time specified above will be considered late and will not be accepted. Please contact Rachel Rodriguez at Rodriguez@watertransit.org with any questions regarding these Proposal submission instructions.

17. WAIVER

Proposers are solely responsible for examining, with appropriate care and diligence, all parts of this RFP and fully informing themselves of all relevant aspects of the Scope of Services. By submitting a proposal, the Proposer represents and warrants that the Proposer has: sufficiently examined and are familiar with each part of this RFP and with all matters affecting the performance of the Scope of Services; checked its proposal for errors and omissions; confirmed that the prices stated in its proposal are correct for performing the Scope of Services and as intended by it. The Proposer waives any claim against WETA for costs incurred in preparing a proposal and responding to this RFP.

18. WITHDRAWAL OF PROPOSAL

Submission of a Proposal shall constitute a firm offer to WETA for 90 calendar days from the submission deadline for proposals stated in Part A, Section 2 of this RFP.

A Proposer may withdraw its proposal any time before the date and time when proposals are due, without prejudice, by submitting a written request for its withdrawal to Rachel Rodriguez at Rodriguez@watertransit.org. A telephone request is not acceptable.

19. EVALUATION PROCESS

A. WETA Evaluation Committee

WETA will establish an evaluation committee appointed by the Executive Director with responsibility for (1) reviewing all proposals and (2) conducting the evaluation and interviews, if any, described in this RFP. WETA reserves the right to reject or accept any and all proposals,

to waive any minor irregularities in proposals or procedures, and to request additional information from Proposers at any stage of the evaluation.

B. Preliminary Evaluation of Proposals

The Evaluation Committee will conduct a preliminary responsiveness check to confirm that each proposal contains all the required documentation and information necessary to be deemed responsive to the RFP. WETA may reject as non-responsive any proposal that does not include the documents and information required by the RFP. However, WETA reserves the right to request additional information and clarifications during the evaluation and selection process from any or all Proposers regarding their proposals.

C. Evaluation Criteria

WETA intends to award a contract to the most qualified, responsible firm submitting a responsive proposal. Ranking of Proposers will be based on a maximum of 100 points, allocated as indicated below. To determine the number of points a Proposer will receive in each category, the Evaluation Committee will consider the proposal material submitted, interviews (if applicable), additional information requested by WETA, client references and any other relevant information about a given Proposer.

The following criteria will be used by the WETA's Evaluation Committee in the evaluation of the proposals:

Evaluation Criteria	Maximum Points
Project Understanding and Approach Score will be based on Proposer's ability to satisfy the requirements in Section 14.B.	15
Service Enhancements and Efficiency Score will be based on Proposer's ability to satisfy the requirements in Section 14.C.	15
Technical Approach to Services Score will be based on Proposer's ability to satisfy the requirements in Section 14.D.	15
Proposer's Qualifications and Experience, Proposer's Business and Financial Qualifications, Qualifications and Experience of Key Personnel, References Score will be based on Proposer's ability to satisfy the requirements in Section 14. E-H	15
Price Proposal Score will be based on Proposer's Total Price (Pay Item C) on the Price Proposal Form (Attachment A) and in accordance with Section 15.	40
Total Possible Points	100

D. Revised Proposals, Interviews and Negotiations

After completing the preliminary evaluation, the Evaluation Committee may conduct further discussion or interviews with firms whose proposals the Evaluation Committee considers

sufficiently viable to allow for further consideration ("the competitive range"). The Evaluation Committee may also reject any proposals it deems not within the competitive range. The Evaluation Committee may require that some or all Proposers attend an interview (may be in person or conducted via telephone per WETA's request) in order to seek clarification regarding the various proposals. WETA also reserves the right to request additional information and to require any such information in writing. The evaluation committee may also contact any reference listed in the proposal or otherwise seek input about Proposers. WETA reserves the right to complete the evaluation process without any interviews or additional information, so Proposers are encouraged to submit their best Proposal with their initial submission.

Upon completion of the final evaluation process, WETA will rank each firm based on the evaluation criteria above, considering all information, including written submissions and any additional information the Evaluation Committee received during the final evaluation process. WETA may accept the highest-ranked proposal or negotiate terms and conditions of the Agreement with the highest-ranked firm. If negotiations are unsuccessful, WETA will terminate the negotiations with that firm and may open negotiations with the next highest-ranked firm. If negotiations with this firm are also not successful, WETA may repeat the negotiations process with the next-highest-ranked firms, or, at its sole discretion, WETA may reject all remaining proposals.

E. Notice of Intent to Award

If WETA determines to award a contract pursuant to this RFP, Proposers will be notified of WETA's intent to award the contract at least 72 hours before the contract is awarded by WETA's Executive Director or the WETA Board of Directors.

20. WETA'S RIGHTS; WAIVER OF COSTS

This RFP does not commit WETA to entering into a contract nor does it obligate WETA to pay for any costs incurred in preparation and submission of proposals submitted in response to this RFP. WETA will not reimburse any firm for costs incurred as a result of preparing or submitting a proposal, including negotiating with WETA on any matter related to this RFP. WETA reserves the right to:

- Remedy errors in the RFP process
- Reject any and all proposals
- Waive formalities and irregularities in proposals
- Modify or rescind the any part of or the entire RFP
- Negotiate with any, all or none of the Proposers
- Issue subsequent RFPs for the Services
- Accept a proposal that does not offer the lowest price

In the event the Selected Proposer defaults or fails to execute a contract with WETA, WETA may enter a contract with another proposer.

21. PROTEST PROCEDURES

Chapter 5, Article XII, of WETA's Administrative Code provides that specific protest procedures set forth in an RFP prevail over those that may be included in WETA's Administrative Code. The following procedures therefore apply.

A. Protests Based Upon the RFP

Protests based upon restrictive requirements or alleged improprieties in the RFP procedure which are apparent or reasonably should have been discovered prior to the proposal due date, must be filed in writing at least five (5) calendar days prior to the proposal due date. The protest must clearly specify in writing the grounds and evidence on which the protest is based and the relief sought. Protesters must first have availed themselves of the procedures for requesting modifications or clarifications of the RFP prior to submitting any protest. Protests that are received outside of the above time period will be rejected.

For timely protests based upon restrictive requirements or alleged improprieties in the RFP procedures, the Executive Director will respond with a written determination prior to the proposal due date. If the Executive Director's determination could affect proposal submission, an appropriate extension of the proposal due date may be granted by WETA via a written addendum. The decision of the Executive Director is final.

B. Protests Based Upon the Notification of Intent to Award a Contract

Protests based upon WETA's notification of intent to award the Contract must be submitted in writing within forty-eight (48) hours of receipt of notice intent to award. The protest must clearly specify in writing the grounds and evidence on which the protest is based and the relief sought. For timely protests based upon the notice of intent to award, the Executive Director will make efforts to notify other Proposers of the protest. The Executive Director will rule on the protest and will respond with a written determination. The decision of the Executive Director is final.

C. Submission of Protests

All Protests should be submitted in writing to WETA's Executive Director at murphy@watertransit.org. Protests that are received outside of the above time periods specified in this section will be rejected. No protests will be considered after contract award, except for compelling reasons whereby the lateness is due to WETA's untimely handling of the protest submission. In no event will WETA consider protests filed after contract award due to the neglect of the protestor. Failure to comply with the time periods for filing protests as set forth in this section will be a basis for rejection of the protest.

22. CONTRACT AWARD AND EXECUTION

WETA reserves the right to not award any contract as a result of this procurement and may terminate the procurement and commence a new procurement for part or all of the Services at any time. Formal contract award will only occur as and when, if at all, the WETA Board takes such action.

If the WETA Board acts to award the Agreement, the Selected Proposer must execute and deliver execution copies of the Agreement within ten (10) working days of receipt, together with all required documents, including but not limited to, the insurance certificates. If the Proposer is an individual, the Agreement must be executed by the individual personally. If the Proposer is a co-partnership, it is desirable that the Agreement be executed by all of the partners, but it may be executed by one (1) of them. If the Proposer is a corporation, this Agreement must be executed by two corporate officers, consisting of: (1) the president, vice president or chair of the board; and (2) the secretary, assistant secretary, chief financial officer or assistant treasurer. In

*SAN FRANCISCO WATER EMERGENCY TRANSPORTATION AUTHORITY
REQUEST FOR PROPOSALS #21-014*

the alternative, this Agreement may be executed by a single officer or a person other than an officer provided that evidence satisfactory to WETA is provided demonstrating that such individual is authorized to bind the corporation (e.g. a copy of a certified resolution from the corporation's board or a copy of the corporation's bylaws). If the Proposer is a joint venture, the Agreement must be executed on behalf of each participating firm by officers or other authorized individuals. If the Proposer is an LLC, the Agreement must be executed by an officer or member who is authorized to bind the LLC.

PART D: FORMS AND ATTACHMENTS

1. **REQUIRED FORMS.** Each Proposer must submit all of the forms listed below. Failure to submit these required forms may result in WETA declaring a proposal non-responsive. All forms should be signed by an authorized individual. Electronic signatures, including digital signatures, are acceptable. WETA may reject as non-responsive forms containing interlineations, alternations, or erasures.
 - A. Attachment A, "Price Proposal Form," in accordance with Part A, Section 15.
 - B. Attachment B, "Vessel Characteristics Form"

2. **ATTACHMENTS.** The following attachments are made part of this RFP and any contract awarded pursuant to this RFP:
 - A. Attachment C, "Insurance Requirements"
 - B. Attachment D, Terminal Specifications and Drawings: South San Francisco and San Francisco Ferry Building
 - C. Attachment E, WETA's License with the Port of San Francisco
 - D. Attachment F, WETA's Lease with the San Mateo County Harbor District
 - E. Attachment G, City of South San Francisco Ferry Feasibility Report. This report was conducted by Tideline Marine Group and the City of South San Francisco and is included here for reference.
 - F. Attachment H, "Facility Security Plan"
 - G. Attachment I, "Declaration of Security"(DoS)

**SAN FRANCISCO BAY AREA WATER EMERGENCY TRANSPORTATION AUTHORITY
REQUEST FOR PROPOSALS FOR WATER TRANSIT SERVICES
RFP #21-014**

ISSUED: July 15, 2021

Part B – SCOPE OF SERVICES

Contractor must provide ferry service Monday through Friday between the South San Francisco Terminal located at 911 Marina Boulevard in South San Francisco and Gates E, F, or G at the Downtown San Francisco Ferry Terminal in a safe, efficient, and accountable manner. Contractor must provide all vessels, supplies, materials, and equipment required for the service, with the exception of WETA-provided floats for landings. Contractor must provide WETA with dedicated services of a firm with the resources, training, prior experience, knowledge, skills, and expertise to effectively perform and complete this Scope of Services.

The Scope of Services includes, at a minimum, provision of the following project elements:

- 1) Marketing:
 - a) Produce a marketing plan for WETA review no later than one month prior to start of service, with marketing materials and messages subject to WETA approval.

- 2) Fare Collection:
 - a) Utilize fare categories and fares described below. Contractor must validate and/or monitor fare collection at the prices listed below and ensure that each passenger pays the correct fare. Contractor must accept all fare media in WETA’s Fare Program: Clipper Cards and Hopthru (WETA’s Mobile Ticketing Application).
 - b) Contractor will visually verify payment of fares by riders utilizing Hopthru and the Clipper card readers located at the South San Francisco Terminal and the Downtown San Francisco Ferry Terminal. Contractor may not access, use, or share any information or data related to fare collection, including Personally Identifiable Information (as defined in Section 22.i of the Agreement), unless otherwise expressly stated in the Agreement or so directed in writing by WETA.
 - c) Contractor may not provide free or discounted transportation unless expressly permitted herein or approved by WETA in advance in writing.

Fare Category	One-Way Fare
Clipper/Hopthru	\$4.50
Discount Clipper/Hopthru	\$2.25
Children Under 5	FREE

- 3) Service Plan and Schedule:
 - a) Provide weekday ferry service from January 3, 2022 through June 30, 2022, except for the President’s Day (February 2, 2022) and Memorial Day (May 30, 2022) holidays. Contractor must provide a service schedule to operate a minimum of three (3) peak-direction trips in both the AM and PM Commute Periods listed below between South San Francisco and Gates E, F, or G of the Downtown San Francisco Ferry Terminal for the duration of the six-month service period.

- 1) AM Commute Period: 6:00AM to 11:00 AM
- 2) PM Commute Period: 2:00PM to 7:00 PM

Provide service for the WETA-approved scheduled arrival and departure times at the South San Francisco terminal and Gates E, F, or G of the Downtown San Francisco Ferry Terminal. The Contractor’s scheduled landing times shall not interfere with WETA scheduled ferry service. Contractor is not permitted to land 15 minutes before and 5 minutes after WETA regular ferry landings at the South San Francisco Ferry Terminal as shown on the table below:

WETA SSF Schedule Effective OCT 2021			
AM		PM	
Arrival	Departure	Arrival	Departure
7:00	7:10	2:30	3:20
8:00	8:10	4:10	4:20
9:00	9:50	5:05	5:20

- b) Contractor shall communicate with WETA Project Manager, Rachel Rodriguez at Rodriguez@watertransit.org for operational questions that arise during the service period and may be required to communicate by radio with WETA’s regular ferry service operator Blue&Gold Fleet for coordination of vessel landings that deviate from the agreed upon schedule.
 - c) Contractor may request an adjustment to the service schedule by providing WETA with 30 calendar days prior written notice before the proposed effective date of the requested service change. The request must include: the proposed change(s), the reasons for the proposed change(s) and any cost difference that result from the change(s). All service schedule adjustments must be approved in advance and in writing by WETA. WETA may reject a service schedule adjustment request for any reason and at any time.
 - d) At WETA’s discretion and direction, Contractor shall provide service between the Downtown San Francisco ferry terminal and WETA’s temporary landing facility in Mission Bay located next to Chase Center in San Francisco. The schedule for service to and from Mission Bay will be approved and finalized by WETA prior to beginning service.
 - e) WETA reserves the right to review, approve and change the service schedule prior to service operation and at any time for any reason.
- 4) Crew:
- a) "Crew" includes, but is not limited to, deckhands, captains, ticketing inspector, concessions and bar tender, customer service agent, and any other positions identified by the Contractor and approved by WETA.
 - b) All Crew must be proficient in English.
 - c) All Crew must possess the requisite certifications and licenses to perform the Services.
 - d) At least one Crew member on board a vessel landing at a WETA facility must have a Transportation Security Worker Credential (TWIC).

- 5) Safety:
- a) Contractor must comply with all WETA safety and security standards and applicable local, state and federal laws and regulations, including without limitation, the Maritime Transportation Security Act.
 - b) Contractor must maintain evidence of any required USCG certifications.
 - c) Contractor must maintain and be in compliance with the Facility Security Plan and Declaration of Security Form as listed in Part D Attachment I.
- 6) Vessel profile and specifications for each of the vessel/s operating the service:
- a) Contractor will provide suitable vessel(s) for the performance of the Services. At all times, vessels shall be in strong, staunch, seaworthy and good working condition throughout the entire project period.
 - b) WETA reserves the right to revoke any vessel at any time for safety or compliance purposes. In the event WETA revokes a vessel, Contractor must provide a backup vessel to continue providing the Service without interruption and in accordance with the Contract requirements.
 - c) Contractor will make any and all corrections and repairs to the vessel, as directed by WETA, and provide WETA with proof of repair before vessel is placed back into service.
 - d) Contractor is responsible for all costs to maintain and repair the vessel(s) to ensure the vessel(s) are in compliance with the requirements of the Agreement at all times. In no event will WETA be liable for such costs or lost profits or damages of any kind related to vessel maintenance or repairs.
 - e) Contractor's vessels may not remain at a terminal after a run or overnight.
 - f) Contractor may not leave a vessel engine running while the vessel is at standstill at terminal.
 - g) Contractor may not perform any repairs or maintenance while the vessel is dockside.
- 7) Reports:
- a) All required reports listed below must be provided to WETA's Project Manager, Rachel Rodriguez, at rodriguez@watertransit.org at the time and in the format specified.
 - b) Contractor must provide passenger and bicycle counts by trip segment daily in the following format: Day, Date, Vessel Name, Captain's Name, Departure Time, Departure Terminal, Arrival Terminal, Arrival Time, Passenger Count, Bicycle Count.
 - c) Contractor is responsible for reporting service interruptions or delays to WETA's Project Manager, Rachel Rodriguez within 24 hours.
 - d) Contractor must provide a mechanism approved by WETA to alert passengers of delays of more than 10 minutes for any departure or arrival and all schedule changes by text message and/or email and deliver timely alerts as necessary during the term of the Contract. A Service Disruption report summarizing the reason for all alerts provided to passengers must also be provided to WETA's Project Manager, Rachel Rodriguez by the 10th of the month in the following format: Date, Name of Vessel, Departure Affected, Description of Disruption (examples: delays more than 10 minutes, canceled run, issue while underway), Number of Passengers left on dock if applicable, Method of Passenger Notification.

- e) Contractor must report any passenger injuries or passenger complaints during the service period to WETA's Project Manager, Rachel Rodriguez by the end of the business day on which the injury or complaint occurs.
- f) Contractor must provide WETA with a daily report of its inspection of the docks and gangways, within the MARSEC security area, at each terminal with regard to safety, function, and appearance.
- g) Contractor must immediately report to WETA's Project Manager all maintenance and repair needs of ferry terminals.
- h) Contractor agrees to provide WETA with any supplemental information or documentation related to any of the reports listed above, upon request.

Part C - Sample Agreement

PROFESSIONAL SERVICES AGREEMENT #21-014

between

SAN FRANCISCO BAY AREA WATER EMERGENCY TRANSPORTATION AUTHORITY

and

[CONTRACTOR]

This Agreement is made and entered into as of [Date] (Effective Date), by and between the San Francisco Bay Area Water Emergency Transportation Authority (WETA) and [Contractor] located at [Address] (Contractor). For purposes of this AGREEMENT, each of the WETA and Contractor may be referred to individually as a "Party" or together, as "Parties."

RECITALS

WHEREAS, WETA requires water transit services and has issued a Request for Proposals (RFP) dated July 14, 2021, Part B: Scope of Services of which is attached and incorporated into this Agreement as Exhibit A; and

WHEREAS, the Contractor desires to provide such services and has represented that it is experienced and qualified to perform such services. It has submitted a written proposal, dated [Date], a copy of which is attached and incorporated into this Agreement as Exhibit B; and

WHEREAS, on [Date], WETA's Board of Directors authorized award of the Agreement to the Contractor;

NOW THEREFORE, THE PARTIES AGREE AS FOLLOWS:

1. CONTRACTOR'S REPRESENTATIONS AND WARRANTIES

In the performance of the Services, as defined in Section 2, the Contractor represents and warrants that:

- a. Professional Expertise. It has and will exercise the degree of professional care, skill, efficiency, and judgment of contractors with special expertise in water transit services; that it carries all applicable licenses, certificates, and registrations in current and good standing that may be required to perform the work; and that it will retain all such licenses, certificates, and registrations in active status throughout the duration of this engagement.
- b. Intellectual Property Rights. In the performance of Services, its use of any third party's intellectual property does not and will not infringe or violate the patent, copyright, trade-secret, or other intellectual-property or proprietary rights of any third party. Contractor further represents and warrants that it has or will have all appropriate licenses, agreements, or ownership rights pertaining to all patent, copyright, trade-secret, or other intellectual-property or proprietary rights needed for the performance of its obligations under this Agreement—including without limitation that it will have all necessary rights to use patentable or copyrightable materials, equipment, devices, or processes not furnished by WETA. Contractor assumes all risks arising from the use of any such patented or copyrighted materials, equipment, devices, or processes.

- c. Existence and Powers. Contractor is a [insert type of entity] duly organized, validly existing and in good standing under the laws of the State of California and has the authority to do business in the State of California. It has the full legal right, power, and authority to own its properties and to carry on its business as now owned and operated and as required by this Agreement.
- d. Corporate Authorization and Binding Obligation. Contractor has the authority and legal capacity to enter into and perform its obligations under this Agreement. This Agreement has been duly authorized, executed and delivered by all necessary corporate action of Contractor and constitutes a legal, valid and binding obligation of Contractor, enforceable against Contractor in accordance with its terms, except to the extent that its enforceability may be limited by bankruptcy, insolvency or other similar laws affecting creditor's rights from time-to-time in effect and equitable principles of general application. The persons signing this Agreement on behalf of Contractor have authority to do so.
- e. No Conflict. Neither the execution and delivery by Contractor of this Agreement nor the performance by Contractor of its obligations under the Agreement: (a) conflicts with, violates or results in a breach of any constitution, law or governmental regulation, bylaws or certificates of incorporation applicable to Contractor; or (b) conflicts with, violates or results in a breach of any order, judgment or decree, or any contract, agreement or instrument, to which Contractor is a party or by which Contractor or any of its properties or assets are bound.
- f. No Litigation. Except as disclosed in writing to WETA before the Effective Date of this Agreement, there is no legal proceeding, at law or in equity, pending or, to the best of Contractor's knowledge, overtly threatened or publicly announced against Contractor, or any of its affiliates or its parent or subsidiary corporations, or otherwise affecting Contractor, in which an unfavorable decision, ruling, or finding, in any single case or in the aggregate, could reasonably be expected to have a material and adverse effect on the execution and delivery of this Agreement by Contractor or on the validity or enforceability of this Agreement against Contractor.
- g. Claims and Demands. Except as disclosed in writing to WETA before the Effective Date of this Agreement, there are no material and adverse claims and demands based in contract or tort law pending or, to the best of its knowledge, threatened against Contractor, or any of its affiliates or its parent or subsidiary corporations, with respect to any project similar to the one that is the subject of this Agreement.

2. SCOPE OF SERVICES

The scope of the Contractor's services will consist of services set forth in Exhibit A, as supplemented by Exhibit B, except when inconsistent with Exhibit A (collectively referred to as the "Services" or the "Service"). The Contractor is responsible for performing all work necessary to complete, in a manner satisfactory to WETA, the work described in this Agreement.

3. COMPONENT PARTS OF THE AGREEMENT

This Agreement consists of the following documents, all of which are incorporated into this Agreement by this reference. In the event of any conflict of inconsistency between the following documents, they are listed in order of precedence:

- a. Amendments to the Agreement
- b. This Agreement
- c. Exhibit A, Scope of Services

- d. Exhibit B, Contractor's Proposal, including all forms, and supporting materials, as accepted by WETA
- e. Attachment X, Insurance Requirements
- f. Attachment X, Terminal Specifications and Drawings
- g. Attachment X, WETA's License with the Port of San Francisco
- h. Attachment X, WETA's Lease with the San Mateo County Harbor District
- i. Attachment X, Facility Security Plan Form
- j. Attachment X, Declaration of Security

4. TERM

The term of this Agreement will commence upon the Effective Date and ending on June 30, 2022, unless the Agreement is terminated sooner pursuant to Section 21. The Contractor will furnish all materials, equipment and services called for under this Agreement, and perform all work in accordance with this Agreement.

WETA reserves the right, in its sole discretion, to exercise up to one 6-month option term to extend this Agreement, pursuant to the terms of this Agreement. If WETA determines to exercise the option term, WETA will give the Contractor at least 30 calendar days' written notice of its determination.

5. KEY PERSONNEL

It is understood and agreed by the Parties that at all times during the term of this Agreement that [Name], will serve as the [primary staff person/designated representative] of the Contractor to undertake, render and oversee all of the services under this Agreement (Key Personnel). The Contractor may not reassign Key Personnel or assign another resource to the Key Personnel role until and unless WETA, in its sole discretion, approves a replacement in writing. WETA reserves the right to direct the removal of any personnel, including but not limited to Key Personnel, when in WETA's opinion the individual's performance is unsatisfactory. Replacement of personnel will not excuse the Contractor from compliance with all of the requirements of this Agreement, including any schedule.

6. COMPENSATION

The Contractor agrees to perform the Services set forth in Section 2 for the total not to exceed amount of [Amount] in accordance with Exhibits A and B. If WETA exercises the 6-month option term, the total not to exceed amount will be [Amount]. The total not to exceed amount includes all labor, costs for maintenance, fuel, materials, and insurance, all applicable fees and taxes, overhead, employee benefits, profit, and all other costs and expenses incurred by the Contractor to perform the Services. WETA will pay the Contractor in accordance with Section 7.

7. MANNER OF PAYMENT

The Contractor must submit invoices on a monthly basis for each complete calendar month. Invoices must be submitted to WETA as soon as possible but no later than 30 days after the end of each month. All invoices must include (i) the contract number; (ii) the full name, phone number, and email of the person to contact with invoice questions; (iii) the Total Monthly Price set forth in Exhibit B; (iv) the difference between the total actual fare revenue for the month (which will be supplied by WETA) and the Total Monthly Revenue Assumption set forth in Exhibit B; (v) and the Total Payment Due. The Total Payment Due is the Total Monthly Price, less the difference between the total actual fare revenue for the month and the Total Monthly Revenue Assumption. By way of example, if the actual fare revenue is greater than or equal to the Total Monthly Revenue Assumption in any month, WETA will pay Contractor the Total Monthly Price. If actual

fare revenue is less than the Total Monthly Revenue Assumption in any month, WETA will pay Contractor the Total Monthly Price, less the difference between the actual fare revenue and the Total Monthly Revenue Assumption. In no event will WETA pay Contractor more than the Total Monthly Price for any month.

PDF invoices should be emailed to the WETA Project Manager, Rachel Rodriguez at Rodriguez@watertransit.org with cc to payables@watertransit.org. No hard copy invoices are required if WETA acknowledges receipt of the email invoice.

WETA will endeavor to pay the Total Payment Due for approved invoices within thirty (30) days of their receipt. Upon request, the Contractor will provide WETA with requested supplemental information or documentation to assist in WETA's review of an invoice. If WETA objects to any invoice submitted by Contractor, WETA will so advise the Contractor in writing giving reasons for its objection. If any invoice submitted by the Contractor is disputed by WETA, only that portion so disputed may be withheld from payment and the Contractor must continue to perform diligently during the pendency of any dispute resolution process that may ensue.

8. NOTICES

All communications relating to the day-to-day activities of the project will be exchanged between WETA's Project Manager, Rachel Rodriguez at Rodriguez@watertransit.org, and the Contractor's [Name] at [Email] and [Phone].

All other notices and communications regarding interpretation of the terms of this Agreement and changes thereto will be given to the other Party in writing and may be given by personal delivery to a representative of the parties, by emailing as follows:

If to WETA: San Francisco Bay Area Water Emergency Transportation Authority
Attn: Rachel Rodriguez
Email: Rodriguez@watertransit.org

If to the Contractor: _____

Attention: _____
Email: _____

The addresses to which notice may be given may be changed from time to time by notice emailed or mailed as described above. Notice will be deemed given on the day after that on which it is emailed, delivered in person, or deposited with a courier.

9. WETA'S RIGHTS

In addition to all other rights specified in this Agreement and available under law, at all times during the term of the Agreement, WETA reserves the right to the following, consistent with its obligations as a public transit service provider: (i) suspend or terminate this Agreement for any reason and at any time, pursuant to Sections 31 and 32, respectively; (ii) contract with another operator to provide the Service; (iii) modify the Service schedule; (iv) modify the fares applicable to the Service; (v) inspect the Contractor's vessel(s); (vi) reject the Contractor's vessel(s) for failure to comply with the requirements of this Agreement, in WETA's sole discretion; and (vii) direct the Contractor to make modifications to the Service, including changes to staffing, schedule, and operations, to ensure compliance with the requirements of this Agreement.

10. UNSAFE CONDITIONS

If a vessel, equipment or facility has any unsafe condition or is not in compliance with applicable laws and regulations, as determined by WETA in its sole discretion, the Contractor must immediately take the vessel, equipment or facility out of service. The vessel, equipment or facility will remain out of service until WETA provides the Contractor with a written notice to resume operation of the vessel, equipment or facility. Contractor agrees to work with WETA in good faith to bring a vessel, equipment or facility into compliance.

Contractor is responsible for all costs incurred to remedy unsafe conditions or maintain compliance with the requirements of the Agreement. In no event will WETA be liable of Contractor's costs, actual or projected lost profits, loss of business, goodwill, or opportunity, or damages of any kind incurred by the Contractor as a result of any unsafe condition or noncompliance with this Agreement.

11. DOCK AND GANGWAY INSPECTIONS

Contractor must inspect the docks and gangways within the MARSEC security area at the Terminals (as defined in Section 12) with regard to safety, function, and appearance each day of service and provide documentation of inspections to WETA's Project Manager. Contractor will immediately report to WETA's Project Manager all maintenance and repair needs of the Terminals. If MARSEC level increases from Level 1, Contractor must complete Attachment X, Declaration of Security and submit to WETA's Project Manager.

12. COMPLIANCE WITH TERMINAL AGREEMENTS

WETA grants to the Contractor a revocable license to land at the South San Francisco Terminal located at 911 Marina Boulevard in South San Francisco ("South San Francisco License") pursuant to WETA's Lease with the San Mateo County Harbor District, which is attached hereto and incorporated herein as Attachment X, solely for the purpose of operating the Service in accordance with this Agreement. The South San Francisco License is subject to the terms, conditions, and restrictions in Attachment X.

WETA grants to the Contractor a revocable license to land at Gates E, F, or G at the Downtown San Francisco Ferry Terminal ("Downtown San Francisco License") pursuant to WETA's License with the Port of San Francisco, which is attached hereto and incorporated herein as Attachment X, solely for the purposes of operating the Service in accordance with this Agreement. The Downtown San Francisco License is subject to the terms, conditions, and restrictions in Attachment X.

The South San Francisco Terminal located at 911 Marina Boulevard in South San Francisco and Gates E, F, or G at the Downtown San Francisco Ferry Terminal are collectively referred to as "the Terminals" and Attachments X and X are collectively referred to as "the Terminal Agreements" for purposes of this Agreement.

Contractor must, at all times during the term of the Agreement, conduct its operations so as not to violate or be in breach of, or cause WETA to violate or be in breach of, any terms or conditions of the Terminal Agreements. The revocable licenses granted to the Contractor do not create a lease (express or implied), do not give rise to any of the legal rights or interests associated with a leasehold interest in property, and may not be transferred or assigned.

13. RESPONSIBILITY FOR ACCESSIBILITY OF VESSELS TO PERSONS WITH DISABILITIES OR MOBILITY CONSTRAINTS

The Service and vessels provided by the Contractor under this Agreement must comply with all accessibility standards equivalent to those that WETA applies to its services and facilities. These standards may exceed the minimum legal requirements in particular circumstances. Contractor agrees to comply with all of WETA's requirements and all applicable local, state, and federal laws and regulations related to accessibility for passengers with disabilities or mobility constraints and the protection of the rights of persons with disabilities, including but not limited to all applicable requirements of: 49 CFR Part 39, "Transportation of Individuals with Disabilities;" 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, as amended; 49 U.S.C. Sections 5332; and implementing regulations, as may be amended. Additionally, Contractor agrees to provide vessels for the Services that comply with or exceed the Proposed Passenger Vessels Accessibility Guidelines dated June 25, 2013, as may be amended, if directed to do so by WETA.

14. HAZARDOUS CHEMICALS AND WASTES

For the purposes of this Section only, the term "claims" shall include (a) all notices, orders, directives, administrative, or judicial proceedings, fines, penalties, fees, or charges imposed by any governmental agency with jurisdiction, and (b) any claim, cause of action, or administrative or judicial proceeding brought against WETA, its directors, or employees, or for any loss, cost (including reasonable attorney's fees), damage, or liability, sustained or suffered by any person or entity, including WETA.

The Contractor is fully and exclusively responsible for any release of hazardous or nonhazardous chemicals or substances during the course of performance of this Contract. The Contractor must immediately report any such release to WETA's Project Manager. The Contractor is solely responsible for all claims and expenses associated with the response to, removal and remediation of the release, including, without limit, payment of any fines or penalties levied against WETA by any agency as a result of such release and shall hold harmless, indemnify, and defend WETA from any claims arising from such release.

If the performance of the work outlined by the Contract creates any hazardous wastes, those wastes shall be properly disposed of according to federal, state, and local laws, at the Contractor's sole expense. The Contractor must dispose of the wastes under its own EPA generator number. In no event will WETA be identified as the generator. The Contractor must notify WETA's Project Manager of any such hazardous wastes and WETA reserves the right to a copy of any test conducted on the wastes and, at its cost, to perform additional tests or examine those wastes, prior to disposition. The Contractor agrees to hold harmless, indemnify, and defend WETA from any claims arising from the disposal of the hazardous wastes, regardless of the absence of negligence or other malfeasance by the Contractor.

15. EMERGENCIES

In the event of a declared emergency by WETA, Contractor must deploy vehicles, including, but not limited to, vessels owned by the Contractor in the manner described by WETA. WETA will compensate Contractor during such period of declared emergency for costs reasonably incurred by Contractor that materially exceed the Contractor's normal expense of performing the Services. Contractor must keep accurate records of any additional expenses and submit a notice to WETA as soon as reasonably practicable pursuant to Section 21.

16. OWNERSHIP OF WORK

All reports, designs, drawings, plans, photographic images, video and sound recording, specifications, analyses, charts, tables, schedules and all other materials prepared, or in the process of being prepared, for the services to be performed by the Contractor will be and are the property of WETA. WETA will be entitled access to and copies of these materials during the progress of the work. Any such materials remaining in the hands of the Contractor or in the hands of any subcontractor upon completion or termination of the work must be immediately delivered to WETA. If any materials are lost, damaged or destroyed before final delivery to WETA, the Contractor must replace them at its own expense, and the Contractor assumes all risks of loss, damage or destruction of or to such materials. The Contractor may retain a copy of all material produced under this Agreement for its use in its general business activities.

Any and all rights, title, and interest (including without limitation copyright and any other intellectual property or proprietary right) to materials prepared under this Agreement are hereby assigned to WETA. The Contractor agrees to execute any additional documents which may be necessary to evidence such assignment.

The Contractor represents and warrants that all materials prepared under this Agreement are original or developed from materials in the public domain (or both) and that all materials prepared under and services provided under this Agreement do not infringe or violate any copyright, trademark, patent, trade secret, or other intellectual-property or proprietary right of any third party.

17. DATA PRIVACY AND SECURITY
N/A

18. CONFIDENTIALITY

Any WETA materials to which the Contractor has access or materials prepared by the Contractor during the course of this Agreement ("confidential information") must be held in confidence by the Contractor, who must exercise all reasonable precautions to prevent the disclosure of confidential information to anyone except the officers, employees and agents of the Contractor as necessary to accomplish the rendition of services set forth in Section 2 of this Agreement.

The Contractor, its employees, subcontractors, and agents may not release any reports, information or other materials prepared in connection with this Agreement, whether deemed confidential or not, to any third party without the approval of WETA.

19. USE OF SUBCONTRACTORS

Unless identified in Contractor's proposal as accepted by WETA, the Contractor may not subcontract any services to be performed by it under this Agreement without the prior written approval of WETA. Any subcontractors must be engaged under written contract with the Contractor with provisions allowing the Contractor to comply with all requirements of this Agreement. The Contractor will be solely responsible for reimbursing any subcontractors, and WETA will have no obligation to them.

20. CHANGES

WETA may, at any time, by written order, make changes to Exhibit A. If such changes cause an increase in the budgeted cost of or the time required for performance of the

Services, an equitable adjustment as mutually agreed will be made in the limit on compensation set forth in Section 6 or to the schedule of Services.

In the event that the Contractor encounters any unanticipated conditions or contingencies that may affect the Services, schedule or the amount of compensation specified herein, the Contractor will so advise WETA immediately upon notice of such condition or contingency. The written notice will explain the circumstances giving rise to the unforeseen condition or contingency and will set forth the proposed adjustment in schedule or compensation. The Contractor must give this notice to WETA prior to performing work related to any proposed adjustment. The pertinent changes will be expressed in a written supplement to this Agreement prior to implementation of such changes.

21. RESPONSIBILITY; INDEMNIFICATION

To the maximum extent permitted by law, the Contractor must indemnify, defend, and hold harmless WETA and its directors, officers, agents and employees (Indemnitees) from and against any and all suits, claims or actions, and damages of any dollar value, arising out of any of the following:

- a. Any injury or death of persons (including without limitation, any employee, agent, and/or subcontractor of Contractor and Contractor's employees and agents) or injury to property that may occur, or that may be alleged to have occurred, arising from the performance of this Agreement by the Contractor caused by a negligent act or omission or willful misconduct of the Contractor or its employees, subcontractors or agents, representatives, or invitees including but not limited to any failure to comply with applicable laws;
- b. Ownership, operation, use, maintenance and/or control of vessels and equipment used to perform the Services registered to or owned by Contractor;
- c. Contractor's unauthorized use of any equipment or vessel in the performance of this Agreement;
- d. Any release of hazardous materials in, on, about or adjacent to WETA's property or the Terminals (as defined in Section 12) that is caused by negligent acts or omissions, or willful misconduct of Contractor, its employees, subcontractors, agents, representatives, or invitees, during the term of this Agreement;
- e. Contractor's use of the Terminals (as defined in Section 12) and any property leased or owned by the Contractor that the Contractor may use in support of this Agreement;
- f. A violation or alleged violation by Contractor of any federal, state, or local law and regulations applicable to Contractor's performance of this Agreement, including any fines, penalties, or liabilities arising out of Contractor's violations of said laws;
- g. A violation or alleged violation by Contractor of any of any WETA requirement or local, state, and federal laws and regulations related to accessibility for passengers with disabilities or mobility constraints and the protection of the rights of persons with disabilities, including without limitation those listed in Section 13;
- h. Unauthorized disclosure by the Contractor or its subcontractors/subconsultants of information WETA deems the disclosure of which would impact the safety of its operations (Security Sensitive Information);

- i. Unauthorized disclosure by the Contractor or its subcontractors/subconsultants of any information that identifies or describes a person or can be directly linked to a specific individual (e.g. name, address, phone or fax number, signature, date of birth, e-mail address, method of payment, ridership and travel pattern data) (Personally Identifiably Information);
- j. Contractor's breach of WETA's network or other cyber-liability-related claims and damages, to the extent caused by Contractor or any of its subcontractors or subconsultants;
- k. WETA's withholding of records the Contractor has marked "Confidential," "Trade Secret," "Proprietary," or other similar designation that are otherwise responsive to a request pursuant to the California Public Records Act;
- l. Any allegation that materials or services provided by the Contractor under this Agreement infringe or violate any copyright, trademark, patent, trade secret, or any other intellectual-property or proprietary right of any third party. In the event any such claims result in a finding of infringement or other violation, Contractor, at Contractor's sole cost and expense, must: (a) secure for WETA the right to continue using the materials, equipment, devices or processes by suspension of the injunction or by procuring a royalty-free license, or licenses, (b) replace any software, hardware, materials, equipment, devices, or processes found to be infringing or violative of third-party rights with non-infringing software, hardware, materials, equipment, devices, or processes, or (c) modify them so that they become non-infringing; and the alternative of (a), (b), or (c) must be selected in consultation with WETA and with WETA's written consent, which will not be unreasonably withheld, though in any event the selection may not entail an unreasonable or excessive amount of time or cause undue disruption to WETA's operations.

To the maximum extent permitted by law, the Contractor further agrees to defend Indemnitees from any and all such actions, suits or claims in any dollar value, listed in this Section 22 with counsel acceptable to WETA in its sole discretion, and pay all charges of attorneys and all other costs and expenses of defenses as they are incurred. If any judgment is rendered, or settlement reached, against WETA, or any of the other individuals enumerated above in any such action, the Contractor must, at its expense, satisfy and discharge the same.

In the event of any claims and damages giving rise to the indemnity and defense obligations set forth in this Section, Contractor must immediately provide Indemnitees with notice of such claims and damages. Both parties contemplate that they will each look to insurance coverage to satisfy their indemnity obligations, and that their respective insurance coverage will be primary (and the other's therefore excess) for obligations for which a party must provide an indemnity. Notwithstanding the previous sentence, the indemnity obligations in this Section are in no way limited by the insurance requirements set forth in Section 25, or the actual insurance coverage available to satisfy any claims and damages.

If any of the provisions to indemnify a party against liability, loss or damage would be prohibited by or unenforceable under the law of the State of California for any reason, including without limitation California Insurance Code Section 533 and California Civil Code Section 1668, the indemnity provided by such provision will be deemed to be limited to and operative only to the maximum extent permitted by law. The provisions of this paragraph will under no circumstances be interpreted as limiting in any manner the obligations of any insurer under any insurance policy maintained pursuant to Section 25.

This indemnification will survive suspension, termination or expiration of the Agreement.

22. CONTRACTOR CONTROL OF WORKFORCE; INDEMNITY AND DEFENSE OF EMPLOYMENT RELATED LIABILITIES

The parties understand and agree that WETA has no control over any employment matters related to Contractor's workforce, including personnel decisions, direction of the workforce or terms and conditions of employment. Contractor assumes all responsibilities with respect to employment liabilities for its workforce. Employees of the Contractor are not employees of WETA. Contractor has sole control over its employees' wages, hours, or working conditions. Given this, in paying its workforce, Contractor must take steps to ensure it meets all wage (under federal, state, and local laws) and workers compensation requirements. Further, Contractor is solely responsible for all pre-employment screening and testing of its workforce, as may be required or allowed by law, including Form I-9 verification, background checks, and related recordkeeping. Contractor is solely responsible for training its own workforce under federal, state, and local laws, including those regarding anti-harassment, anti-retaliation, anti-discrimination, workplace safety training, and any other applicable laws.

Contractor must defend, indemnify, and hold harmless the Indemnitees, as defined in Section 22, from and against all claims and damages arising out of or resulting from employment-related liabilities, including without limitation to an assertion that WETA is a joint employer with Contractor or that a Contractor employee is a borrowed servant of WETA or any of the following:

- a) Any and all claims and damages under Title VII of the Civil Rights Act of 1964 (Title VII), the Americans with Disabilities Act (ADA), the Family and Medical Leave Act (FMLA), the Fair Labor Standards Act (FLSA), the Equal Pay Act, the Employee Retirement Income Security Act (ERISA), the Civil Rights Act of 1991, Section 1981 of U.S.C. Title 42, the Fair Credit Reporting Act (FCRA), the Worker Adjustment and Retraining Notification (WARN) Act, the National Labor Relations Act (NLRA), the Federal Employers Liability Act (FELA), the Age Discrimination in Employment Act (ADEA), the Uniform Services Employment and Reemployment Rights Act (USERRA), the Genetic Information Nondiscrimination Act (GINA), the Immigration Reform and Control Act (IRCA), Affordable Care Act (ACA), Occupational Safety and Health Administration (OSHA) and California Division of Occupational Safety and Health Administration (CalOSHA) claims, wrongful termination in violation of public policy, breach of contract, breach of the implied covenant of good faith and fair dealing, privacy violations, defamation, intentional infliction of emotional distress, discrimination and harassment claims under California's Fair Employment and Housing Act (FEHA), California Family Rights Act (CFRA), Pregnancy Disability Leave, rehire or reemployment rights and any and all claims based on state, municipal, or local employment discrimination statutes, laws, regulations, or ordinances, including, but not limited to age, sex, race, religion, national origin, marital status, sexual orientation, ancestry, parental status, disability, veteran status, harassment, retaliation, attainment of benefit plan rights, claims for severance pay, claims based on breach of contract, quasi-contract (including but not limited to claims of breach of an express or implied contract, tortious interference with contract or prospective business advantage, breach of the covenant of good faith and fair dealing, promissory estoppel, detrimental reliance), wrongful termination, fraud, defamation, libel, slander, false imprisonment, negligent or intentional infliction of emotional distress, tort, personal injury or sickness or any other harm, invasion of privacy, violation of public policy, negligence or any common law, statutory, or other claim whatsoever arising out of

or relating to employment with or separation from employment with the employer, California Labor Code claims, wage claims, all including any amendments and their respective implementing regulations, and any other federal, state, local, or foreign law (statutory, regulatory, or otherwise);

- b) Any and all claims and damages for compensation of any type whatsoever, including but not limited to claims for salary, back pay, front pay, wages of any type, prevailing wages, meal or rest periods, bonuses, commissions, incentive compensation, vacation, and severance;
- c) Any and all claims and damages for monetary or equitable relief, including but not limited to attorneys' fees, reinstatement experts' fees, medical fees or expenses, costs and disbursements, punitive damages, liquidated damages, and penalties;
- d) Any and all claims and damages under a collective bargaining agreement;
- e) Any and all claims and damages for workers compensation benefits (whether under State law or FELA);
- f) Any and all claims and damages for unemployment insurance (whether under State law or RUIA); or
- g) Any and all claims and damages alleging any violation or breach of Labor Code Section 1070 et seq. arising from or related to the terms and conditions of employment of employees hired to work for the Contractor as of the Effective Date of this Agreement. The Contractor is exclusively responsible for satisfaction of all obligations that may be owed to its employees or employees of the prior contractor, pursuant to Labor Code Section 1070 et seq., both during and subsequent to the term of the Agreement.

To the maximum extent permitted by law, the Contractor further agrees to defend Indemnitees from any and all such actions, suits or claims in any dollar value, listed in this Section 23 with counsel acceptable to WETA in its sole discretion, and pay all charges of attorneys and all other costs and expenses of defenses as they are incurred. If any judgment is rendered, or settlement reached, against WETA, or any of the other individuals enumerated above in any such action, the Contractor must, at its expense, satisfy and discharge the same.

In the event of any claims and damages giving rise to the indemnity and defense obligations set forth in this Section, Contractor must immediately provide Indemnitees with notice of such claims and damages. Both parties contemplate that they will each look to insurance coverage to satisfy their indemnity obligations, and that their respective insurance coverage will be primary (and the other's therefore excess) for obligations for which a party must provide an indemnity. Notwithstanding the previous sentence, the indemnity obligations in this Section are in no way limited by the insurance requirements set forth in Section 25, or the actual insurance coverage available to satisfy any claims and damages.

If any of the provisions to indemnify a party against liability, loss or damage would be prohibited by or unenforceable under the law of the State of California for any reason, including without limitation California Insurance Code Section 533 and California Civil Code Section 1668, the indemnity provided by such provision will be deemed to be limited to and operative only to the maximum extent permitted by law. The provisions of this

paragraph will under no circumstances be interpreted as limiting in any manner the obligations of any insurer under any insurance policy maintained pursuant to Section 25.

This indemnification will survive suspension, termination or expiration of the Agreement.

23. LIQUIDATED DAMAGES

It is agreed by the Parties that time is of the essence, and in the event of Contractor's failure to provide Service in accordance with the schedule approved by WETA, damage will be sustained by WETA and that it is or will be impracticable to determine the actual amount of the damage. It is therefore agreed that WETA may assess Liquidated Damages in the amount of \$10,373.00 for each day Contractor fails to provide scheduled Service. No Liquidated Damages will be imposed if WETA determines, based on a proper showing by the Contractor, that Contractor's failure to provide scheduled Service was due to causes beyond the Contractor's control.

24. INSURANCE

Contractor is required to procure and maintain at its sole cost and expense the insurance coverage listed in Exhibit C. Contractor will provide a certificate evidencing that it meets the insurance requirements prior to WETA issuing a Notice to Proceed, and will provide updated certificate(s) each year. Contractor will maintain the required insurance for the duration of this Agreement and will provide WETA with at least 30 days notice of any modification or cancellation of any policy.

25. CONTRACTOR'S STATUS

Neither the Contractor nor any party contracting with the Contractor are deemed to be an agent or employee of WETA. The Contractor is and will be an Independent Contractor, and the legal relationship of any person performing services for the Contractor will be one solely between that person and the Contractor.

26. ASSIGNMENT

The Contractor may not assign any of its rights nor transfer any of its obligations under this Agreement without the prior written consent of WETA.

27. WETA WARRANTIES

WETA makes no warranties, representations or agreements, either express or implied, beyond such as are explicitly stated in this Agreement.

28. WETA REPRESENTATIVE

Except when approval or other action is required to be given or taken by the WETA Board of Directors, the WETA Executive Director or the Executive Director's designee will represent and act for WETA.

29. DISPUTE RESOLUTION

The Contractor will be solely responsible for providing timely written notice to WETA of any claims for additional compensation and/or time in accordance with the provisions of this Agreement. It is WETA's intent to investigate and attempt to resolve any Contractor claims before the Contractor has performed any disputed work. Therefore, Contractor's failure to provide timely notice will constitute a waiver of Contractor's claims for additional compensation and/or time.

Claims by the Contractor disputing any interpretation of the meaning and intent of this Agreement by WETA or arising from performance of this Agreement must be referred in writing to WETA's Project Manager for a written decision. All such claims must be filed within five (5) calendar days after Contractor knows, or should have known, of the issues

giving rise to the claim, and must be accompanied by written documentation substantiating the reasons for which the Contractor believes additional compensation/time may be due, the nature of the costs involved, and the amount of the potential claim. WETA's Project Manager will respond to the Contractor in writing with a decision within ten (10) calendar days following receipt of the Contractor's claim. WETA may, in its discretion, extend the time for its response if necessary, or may request, in writing, within ten (10) calendar days of receipt of the claim, any additional documentation supporting the claim or relating to defenses or claims WETA may have against the Contractor.

If there is a dispute over any claim, the Contractor must continue to work during the dispute resolution process in a diligent and timely manner as directed by WETA, and will be governed by all applicable provisions of the Agreement. The Contractor must maintain cost records of all work which is the basis of any dispute.

Unless agreed upon by the parties, all disputes will use the following escalation procedures:

- a. Contractor and WETA will use good faith efforts to resolve all disputes informally at the Project Manager level. In the event such efforts are unsuccessful, either Party may request that WETA provide a written determination as to the proposed resolution of the dispute.
- b. Within ten (10) calendar days of the request, the Project Manager will provide a written determination as to the dispute, which will include the basis for its decision. Upon Contractor's written acceptance of the Project Manager's determination, the Agreement may be modified and the determination implemented or, failing agreement, WETA may in its sole discretion pay such amounts and/or revise the time for performance in accordance with the Project Manager's determination.
- c. If the Project Manager's determination is not accepted by the Contractor, or if the Project Manager fails to respond within ten (10) calendar days, the matter will promptly be referred to senior executives of the Parties having designated authority to settle the dispute. The senior executives will exchange memoranda stating the issues in dispute and their respective positions and then meet for negotiations at a mutually agreed time and place. At either Party's request, such meeting will take place within ten(10) calendar days of the referral of the claim to senior management pursuant to this paragraph. If the matter has not been resolved within ten (10) calendar days of commencement of senior management negotiations, the Parties may mutually agree to try to settle the dispute by means of alternate dispute resolution methodologies such as mediation or arbitration.
- d. In the event that efforts to resolve disputes under this Section are unsuccessful, Contractor must file a government claim, pursuant to California Government Code Section 910 et seq., in order to initiate a civil action.

30. SUSPENSION

WETA has the right to suspend this Agreement at any time and for any reason, including but not limited to non-appropriation of funds and reasons related to the impacts of the COVID-19 pandemic, by giving five (5) calendar days' prior written notice to Contractor. Upon receipt of such notice, Contractor must not commit itself to any further expenditure of time or resources ("Suspension Period").

The Suspension Period will continue until WETA provides written notice to Contractor to resume performance of this Agreement, provided at WETA's sole discretion. With the

exception of Contractor's obligations under Section 13 of this Agreement, which continue in full force and effect during the Suspension Period, Contractor will not provide any services required under this Agreement during the Suspension Period. WETA will have no obligation to compensate Contractor during the Suspension Period. If WETA, in its sole discretion, exercises its right to terminate this Agreement following suspension of work, the terms and conditions in Section 22 of this Agreement will apply.

During the Suspension Period, WETA may require Contractor to provide a written plan for resuming services to WETA's satisfaction. Contractor agrees to provide such a plan and any additional information requested by WETA. WETA reserves the right to continue the Suspension Period until Contractor and WETA mutually agree to a written plan for resuming performance of this Agreement.

After Contractor resumes services pursuant to the agreed-upon plan, if applicable, the parties may determine it is necessary to modify the plan, or WETA may subsequently suspend this Agreement again upon five (5) calendar days' written notice to Contractor. In the event of a subsequent Agreement suspension, the terms and conditions of this section will apply.

Under no circumstances will WETA be liable for any costs, expenses, wages, actual or projected lost profits, or damages of any kind incurred by Contractor during the Suspension Period, or as a result of suspension of this Agreement or the impacts of the COVID-19 pandemic. Contractor agrees not to make any claims against WETA for losses of any kind related to suspension of this Agreement.

31. TERMINATION

WETA has the right to terminate this Agreement at any time for cause or for convenience (including but not limited to for non-appropriation of funds) by giving written notice to the Contractor. Upon receipt of such notice, the Contractor must not commit itself to any further expenditure of time or resources. If the Agreement is terminated for any reason other than a breach or default by the Contractor, WETA will pay the Contractor in accordance with the provisions of this Agreement all sums actually due and owing from WETA for all services performed and all expenses incurred up to the day written notice of termination is given, plus any costs reasonably and necessary incurred by the Contractor to effect such termination, approved by WETA.

If the Agreement is terminated for breach or default, WETA will provide Contractor a reasonable opportunity to cure any breach or default prior to termination. If the Agreement is terminated for breach or default, WETA will pay the Contractor an amount to cover only those services actually performed and expenses incurred in full accordance with the terms and conditions of this Agreement up to the effective date of termination.

In the event termination for cause or convenience occurs prior to Contractor's submission of the monthly invoice pursuant to Section 7, WETA will pay the Contractor the pro-rated Total Payment Due for the services completed during the month in which the Agreement is terminated.

Upon termination for any reason, Contractor must transfer title to WETA (to the extent that title has not already been transferred) and deliver to WETA in the manner and format, at the times, and to the extent directed by WETA all equipment owned by WETA, all data, all work in process, completed work, and all other material produced as a part of, or acquired in the performance of the Agreement.

Additionally, at WETA's request, for up to thirty (30) calendar days after any expiration or termination of this Agreement, Contractor will provide reasonable assistance to transition services to WETA's contracted operator. In the event WETA requests the Contractor to provide transition services outside the scope of this Agreement, Contractor may charge its then-prevailing rates for such services, but no more than the rates it charges to other customers for similar or comparable services and no more than reasonable rates.

In the event of termination for any reason, WETA will not in any manner and under no circumstances be liable for the Contractor's actual or projected lost profits had the Contractor completed the services required by this Agreement, loss of business, goodwill, or opportunity, or damages of any kind incurred by the Contractor as a result of termination.

32. MAINTENANCE, AUDIT AND INSPECTION OF RECORDS

All Contractor and subcontractor costs incurred in the performance of this Agreement will be subject to audit. The Contractor and its subcontractors must permit WETA and the State Auditor to inspect, examine, make excerpts from, transcribe, and copy the Contractor's books, work, documents, papers, materials, payrolls records, accounts and any and all data relevant to the Agreement at any reasonable time, and to audit and verify statements, invoices or bills submitted by the Contractor pursuant to this Agreement. The Contractor must also provide such assistance as may be required in the course of such audit. The Contractor must retain these records and make them available for inspection hereunder for a period of four (4) years after expiration or termination of the Agreement.

If, as a result of the audit, it is determined by WETA's auditor or staff that reimbursement of any costs including profit or fee under this Agreement was in excess of that represented and relied upon during price negotiations or represented as a basis for payment, the Contractor agrees to reimburse WETA for those costs within sixty (60) days of written notification by WETA.

33. WORKERS' COMPENSATION COMPLIANCE

Contractor is required to secure the payment of compensation of its employees in accordance with Labor Code section 3700. Contractor certifies the following:

Contractor is aware of the provisions of Section 3700 of the Labor Code which require every employer to be insured against liability for workers' compensation or to undertake self-insurance in accordance with the provisions of that Code, and Contractor will comply with such provisions before commencing the performance of the any work or services under the Agreement or any subcontract.

34. EQUAL EMPLOYMENT OPPORTUNITY

In connection with the performance of this Agreement, the Contractor may not discriminate against any employee or applicant for employment because of race, color, religion, citizenship, political activity or affiliation, national origin, ancestry, physical or mental disability, marital status, age, medical condition (as defined under California law), veteran status, sexual orientation, gender identity, gender expression, sex or gender (which includes pregnancy, childbirth, breastfeeding, or related medical conditions), taking or requesting statutorily protected leave, or any other characteristics protected under federal, state, or local laws. The Contractor must take affirmative actions to ensure that applicants are employed, and that employees are treated during their employment, without regard to their race, religion, color, sex, disability, national origin, or any other characteristic protected under state, federal, or local laws. Such actions include, but not be limited to, the following: employment, upgrading, demotion or transfer, recruitment or recruitment advertising, layoff or termination, rates of pay or other forms of compensation; and

selection for training, including apprenticeship. The Contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided by WETA's contracting officer setting forth the provisions of this nondiscrimination clause. The Contractor further agrees to insert a similar provision in all subcontracts, except subcontracts for standard commercial supplies or raw materials.

The Contractor will, in all solicitations or advancements for employees placed by or on behalf of the Contractor, state that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex, sexual orientation, gender identity, or national origin.

The Contractor will not discharge or in any other manner discriminate against any employee or applicant for employment because such employee or applicant has inquired about, discussed, or disclosed the compensation of the employee or applicant or another employee or applicant. This provision will not apply to instances in which an employee who has access to the compensation information of other employees or applicants as a part of such employee's essential job functions discloses the compensation of such other employees or applicants to individuals who do not otherwise have access to such information, unless such disclosure is in response to a formal complaint or charge, in furtherance of an investigation, proceeding, hearing, or action, including an investigation conducted by the employer, or is consistent with the Contractor's legal duty to furnish information.

The Contractor will send to each labor union or representative of workers with which the Contractor has a collective bargaining agreement or other contract or understanding, a notice, to be provided by WETA's contracting officer, advising the labor union or workers' representative of the Contractor's commitments under Section 202 of Executive Order No. 11246 of September 24, 1965, and will post copies of the notice in conspicuous places available to employees and applicants for employment.

The Contractor will comply with all provisions of Executive Order No. 11246 of September 24, 1965, and of the rules, regulations, and relevant orders of the Secretary of Labor. The Contractor will furnish all information and reports required by Executive Order No. 11246 of September 24, 1965, and by the rules, regulations, and orders of the Secretary of Labor, or pursuant thereto, and will permit access to the Contractor's books, records, and accounts by WETA and the Secretary of Labor for purposes of investigation to ascertain compliance with such rules, regulations, and orders.

In the event of the Contractor's noncompliance with the nondiscrimination clauses of this Agreement or with any of such rules, regulations, or orders, this Agreement may be cancelled, terminated, or suspended in whole or in part and the Contractor may be declared ineligible for further WETA contracts in accordance with procedures authorized in Executive Order No. 11246 of September 24, 1965, and such other sanctions may be imposed and remedies invoked as provided in Executive Order No. 11246 of September 24, 1965, or by rule, regulation, or order of the Secretary of Labor, or as otherwise provided by law.

The Contractor will include the provisions of all of the above paragraphs in this Section 25 in every subcontract or purchase order entered into under this Agreement, unless exempted by rules, regulations, or orders of the Secretary of Labor issued pursuant to Section 204 of Executive Order No. 11246 of September 24, 1965, so that such provisions will be binding upon each subcontractor or vendor. The Contractor will take such action with respect to any subcontract or purchase order as may be directed by the Secretary of Labor as a means of enforcing such provisions including sanctions for noncompliance,

provided, however, that in the event the Contractor becomes involved in, or is threatened with, litigation with a subcontractor or vendor as a result of such direction, the Contractor may request the United States to enter into such litigation to protect the interests of the United States.

35. NON-DISCRIMINATION ASSURANCE

The Contractor may not discriminate on the basis of race, color, national origin, or sex in the performance of this Agreement. The Contractor must carry out applicable requirements of 49 C.F.R. Part 26 in the award and administration of U.S. DOT-assisted contracts. Further, the Contractor agrees to comply with all provisions prohibiting discrimination on the basis of race, color, or national origin of Title VI of the Civil Rights Act of 1964, as amended, 42 U.S.C. §§ 2000d et seq., and with U.S. DOT regulations, "Nondiscrimination in Federally-Assisted Programs of the Department of Transportation – Effectuation of Title VI of the Civil Rights Act," 49 C.F.R. Part 21. The Contractor must obtain the same assurances from its joint venture partners, subcontractors, and subconsultants by including this assurance in all subcontracts entered into under this Agreement. Failure by the Contractor to carry out these requirements is a material breach of this Agreement, which may result in the termination of this Agreement or such other remedy as WETA deems appropriate.

36. LIVING WAGES

Contractor agrees to comply with all applicable living wage ordinances and standards for all persons employed in the performance of this Agreement.

37. CONFLICT OF INTEREST

The Contractor warrants and represents that it presently has no interest and agrees that it will not acquire any interest that would present a conflict of interest under California Government Code §§ 1090 et seq. or §§ 87100 et seq. during the performance of services under this Agreement. The Contractor further covenants that it will not knowingly employ any person having such an interest in the performance of this Agreement. Violation of this provision may result in this Agreement being deemed void and unenforceable.

Depending on the nature of the work performed, a Contractor of WETA is subject to the same conflict of interest prohibitions that govern WETA employees and officials (Cal. Govt. Code Section 1090 et seq. and Cal. Govt. Code Section 87100 et seq. as well as all applicable federal regulations and laws). During the proposal process or the term of the Agreement, Contractor and its employees may be required to disclose financial interests.

Depending on the nature of the work performed, the Contractor may be required to publicly disclose financial interests under WETA's Conflict of Interest Code. Upon receipt, the Contractor agrees to promptly submit a Statement of Economic Interest on the form provided by WETA.

No person previously in the position of director, officer, employee or agent of WETA may act as an agent or attorney for, or otherwise represent, the Contractor by making any formal or informal appearance, or any oral or written communication, before WETA, or any officer or employee of WETA, for a period of twelve (12) months after leaving office or employment with WETA if the appearance or communication is made for the purpose of influencing any action involving the issuance, amendment, award or revocation of a permit, license, grant or contract.

The Contractor must take all reasonable measures to preclude the existence or development of an organizational conflict of interest in connection with work performed under this Agreement and other solicitations. An organizational conflict of interest occurs

when, due to other activities, relationships, or contracts, a firm or person is unable, or potentially unable, to render impartial assistance or advice to WETA; a firm or person's objectivity in performing the contract work is or might be impaired; or a firm or person has an unfair competitive advantage in proposing for award of a contract as a result of information gained in performance of this or some other Agreement.

The Contractor may not engage the services of any subcontractor or independent Contractor on any work related to this Agreement if the subcontractor or independent Contractor, or any employee of the subcontractor or independent Contractor, has an actual or apparent organizational conflict of interest related to work or services contemplated under this Agreement.

If at any time during the term of this Agreement, the Contractor becomes aware of an organizational conflict of interest in connection with the work performed hereunder, the Contractor immediately must provide WETA with written notice of the facts and circumstances giving rise to this organizational conflict of interest. The Contractor's written notice will also propose alternatives for addressing or eliminating the organizational conflict of interest. If at any time during the term of this Agreement, WETA becomes aware of an organizational conflict of interest in connection with the Contractor's performance of the work hereunder, WETA will similarly notify the Contractor. In the event a conflict is presented, whether disclosed by the Contractor or discovered by WETA, WETA will consider the conflict presented and any alternatives proposed and meet with the Contractor to determine an appropriate course of action. WETA's determination as to the manner in which to address the conflict will be final.

During the term of this Agreement, the Contractor must maintain lists of its employees, and the subcontractors and independent Contractor used and their employees. The Contractor must provide this information to WETA upon request. However, submittal of such lists does not relieve the Contractor of its obligation to assure that no organizational conflicts of interest exist. The Contractor must retain this record for five (5) years after WETA makes final payment under this Agreement. Such lists may be published as part of future WETA solicitations.

The Contractor must maintain written policies prohibiting organizational conflicts of interest and must ensure that its employees are fully familiar with these policies. The Contractor must monitor and enforce these policies and must require any subcontractors and affiliates to maintain, monitor and enforce policies prohibiting organizational conflicts of interest.

Failure to comply with this section may subject the Contractor to damages incurred by WETA in addressing organizational conflicts that arise out of work performed by the Contractor, which damages the Contractor agrees to reimburse, or to termination of this Agreement for breach.

38. PUBLICITY

The Contractor, its employees, subcontractors and agents may not refer to WETA, or use any logos, images or photographs of WETA for any commercial purpose, including, but not limited to, advertising, promotion or public relations, without WETA's prior written consent. Such written consent will not be required for the inclusion of WETA's name on a customer list.

39. ATTORNEYS' FEES

If any legal proceeding should be instituted by either of the parties to enforce the terms of this Agreement or to determine the rights of the parties under this Agreement, the prevailing party in said proceeding will recover, in addition to all court costs, reasonable legal fees.

40. WAIVER

Any waiver of any breach or covenant of this Agreement must be in a writing executed by a duly authorized representative of the party waiving the breach. A waiver by any of the parties of a breach or covenant of this Agreement does not waive any succeeding breach or any other covenant unless specifically and explicitly stated in such waiver.

41. SEVERABILITY

If any provision of this Agreement is deemed invalid or unenforceable, that provision may be reformed and/or construed consistently with applicable law as nearly as possible to reflect the original intentions of this Agreement, and in any event, the remaining provisions of this Agreement will remain in full force and effect.

42. NO THIRD PARTY BENEFICIARIES

This Agreement is not for the benefit of any person or entity other than the parties.

43. COMPLIANCE WITH LAWS, PRACTICES AND POLICIES

Contractor and its employees, agents, and subcontractors/subconsultants performing the Services must at all times comply with all applicable local, state, federal laws, ordinances, statutes, and regulations (including without limitation any applicable health and safety standards) in effect at the time Services under this Agreement are performed. Contractor, when present at WETA's facilities and the Terminal, and when passengers are present, will observe and obey (and compel its officers, employees, guests, and those doing business with it, to observe and obey) all generally applicable policies, practices, and procedures of WETA.

44. NON-EXCLUSIVITY OF AGREEMENT

The Agreement is not, and will not be construed to be, the sole contract for ferry operations between South San Francisco and Downtown San Francisco into which WETA may enter during the term of the Agreement or as it may be extended. In particular, WETA reserves the right to perform services that fall outside the Scope of Services in Exhibit A, or any Services that Contractor fails or refuses to perform, by its own employees and equipment or pursuant to contracts with other parties during the term of the Agreement.

45. APPLICABLE LAW

This Agreement, its interpretation and all work performed under it will be governed by the laws of the State of California.

46. BINDING ON SUCCESSORS

All of the terms, provisions and conditions of this Agreement are binding upon and inure to the benefit of the parties and their respective successors, assigns and legal representatives.

47. COUNTERPARTS

This Agreement may be executed in one or more counterparts, each of which will be deemed an original. All counterparts will be construed together and will constitute one agreement.

48. ENTIRE AGREEMENT; MODIFICATION

This Agreement, including any attachments, constitutes the entire Agreement between the parties with respect to the subject matter hereof and may not be amended except by a written amendment executed by authorized representatives of both parties. In the event of a conflict between the terms and conditions of this Agreement and the attachments, the terms of this Agreement will prevail.

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

CONTRACTOR*:

NAME

By: _____

Date: _____

Name: _____

Title: _____

By: _____

Date: _____

Name: _____

Title: _____

WETA:

SAN FRANCISCO BAY AREA WATER
EMERGENCY TRANSPORTATION
AUTHORITY

By: _____

Date: _____

Name: Seamus Murphy

Title: Executive Director

Approved as to form:

Legal Counsel to WETA

** If the Contractor is a corporation, this Agreement must be executed by two corporate officers, consisting of: (1) the president, vice president or chair of the board; and (2) the secretary, assistant secretary, chief financial officer or assistant treasurer. In the alternative, this Agreement may be executed by a single officer or a person other than an officer provided that evidence satisfactory to WETA is provided demonstrating that such individual is authorized to bind the corporation (e.g. a copy of a certified resolution from the corporation's board or a copy of the corporation's bylaws).*

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

**REQUEST FOR PROPOSALS FOR WATER TRANSIT SERVICES
RFP #21-014**

**ATTACHMENT A
PRICE PROPOSAL FORM**

Proposer Name: _____

Address: _____

Pay Item	Description	Total Monthly Price
A.	<i>All costs to perform all services described in Part B, Scope of Services, including but not limited to, providing the Minimum Service (i.e. three (3) AM and three (3) PM Round Trips from South San Francisco to Downtown SF Ferry Terminal). The "Total Monthly Price" must include all applicable fees, taxes, costs for maintenance, fuel, and insurance, overhead and profit, labor, materials and all other costs to perform the Scope of Services.</i>	
Pay Item	Description	Total Monthly Revenue Assumption
B.	<i>Total Monthly Revenue Assumption is the amount of fare revenue per month assumed by the Proposer. To calculate Total Monthly Revenue Assumption multiply 21 days per month by projected total number of passengers per day by \$4.50.</i>	
Pay Item	Description	Total Price
C.	<i>Pay Item A minus Pay Item B. WETA will evaluate this Total Price for purposes of scoring the Price Proposal in accordance with Part A, Section 19.</i>	
Pay Item	Description	Total Monthly Price for Optional Service Enhancements
D.	<i>Additional costs for optional service enhancements as described in Part A, Section 14.C*</i>	

**The Total Monthly Price for Optional Service Enhancements will not be considered for purposes of scoring the Price Proposal pursuant to Part A, Section 19. This information will be used for negotiations between WETA and the Proposer, if applicable.*

All pricing shown in this Price Proposal Form includes all costs required to perform all tasks described in the Part B, Scope of Services. **In addition to submitting this completed Price Proposal Form, Proposers must provide a detailed cost breakdown of the Total Monthly Price (Pay Item A) and, if applicable, the Total Monthly Price for Optional Service Enhancements (Pay Item D). The detailed cost breakdown of the Total Monthly Price must include all applicable fees, taxes, maintenance, fuel, insurance, overhead and profit, labor, materials and all other costs associated with performing all of the services in Part B, Scope of Services. The detailed cost breakdown for the Total Monthly Price for Optional Service Enhancements must include all applicable fees, taxes, maintenance, fuel, insurance, overhead and profit, labor, materials and all other costs associated with performing all of the service enhancements proposed by the Proposer in response to Part A, Section 14.C.**

All costs must meet the standards for reasonable, allowable, and allocable in accordance with the cost principles of Part 31 of the Federal Acquisition Regulations (48 C.F.R., Part 31). WETA's determination on the allowability, allocability, and reasonableness of the proposed costs shall be final and conclusive.

The undersigned has carefully read the RFP, and has full authority to enter into a Contract on behalf of the Proposer and to bind the Proposer to the terms and conditions of the Contract.

Proposer Full Legal Name: _____

Signature/Date Name and Title of Person Signing

**ATTACHMENT B
 Vessel Specifications Form**

Please fill out each line item on the right side of the table below for each vessel proposed for service in this project. (One form per vessel proposed)

Characteristic	Proposer Specifications
Vessel Name	
Year Built	
Hullform	
Hull Material	
Regulatory Tonnage	
Classification	
Regulatory	
Length Over All	
Beam (molded)	
Draft Max (incl. appendages)*	
Freeboard	
Enclosed Decks	
Main Engines (Make, Model)	
Fuel Type	
Propulsors	
Service Speed	
Passenger Capacity	
Interior Seats	
Exterior Seats	
No. of Crew Required for Service	
Bicycle Capacity	
Fuel Capacity (Gallons)	
No. of Restroom(s)	
No. of ADA Restroom(s)	
Security MTSA Compliance for WETA Ferry Terminals (Yes or No)	
ADA Compliant (Yes or No)	

ATTACHMENT C

INSURANCE REQUIREMENTS FOR CONTRACTOR

CONTRACTOR shall procure and maintain for the duration of the agreement insurance against claims for injuries to persons or damages to property which may arise from or in connection with the performance of work hereunder by the CONTRACTOR, its agents, representatives, or employees or SUBCONTRACTORS:

1.01 GENERAL

A. Any person, firm or corporation CONTRACTOR authorizes to work upon the Property, including any SUBCONTRACTOR, shall be deemed to be CONTRACTOR's agent and shall be subject to all the applicable terms of this Section. Prior to entry upon the Property by such agents, CONTRACTOR shall provide WETA with satisfactory evidence (e.g., in the form of a Certificate of Insurance) that it and its SUBCONTRACTORS or other agents who will perform work under this agreement are insured in accordance with the following. Such insurance shall remain in effect throughout the term of this Agreement and shall be at the sole cost and expense of CONTRACTOR (or its agents or SUBCONTRACTORS).

1.02 WORKERS' COMPENSATION COVERAGE

A. CONTRACTOR shall at its own cost and expense procure and maintain Workers' Compensation coverage to its employees, as required by the California Labor Code and/or Longshoreman's and Harbor Workers Act Insurance in compliance with the laws of the State of California, and Federal laws where applicable with statutory policy limits. The CONTRACTOR shall also maintain Employer's Liability coverage with minimum limits of Five Million Dollars (\$5,000,000) for each disease, with a policy limit of Five Million Dollars (\$5,000,000). Contractor's insurance must be from a carrier with an A M Best rating of A-7 or better, must be statutory in nature, and must include USL&H on an "if any basis". In the event the Contractor 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. The policy shall contain a waiver of subrogation in favor of WETA and its respective officers, directors, employees, volunteers and agents while acting in such capacity.

C. Prior to commencing work or entering onto the Property, CONTRACTOR shall provide WETA the Designated Representative with a certificate evidencing coverage, and upon request, a certified duplicate original of the policy. The certificate and policy shall also provide that the CONTRACTOR's policy will not be cancelled without 30 days prior written notice to WETA's Designated Representative.

1.03 MARINE GENERAL LIABILITY

A. CONTRACTOR shall, at its own cost and expense, procure and maintain Marine General Liability insurance which shall include, as additional insureds, WETA and its respective directors, officers, employees, volunteers and agents while acting in such capacity.

The Contractor shall provide and maintain coverage limits not less than Five Million Dollars (\$5,000,000) per occurrence and in the aggregate for bodily injury and property damage, including coverages for blanket contractual liability, independent contractors, broad form property damage, wharfingers liability, ship repairers liability, terminal operators liability, personal injury, products and completed operations, fire legal liability, sudden & accidental pollution and explosion, collapse and underground (XCU) coverage during any period in which Contractor is conducting any activity on WETA's owned, leased or controlled property. If a Comprehensive or Commercial General Liability policy is used, it shall not contain any marine exclusions. The Marine General Liability Insurance Policy shall not contain a Care, Custody and Control exclusion provision.

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B. Prior to commencing work or entering onto the Property, CONTRACTOR shall provide the Designated Representative of WETA with a Certificate(s) of Insurance evidencing coverage, and upon request, a certified duplicate original of the policy

C. The policy(ies) shall indicate that it is primary to any other insurance and the insurance company(ies) providing such policy(ies) shall be liable thereunder for the full amount of any loss or claim, up to and including the total limit of liability, without right of contribution from any of the insurance effected or which may be effected by WETA. The policy shall contain a waiver of subrogation in favor of WETA and its respective directors, officers, employees, volunteers, agents while acting in such capacity.

D. The policy shall also contain either a Cross Liability endorsement or Severability of Interests Clause and stipulate that inclusion of WETA as additional insureds shall not in any way affect WETA's rights either as respects any claim, demand, suit or judgment made, brought or recovered against the CONTRACTOR. Said policy shall protect CONTRACTOR and WETA in the same manner as though a separate policy had been issued to it, but nothing in said policy shall operate to increase the insurance company's liability as set forth in its policy beyond the amount or amounts shown or to which the insurance company would have been liable if only one interest had been named as an insured.

1.04 BUSINESS AUTOMOBILE LIABILITY

CONTRACTOR shall, at its own cost and expense, procure and maintain Business Automobile Liability insurance providing bodily injury and property damage coverage with a combined single limit of at least \$2 million per occurrence for all owned, non-owned and hired automobiles. This insurance shall provide contractual liability covering all motor vehicles and mobile equipment to the extent coverage may be excluded from commercial general liability insurance. Such insurance shall include, as additional insureds, WETA and its respective directors, officers, employees, volunteers, and agents while acting in such capacity. Said policy shall contain a waiver of subrogation in favor of WETA and its respective directors, officers, employees, volunteers, agents while acting in such capacity. Prior to commencing work or entering onto the Property, CONTRACTOR shall provide the Manager, Operations of WETA with a Certificate(s) of Insurance evidencing coverage, and upon request, a certified duplicate original of the policy.

1.05 Protection & Indemnity Insurance

The Contractor shall provide Protection & Indemnity insurance (P&I) with limits of liability of not less than \$5,000,000 per claim. This insurance will cover bodily injury and property damage caused by the vessel and extend to cover the master and members of the crew as well as passengers on the vessel. The P&I coverage will cover injury to passengers and crew while they are on the vessel including the gangway. WETA shall be named as an Additional Insured.

1.06 Vessel Pollution Liability

The Contractor shall provide Vessel Pollution Liability insurance with limits of liability not less than \$5,000,000 per claim. WETA shall be named as an Additional Insured.

1.07 UMBRELLA COVERAGE

A. CONTRACTOR may provide Umbrella or Excess Liability insurance at its own cost and expense, procure and maintain Umbrella Liability Insurance coverage of at least \$10 million per occurrence and in the annual aggregate in excess of Marine General Liability, Ship Repairers Legal Liability, Business Automobile Liability and Employer's Liability.

1.08 GENERAL INSURANCE REQUIREMENTS

A. Acceptable Insurance

1. All policies will be issued by insurers acceptable to WETA (generally with a Best's Rating of A 7 or better). Upon evidence of financial capacity satisfactory to WETA, CONTRACTOR's obligation hereunder may be satisfied in whole or in part by adequately funded self-insurance. All insurance specified above shall remain in force until all work to be performed is satisfactorily completed, all of CONTRACTOR's personnel and equipment have been removed from the property, and the work has been formally accepted. The failure to procure or maintain required insurance and/or an adequately funded self-insurance program will constitute a material breach of this Agreement.

2. Prior to commencing work or entering onto the property, CONTRACTOR shall provide WETA's Designated Representative with a Certificate(s) of Insurance evidencing the coverage listed above, and upon request, a certified duplicate original of the policy(ies). The Certificate shall stipulate that the insurance company(ies) issuing such policy(ies) shall give written notice to the Executive Director or the owner's designated representative of any material alteration or reduction in coverage of aggregate limits, if such limits apply, and provide at least thirty (30) days' notice of cancellation.

B. Claims-Made Insurance

1. If any insurance specified above shall be provided on a claim-made basis, then in addition to coverage requirements above, such policy shall provide that:

(a) Policy retroactive date coincides with or precedes the CONTRACTOR's start of work (including subsequent' policies purchased as renewals or replacements).

(b) CONTRACTOR shall make every effort to maintain similar insurance for at least three (3) years following project completion, including the requirement of adding all named insureds.

(c) If insurance is terminated for any reason, CONTRACTOR agrees to purchase an extended reporting provision of at least two years to report claims arising from work performed in connection with this Agreement.

(d) Policy allows for reporting of circumstances or incidents that might give rise to future claims.

C. Failure to Procure or Maintain Insurance

1. The failure to procure or maintain required insurance and/or an adequately funded self-insurance program will constitute a material breach of the agreement.

D. Regulatory Compliance

1. In addition to the requirements described above, CONTRACTOR shall comply with any additional coverages required by the United States Department of Transportation, the Environmental Protection Agency and/or related state and local laws, rules and regulations. The CONTRACTOR and/or SUBCONTRACTORS shall obtain all permits, licenses and other forms or documentation which are required and forward them with the required evidence of insurance to WETA.

E. Terms of Policies

1. Except as provided in Section 2 concerning claims made insurance policies, all insurance specified above shall remain in force until all work to be performed is satisfactorily completed, all of CONTRACTOR's personnel and equipment have been removed from WETA's property, and the work has been formally accepted.

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F. Evidence of Insurance

1. The CONTRACTOR shall furnish to WETA Certificates of Insurance or, upon request a certified copy of all policies, for all specified coverages prior to commencing work within ten (10) business days of award of contract. All policies and certificates required hereunder shall provide for thirty (30) days written notice to WETA of cancellation or reduction in limits. The certificates and policies shall also evidence any specific requirements of coverage as set forth in this Section.

G. Reporting of Incidents, Losses or Claims

1. The CONTRACTOR agrees to immediately notify WETA's Manager of Operations & Maintenance, at **(415) 450-5285** following any accident or injury, which occurs in connection with the Work under this AGREEMENT. In addition, the CONTRACTOR shall provide a detailed written report of the accident or injury to WETA within seven (7) days of its occurrence.

END OF SECTION

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

**REQUEST FOR PROPOSALS FOR WATER TRANSIT SERVICES
RFP #21-014**

**ATTACHMENT D
Terminal Specifications and Drawings**

Provided in a separate attachment at weta.sanfranciscobayferry.com

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

**REQUEST FOR PROPOSALS FOR WATER TRANSIT SERVICES
RFP #21-014**

**ATTACHMENT E
WETA's License Agreement with the Port of San Francisco**



**CITY AND COUNTY OF SAN FRANCISCO
LONDON N. BREED, MAYOR**

LICENSE NO. L-16686

BETWEEN THE

**THE CITY AND COUNTY OF SAN FRANCISCO
OPERATING BY AND THROUGH THE
SAN FRANCISCO PORT COMMISSION**

AND

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

DATED AS OF JULY 6, 2020

DOWNTOWN FERRY TERMINAL EXPANSION PROJECT

**ELAINE FORBES
EXECUTIVE DIRECTOR**

SAN FRANCISCO PORT COMMISSION

**KIMBERLY BRANDON, PRESIDENT
WILLIE ADAMS, VICE PRESIDENT
GAIL GILMAN, COMMISSIONER
DOREEN WOO HO, COMMISSIONER**

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EXHIBITS

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Exhibit A-2 Depiction of Completed Downtown Ferry Terminal Expansion Project
Exhibit B Cover Page of Vulnerability Study
Exhibit C Queuing Plan
Exhibit D Approved Plans for Ferry Information and Wayfinding Signs and Ticketing Kiosks
Exhibit E Approved Location of Canopies within License Area
Exhibit F Mitigation Monitoring and Reporting Program
Exhibit G Form of Estoppel Certificate

Schedule 1 List of Warranties

BASIC LICENSE INFORMATION

<i>License Date:</i>	July <u>6</u> , 2020
<i>License No.:</i>	L-16686
<i>Landlord or "Port":</i>	CITY AND COUNTY OF SAN FRANCISCO , a municipal corporation, operating by and through the SAN FRANCISCO PORT COMMISSION
<i>Licensee or "WETA":</i>	SAN FRANCISCO BAY AREA WATER EMERGENCY TRANSPORTATION AUTHORITY , a California public entity created pursuant to Government Code Section 66540 <i>et seq.</i>
<i>Landlord's Notice Address:</i>	Port of San Francisco Pier 1 San Francisco, California 94111 Attention: Director of Real Estate Telephone: (415) 274-0400
<i>Licensee's Notice Address:</i>	San Francisco Bay Area Water Emergency Transportation Authority Pier 9 San Francisco, CA 94111 Attn: Project Manager, FTX Telephone: (415) 291-3377
<i>License Area:</i>	The area depicted on Exhibit A-1 and located generally between the Ferry Building and the Agriculture Building and commonly referred to as the " Embarcadero Plaza " and the " East Bayside Promenade. "
<i>Commencement Date:</i>	July <u>22</u> , 2020
<i>Expiration Date:</i>	July <u>21</u> , 2025, subject to renewal as described in Section 2.2.
<i>Length of Term:</i>	One (1) year, subject to renewal as described in Section 2.2.
<i>Permitted Activities:</i>	Licensee may use the License Area on a non-exclusive basis solely for the following purpose only and for no other purpose: (i) Queuing of passengers embarking from Gates E, F, and G (" Ferry Terminal Gates ") at the Downtown San Francisco Ferry Terminal (" Downtown Ferry Terminal ") in accordance with a Queuing Plan;

	(ii) Access to and from the Embarcadero Plaza, the Ferry Building and the Agriculture Building to the Downtown Ferry Terminal for passengers of Vessels embarking or disembarking from the Downtown Ferry Terminal; and (iii) Staging and coordination area for evacuees during events of regional emergencies.
<i>License Fee:</i>	None.
<i>Development Projects:</i>	Development Projects in the Ferry Building area may include the rehabilitation of the Agriculture Building, the Seawall Improvements, and improvements to Ferry Pier, as further discussed in <i>Section 7</i> .
<i>License Prepared By:</i>	James Hurley, Real Estate and Development, and Dan Hodapp, Planning and Environment

LICENSE NO. L-16686

THIS LICENSE NO. L-16686 is entered into for reference purposes only as of the License Date set forth in the Basic License Information, by and between the **CITY AND COUNTY OF SAN FRANCISCO**, a municipal corporation (the “City”), operating by and through the **SAN FRANCISCO PORT COMMISSION** (“Port” or “Port Commission”), and the **SAN FRANCISCO BAY AREA WATER EMERGENCY TRANSPORTATION AUTHORITY**, a California public entity created pursuant to Government Code Section 66540 et seq. (“Licensee” or “WETA”). The basic license information (the “Basic License Information”), the exhibits, schedule and this agreement are and shall be construed as a single instrument and are referred to herein as this “License.” In the event of any conflict or inconsistency between the Basic License Information and the other provisions of this License, the Basic License Information will control. Initially capitalized terms in this License are defined in *Article 30*.

RECITALS

THIS LICENSE IS MADE WITH REFERENCE TO THE FOLLOWING FACTS AND CIRCUMSTANCES:

A. Port is an agency of the City, exercising its functions and powers over property under its jurisdiction and organized and existing under the Burton Act and the City’s Charter. The Port of San Francisco Waterfront Land Use Plan (the “WLUP”) is Port’s adopted land use document for property within Port jurisdiction, which provides the policy foundation for waterfront development and improvement projects.

B. Port has jurisdiction over the area that is the subject of this License. The License Area is within the area identified as the Ferry Building Waterfront Subarea in the WLUP and landward of the South Basin. The License Area is located generally between and around the Ferry Building and the Agriculture Building.

C. The Downtown Ferry Terminal is located in the Ferry Building Waterfront Subarea, between Pier 1 on the North and Pier 14 on the South, and consists of two open water basins—the “North Basin” and the “South Basin”—separated by the Ferry Pier behind the Ferry Building. The Downtown Ferry Terminal is in Port’s jurisdiction and is located in the Port’s Ferry Building Waterfront Subarea.

D. Ferry berthing facilities in the “North Basin” include: Gate A which no longer exists but is anticipated to be rebuilt as part of a later, as yet unfunded expansion phase; existing Gate B which was constructed and is maintained and operated by Port; and Gates C and D which were constructed by and are operated and maintained by the Golden Gate Ferry. Ferry berthing facilities in the “South Basin” includes: Gates E, F and G.

E. WETA was created by the State of California to develop and operate a regional ferry transit system on the San Francisco Bay and to coordinate ferry transit response to regional emergencies (“WETA’s Primary Mission”). In this capacity, WETA currently operates regional ferry services to and from Port facilities.

F. Port and WETA entered into a Lease Disposition and Development Agreement executed by WETA on November 28, 2016 and by Port on December 1, 2016 (“LDDA”) and Construction Lease L-16200 dated as of April 10, 2017 (“Construction Lease”) in connection with WETA’s development of the Downtown San Francisco Ferry Terminal Expansion Project (“Project”). The LDDA and Construction Lease covered each Parties’ respective obligations regarding the construction and development of the Project.

G. The Project expanded and improved facilities at the South Basin. The Project did not include any improvements to the ferry berthing facilities in the North Basin. The completed Project includes two (2) new ferry gates/berths (Gates F and G) and the rehabilitated pre-existing

Gate E, new landside pedestrian improvements (including a newly built pile-supported “East Bayside Promenade” that connects each of the Ferry Terminal Gates to the landside improvements), new amenities such as weather-protected areas for queuing, a moveable “Pedestrian Bridge” over the water area south of the Agriculture Building that connects Gate G and a portion of the East Bayside Promenade to The Embarcadero Promenade, and a new “Embarcadero Plaza” between the Ferry Building and the Agriculture Building over the water area previously referred to as the “lagoon.” A depiction of the completed Project is shown as *Exhibit A-2*. The Embarcadero Plaza is a new public access area and also a staging area for evacuees in the event of a major emergency. The Project will support projects currently under development by WETA to provide new ferry service to Mission Bay, Berkeley, Treasure Island, and other locations, as well as efforts to enhance existing services.

H. The Project implements one of Port’s objectives in the WLUP for the Ferry Building Waterfront—restore the Ferry Building Waterfront as a major transit center by improving transit access and transfers among water and land transportation modes. Port is proceeding with adjacent and complementary projects such as rehabilitation of the Agriculture Building and Ferry Pier landscaping improvements that also further implement Port’s objectives for the Ferry Building Waterfront Subarea.

I. The LDDA and Construction Lease contemplated that upon completion of the Project, the Parties would enter into this License and a long-term Lease No. L-16685 for generally the land-side portion of the Project (the “Long-Term Lease”).

J. On April 6, 2017, the WETA Board of Directors authorized and directed the Executive Director of WETA, among other things, to enter into this License and the Long-Term License with Port.

K. On April 11, 2017, by Resolution 17-19, the Port Commission authorized and directed the Executive Director, among other things, to enter into this License and the Long-Term Lease with WETA.

L. All conditions to execution of this License pursuant to the LDDA and Construction Lease have been satisfied or waived, and the Parties now wish to enter into this License, upon all of the terms and conditions hereof.

ACCORDINGLY, for good and valuable consideration, the receipt and adequacy of which are hereby acknowledged, the Parties agree as follows:

1. LICENSE AREA; RESERVED RIGHTS; AS IS.

1.1. License Area. Subject to all terms and conditions of this License, Port hereby grants to Licensee a revocable, personal, non-exclusive, and non-possessory privilege to enter and use the License Area for the Permitted Activities.

1.2. License Area is Public Access Area. Licensee acknowledges that the License Area is a BCDC designated public access area (“Public Access Area”) and that Port and other third parties (including members of the public, farmers, vendors, entertainers, and Port licensees) could use the License Area simultaneously or immediately after or before Licensee’s Permitted Activities.

1.3. Farmers Market and Consideration of WETA’s Primary Mission in Scheduling Other Events at the Embarcadero Plaza.

(a) Farmers Market. Pursuant to BCDC Permit 2016.001.00 (as amended from time to time, “BCDC Permit”), upon satisfaction of certain conditions set forth therein, the Embarcadero Plaza may be used for farmers market activities (“Farmers Market”), including set up and removal of infrastructure, for a period not to exceed a total of six (6) hours during non-commute hours (generally 9:00 a.m. to 3:00 p.m.). Under the existing BCDC Permit, the Farmers Market is permitted on a trial basis, up to twenty-four (24) months (“Trial Period”) on

the days described therein. Port has the right, in its sole discretion, to seek an amendment of the BCDC Permit to extend Farmers Market events beyond the Trial Period. Any Farmers Market events at the Embarcadero Plaza beyond the Trial Period will comply with the then current BCDC Permit.

(b) **Scheduling Other Events.** Port may hold, in its sole discretion, non-Farmers Market events on the Embarcadero Plaza in compliance with the BCDC Permit; provided, however, prior to scheduling any non-Farmers Market events that overlap with Licensee's Permitted Activity in the License Area during peak p.m. commute hours (which generally start around 4:00 p.m.), Port will consult and coordinate with Licensee to minimize any adverse and significant impacts the applicable non-Farmers Market event may have on Licensee's Permitted Activity in the License Area. This **Section 1.3** is not intended to be a limitation on the non-exclusive nature of this License or the License Area being a Public Access Area.

1.4. License Area Reduction to Accommodate Adjacent Projects. Port anticipates proceeding with the Adjacent Projects during the Term. Port is in the preliminary planning stages of the Seawall Improvements and is unclear at this time of the various alternatives and impacts the Seawall Improvements may have on the License Area. The Agriculture Building rehabilitation may require, among other things, pushing the Agriculture Building eastward and placing the Agriculture Building on a podium that extends ten (10) feet or more beyond the existing footprint of the Agriculture Building, which may permanently alter the existing License Area boundaries. Additionally, Port or its Agents may require the extended temporary removal of the Pedestrian Bridge during construction of any of the Adjacent Projects. Within a reasonable time following completion of the Adjacent Project that necessitated the Pedestrian Bridge removal, Port will reinstall the Pedestrian Bridge and make any improvements necessary to the Pedestrian Bridge such that it complies with all applicable Laws and its functionality is reasonably comparable to the Pedestrian Bridge's functionality at the time of removal. Accordingly, if Port reasonably believes at any time during the Term, that in order to accommodate construction of any of the Adjacent Projects, the License Area boundaries need to be adjusted, Port will have the right to adjust the License Area so long as ferry passengers are able to access the Ferry Terminal Gates and WETA's Primary Mission at the Downtown Ferry Terminal is not adversely and significantly impacted. In furtherance of the foregoing, Port agrees that in no event will any permanent modification of the License Area result in the removal of the East Bayside Promenade or portions of the Embarcadero Plaza necessary for access and queuing by passengers to and from the Ferry Terminal Gates or for WETA to coordinate ferry transit response to regional emergencies unless (i) otherwise agreed to by the Parties, or (ii) the Adjacent Project is for the Seawall Improvements and the most feasible option is to remove portions of the License Area, as reasonably determined by Port, based on a thorough review of the various options available, the associated costs and the impacts of each such option on the City and region-wide infrastructure (including the Downtown Ferry Terminal, BART, MUNI), service (such as commuter ferry/rail/bus service and ferry transit response to regional emergencies), and utilities, the City, the public and Port's tenants and licensees. WETA hereby waives any and all Losses against the Indemnified Parties arising out of any adjustment to the License Area (whether temporary or permanent), impacts (including significant and adverse impacts) to the Project, and delays in construction, increased cost, inconvenience or disturbance to WETA, its Agents or Invitees, from the Adjacent Projects, except to the extent of the sole negligence or willful misconduct of Port or City.

1.5. Warranty. The Parties acknowledge that pursuant to the LDDA and Construction Lease, WETA designed, developed and constructed the License Area and the Improvements as part of the Downtown Ferry Terminal Expansion Project. As such, WETA, not Port, holds all warranties for the design and construction of the Improvements (collectively, "Warranties"). Accordingly, promptly following notice or knowledge of any claims falling under any of the Warranties, WETA will diligently pursue and enforce its rights under the applicable Warranties.

Schedule I lists the current Warranties, describes the work covered by the Warranties, and the Warranties' period of coverage. For any Warranty that may be extended without payment of additional funds, WETA will extend such Warranty in a timely manner. If a warranty may be extended by payment of additional funds and WETA elects, in its sole discretion, not to expend funds for such extension, WETA will so notify Port within a reasonable time prior to expiration of the applicable Warranty. Port, in its sole discretion, may elect to fund the extension. If Port so elects, then WETA will extend the applicable Warranty.

1.6. Unique Nature of License Area.

(a) WETA acknowledges that: (i) the License Area is located along the waterfront in the immediate vicinity of the Seawall that is in need of repair and present increased risk of damage to property and injury or death to persons from seismic events; (ii) Port's regular maintenance may involve activities, such as pile driving, that create noise and other effects not normally encountered in locations elsewhere in San Francisco due to the unique nature of the License Area; (iii) there is a risk that all or a portion of the License Area will be inundated with water due to floods or sea level rise; (iv) there is a risk that sea level rise will increase the cost of repairs and/or prevent or limit the ability to make repairs to the Improvements; (v) the License Area is located over fill and subject to liquefaction during a seismic event and present increased risk of damage to property and injury or death to persons from seismic events; and (vi) Port cannot guarantee that the License Area will be suitable for the Permitted Activity during the entire Term.

(b) The U.S. Geological Survey predicts that a major earthquake has a 72% chance of occurring in the Bay Area by 2044. An Executive Summary Report for the Seawall Earthquake Vulnerability Study of the Northern Seawall, San Francisco, California, dated July 2016, prepared by GHD-GTC Joint Venture (the "**Vulnerability Study**") was prepared for the Port. The Vulnerability Study summarizes the Seawall's vulnerability during an earthquake. Tenant has been provided a copy of the Vulnerability Study and copy of the cover page of the Vulnerability Study is attached hereto as **Exhibit B**.

(c) The License Area is located in the immediate vicinity of and bayward along a portion of the Seawall. In the event of a major earthquake, the License Area, including the Improvements thereon, may incur significant damage (which may result in greater injury or death to persons on or near the License Area) when compared to properties that are not located on or near the Seawall. Additionally, because of the proximity to the Bay, the License Area is more vulnerable to flooding from sea level rise. Accordingly, (i) Tenant's acceptance of the License Area in its "**As Is With All Faults**" condition as described in **Section 1.7**, (ii) Tenant's independent investigation of the License Area as described in **Section 1.8**, (iii) Port's disclaimer of any representations and warranties as described in **Section 1.9**, and (iv) Tenant's release and waiver of Port from any Losses that Tenant may incur as described in **Section 1.10**, includes the direct or indirect, known or unknown, and foreseeable or unforeseeable Losses and claims (including the potential additional risks of injury or death to persons or damage to property) due to the Seawall's condition or the proximity of the License Area to the Bay and the Seawall.

1.7. As Is With All Faults. Licensee agrees that it has been continuously leasing the License Area since April 10, 2017 (the "**Construction Lease Commencement Date**"), the date certain real property, including the License Area, were delivered to Licensee under the Construction Lease. Since the Construction Lease Commencement Date, Licensee has been solely responsible for the development of the Project and construction of the Project in, on, under and around the License Area. Port has had no responsibility or liability for the development and construction of the Project. Accordingly, Licensee further agrees that Port is leasing the License Area to Licensee, and the License Area are hereby accepted by Licensee, in their existing state and condition, "**As Is With All Faults**," on the Construction Lease Commencement Date, and as further described in **Sections 1.8—1.10**.

1.8. *Independent Investigation by WETA.* WETA acknowledges and agrees that it has been afforded a full opportunity to inspect Port's records relating to conditions in, on, around, under, and pertaining to the License Area as of the Construction Lease Commencement Date and that it has had exclusive use of the License Area since then. Port makes no representation or warranty as to the accuracy or completeness of any matters contained in such records. WETA is not relying on any such information. All information contained in such records is subject to the limitations set forth in *Section 1.9*. WETA represents and warrants to Port that WETA has performed a diligent and thorough inspection and investigation in, on, around, under, and pertaining to the License Area, either independently or through its own experts including (i) the quality, nature, adequacy and physical condition in, on, around, under, and pertaining to the License Area including the structural elements, foundation, and all other physical and functional aspects in, on, around, under, and pertaining to the License Area (including the License Area being on top of and bayward along a portion of the Seawall); (ii) the quality, nature, adequacy, and physical, geotechnical and environmental condition in, on, around, under, and pertaining to the License Area, including the soil and any groundwater (including Hazardous Materials conditions (including the presence of asbestos or lead) with regard to the building, soils and any groundwater); (iii) the suitability in, on, around, under, and pertaining to the License Area for the Improvements and WETA's planned use of the License Area; (iv) the zoning, land use regulations, historic preservation laws, and other Laws governing use of or construction in, on, around, under, and pertaining to on the License Area; and (v) all other matters of material significance affecting in, on, around, under, and pertaining to the License Area (including the License Area being on top of and bayward along a portion of the Seawall) and its development and use under this Agreement.

1.9. *Disclaimer of Representations and Warranties.* WETA specifically acknowledges and agrees that neither the City, including its Port, nor any of the other Indemnified Parties, has made, and there is hereby disclaimed, any representation or warranty, express or implied, of any kind, with respect to the condition in, on, under, around, or pertaining to the License Area (including the License Area being on top of and bayward along a portion of the Seawall), the suitability or fitness in, on, under, around, or pertaining to the License Area or appurtenances to the License Area for the development, use or operation of the improvements, any compliance with Laws or applicable land use or zoning regulations, any matter affecting the use, value, occupancy or enjoyment in, on, under, or pertaining to the License Area, or any other matter whatsoever pertaining to the License Area or the proposed Project.

1.10. *Release and Waiver.* As part of its agreement to accept the License Area in their "As Is With All Faults" condition, Licensee, on behalf of itself and its successors and assigns, will be deemed to waive any right to recover from, and forever release, acquit and discharge, Port and the other Indemnified Parties of and from any and all Losses, whether direct or indirect, known or unknown, foreseen or unforeseen, that Licensee may now have or that may arise on account of or in any way be connected with (i) the physical, geotechnical or environmental condition in, on, under, above, or about the License Area and the Seawall, including any Hazardous Materials in, on, under, above or about the License Area (including soil and groundwater conditions), (ii) the suitability of the License Area for the Permitted Activities, (iii) any Laws applicable thereto, including Environmental Laws, (iv) damages by death of or injury to any Person, or to property of any kind whatsoever and to whomever belonging, and (v) goodwill, or business opportunities arising at any time and from any cause in, on, around, under, and pertaining to the License Area, including all claims arising from the joint, concurrent, active or passive negligence of any of Indemnified Parties, but excluding any intentionally harmful acts committed solely by Port or City.

Licensee expressly acknowledges and agrees that the amount payable or expended by Licensee hereunder does not take into account any potential liability of the Indemnified Parties for any consequential, incidental or punitive damages. Port would not be willing to enter into this Agreement in the absence of a complete waiver of liability for consequential, incidental or

punitive damages due to the acts or omissions of the Indemnified Parties, and Licensee expressly assumes the risk with respect thereto. Accordingly, without limiting any Indemnification obligations of Licensee or other waivers contained in this Agreement and as a material part of the consideration of this Agreement, Licensee fully RELEASES, WAIVES AND DISCHARGES forever any and all claims, demands, rights, and causes of action against the Indemnified Parties for consequential, incidental and punitive damages (including, without limitation, lost profits) and covenants not to sue for such damages, the Indemnified Parties arising out of this Agreement or the uses authorized hereunder, including, any interference with uses conducted by Licensee pursuant to this Agreement regardless of the cause, and whether or not due to the negligence of the Indemnified Parties.

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

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

Licensee agrees that the releases, waivers, and discharges given in and/or contemplated by this *Section 1.10* includes known and unknown claims, disclosed and undisclosed, and anticipated and unanticipated claims pertaining to the subject matter of the releases, waivers, and discharges. Accordingly, Licensee hereby waives the benefits of Civil Code Section 1542, or under any other statute or common law principle of similar effect, in connection with the releases, waivers, and discharges contained in this *Section 1.10*.

Licensee Initials: _____

DS
MK

1.11. Prohibition on Encumbering Port's Interest and Obtaining Other Changes.

Except as set forth in *Section 4.2*, Licensee may not enter into agreements granting licenses, easements or access rights over the License Area. Licensee may not obtain changes in applicable land use laws or conditional use authorizations or other permits without the prior written consent of Port, which will not be unreasonably withheld to the extent any such change is required in order for WETA to carry out WETA's Primary Mission within the License Area and WETA has agreed to be solely responsible for implementing and paying for any additional obligations that may be imposed on Port, WETA, or any other party, as a result of such change.

2. TERM; REVOCABILITY; RENEWAL OPTION.

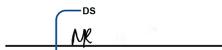
2.1. Term. This License is a revocable, personal, non-assignable, non-exclusive, and non-possessory privilege to enter and use the License Area for the Permitted Activity only on a temporary basis that commences on the commencement date set forth in the Basic License Information ("**Commencement Date**") and expires on the expiration date specified in the Basic License Information ("**Expiration Date**") unless sooner terminated pursuant to the terms of this License or renewed in accordance with *Section 2.2* ("**Term**").

2.2. Renewal. Subject to termination rights under *Sections 2.3 and 2.4*, the Term will be extended for one (1) year automatically on each anniversary of the Commencement Date, to a maximum Term ending on the date the Long-Term Lease expires or terminates or earlier if Port exercises its right to terminate in the event of a Licensee Event of Default; provided, however, if

the Long-Term Lease is not entered into between the Parties within ten (10) days following expiration or termination of the LDDA, the date the LDDA expires or is terminated. In the event the Long-Term Lease terminates, this License shall automatically terminate without the need for further notice.

2.3. Early Termination in Event of Casualty. In the event the Improvements located on the License Area become damaged from casualty such that WETA cannot use and access the premises within the Long-Term Lease or otherwise operate a majority of its then-operating ferry services and WETA has elected to terminate the Long-Term Lease in accordance with its provisions, then either Party will have the option, in their respective sole and absolute discretion, to terminate this License upon written notice to the other Party. If WETA does not terminate this License in the event of a casualty, then WETA and Port will meet and confer to discuss seeking funding resources to rebuild the Improvements within the License Area.

2.4. Revocability. Without limiting any of Port's rights hereunder, by initialing below, Licensee agrees and acknowledges that Port 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 ("Port's Termination Right"); provided, however, Port will not exercise Port's Termination Right if (i) WETA is not in default under the Long-Term Lease or this License, and (ii) WETA is continuing to use the License Area and the premises within the Long-Term Lease for WETA's Primary Mission. Failure of Licensee to initial below shall in no way affect or hinder Port's Termination Right.


 Licensee Initials

3. LICENSE FEE.

In consideration of Licensee's development of the Project and agreement to maintain, repair and replace the improvements within the premises as described in the Long-Term Lease and certain improvements in the License Area throughout the entire Term at its sole cost and expense and at no cost to Port, Port will not charge Licensee a fee to use the License Area for the Permitted Activities.

4. PERMITTED ACTIVITIES; PERMITTED AGENT'S LIMITED USE OF LICENSE AREA; RULES AND REGULATIONS.

4.1. Permitted Activities. Licensee will use and operate the License Area only for the Permitted Activities specified in the Basic License Information and for no other purpose. Persons subject to this License must comply with the directions of Port's employees and agents, and the San Francisco Police Department and Fire Department in connection therewith.

4.2. Permitted Agent's Limited Use of License Area. So long as a Permitted Agent complies with all requirements of this License and Port has received certificates of insurance from such Permitted Agent evidencing its compliance with **Article 16** prior to such Permitted Agent's use and access of the License Area and as may be reasonably requested by Port from time to time, WETA may, without Port's prior consent, allow such Permitted Agent to use and access the License Area only to the extent necessary for the queuing of passengers embarking from the Ferry Terminal Gates. A "Permitted Agent" is WETA's contracted ferry service provider at the Downtown Ferry Terminal that has entered into a written agreement with WETA, which agreement obligates such contracted ferry service provider to comply with all requirements of this License. WETA must provide Port with copies of the actions, resolutions, and agreements with such Permitted Agent for the License Area prior to the effective date of the Permitted Agents' use of the License Area. WETA must promptly provide Port with copies of any subsequent actions, resolutions, amendments and terminations.

4.3. Rules and Regulations. Port has the full right and authority to make, revoke, impose, and amend any rules and regulations pertaining to and reasonably necessary for the

6.1. Sufficient Personnel. Licensee must have sufficient personnel to direct passengers to and from the License Area. Licensee must use its best efforts to ensure that there is no drinking of alcoholic beverages by any passengers of Vessels within, on, around, or adjacent to the License Area. Licensee may enter into a written agreement with an Agent to fulfill the requirements of this **Section 6.1** provided that Licensee gives to Port at least fifteen (15) days prior written notice of such agreement and provides a copy of such agreement to Port. Any such agreement must be subject to and consistent with the terms of this License, including without limitation the insurance requirements set forth in **Article 16**, unless otherwise agreed to by Port in its sole discretion. Port reserves the right to reject any Agent proposed by Licensee in its sole and absolute discretion; provided, however, if the Agent for purposes of this **Section 6.1** is WETA's contracted ferry service operator, then Port will accept such Agent in its reasonable discretion so long as the requirements of this License are complied with by WETA and its contracted ferry service operator. If Port rejects a proposed Agent, Port will provide a written explanation for such rejection.

6.2. No Smoking. Smoking is strictly prohibited in and around the License Area.

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

6.4. Queuing Plan. As of the Commencement Date, the Parties have agreed on the queuing plan for how passengers will queue for the various Vessels embarking from and disembarking at the Downtown Ferry Terminal, a copy of which is attached hereto as **Exhibit C** ("Queuing Plan"). Following agreement of the other Party, the Parties may change the Queuing Plan from time to time. If Port reasonably believes that the Queuing Plan is in need of revision because of adverse impacts to the public, Port's other tenants and other users of Port property, other uses in the License Area, or concerns raised by other Regulatory Agencies, Licensee will work in good faith to mitigate the adverse impacts and concerns and revise and adjust the Queuing Plan accordingly.

6.5. Public Address System. Licensee is solely responsible for installing a public address system at the License Area and the costs to operate, maintain, repair, and replace the public address system.

6.6. Noise Control. Licensee must (and cause its Agents using or accessing in, on, under, or around the License Area to) use devices and operate or conduct all activity in compliance with the Noise Ordinance. Any devices or activities which are subject to the Noise Ordinance must incorporate advances in the art of noise control developed for the kind and level of noise emitted or produced by such devices and activities, in accordance with regulations issued by the San Francisco Police Department.

6.7. No Obstructions. Unless otherwise approved by Port, in its sole discretion, placement of barriers or obstructions in the License Area are strictly prohibited.

6.8. No Solicitation. Licensee is prohibited from (i) using any public address systems or other mechanical or hand operated voice or power operated megaphones to solicit business or for entertainment purposes, and (ii) using or employing persons to solicit business either in, on, under, or around the License Area or from aboard Vessels berthing at or embarking from the License Area.

6.9. Licensee's Maintenance and Repair Responsibilities. Licensee must, at its sole cost, maintain and repair the Portals (located between the gangway and float on one side and the East Bayside Promenade on the other side) and its Personal Property (such as the Canopies, Ferry Information and Wayfinding Signs, Ticketing Kiosks) within the License Area in good condition and repair, free of graffiti, trash and garbage. "Portal" means the structure and its

doors and doorway located on top of the pile supported walkway between the gangway and float on one side and the East Bayside Promenade on the other side. Ferry passengers will pass through the Portal onto and from a gangway and float as they disembark from and embark on Vessels.

6.10. Ferry Information and Wayfinding Signs and Ticketing Kiosks.

(a) Licensee has the right to install, place, and maintain Ferry Information and Wayfinding Signs and Ticketing Kiosks in the locations identified on the approved plans attached hereto as *Exhibit D*. The installation of Ferry Information and Wayfinding Signs and Ticketing Kiosks in addition to those shown on *Exhibit D* require the prior approval of Port, which may be withheld in Port's sole discretion. Prior to installing or placing any of the Ferry Information and Wayfinding Signs and Ticketing Kiosks, Licensee must first obtain Port's prior consent on the color, shape, and dimensions of the same. Placement or installation of any Signs that are not Ferry Information and Wayfinding Signs or kiosks that are not Ticketing Kiosk within the License Area are strictly prohibited.

(b) All Signs and Ticketing Kiosks must comply with all Laws and building permit requirements. The design, fabrication, installation, maintenance, repair, replacement, and removal of all Signs and Ticketing Kiosk placed or installed on and off the License Area, will be at Licensee's sole cost and expense. Licensee will promptly remove Signs and Ticketing Kiosks that are not in compliance with this *Section 6.10* and at the expiration or earlier termination of this License.

(c) All Signs and Ticketing Kiosks must be maintained and repaired by Licensee at its sole cost and expense. Port will have no responsibility or liability to repair or for any damage to the Signs and Ticketing Kiosks. Licensee assumes all risk for any damage to the Signs and Ticketing Kiosks.

(d) "Ferry Information and Wayfinding Signs" means any Sign that provides information to ferry passengers about ferry information, the location of Ferry Terminal Gates, or the location or destination of ferry vessels at the Downtown Ferry Terminal. "Ticketing Kiosk" means a machine that issues tickets for ferry service embarking from the Downtown Ferry Terminal.

6.11. Weather Protection Canopies. Prior to the Commencement Date, Licensee installed weather-protection canopies ("Canopies") within the License Area in the location generally depicted on *Exhibit E*. The Canopies are the Personal Property of Licensee and will be maintained and repaired by Licensee during the Term and at Port's request, removed at the expiration of the Term, all at Licensee's sole cost and expense. Except in the event of an emergency, Licensee must obtain Port's prior approval with respect to the time and date of any maintenance and repair of the Canopies. Licensee's request must include Licensee's estimate of the period of maintenance and repair. Closure or blockage of any portion of the License Area must be temporary, limited to the smallest footprint possible, and may only occur if such closure is absolutely necessary to protect the public during the maintenance and repair.

6.12. Photovoltaic Panels. Licensee may install on top of the Canopies a photovoltaic energy generation facility for the generation and delivery of electrical energy to the Ferry Terminal Gates and its Personal Property in License Area (the "PV System"). Licensee maintenance and repair obligations under *Section 6.11* includes the obligation to maintain and repair the PV System throughout the Term.

6.13. No Interference with Licensee's Personal Property. Unless necessary for an emergency that could affect public health or safety or in connection with construction of an Adjacent Project, Port will not relocate or modify any of Licensee's Personal Property located within the License Area unless agreed to by WETA in its reasonable discretion.

6.14. Mitigation Monitoring and Reporting Program. In order to mitigate any potential significant environmental impacts of the Project, Licensee agrees that as appropriate, Licensee will incorporate the Mitigation Monitoring and Reporting Program attached hereto as *Exhibit F* in its use of the License Area.

7. DEVELOPMENT PROJECTS.

7.1. Development Projects. A portion of the seawall, constructed more than a century ago, is the foundation of over three (3) miles of San Francisco waterfront stretching from approximately Pier 45 and Telegraph Hill to South Beach and Mission Creek (the "Seawall"). The Seawall requires significant improvements to survive the next major earthquake and to mitigate increasing flood risk from sea level rise and climate change. Improvements to the Seawall under consideration include: (a) strengthening the ground below the Seawall, (b) improving the ground landside of the Seawall, (c) constructing a new Seawall, (d) strengthening or replacing bulkhead walls and wharves, and (e) relocating or replacing critical utilities (the "Seawall Improvements").

During the Term, Port anticipates proceeding with complementary projects adjacent to or near the Downtown Ferry Terminal, such as the rehabilitation of the Agriculture Building, the Seawall Improvements, Ferry Pier improvements, and other possible projects in the Ferry Building area (collectively, the "Adjacent Projects"). In addition to the planned Adjacent Projects, other projects also may be constructed in the vicinity of the License Area by or on behalf of Port or the City (together with Adjacent Projects, collectively, "City Projects") or by Port tenants, licensees or other owners and occupants of other property within or in the vicinity of the License Area ("Other Projects," together with City Project, "Development Projects"). During construction, the Development Projects may require temporary use of all or a portion of the Embarcadero Plaza and removal of the Pedestrian Bridge to permit barges to berth during construction. Accordingly, if Port reasonably believes at any time during the Term, that in order to accommodate any of the Development Projects, the License Area boundaries need to be adjusted, the Parties will negotiate in good faith to adjust the License Area boundaries.

In the event any Development Project results in required modifications to the Improvements within the License Area, Port agrees that it will design and reconstruct such Improvements at its sole cost and expense in accordance with all applicable Laws. Port will use its commercially reasonable efforts to use material reasonably comparable to those in place just prior to commencement of the applicable Development Project. WETA will have the opportunity to review and comment on the design and location of any replacement Improvements, but will not have any approval rights over such design and location.

7.2. Construction Impacts Generally. Licensee is aware that construction of the City Projects and construction projects of Port tenants, licensees or occupants within or in the vicinity of the License Area and the activities associated with such construction may generate adverse impacts on Licensee's use of the License Area, or may result in inconvenience to or disturbance (including significant and adverse impacts) to Licensee and its Agents and Invitees. Said impacts may include increased vehicle and truck traffic, traffic delays and re-routing (including for vehicular and pedestrian routes), noise and vibration from pile driving, closure of streets or traffic lanes for significant amounts of time, removal of the gangway south of the Agriculture Building, loss of street and public parking, dust, dirt, construction noise, and visual obstructions (collectively, "Construction Impacts").

7.3. Waiver. Without limiting Licensee's waiver in *Sections 1.10 and 14.7*, Licensee hereby waives any and all Losses against the Indemnified Parties arising out of any inconvenience or disturbance to Licensee, its Agents or Invitees, from Construction Impacts, including impacts (including significant and adverse impacts) to the Permitted Activities and Licensee's use of the License Area, increased cost, inconvenience or disturbance to Licensee, its Agents or Invitees, from the Adjacent Projects, except to the extent of the sole negligence or willful misconduct of Port or City.

8. TAXES AND ASSESSMENTS.

8.1. *Payment of Taxes and Other Impositions.*

(a) **Payment of Taxes.** Licensee will pay to the proper authority prior to delinquency, all Impositions levied, assessed, confirmed or imposed on the License Area, on any of the improvements or Licensee's Personal Property located on the License Area, or on Licensee's use or occupancy of the License Area hereunder, to the full extent of installments or amounts payable or arising during the Term whether in effect at the Commencement Date or which become effective thereafter. Licensee will not permit any such Impositions to become a defaulted lien on the License Area; provided, however, that in the event any such Imposition is payable in installments, Licensee may make, or cause to be made, payment in installments. In the event of any such dispute, Licensee will Indemnify and hold the Indemnified Parties harmless from and against all losses, damages, costs, or expenses, including Attorneys' Fees and Costs, resulting therefrom.

(i) **Acknowledgment of Possessory Interest.** Licensee specifically recognizes and agrees that this License may create a possessory interest which may be subject to taxation, and that this License requires Licensee to pay any and all possessory interest taxes levied upon Licensee's interest pursuant to an assessment lawfully made by the County Assessor. Licensee further acknowledges that any assignment permitted under this License and any exercise of any option to renew or extend this License may constitute a change in ownership, within the meaning of the California Revenue and Taxation Code, and therefore may result in a reassessment of any possessory interest created hereunder in accordance with applicable Law. Licensee agrees to pay taxes of any kind, including, but not limited to, possessory interest taxes, that may be lawfully assessed on the leasehold interest hereby created and to pay all other taxes, excises, licenses, permit charges and assessments based on Licensee's usage of the License Area that may be imposed upon Licensee by Law, all of which will be paid when the same become due and payable and before delinquency. Licensee agrees not to allow or suffer a lien for any such taxes to be imposed upon the License Area or upon any equipment or property located thereon without promptly discharging the same, provided that Licensee, if so desiring, may have reasonable opportunity to contest the validity of the same.

(ii) **Reporting Requirements.** Administrative Code Sections 23.38 and 23.39 (or its successor) require that Port report certain information relating to this License, and the creation, renewal, extension, assignment, or other transfer of any interest granted hereunder, to the County Assessor within sixty (60) days after any such transaction. Within sixty (60) days following the date of any transaction that is subject to such reporting requirements, Licensee will provide such information as may be requested by Port to enable Port to comply with such requirements.

(b) **Prorations.** All Impositions imposed for the tax year in which the Commencement Date occurs or during the tax year in which this License terminates will be apportioned and prorated between Licensee and Port on a daily basis.

(c) **Proof of Compliance.** Within thirty (30) days following Port's written request, Licensee will deliver to Port copies of official receipts of the appropriate taxing authorities, or other proof reasonably satisfactory to Port, evidencing the timely payment of such Impositions.

(d) **WETA is a Public Agency.** Licensee is a regional public agency that will use the License Area and Improvements to operate a regional ferry transit system on the San Francisco Bay and coordinate ferry transit response to regional emergencies. Accordingly, Licensee may be eligible for certain property tax exemptions. So long as Licensee continues to use the License Area and Improvements primarily for such purpose, Port will not oppose Licensee's application for any applicable property tax exemptions with the County Assessor's Office or the Office of the Treasurer.

8.2. *Port's Right to Pay.* If Licensee fails to pay and discharge any Imposition (including fines, penalties and interest) prior to delinquency, Port, at its sole option, may (but is not obligated to) pay or discharge the same; provided that prior to paying any such delinquent Imposition, Port will give Licensee written notice specifying a date that is at least ten (10) days following the date such notice is given after which Port intends to pay such Impositions. If Licensee fails, on or before the date specified in such notice, to pay the delinquent Imposition, then Port may thereafter pay such Imposition, and the amount so paid by Port (including any interest and penalties thereon paid by Port), together with interest at the Default Rate computed from the date Port makes such payment, will be payable by Licensee to Port.

9. COMPLIANCE WITH LAWS; REGULATORY APPROVALS.

9.1. *Compliance with Laws.* During the Term, Licensee will comply with, at no cost to Port, all applicable Laws, and the Mitigation Monitoring and Reporting Program in its use of the License Area. The foregoing sentence will not be deemed to limit Port's ability to act in its legislative or regulatory capacity, including the exercise of its police powers. In particular, Licensee acknowledges that the Permitted Activities do not limit Licensee's responsibility to obtain Regulatory Approvals for such Permitted Activities, nor do such Permitted Activities limit Port's responsibility in the issuance of any such Regulatory Approvals to comply with applicable Laws.

9.2. *Regulatory Approvals.*

(a) Port Acting as Owner of License Area. Licensee understands and agrees that Port is entering into this License in its proprietary capacity as the holder of fee title to the License Area (subject to the Public Trust) and not as a Regulatory Agency with certain police powers. Licensee agrees and acknowledges that Port has made no representation or warranty that the necessary Regulatory Approvals to allow for Licensee's intended use of the License Area can be obtained. Licensee agrees and acknowledges that although Port is an agency of the City, Port staff and executives have no authority or influence over officials or Regulatory Agencies responsible for the issuance of any Regulatory Approvals, including Port and/or City officials acting in a regulatory capacity. Accordingly, there is no guarantee, nor a presumption, that any of the Regulatory Approvals required for Licensee's intended use of the License Area will be issued by the appropriate Regulatory Agency, and Licensee understands and agrees that neither entry by Port into this License nor any approvals given by Port under this License will be deemed to imply that Licensee will obtain any required approvals from Regulatory Agencies which have jurisdiction over the License Area, including Port itself in its regulatory capacity. Port's status as an agency of the City in no way limits the obligation of Licensee, at Licensee's own cost and initiative, to obtain Regulatory Approvals from Regulatory Agencies that have jurisdiction over the License Area. In entering into this License, Port is in no way modifying or limiting Licensee's obligations to use the License Area in accordance with all applicable Laws. Without limiting the foregoing, Licensee understands and agrees that Port staff have no obligation to advocate, promote or lobby any Regulatory Agency and/or any local, regional, state or federal official for any Regulatory Approval, for any matters related to this License, and any such advocacy, promotion or lobbying will be done by Licensee at Licensee's sole cost and expense. Licensee hereby waives any claims against the Indemnified Parties, and fully releases and discharges the Indemnified Parties to the fullest extent permitted by Law, from any liability relating to the failure of Port, the City or any Regulatory Agency from issuing any required Regulatory Approval.

(b) Regulatory Approval; Conditions. Licensee understands that Licensee's contemplated uses and activities on the License Area and any subsequent changes in Permitted Activities, may require, Regulatory Approvals from Regulatory Agencies, which may include RWQCB, SHPO, NPS, BCDC, State Lands, the City's Planning Commission and/or Zoning Administrator, SFPUC, and other Regulatory Agencies. Licensee is solely responsible for obtaining any such Regulatory Approvals, as further provided in this Section. Licensee will not

seek any Regulatory Approval without first obtaining the approval of Port. Throughout the Term, Licensee will submit all applications and other forms of request for required Regulatory Approvals on a timely basis and will consult and coordinate with Port in Licensee's efforts to obtain Regulatory Approvals.

Port will cooperate reasonably with Licensee in its efforts to obtain such Regulatory Approvals. However, Licensee will not agree to the imposition of conditions or restrictions in connection with its efforts to obtain a Regulatory Approval if Port is required to be a co-permittee under such permit and such conditions and/or restrictions could create any obligations on the part of Port beyond those specified in this License or the Long-Term Lease that are not agreed to be assumed wholly by Licensee, or could otherwise encumber, restrict or change the use of Port property (other than the License Area), unless in each instance Port has previously approved, in Port's sole and absolute discretion, such conditions or restrictions. Port will provide Licensee with its approval or disapproval thereof in writing to Licensee within fifteen (15) business days after receipt of Licensee's written request, or if Port's Executive Director determines that Port Commission or Board action is necessary, at the first Port and subsequent Board hearings after receipt of Licensee's written request subject to notice requirements and reasonable staff preparation time, not to exceed forty-five (45) days for Port Commission action alone and sixty (60) days if both Port Commission and Board action is required, provided such period may be extended to account for any recess or cancellation of board or commission meetings.

Licensee will bear all costs associated with (1) applying for and obtaining any necessary Regulatory Approval, and (2) complying with any and all conditions or restrictions imposed by Regulatory Agencies as part of any Regulatory Approval beyond those specified in this License or the Long-Term Lease that are assumed wholly by Port. Licensee has the right to appeal or contest any condition in any manner permitted by Law imposed by any such Regulatory Approval. Licensee will provide Port with prior notice of any such appeal or contest and keep Port informed of such proceedings. Licensee will pay or discharge any fines, penalties or corrective actions imposed as a result of the failure of Licensee to comply with the terms and conditions of any Regulatory Approval. No Port Approval will limit Licensee's obligation to pay all the costs of complying with any conditions or restrictions. Licensee will take reasonable steps to cooperate with Port in connection with Port's efforts to obtain approvals from Regulatory Agencies related to development of the Agriculture Building and the Seawall Improvements that are not necessary for or related to development of the License Area, so long as Licensee is reimbursed for all third-party, out-of-pocket costs associated with such cooperation.

Without limiting any other Indemnification provisions of this License, Licensee will Indemnify the Indemnified Parties from and against any and all Losses which may arise in connection with Licensee's failure to obtain or seek to obtain in good faith, or to comply with the terms and conditions of any Regulatory Approval or to pursue in good faith the appeal or contest of any conditions of any Regulatory Approval except to the extent that such Losses arise solely from the gross negligence or willful acts or omissions of Port acting in its proprietary capacity.

10. MAINTENANCE; DAMAGE.

10.1. *Maintenance of the License Area.* Throughout the Term, Port will maintain lighting and trash pickup in the License Area. Port will maintain and repair the License Area in good operating condition and repair, as Port will determine in its reasonable judgment, and subject to the appropriations process. Except for any repair of defects in the construction of the Project, Licensee will not perform any maintenance or repair of the License Area. Licensee will notify Port in writing if it believes any maintenance or repairs to the License Area are necessary. Upon receipt of such notification, Port shall investigate the matter within a reasonable time, and if Port determines that such maintenance or repairs are necessary, Port will perform same when reasonably practicable and funds are appropriated for the Port to do so.

10.2. *Damage.*

(a) **Reporting Damage.** If the Licensee damages the License Area, Licensee will take immediate steps to mitigate the damage to prevent injury or further damage. Licensee will notify Port immediately but in no event more than three (3) hours after the occurrence of such damage.

(b) **Licensee Responsible for Cost of Repair.** Licensee will 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', or Invitees' use of the License Area or approaches thereto. Port 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 Port for costs incurred by Port related to any repair performed by Port in accordance with this Section, Licensee will reimburse Port therefore within ten (10) days after receipt of the applicable invoice. If the cost (including, but not limited to, salaries of Port staff and attorneys' fees) of any such repair work made at Licensee's expense is in excess of Two Thousand Dollars (\$2,000), then Licensee will pay to Port an administrative fee equal to ten percent (10%) of the total "hard costs" of the work. "Hard costs" will include the cost of materials and installation, but will exclude 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 will pay to Port Two Hundred Dollars (\$200) for Port's applicable administrative expenses.

(c) **Circumstance When Licensee Performs Repair.** If Port determines in accordance with *Section 10.2(b)* that Licensee will perform any needed repairs for damage caused by Licensee, its Agents or Invitees, Licensee will 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, including without limitation, any applicable code, rule or regulation of Port without first obtaining Port's prior written consent, which will not be unreasonably withheld or delayed, and a permit therefore. This provision will survive the expiration or earlier termination of this License.

10.3. *Waiver of Rights.* Licensee waives the benefit of any Law that would permit Licensee to make repairs or replacements at Port's expense, or abate or reduce any of Licensee's obligations under, or terminate, this License, on account of the need for any repairs or replacements. Without limiting the foregoing, Licensee hereby waives any right to make repairs at Port's expense as may be provided by Sections 1932(1), 1941 and 1942 of the California Civil Code, as any such provisions may from time to time be amended, replaced or restated.

11. ALTERATIONS.

Licensee will not make, nor suffer to be made, alterations or improvements to the License Area without the express written consent of Port, which consent may be granted or withheld in Port's sole discretion.

12. RESERVED.

13. ASSIGNMENT.

13.1. *Port Consent Required.* Except for a Permitted Transfer as described in *Section 13.2*, Licensee, its successors and permitted assigns will not assign, encumber, hypothecate, pledge, or sell any interest in this License either voluntarily or by operation of law (each and collectively, a "Transfer"), without the prior written consent of Port, which consent may be withheld by Port in its sole discretion. Approval to any one Transfer will not be a waiver of Port's right to require approval for any other Transfer. Licensee must reimburse Port for its reasonable costs of reviewing a proposed Transfer, as provided in the License.

13.2. *Permitted Transfer.* WETA may Transfer all of its rights and obligations under this License without Port's prior consent if all of WETA's Primary Mission is transferred to and

assumed by another state, local or federal agency or joint powers authority (“**Permitted Transfer**”). WETA must provide Port with copies of the actions, resolutions, ordinance, or such other evidence authorizing such Permitted Transfer prior to the effective date of the Permitted Transfer.

13.3. Assignment and Assumption Agreement. Any Transfer made with Port’s consent or a Permitted Transfer must be made pursuant to an Assignment and Assumption Agreement, in form and substance reasonably satisfactory to Port, under which the transferee assumes performance of and agrees to be bound by all of Licensee’s obligations under this License (including all of the Indemnifications and releases and waivers by Licensee in this License) and Licensee’s obligations under other assigned documents, until and including the end of the Term; provided, however, that the failure of any transferee to assume this License and any other assigned documents or to assume one or more of Licensee’s obligations under this License and any other assigned documents, will not relieve such transferee from such obligations or limit Port’s rights or remedies under this License, the other assigned documents, or under applicable Law. Licensee must provide Port within thirty (30) days after Licensee entered into the Assignment and Assumption Agreement with the transferee, a fully executed agreement.

13.4. No Release of Licensee’s Pre-Transfer Liability or Waiver by Virtue of Consent. The consent by Port to a Transfer hereunder is not in any way to be construed to, from and after the date of such assignment, relieve Licensee of any liability arising out of or with regard to the performance of any covenants or obligations to be performed by Licensee hereunder before the date of such assignment, or relieve any transferee of Licensee from its obligation to obtain the express consent in writing of Port to any further Transfer.

13.5. No Further Amendment, No Further Consent Implied. No material terms of a Transfer, after approval by Port, will be amended without Port’s prior written consent. Consent to one Transfer will not be construed as consent to a subsequent Transfer.

13.6. Fees for Review. Licensee will reimburse Port for costs incurred by Port in connection with the review, investigation, processing, documentation, disapproval and/or approval of any proposed Transfer, including its Attorneys’ Fees and Costs and Port staff time. Licensee will pay such costs regardless of whether or not Port consents to such requested Transfer.

13.7. No Release of Licensee. The acceptance by Port of any sum from any other person will not be deemed to be a waiver by Port of any provision of this License or to be a release of Licensee from any obligation under this License. No Transfer will in any way diminish, impair or release any of the liabilities and obligations of Licensee or any other person liable for all or any portion of Licensee’s obligations under this License, except as agreed in writing by Port.

13.8. Acknowledgement. Licensee acknowledges and agrees that each of the rights of Port set forth in this **Article 13** is a reasonable limitation on Licensee’s right to assign or sublet for purposes of California Civil Code Section 1951.4.

14. INDEMNIFICATION OF PORT; WAIVER.

14.1. General Indemnification of the Indemnified Parties. Subject to **Section 14.4**, Licensee agrees to and will Indemnify the Indemnified Parties from and against any and all Losses imposed upon or incurred by or asserted against any such Indemnified Parties in connection with the occurrence or existence of any of the following: (i) any accident, injury to or death of Persons or loss or destruction of or damage to property occurring in, on, under, around, or about the License Area or any part thereof and which may be directly or indirectly caused by any acts done in, on, under, or about the License Area, or any acts or omissions of Licensee, its Agents, or Invitees, or their respective Agents and Invitees; (ii) any use, non-use, possession, occupation, operation, maintenance, management, or condition of the License Area or any part thereof by Licensee, its Agents, or Invitees, or their respective Agents and Invitees;

(iii) any latent, design, construction or structural defect relating to the Project, or any other matters relating to the condition of the License Area caused directly or indirectly by Licensee or any of its Agents or Invitees; (iv) any failure on the part of Licensee or its Agents or Invitees, as applicable, to perform or comply with any of the terms, covenants, or conditions of this License or with applicable Laws; (v) performance of any labor or services or the furnishing of any materials or other property in respect of the License Area or any part thereof by Licensee or any of its Agents or Invitees; (vi) any acts, omissions, or negligence of Licensee, its Agents or Invitees; and (vii) Licensee's failure to provide oversight and direction to its contractors and other Agents to prevent the Project from degrading existing functional performance of the Seawall and Agriculture Building by actions or omissions that would interfere with their structural integrity or Port's operation and maintenance of these facilities.

14.2. Hazardous Materials Indemnification.

(a) In addition to its obligations under *Section 14.1* and subject to *Section 14.4*, Licensee, for itself and on behalf of its Agents and Invitees, agrees to Indemnify the Indemnified Parties from any and all Losses and Hazardous Materials Claims that arise as a result of: (i) any Handling or Release of Hazardous Materials in, on, under, around or about the License Area by Licensee or its Agents or Invitees; or (ii) Licensee's Exacerbation of any Hazardous Material Condition.

(b) Licensee's obligations under *Section 14.2(a)* includes: (i) costs incurred in connection with any Investigation or Remediation requested by Port or required by any Environmental Regulatory Agency and to restore the affected area to its condition before the Release; (ii) sums paid in settlement of Claims, Hazardous Materials Claims, Environmental Regulatory Actions, including fines and penalties; (iii) natural resource damages; and (iv) Attorneys' Fees and Costs, consultant fees, expert fees, and all other litigation, administrative or other judicial or quasi-judicial proceeding expenses. If Port pays any costs within the scope of this section, Licensee must reimburse Port for Port's costs, plus interest at the Interest Rate from the date Port incurs each cost until paid, within three (3) business days after Port's payment demand.

(c) Licensee understands and agrees that its liability to the Indemnified Parties under this *Section 14.2* arises upon the earlier to occur of (a) discovery of any such Hazardous Materials in, on, under, around, or about the License Area, (b) the Handling or Release of Hazardous Materials in, on, under, around or about the License Area, (c) the Exacerbation of any Hazardous Material Condition, or (d) the institution of any Hazardous Materials Claim with respect to such Hazardous Materials, and not upon the realization of loss or damage.

14.3. Scope of Indemnities; Obligation to Defend. Except as otherwise provided in *Section 14.4*, Licensee's Indemnification obligations under this License is enforceable regardless of the active or passive negligence of the Indemnified Parties, and regardless of whether liability without fault is imposed or sought to be imposed on the Indemnified Parties. Licensee specifically acknowledges that it has an immediate and independent obligation to defend the Indemnified Parties from any Loss that actually or potentially falls within the Indemnification obligations of Licensee, even if such allegations are or may be groundless, false, or fraudulent, which arises at the time such claim is tendered to Licensee and continues at all times thereafter until finally resolved. Licensee's Indemnification obligations under this License are in addition to, and in no way will be construed to limit or replace, any other obligations or liabilities which Licensee may have to Port in this License, at common law or otherwise. All Losses incurred by the Indemnified Parties subject to Indemnification by Licensee is due and payable from time to time immediately upon Port's request, as incurred.

14.4. Exclusions from Indemnifications, Waivers and Releases. Nothing in this *Article 14* relieves the Indemnified Parties from liability, nor will the Indemnities set forth in *Sections 14.1 and 14.2*, the defense obligations set forth in *Sections 14.3 and 14.6*, or the waivers or releases of claims set forth in *Section 14.7* extend to Losses to the extent caused by

the sole negligence or willful misconduct of the Indemnified Parties. The Indemnified Parties will not be liable under any circumstances for any consequential, incidental, or punitive damages.

14.5. *Survival.* Licensee's Indemnification obligations under this License, Licensee's waivers and releases made under this License, and the provisions of this **Article 14** survive the expiration or earlier termination of this License.

14.6. *Defense.* Licensee, at its option but subject to the reasonable consent and approval of Port, will be entitled to control the defense, compromise, or settlement of any such matter through counsel of Licensee's own choice; provided, however, in all cases Port will be entitled to participate in such defense, compromise, or settlement at its own expense. If Licensee fails, however, in Port's reasonable judgment, within a reasonable time following notice from Port alleging such failure, to take reasonable and appropriate action to defend, compromise, or settle such suit or claim, Port has the right promptly to use the City Attorney or hire outside counsel, at Licensee's sole expense, to carry out such defense, compromise, or settlement, which expense will be due and payable to Port ten (10) days after receipt by Licensee of an invoice therefor.

14.7. *Waiver.* Subject to **Section 14.4**, as a material part of the consideration of this License, Licensee hereby assumes the risk of, and waives, discharges, and releases any and all claims against the Indemnified Parties from any Losses, including (i) damages by death of or injury to any Person, or to property of any kind whatsoever and to whomever belonging, (ii) goodwill, (iii) business opportunities, (iv) any act or omission of persons occupying adjoining premises, (v) theft, (vi) explosion, fire, steam, oil, electricity, water, gas or rain, pollution or contamination, (vii) stopped, leaking or defective material systems (such as plumbing, sewer, electrical, mechanical and other utility systems), (viii) defects, (ix) inability to use all or any portion of the License Area due to sea level rise, flooding, or damage, collapse or failure of the Seawall, (x) impacts on the Permitted Activities due the License Area being a public access area that includes ability of Port and other third parties to use the License Area for other uses concurrently or immediately prior to or after the Permitted Activities, and (xi) any other acts, omissions or causes arising at any time and from any cause, in, on, under, or about the License Area including all claims for Losses arising from the joint, concurrent, active or passive negligence of any of Indemnified Parties.

Licensee expressly acknowledges and agrees that the consideration provided by Licensee hereunder does not take into account any potential liability of the Indemnified Parties for any consequential, incidental or punitive damages. Port would not be willing to enter into this License in the absence of a complete waiver of liability for consequential, incidental or punitive damages due to the acts or omissions of the Indemnified Parties, and Licensee expressly assumes the risk with respect thereto. Accordingly, without limiting any Indemnification obligations of Licensee or other waivers or releases contained in this License and as a material part of the consideration of this License, Licensee fully RELEASES, WAIVES AND DISCHARGES forever any and all claims, demands, rights, and causes of action against the Indemnified Parties for consequential, incidental and punitive damages (including, without limitation, lost profits) and covenants not to sue or to pay the Attorneys' Fees and Costs of any party to sue for such damages, the Indemnified Parties arising out of this License or the uses authorized hereunder, including, any interference with uses conducted by Licensee pursuant to this License regardless of the cause, and whether or not due to the negligence of the Indemnified Parties.

Licensee understands and expressly accepts and assumes the risk that any facts concerning the 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 waivers and releases in this License will remain effective. Therefore, with respect to the claims released in this License, Licensee waives any rights or benefits provided by Section 1542 of the California Civil Code, which reads as follows:

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

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

Licensee's Initials MR^{DS}

Licensee acknowledges that the waivers and releases contained herein include all known and unknown, disclosed and undisclosed, and anticipated and unanticipated claims for consequential, incidental or punitive damages. Licensee realizes and acknowledges that it has agreed upon this License in light of this realization and, being fully aware of this situation, it nevertheless intends to waive the benefit of Civil Code Section 1542, or any statute or other similar law now or later in effect.

15. HAZARDOUS MATERIALS.

15.1. Requirements for Handling. Neither Licensee nor its Agents or Invitees may Handle or permit any other person to Handle any Hazardous Material in, on, under or about the License Area.

15.2. Licensee Responsibility. Licensee agrees to protect its Agents and Invitees in its use and operations in, on, under, around or about the License Area from hazards associated with Hazardous Materials in accordance with all Environmental Laws and also agrees, for itself and on behalf of its Agents and Invitees, that during its use and occupancy of the License Area:

- (a) Will not permit any Hazardous Materials to be present in, on, under or about the License Area;
- (b) Will not cause or permit any Hazardous Material Condition; and
- (c) Will comply with all Environmental Laws relating to the License Area and its operations, use or any other activities conducted in, on, or under the License Area, and will not engage in or permit any activity at the License Area, or in the operation of any vehicles used in connection with the License Area in violation of any Environmental Laws.

15.3. Licensee's Environmental Condition Notification Requirements.

Licensee must comply with the following:

(a) Licensee must notify Port immediately, orally or by other means that will transmit the earliest possible notice to Port staff, followed within twenty-four (24) hours by written notice, of and when Licensee learns or has reason to believe Hazardous Materials were Released or, except as allowed under *Section 15.1*, Handled, in, on, under, or about the License Area or the environment, or from any vehicles Licensee, or its Agents and Invitees use during Licensee's occupancy of the License Area, whether or not the Release or Handling is in quantities that would be required under Environmental Laws to be reported to an Environmental Regulatory Agency.

(b) Licensee must notify Port immediately, orally or by other means that will transmit the earliest possible notice to Port staff, followed within twenty-four (24) hours by written notice, and contemporaneously provide Port with an electronic copy, of:

(i) Any notice of the Release or Handling of Hazardous Materials, in, on, under, or about the License Area or the environment, or from any vehicles Licensee, or its Agents and Invitees use during Licensee's occupancy of the License Area that Licensee or its Agents or Invitees provide to an Environmental Regulatory Agency;

(ii) Any notice of a violation, or a potential or alleged violation, of any Environmental Law that Licensee or its Agents or Invitees receive from any Environmental Regulatory Agency;

(iii) Any other Environmental Regulatory Action that is instituted or threatened by any Environmental Regulatory Agency against Licensee or its Agents or Invitees and that relates to the Release or Handling of Hazardous Materials, in, on, under, or about the License Area or the environment, or from any vehicles Licensee, or its Agents and Invitees use during Licensee's occupancy of the License Area;

(iv) Any Hazardous Materials Claim that is instituted or threatened by any third party against Licensee or its Agents or Invitees and that relates to the Release or Handling of Hazardous Materials, in, on, under, or about the License Area or the environment, or from any vehicles Licensee, or its Agents and Invitees use during Licensee's occupancy of the License Area; and

(v) Any notice of the termination, expiration, or substantial amendment of any Environmental Regulatory Approval needed by Licensee or its Agents or Invitees for their operations at the License Area.

(c) Licensee must notify Port of any meeting, whether conducted face-to-face or telephonically, between Licensee and any Environmental Regulatory Agency regarding an Environmental Regulatory Action. Port will be entitled to participate in any such meetings at its sole election.

(d) Licensee must notify Port of any Environmental Regulatory Agency's issuance of an Environmental Regulatory Approval. Licensee's notice to Port must state the name of the issuing entity, the Environmental Regulatory Approval identification number, and the dates of issuance and expiration of the Environmental Regulatory Approval. In addition, Licensee must provide Port with a list of any plan or procedure required to be prepared and/or filed with any Environmental Regulatory Agency for operations on the License Area. Licensee must provide Port with copies of any of the documents within the scope of this *Section 15.3(d)* upon Port's request.

(e) Licensee must provide Port with copies of all communications with Environmental Regulatory Agencies, copies of investigation reports conducted by Environmental Regulatory Agencies, and all non-privileged communications with other persons regarding potential or actual Hazardous Materials Claims arising from Licensee's or its Agents' or Invitees' operations at the License Area. Upon Port's request, Licensee must provide Port with a log of all communications withheld under a claim of privilege that specifies the parties to and subject of each withheld communication.

(f) Port may from time to time request, and Licensee will be obligated to provide, information reasonably adequate for Port to determine whether any and all Hazardous Materials are being Handled in a manner that complies with all Environmental Laws.

15.4. Requirement to Remediate.

(a) After notifying Port in accordance with *Section 15.3*, subject to *Section 15.4(d)*, Licensee must Remediate, at its sole cost and in compliance with all Environmental Laws and this License, any Hazardous Material Condition that relates, directly or indirectly, to Licensee's use of the License Area. Licensee must obtain Port's approval of a Remediation work plan whether or not such plan is required under Environmental Laws, then

begin Remediation actions immediately following Port's approval of the work plan and continue diligently until Remediation is complete.

(b) In addition to its obligations under *Section 15.4(a)*, before this License terminates for any reason, subject to *Section 15.4(d)*, Licensee must Remediate, at its sole cost and in compliance with all Environmental Laws and this License: (i) any Hazardous Material Condition caused by Licensee's or its Agents' or Invitees' Handling of Hazardous Materials during the Term; and (ii) any Hazardous Material Condition discovered during Licensee's occupancy that is required to be Remediated by any Regulatory Agency if Remediation would not have been required but for Licensee's use of the License Area, or due to construction of the Project.

(c) In all situations relating to Handling or Remediating Hazardous Materials, Licensee must take actions that are reasonably necessary in Port's sole judgment to protect the value of the License Area, such as obtaining Environmental Regulatory Approvals related to Hazardous Materials and taking measures to remedy any deterioration in the condition or diminution of the value of any portion of the License Area in any manner related directly or indirectly to Hazardous Materials.

(d) Unless Licensee or its Agents or Invitees Exacerbate the Hazardous Material Condition, Licensee will not be obligated to Remediate any Hazardous Material Condition: (i) caused solely by City, Port, or their Agents during Licensee's use or occupancy of the License Area; or (ii) arising before the Construction Lease Commencement Date.

15.5. Port's Right to Audit. Port has the right, but not the obligation, to inspect and audit the License Area for any Hazardous Materials, including the right to Investigate at reasonable times pursuant to *Article 26*. Port's failure to inspect or obtain samples or to detect conditions attributable to Licensee's operations if an inspection is conducted will not be deemed to be a release of Licensee's obligations under this License.

15.6. Notification of Asbestos and Lead. Port hereby notifies Licensee of the potential presence of lead-containing and presumed lead-containing materials in the License Area, and, in accordance with the United States Occupational Safety and Health Administration ("OSHA") Asbestos Rule (1995), 59 Fed. Reg. 40964, 29 CFR §§ 1910.1001, 1926.1101 (as amended, clarified and corrected) (OSHA Asbestos Rule); California Health and Safety Code §§ 25915-259.7 and the Division of Occupational Safety and Health of the California Department of Industrial Relations ("Cal-OSHA") General Industry Safety Order for Asbestos, 8 CCR § 5208, of the presence of asbestos-containing materials ("ACMs") and/or presumed asbestos-containing materials ("PACMs") (as such terms are defined in the Cal-OSHA General Industry Safety Order for Asbestos). Disturbance or removal of lead is regulated by among other Laws, 29 CFR §§ 1910.1025, 1926.62; California Health & Safety Code §§ 105185-105197 and 105250-105257; Cal-OSHA Construction Safety Order for Lead, Title 8 CCR § 1532.1; Title 17 CCR Chapter 8; and San Francisco Building Code § 3423.

Licensee hereby acknowledges receipt of the notification specified in the first paragraph of this *Section 15.6* and understands, after having consulted its legal counsel, that it must make its Agents aware of the presence of ACMs and/or PACMs in or about the License Area in order to avoid or minimize any damage to or disturbance of such ACMs and/or PACMs. Licensee further acknowledges its obligations under the Cal-OSHA General Industry Safety Order for Asbestos to provide information to its employees and contractors regarding the presence of ACMs and PACMs at the License Area and to provide a training program for its employees that conforms with 8 CCR § 5208(j)(7)(C).

Licensee agrees that its waiver of claims set forth in *Section 14.7* is given with full knowledge of the presence, or possible presence, of lead and/or asbestos in or about the License Area and the potential consequences of such fact. Licensee is aware that the presence, or possible presence, of lead and/or asbestos in or about the License Area may limit Licensee's

ability to construct the Improvements without Licensee first performing abatement of such lead and/or asbestos, as applicable. The presence of lead and/or asbestos in the License Area and the removal or non-removal by Port of all or a portion of such lead and/or asbestos will not, however, (i) entitle Licensee to any claim for Losses, (ii) relieve Licensee of any of its obligations hereunder, (iii) constitute or be construed as a constructive or other eviction of Licensee, or (iv) constitute or be construed as a breach of Port's covenant assuring Licensee's quiet enjoyment of the License Area.

Notwithstanding any other provisions of this License, Licensee agrees to defend and Indemnify the Indemnified Parties for Licensee's acts or omissions that result in (1) asbestos-related enforcement actions, including both administrative or judicial proceedings; (2) any Losses arising from an alleged violation of Cal-OSHA General Industry Safety Order for asbestos and/or exposures to asbestos; (3) lead-related enforcement actions, including both administrative or judicial proceedings; and (4) any Losses arising from an alleged violation of Cal-OSHA Construction Safety Order for lead and/or exposures to lead.

15.7. Presence of Hazardous Materials. California Law requires landlords to disclose to tenants the presence or potential presence of certain Hazardous Materials. Accordingly, Licensee is hereby advised that Hazardous Materials may be present on or near the License Area, including naturally occurring asbestos, metals and other contamination commonly found in fill, petroleum, vehicle fluids, janitorial products, tobacco smoke, and building materials containing chemicals, such as lead and formaldehyde. Further, the following known Hazardous Materials are present on the property: metals and other contamination commonly found in fill, petroleum, and lead-based paint. By execution of this License, Licensee acknowledges that the notice set forth in this **Section 15.7** satisfies the requirements of California Health and Safety Code Section 25359.7 and related Laws. Licensee must disclose the information contained in this **Section 15.7** to any Contractor, Agent, Invitee, transferee, or assignee of Licensee's interest in this License. Licensee also acknowledges its own obligations pursuant to California Health and Safety Code Section 25359.7 as well as the penalties that apply for failure to meet such obligations.

15.8. Survival. Licensee's obligations under this **Article 15** will survive the expiration or earlier termination of this License.

16. INSURANCE.

16.1. License Area and Liability Coverage.

(a) **Required Types and Amounts of Insurance.** Except as more specifically provided in this **Section 16.1**, Licensee shall, at no cost to Port, obtain and maintain, and cause to be in effect at all times from the Commencement Date to the later of (i) the last day of the Term, or (ii) the last day Licensee (A) is in possession of the License Area or (B) has the right of possession of the License Area (except as otherwise specified in this **Section 16.1(a)**), the following types and amounts of insurance:

(i) **Property Insurance; Earthquake and Flood Insurance.**

(1) **Property Insurance.** Licensee will maintain, or require to be maintained, property insurance policies with coverage at least as broad as Insurance Services Office form CP 10 30 06 95 ("Causes of Loss Special Form" (or its replacement)), in an amount not less than 100% of the then-current full replacement cost of the Improvements including any foundations, pilings, excavations and footings, including increased cost of construction and demolition of damaged and undamaged structures due to the enforcement of Laws, (with any deductible not to exceed Two Hundred Fifty Thousand Dollars (\$250,000), except as to earthquake and flood insurance). If available at commercially reasonable rates, such insurance shall extend to cover the peril of terrorism. In addition to the foregoing, Licensee may insure its Personal Property in such amounts as Licensee deems appropriate; and Port shall have no interest in the proceeds of such Personal Property insurance.

(2) **Earthquake Insurance.** During the Term, Licensee will maintain earthquake insurance in an amount equal to at least the lesser of (i) the Probable Maximum Loss to the Improvements, or (ii) the amount that is available at commercially reasonable rates from recognized insurance carriers, in each case, with a deductible of up to but not to exceed an amount that is necessary to make such earthquake insurance available at a commercially reasonable rate. “**Probable Maximum Loss**” means the scenario upper loss (SUL) estimate of damage that may occur to the structures with a ninety percent (90%) confidence of non-exceedance as a result of an earthquake with a return period of 224 years as determined prior to completion of the Licensee Improvements and thereafter not less frequently than every ten (10) years by a consultant chosen and paid for by Licensee who is reasonably satisfactory to Port.

(3) **Flood Insurance.** Licensee will maintain flood insurance in an amount equal to at least the amount available at commercially reasonable rates from recognized insurance carriers or through the NFIP, with a deductible of up to but not to exceed an amount that is necessary to make flood insurance available at commercially reasonable rates.

(4) **Exceptions for Earthquake and Flood Insurance.** If Licensee determines that earthquake or flood insurance should not be carried on the Improvements because it is not (or no longer) available at commercially reasonable rates (or through the NFIP for flood insurance), then Licensee will request in writing Port’s consent to the absence or deletion thereof. Any request for Port’s consent required hereunder will include with such request evidence supporting Licensee’s determination of commercial unreasonableness or imprudence as to the applicable coverage. Such evidence may include quotes, declinations, and notices of cancellation or non-renewal from leading insurance companies for the required coverage and percentage of overall construction costs attributable thereto. Port will approve or disapprove the absence or deletion of earthquake or flood insurance within forty-five (45) days after Licensee’s request. If Port disapproves such request, Port will state the basis for its disapproval. If Licensee elects not to carry or to discontinue such coverage with Port’s approval, and Port later determines that due to changes in the industry or other changed circumstances, earthquake insurance or flood insurance, as applicable, has become commercially available at reasonable rates, then Port may notify Licensee thereof, and Licensee will add such coverage to its policy as soon as reasonably practicable thereafter.

(ii) ***Commercial General Liability Insurance.*** Licensee will maintain, or require to be maintained “**Commercial General Liability**” insurance with coverage at least as broad as Insurance Services Office form CG 00 01 10 93 (or its replacement) insuring against claims for bodily injury (including death), property damage, personal injury and advertising injury, including coverage for premises operations, blanket contractual liability (to the extent possible under the above-referenced policy form or under a separate policy form) which includes coverage extending to the Indemnity in **Article 14**, broad form property damage, explosion, collapse and underground hazards, independent contractors, products and completed operations, with such insurance to afford protection in an amount not less than Three Million Dollars (\$3,000,000) per occurrence and annual aggregate, and Three Million Dollars (\$3,000,000) products and completed operations aggregate, and deleting any exclusions for care, custody and control of real property. All such insurance may be provided under a combination of primary and umbrella excess policies and may be provided under policies with a “claims made” trigger as provided in **Section 16.1(b)(viii)**.

(iii) ***Workers’ Compensation Insurance.*** 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.

(iv) Business Automobile Insurance. Licensee will maintain, or require to be maintained, policies of business automobile liability insurance covering all owned, non-owned or hired motor vehicles (including electric carts) to be used by Licensee and its Agents in connection with Licensee's use and occupancy of the License Area, affording protection for bodily injury (including death) and property damage in the form of Combined Single Limit Bodily Injury and License Area Damage policy with limits of not less than Five Million Dollars (\$5,000,000) per accident and annual aggregate.

(v) Professional Liability. Tenant will maintain or require to be maintained, project-specific professional liability (errors and omissions) insurance, with limits not less than Five Million Dollars (\$5,000,000) each claim and annual aggregate, with respect to all professional services, including architectural, engineering, geotechnical, and environmental, reasonably necessary or incidental to the construction of the Improvements with any deductible not to exceed Fifty Thousand Dollars (\$50,000) each claim (the "lead policy"). Notwithstanding the foregoing, however, Tenant may elect, instead of obtaining the foregoing coverages in this Section 16.1(a)(v), to require that any architects, contractors and sub-contractors performing professional services in connection with the Improvements carry professional liability insurance (errors and omissions) in an amount not less than Five Million Dollars (\$5,000,000) each claim and annual aggregate with any deductible not to exceed Fifty Thousand Dollars (\$50,000). Such insurance will provide coverage during the period when such professional services are performed and for a period of three (3) years after issuance of a Certificate of Occupancy for the applicable Improvements.

(vi) Other Insurance. Licensee will obtain such other insurance or increase the coverage limits set forth in this *Section 16.1(a)* as is reasonably requested by City's Risk Manager.

(b) General Requirements.

(i) As to all insurance required hereunder, such insurance will be carried under a valid and enforceable policy or policies issued by insurers of recognized responsibility that are rated Best A—:VIII or better by the latest edition of Best's Key Rating Guide (or a comparable successor rating) and legally authorized to sell such insurance within the State;

(ii) As to property insurance required hereunder, such insurance will name Licensee as the first named insured, and will name Port as an insured as its interest may appear. As to general liability, automobile liability, and umbrella or excess liability insurance, such insurance will name as additional insureds by written endorsement: **"THE CITY AND COUNTY OF SAN FRANCISCO AND THE SAN FRANCISCO PORT COMMISSION AND THEIR RESPECTIVE OFFICERS, DIRECTORS, EMPLOYEES AND AGENTS."**

(iii) As to all insurance required hereunder, such insurance will be evaluated by Port and Licensee for adequacy not less frequently than every five (5) years from the Commencement Date. Following consultation with Licensee, Port may, upon not less than ninety (90) days prior written notice, require Licensee to increase the insurance limits for all or any of its policies if in the reasonable judgment of the City's Risk Manager it is the general commercial practice to carry insurance for facilities of comparable size and use to the License Area in amounts substantially greater than the amounts being carried by Licensee with respect to risks comparable to those associated with the uses of the License Area. In such event, Licensee will promptly deliver to Port a certificate evidencing such new insurance amounts and additional insured endorsements in form satisfactory to Port;

(iv) As to all insurance required hereunder, such insurance will provide that no cancellation, material modification or termination of such insurance will be effective until

at least thirty (30) days after mailing or otherwise sending written notice of such cancellation, modification or termination to Port;

(v) As to commercial general liability and automobile liability insurance, such insurance will provide that it constitutes primary insurance with respect to claims insured by such policy, and, except with respect to limits, that insurance applies separately to each insured against whom claim is made or suit is brought. An ISO endorsement CG20 10 11 85 or its equivalent must be added naming the **CITY AND COUNTY OF SAN FRANCISCO AND THE SAN FRANCISCO PORT COMMISSION AND THEIR RESPECTIVE OFFICERS' DIRECTORS; EMPLOYEES AND AGENTS** as additional insureds;

(vi) As to liability, automobile, worker's compensation and property insurance required hereunder, such insurance will provide for waivers of any right of subrogation that the insurer of such party may acquire against each Party hereto with respect to any losses of the type covered under the policies required by *Section 16.1(a)*;

(vii) All insurance will be subject to the approval of Port, which approval will be limited to whether or not such insurance meets the terms of this License;

(viii) If any of the policies of liability required hereunder is provided under a claims-made form of policy, Licensee will maintain such coverage continuously throughout the Term, and following the expiration or earlier termination of the Term, Licensee will maintain, or require to be maintained, such coverage without lapse for a period of ten (10) years beyond the expiration or earlier termination of this License, or, in the case of construction, for ten (10) years after issuance of a final certificate of occupancy for the applicable Improvements; and

(c) **Certificates of Insurance; Right of Port to Maintain Insurance.**

Licensee will furnish Port certificates with respect to the policies required under this *Article 16* and additional insured endorsements in form satisfactory to Port, (i) on or prior to the Commencement Date (to the extent such policy is required to be carried as of the Commencement Date), (ii) for such policies required to be carried after the Commencement Date, on or prior to the date such policies are required, and (iii) with respect to renewal policies, within thirty (30) days after the policy renewal date of each such policy. Within thirty (30) days after Port's request, Licensee also will provide Port with copies of each such policy, or will otherwise make such policy available to Port for its review. If at any time Licensee fails to maintain the insurance required pursuant to this *Section 16.1*, or fails to deliver certificates and/or endorsements as required pursuant to this *Section 16.1(c)* then, upon ten (10) days' written notice to Licensee, Port may obtain and cause to be maintained in effect such insurance by taking out policies with companies satisfactory to Port. Within ten (10) days following demand, Licensee will reimburse Port for all amounts so paid by Port, together with all costs and expenses in connection therewith and interest thereon at the Default Rate.

(d) **Insurance by Others.** To the extent Licensee requires liability insurance policies to be maintained by contractors, subcontractors or others in connection with their use or occupancy of, or their activities in, on, under, around, or about the License Area, Licensee will require that such policies be endorsed to include the **CITY AND COUNTY OF SAN FRANCISCO AND THE SAN FRANCISCO PORT COMMISSION AND THEIR RESPECTIVE OFFICERS; DIRECTORS; EMPLOYEES AND AGENTS** as additional insureds. Notwithstanding the foregoing, Licensee will require all Agents, contractors and sub-contractors performing work in, on, under, around, or about the License Area to carry the following coverages: (i) commercial general liability with limits of not less than One Million Dollars (\$1,000,000) per occurrence and Two Million Dollars (\$2,000,000) annual general aggregate, (ii) workers' compensation in amounts required by law, (iii) employer's liability coverage in an amount not less than One Million Dollars (\$1,000,000) per accident, per employee and policy limit for injury by disease, covering all employees employed at the License Area, (iv) automobile insurance in an amount not less

than \$1,000,000 combined single limit covering use of owned, non-owned or hired vehicles utilized in the performance of work in, on, under, around, or about the License Area.

16.2. Release and Waiver. Each Party hereby waives all rights of recovery and causes of action, and releases each other Party from any liability, losses occasioned to the property of each such Party, which losses are of the type covered under the property policies required by **Section 16.1** to the extent that such loss is reimbursed by an insurer.

16.3. No Limitation. The Indemnification requirements under this License or any other Transaction Documents will not be limited by their insurance requirements.

17. PORT'S RIGHT TO PAY SUMS OWED BY LICENSEE.

17.1. Port May Pay Sums Owed by Licensee Following Licensee's Failure to Pay. Without limiting any other provision of this License, and in addition to any other rights or remedies available to Port for any Licensee Event of Default, if at any time Licensee fails to pay any sum required to be paid by Licensee pursuant to this License to any Person other than Port (other than any Imposition with respect to which the provisions of **Section 8.2** apply), Port may, at its sole option, but will not be obligated to, upon five (5) days prior notice to Licensee, pay such sum for and on behalf of Licensee.

17.2. Licensee's Obligation to Reimburse Port. If pursuant to **Section 17.1** Port pays any sum required to be paid by Licensee hereunder, Licensee will reimburse Port the sum so paid. All such sums paid by Port is due from Licensee to Port at the time the sum is paid, and if paid by Licensee at a later date, will bear interest at the lesser of the Default Rate or the maximum non-usurious rate Port is permitted by Law to charge from the date such sum is paid by Port until Port is reimbursed by Licensee. Port's rights under this **Article 17** are in addition to its rights under any other provision of this License or under applicable Laws. The provisions of this **Section 17.2** will survive the expiration or earlier termination of this License.

18. LICENSEE EVENTS OF DEFAULT.

The occurrence of any one or more of the following events constitutes a "Licensee Event of Default":

(a) Licensee fails to pay any sums owed to Port when due, which failure continues for five (5) days following written notice from Port;

(b) The License Area is used for Prohibited Uses, as determined by Port in its reasonable discretion, and such Prohibited Use(s) continues for a period of twenty-four (24) hours following written notice from Port;

(c) Licensee fails to comply with the provisions of **Article 9** and **Sections 15.1--15.4** and such failure continues for a period of twenty-four (24) hours following written notice from Port. If such default cannot reasonably be cured within such twenty-four (24) hour period, Licensee will not be in default of this License if Licensee commences to cure the default within such twenty-four (24) hour period and diligently and in good faith continues to cure the default;

(d) Licensee files a petition for relief, or an order for relief is entered against Licensee, in any case under applicable bankruptcy or insolvency Law, or any comparable Law that is now or hereafter may be in effect, whether for liquidation or reorganization, which proceedings if filed against Licensee are not dismissed or stayed within one hundred twenty (120) days;

(e) A writ of execution is levied on Licensee's interest in this License which is not released within one hundred twenty (120) days or Licensee makes a general assignment for the benefit of its creditors;

(f) Licensee fails to maintain any insurance required to be maintained by Licensee under this License, which failure continues without cure for five (5) business days after written notice from Port; or

(g) Licensee violates any other covenant, or fails to perform any other obligation to be performed by Licensee under this License at the time such performance is due, and such violation or failure continues without cure for more than thirty (30) days after written notice from Port specifying the nature of such violation or failure, or, if such cure cannot reasonably be completed within such thirty (30) day period, if Licensee does not within such thirty (30) day period commence such cure, or having so commenced, does not prosecute such cure with diligence and dispatch to completion within a reasonable time thereafter.

19. PORT'S REMEDIES.

Upon the occurrence and during the continuance of a Licensee Event of Default (but without obligation on the part of Port following the occurrence of a Licensee Event of Default to accept a cure of such Licensee Event of Default other than as required by Law or by this License), Port, without further notice or demand of any kind to Licensee or to any other person, and in addition to any other remedy Port may have under this License and at Law or in equity (including the right to seek injunctive relief or an order for specific performance, where appropriate), has the ability to immediately terminate this License and Licensee's right to use the License Area. Upon notice of any such termination, Licensee will immediately vacate and discontinue its use of the License Area and Port may take any and all action to enforce Licensee's obligations. All of Port's rights and remedies are cumulative, and except as may be otherwise provided by applicable Law, the exercise of any one or more rights will not preclude the exercise of any other.

20. NO WAIVER.

20.1. *No Implied Waiver by Port.* No failure by Port or Licensee to insist upon the strict performance of any obligation of the other Party 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, will constitute a waiver of such breach or of Party's rights to demand strict compliance with such term, covenant or condition. Port's consent to or approval of any act by Licensee requiring Port's consent or approval will not be deemed to waive or render unnecessary Port's consent to or approval of any subsequent act by Licensee. Any waiver by Port or Licensee of any default must be in writing and will not be a waiver of any other default (including any future default) concerning the same or any other provision of this License.

20.2. *No Accord or Satisfaction.* No submission by Licensee or acceptance by Port of full or partial sums during the continuance of any failure by Licensee to perform its obligations hereunder will waive any of Port's rights or remedies hereunder or constitute an accord or satisfaction, whether or not Port had knowledge of any such failure except with respect to the fee so paid. No endorsement or statement on any check or remittance by or for Licensee or in any communication accompanying or relating to such payment will operate as a compromise or accord or satisfaction unless Port approves the same as such in writing. Port may accept such check, remittance or payment and retain the proceeds thereof, without prejudice to its rights to recover the balance due from Licensee and to pursue any right or remedy provided for or permitted under this License at Law or in equity.

21. INTEREST AND LATE CHARGE ON DELINQUENT AMOUNTS.

21.1. *Interest on Delinquent Amounts.* If any amount owed to Port is not paid within thirty (30) days following written demand for payment of such amount, such unpaid amount will bear interest from the date due until paid at an annual interest rate equal to the greater of (i) ten percent (10%) or (ii) if a higher rate is legally permissible, the highest rate an individual is permitted to charge under Law (the "Default Rate"). However, interest will not be payable on

Late Charges incurred by Licensee or to the extent such payment would violate any applicable usury or similar law. Payment of interest will not excuse or cure any default by Licensee.

21.2. *Late Charges.* Licensee acknowledges and agrees that late payment by Licensee to Port will cause Port increased costs not contemplated by this License. The exact amount of such costs is extremely difficult to ascertain. Such costs include processing and accounting charges. Accordingly, without limiting any of Port's rights or remedies hereunder and regardless of whether such late payment results in a Licensee Event of Default, Licensee will pay a late charge (the "**Late Charge**") equal to the higher of (a) five percent (5%) of all amounts which remain unpaid more than five (5) days following the date it is due, or (b) one hundred dollars (\$100). The Parties agree that such Late Charge represents a fair and reasonable estimate of the cost that Port will incur by reason of a late payment by Licensee.

22. LIMITATION ON LIABILITY.

22.1. *No Recourse Beyond Value of License Area.* Notwithstanding any other term or provision of this License, (a) the liability of Port for its obligations under this License or for any claim based upon this License, is limited solely to the fair market value of Port's fee interest in the License Area (as encumbered by this License) and (b) neither Port nor the Indemnified Parties will be liable under any circumstances for injury or damage to, or interference with Licensee's business, including loss or profits, loss of fees or other revenues, loss of business opportunity, loss of goodwill or loss of use, in each case, however occurring.

22.2. *Nonliability of City Officials, Employees and Agents.* No commissioner, officer or employee of the Indemnified Parties will be personally liable to Licensee, or any successor in interest, for any reason, and Licensee agrees that it will have no recourse with respect to any obligation of Port under this License, or for any amount which may become due Licensee or any successor or for any obligation or claim based upon this License, against any such Person.

22.3. *Nonliability of Licensee's Members, Partners, Shareholders, Directors, Officers and Employees.* No commissioner, officer, director, or employee of Licensee will be personally liable to Port for a Licensee Event of Default or for any amount which may become due to Port or for any obligations under the terms of this License.

22.4. *No Liability for Consequential, Incidental or Punitive Damages.* The Indemnified Parties will not be liable under any circumstances for any consequential, incidental, or punitive damages.

23. ESTOPPEL CERTIFICATES.

Licensee will execute, acknowledge and deliver to Port (or at Port's request, to a prospective purchaser, lessee, or mortgagee of Port's interest in the License Area), within thirty (30) days after request, a certificate in substantially the same form as *Exhibit G*. In addition, if requested by Port, Licensee will attach to such certificate a copy of this License, and any amendments thereto, and include in such certificate a statement by Licensee that such attachment is a true, correct and complete copy of this License, as applicable, including all modifications thereto. Port, any successor agency, and any prospective purchaser, lessee or mortgagee of the License Area or any part of Port's interest in the License Area, may rely upon any such certificate therein.

24. SURRENDER OF LICENSE AREA.

24.1. *Surrender.* Upon the expiration or earlier termination of this License, Licensee will quit and surrender to Port the License Area (a) in good order and condition, ordinary wear and tear and casualty excepted; (b) clean, free of debris, waste, and Hazardous Materials, and (c) free and clear of all liens and encumbrances. If it is determined by Port that the condition of all or any portion of the License Area is not in compliance with the provisions of this License with respect to Hazardous Materials at the expiration or earlier termination of this License, then

at Port's sole option, Port may require Licensee to hold over possession of the License Area until Licensee can surrender the License Area to Port in the condition required herein.

24.2. Removal of Personal Property. On or before the expiration or earlier termination of this License, Licensee at its sole cost will remove (unless otherwise requested by Port in writing) and repair any damage caused by removal of Signs, Canopies, the PV System, or Licensee's Personal Property. Any items not removed by Licensee as required herein will be deemed abandoned and may be stored, removed, and disposed of by Port at Licensee's sole cost and expense, and Licensee waives all claims against Port for any Losses resulting from Port's retention, removal or disposition of such Personal Property; provided, however, that Licensee will be liable to Port for all costs incurred in storing, removing and disposing of such abandoned property or repairing any damage to the License Area resulting from such removal. The Improvements (other than the floats) will remain in the License Area as the property of Port.

24.3. Indemnity. If Licensee fails to surrender the License Area as required by this *Article 24*, Licensee will Indemnify Port from all damages resulting from Licensee's failure to surrender the License Area, including, but not limited to, any costs of Port to enforce this *Article 24* 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.

24.4. Survival. Licensee's obligations under this *Article 24* will survive the expiration or earlier termination of this License.

25. NOTICES.

25.1. Notices.

All notices, demands, consents, approvals, and requests that may or are to be given by any Party to the other will be in writing, except as otherwise provided herein. All notices, demands, consents, approvals, and requests to be provided hereunder will be deemed to have been properly given on the date of receipt if served personally on a day that is a business day (or on the next business day if served personally on a day that is not a business day) or if mailed, the next business day after being deposited with an overnight courier or two business days after being deposited with the U.S. Postal Service (as evidenced by a postmark date), postage prepaid, in each case, addressed as follows:

To Port: Port of San Francisco
Pier 1
San Francisco, CA 94111
Attention: Deputy Director of Planning & Development

Telephone: (415) 274-0400

With a copy to: Port of San Francisco
Pier 1
San Francisco, CA 94111
Attention: Port General Counsel

Telephone: (415) 274-0400

To Licensee: San Francisco Bay Area Water Emergency Transportation Authority
Pier 9

San Francisco, CA 94111
Attn: Project Manager, FTX

Telephone: (415) 291-3377

With a copy to: San Francisco Bay Area Water Emergency Transportation Authority
Pier 9
San Francisco, CA 94111
Attn: WETA General Counsel
Telephone: (415) 291-3377

or at such other place or places in the United States as each such Party may from time to time designate by written notice to the other in accordance with the provisions hereof.

25.2. Form and Effect of Notice.

Every notice given to a Party or other Person must state (or shall be accompanied by a cover letter that states):

(a) The section of this License pursuant to which the notice is given and the action or response required, if any;

(b) If applicable, the period of time within which the recipient of the notice must respond thereto; and

(c) If applicable, that the failure to object to the notice within a stated time period will be deemed to be the equivalent of the recipient's approval of or consent to the subject matter of the notice.

In no event shall a recipient's approval of or consent to the subject matter of a notice be deemed to have been given by its failure to object thereto if such notice (or the accompanying cover letter) does not comply with the requirements of this **Section 25.2**.

26. UNLIMITED ACCESS TO THE LICENSE AREA.

Licensee agrees and acknowledges that the License Area is a public access area open to the public at all times. Accordingly, Port, its Agents, Invitees, and members of the public have the right to enter, access, and use the License Area at all times without prior notice to or approval from Licensee.

Except as expressly set forth in **Section 10.1**, and subject to the limitations set forth therein, nothing herein implies any duty on the part of Port to perform any work that Licensee is required to perform, nor to place upon Port any obligation or liability for the care, supervision or repair of the License Area. If Port elects to perform work on the License Area, Port will not be liable for inconvenience, loss of business or other damage to Licensee by reason of the performance of such work on the License Area, or on account of bringing necessary materials, supplies and equipment into or through the License Area during the course thereof, provided that Port uses commercially reasonable diligence to minimize the interference that any such work may cause to the Permitted Activities.

27. SPECIALTY CITY AND PORT PROVISIONS.

The San Francisco Municipal Codes (available at www.sfgov.org) and City and Port policies described or referenced in this License are incorporated by reference as though fully set forth in this License. The descriptions below are not comprehensive but are provided for notice purposes only; Licensee is charged with full knowledge of each such ordinance and policy and any related implementing regulations as they may be amended from time to time. Licensee understands and agrees that its failure to comply with any provision of this License relating to

any such code provision shall be deemed a material breach of this License and may give rise to penalties under the applicable ordinance. Capitalized or highlighted terms used in this Section and not defined in this License will have the meanings ascribed to them in the cited ordinance.

27.1. *Non-Discrimination.*

(a) **Covenant Not to Discriminate.** In the performance of this License, Licensee covenants and agrees not to discriminate on the basis of the fact or perception of a person's race, color, creed, religion, national origin, ancestry, age, sex, sexual orientation, gender identity, domestic partner status, marital status, disability or Acquired Immune Deficiency Syndrome or HIV status (AIDS/HIV status), weight, height, association with members of classes protected under Chapter 12B or 12C of the Administrative Code or in retaliation for opposition to any practices forbidden under Chapter 12B or 12C of the Administrative Code against any employee of Licensee or any City and County employee working with Licensee, any applicant for employment with Licensee, or any person seeking accommodations, advantages, facilities, privileges, services, or membership in all business, social, or other establishments or organizations operated by Licensee in the City and County of San Francisco.

(b) **Other Contracts.** Licensee will include in all contracts relating to the License Area a non-discrimination clause applicable to the contractor or subcontractor in substantially the form of *Section 27.1(a)*. In addition, Licensee will incorporate by reference in all contracts the provisions of Sections 12B.2 (a), 12B.2 (c)-(k) and 12C.3 of the Administrative Code and will require all contractors and subcontractors to comply with such provisions.

(c) **Non-Discrimination in Benefits.** Licensee represents that it does not as of the date of this License and will not during the Term, in any of its operations in San Francisco or where the work is being performed for the City, discriminate in the provision of bereavement leave, family medical leave, health benefits, membership or membership discounts, moving expenses, pension and retirement benefits or travel benefits (collectively "Core Benefits") as well as any benefits other than the Core Benefits between employees with domestic partners and employees with spouses, and/or between the domestic partners and spouses of such employees, where the domestic partnership has been registered with a governmental entity pursuant to state or local Law authorizing such registration, subject to the conditions set forth in Section 12B.2 of the Administrative Code.

(d) **CMD Form.** On or prior to the Effective Date, Licensee will execute and deliver to Port the "Nondiscrimination in Contracts and Benefits" form approved by CMD.

(e) **Penalties.** Licensee understands that pursuant to Section 12B.2(h) of the Administrative Code, a penalty of \$50.00 for each person for each calendar day during which such person was discriminated against in violation of the provisions of this License may be assessed against Licensee and/or deducted from any payments due Licensee.

27.2. *Requiring Health Benefits for Covered Employees.* Unless exempt, Licensee agrees to comply fully with and be bound by all of the provisions of the Health Care Accountability Ordinance ("HCAO"), as set forth in Administrative Code Chapter 12Q (Chapter 12Q).

(a) For each Covered Employee Licensee will provide the appropriate health benefit set forth in Section 12Q.3 of the HCAO.

(b) Notwithstanding the above, if Licensee meets the requirements of a "small business" by the City pursuant to Section 12Q.3(e) of the HCAO, it will have no obligation to comply with *Section 27.2(a)*.

(c) If, within 30 days after receiving written notice of a breach of this License for violating the HCAO, Licensee fails to cure such breach or, if such breach cannot reasonably be cured within such 30-day period, Licensee fails to commence efforts to cure within such period, or thereafter fails to diligently pursue such cure to completion, the City has the remedies

set forth in Section 12Q.5(f). Each of these remedies will be exercisable individually or in combination with any other rights or remedies available to the City.

(d) Any Contract regarding services to be performed on the License Area entered into by Licensee will require the contractor and subcontractors, as applicable, to comply with the requirements of the HCAO and will contain contractual obligations substantially the same as those set forth in Chapter 12Q of the Administrative Code. Licensee will notify the Office of Labor Standards Enforcement (“OLSE”) when it enters into such a Contract and will certify to OLSE that it has notified the Contractor of the obligations under the HCAO and has imposed the requirements of the HCAO on the Contractor through written agreement with such Contractor. Licensee will be responsible for ensuring compliance with the HCAO for each contractor and subcontractor performing services on the License Area. If any contractor or subcontractor fails to comply, the City may pursue the remedies set forth in Section 12Q.5 of the Administrative Code against Licensee based on the contractor’s or subcontractor’s failure to comply, provided that OLSE has first provided Licensee with notice and an opportunity to cure the violation.

(e) Licensee will not discharge, reprimand, penalize, reduce the compensation of, or otherwise discriminate against, any employee for notifying the City of any issue relating to the HCAO, for opposing any practice proscribed by the HCAO, for participating in any proceedings related to the HCAO, or for seeking to assert or enforce any rights under the HCAO by any lawful means.

(f) Licensee represents and warrants that it is not an entity that was set up, or is being used, for the purpose of evading the requirements of the HCAO.

(g) Licensee will keep itself informed of the requirements of the HCAO, as they may change from time to time.

(h) Upon request, Licensee will provide reports to the City in accordance with any reporting standards promulgated by the City under the HCAO, including reports on contractors and subcontractors.

(i) Within ten (10) business days of any request, Licensee will provide the City with access to pertinent records relating to any Licensee’s compliance with the HCAO. In addition, the City and its agents may conduct random audits of Licensee at any time during the Term. Licensee agrees to cooperate with City in connection with any such audit.

(j) If a contractor or subcontractor is exempt from the HCAO because the amount payable to such contractor or subcontractor under all of its contracts with the City or relating to City-owned property is less than \$25,000.00 (or \$50,000.00 for nonprofits) in that fiscal year, but such contractor or subcontractor later enters into one or more agreements with the City or relating to City-owned property that cause the payments to such contractor or subcontractor to equal or exceed \$75,000.00 in that fiscal year, then all of the contractor’s or subcontractor’s contracts with the City and relating to City-owned property will be thereafter subject to the HCAO. This obligation arises on the effective date of the agreement that causes the cumulative amount of agreements to equal or exceed \$75,000.00 in the fiscal year.

27.3. First Source Hiring. The City has adopted a First Source Hiring Program (Administrative Code Sections 83.1 et seq.) which establishes specific requirements, procedures and monitoring for first source hiring of qualified economically disadvantaged individuals for entry-level positions as those terms are defined by the ordinance. Licensee acknowledges receiving and reviewing the First Source Hiring Program materials and requirements and agrees to comply with requirements of the ordinance as implemented by the Port and/or City, including without limitation, notification of vacancies throughout the Term and entering into a First Source Hiring Agreement, if applicable. Licensee acknowledges and agrees that it may be subject to monetary penalties for failure to comply with the ordinance or a First Source Hiring Agreement and that such non-compliance will be a default of this License.

27.4. Local Business Enterprises. The Port Commission encourages the participation of local business enterprises (“LBEs”) in Licensee’s operations. Licensee agrees to consult with the Contract Monitoring Division of the City’s General Services Agency to determine the extent to which promoting participation by LBEs in the Project is permissible under Licensee’s funding sources for the Project. Architecture, Engineering, Laboratory Services (Materials Testing), Trucking and Hauling, and Security Guard Services are categories of services that may provide opportunities for certified LBE participation. City maintains a list of certified LBEs at: <http://sfgov.org/cmd/lbe-certification-0>.

27.5. Resource-Efficient Facilities and Green Building Requirements. Licensee agrees to comply with all applicable provisions of Environment Code Chapter 7 relating to resource-efficiency and green building design requirements.

27.6. Prohibition Against Tobacco Advertising; Prohibition Against Tobacco Product Sales, Manufacture, and Distribution. Licensee acknowledges and agrees that no advertising of cigarettes or tobacco products is allowed on the License Area. This advertising prohibition includes the placement of the name of a company producing cigarettes or tobacco products or the name of any cigarette or tobacco product in any promotion of any event or product. In addition, Licensee acknowledges and agrees that no Sales, Manufacture, or Distribution of Tobacco Products (as such capitalized terms are defined in Health Code Section 19K.1) is allowed on the License Area and such prohibition must be included in all subleases or other agreements allowing use of the License Area. The prohibition against Sales, Manufacture, or Distribution of Tobacco Products does not apply to persons who are affiliated with an accredited academic institution where the Sale, Manufacture, and/or Distribution of Tobacco Products is conducted as part of academic research.

27.7. Prohibition of Alcoholic Beverages Advertising. Licensee acknowledges and agrees that no advertising of alcoholic beverages is allowed on the License Area. For purposes of this section, “alcoholic beverage” is defined as set forth in California Business and Professions Code Section 23004, and will not include cleaning solutions, medical supplies and other products and substances not intended for drinking. This advertising prohibition includes the placement of the name of a company producing, selling or distributing alcoholic beverages or the name of any alcoholic beverage in any promotion of any event or product. This advertising prohibition does not apply to any advertisement sponsored by a state, local, nonprofit or other entity designed to (i) communicate the health hazards of alcoholic beverages, (ii) encourage people not to drink alcohol or to stop drinking alcohol, or (iii) provide or publicize drug or alcohol treatment or rehabilitation services.

27.8. Pesticide Prohibition. Licensee shall comply with the provisions of Section 308 of Chapter 3 of the Environment Code (the “Pesticide Ordinance”) which (a) prohibit the use of certain pesticides on City property, (b) require the posting of certain notices and the maintenance of certain records regarding pesticide usage and (c) require Licensee to submit to Port an integrated pest management (“IPM”) plan that (i) lists, to the extent reasonably possible, the types and estimated quantities of pesticides that Licensee may need to apply to the License Area during the Term, (ii) describes the steps Licensee will take to meet the City’s IPM Policy described in Section 300 of the Pesticide Ordinance and (iii) identifies, by name, title, address and telephone number, an individual to act as the Licensee’s primary IPM contact person with the City. In addition, Licensee shall comply with the requirements of Sections 303(a) and 303(b) of the Pesticide Ordinance.

Through Port, Licensee may seek a determination from the City’s Commission on the Environment that Licensee is exempt from complying with certain portions of the Pesticide Ordinance with respect to this License, as provided in Section 307 of the Pesticide Ordinance. Port shall reasonably cooperate with Licensee, at Licensee’s sole cost and expense, if Licensee seeks in good faith an exemption under the Pesticide Ordinance.

27.9. MacBride Principles - Northern Ireland. The City and Port urge companies doing business in Northern Ireland to move towards resolving employment inequities and encourages them to abide by the MacBride Principles as expressed in Administrative Code Section 12F.1, et seq. The City and Port also urge San Francisco companies to do business with corporations that abide by the MacBride Principles.

27.10. Tropical Hardwood and Virgin Redwood Ban. The City and Port urge companies not to import, purchase, obtain or use for any purpose, any tropical hardwood or tropical hardwood wood product, or any virgin redwood or virgin redwood wood product. Licensee agrees that, except as permitted by the application of Sections 802(b) and 803(b) of the Environment Code, Licensee will not use or incorporate any tropical hardwood or virgin redwood in the Construction of the Improvements. Licensee will not provide any items to the construction of the Improvements, or otherwise in the performance of this License which are tropical hardwoods, tropical hardwood wood products, virgin redwood, or virgin redwood wood products. In the event Licensee fails to comply in good faith with any of the provisions of Chapter 8 of the Environment Code, Licensee will be liable for liquidated damages for each violation in any amount equal to the contractor's net profit on the contract, or five percent (5%) of the total amount of the contract dollars, whichever is greater.

27.11. Preservative Treated Wood Containing Arsenic. Licensee may not purchase preservative-treated wood products containing arsenic in the performance of this License unless an exemption from the requirements of Chapter 13 of the Environment Code is obtained from the Department of the Environment under Section 1304 of the Environment Code. The term "**preservative-treated wood containing arsenic**" means wood treated with a preservative that contains arsenic, elemental arsenic, or an arsenic copper combination, including chromated copper arsenate preservative, ammoniacal copper zinc arsenate preservative, or ammoniacal copper arsenate preservative. Licensee may purchase preservative-treated wood products on the list of environmentally preferable alternatives prepared and adopted by the Department of the Environment. This provision does not preclude Licensee from purchasing preservative-treated wood containing arsenic for saltwater immersion. The term "saltwater immersion" means a pressure-treated wood that is used for construction purposes or facilities that are partially or totally immersed in saltwater.

27.12. Notification of Limitations on Contributions. If this License is subject to the approval by City's Board of Supervisors, Mayor, or other elected official, the provisions of this section will apply. Through its execution of this License, Licensee acknowledges that it is familiar with Section 1.126 of the San Francisco Campaign and Governmental Conduct Code (the "**Conduct Code**") which prohibits any person who contracts with the City for the selling or leasing of any land or building to or from the City whenever such transaction would require approval by a City elective officer or the board on which that City elective officer serves, from making any campaign contribution to (a) the City elective officer, (b) a candidate for the office or (c) a committee controlled by such individual or candidate, at any time from the submission of proposal for the contract until the later of either the termination of negotiations for such contract or twelve (12) months after the date the contract is approved.

Licensee acknowledges that the foregoing restriction applies only if the contract or a combination or series of contracts approved by the same individual or board in a fiscal year have a total anticipated or actual value of one hundred thousand dollars (\$100,000) or more. Licensee further acknowledges that, if applicable, (i) the prohibition on contributions applies to each Licensee; each member of Licensee's board of directors, and Licensee's principal officers, including its chairperson, chief executive officer, chief financial officer and chief operating officer; any person with an ownership interest of more than ten percent (10%) in Licensee and any subcontractor listed in the Licensee's bid or contract; and (ii) within thirty (30) days of the submission of a proposal for the contract, the Port is obligated to submit to the Ethics Commission the parties to the Lease and any Licensee. Additionally, Licensee certifies that if this Section 27.12 applies, Licensee has informed each of the persons described in the preceding

sentence of the prohibitions contained in Section 1.126 by the time it submitted a proposal for the contract and has provided to City the names of the persons required to be informed.

27.13. *Sunshine Ordinance.* In accordance with Section 67.24(e) of the Administrative Code, contracts, contractors' bids, leases, agreements, responses to Requests for Proposals, and all other records of communications between Port and persons or firms seeking contracts will be open to inspection immediately after a contract has been awarded. Nothing in this provision requires the disclosure of a private person's or organization's net worth or other proprietary financial data submitted for qualification for a contract, lease, agreement or other benefit until and unless that person or organization is awarded the contract, lease, agreement or benefit. Information provided which this Section covers will be made available to the public upon request.

27.14. *Conflicts of Interest.* Through its execution of this License, Licensee acknowledges that it is familiar with the provisions of Article III, Chapter 2 of the Campaign and Governmental Conduct Code, and Sections 87100 et seq. and Sections 1090 et seq. of the California Government Code, certifies that it does not know of any facts which would constitute a violation of these provisions and agrees that if Licensee becomes aware of any such fact during the Term Licensee will immediately notify the Port and City.

27.15. *Drug-Free Workplace.* Licensee acknowledges that pursuant to the Federal Drug-Free Workplace Act of 1988 (41 U.S.C. §§ 8101 et seq.), the unlawful manufacture, distribution, possession, or use of a controlled substance is prohibited on City or Port premises.

27.16. *Prevailing Wages and Working Conditions.*

(a) **Prevailing Wage Rate Requirement For Construction.** Licensee will comply with all applicable prevailing wage requirements, including but not limited to any such requirements in the California Labor Code, the City and County of San Francisco Charter or the City and County of San Francisco Municipal Code. Any undefined, initially-capitalized term used in this Section will have the meaning given to such term in San Francisco Administrative Code Section 23.61. Tenant will require its contractors and subcontractors performing (i) labor in connection with any "public work" as defined under California Labor Code Section 1720 et seq. (which includes certain construction, alteration, maintenance, demolition, installation, repair, carpet laying, or refuse hauling work if paid for in whole or part out of public funds) or (ii) Covered Construction to: (A) pay workers performing such work not less than the highest prevailing rate of wages (B) provide the same hours, working conditions, and benefits as in each case are provided for similar work performed in San Francisco County, and (C) employ apprentices in accordance with Administrative Code Section 23.61 (collectively, "**Prevailing Wage Requirements**"). Licensee agrees to cooperate with the City in any action or proceeding against a contractor or subcontractor that fails to comply with the Prevailing Wage Requirements.

Licensee will include, and will require its contractors and subcontractors (regardless of tier), to include the Prevailing Wage Requirements and the agreement to cooperate in City enforcement actions in any Construction Contract with specific reference to Administrative Code Section 23.61. Each such Construction Contract will name the City and County of San Francisco, affected workers, and employee organizations formally representing affected workers as third party beneficiaries for the limited purpose of enforcing the Prevailing Wage Requirements, including the right to file charges and seek penalties against any contractor or subcontractor in accordance with Administrative Code Section 23.61. Licensee's failure to comply with its obligations under this section constitutes a material breach of this License. A contractor's or subcontractor's failure to comply with this Section will enable the City to seek the remedies specified in Administrative Code Section 23.61 against the breaching party.

Licensee will also pay, and will require its contractors and subcontractors (regardless of tier) to pay, the Prevailing Rate of Wage for the following activities on the License Area as set forth in and to the extent required by Administrative Code Chapter 21C: a Public Off-Street Parking Lot, Garage or Automobile Storage Facility (as defined in Section 21C.3), a Show (as defined in Section 21C.4), a Special Event (as defined in Section 21C.8), Broadcast Services (as defined in Section 21C.9), Commercial Vehicles, Loading and Unloading for Shows and Special Events (as defined in Section 21C.10), and Security Guard Services for Events (as defined in Section 21C.11).

(b) **Prevailing Wage Rate Requirement For Theatrical Workers.** City law entitles individual engaged in theatrical or technical services related to the presentation of a Show at the License Area, including individuals engaged in rigging, sound, projection, theatrical lighting, videos, computers, draping, carpentry, special effects, and motion picture services, to be paid not less than the Prevailing Rate of Wages (including fringe benefits or matching equivalents) fixed by the Board of Supervisors, unless the Show is free and open to the public or meets any of the other exemptions in Administrative Code Section 21C.4(b). Capitalized terms in this Section have the meanings provided in Section 21.C4. Accordingly, Licensee, as a condition of this License, agrees that:

(i) Licensee will comply with the obligations in Administrative Code Section 21C.4, and will require Licensee's contractors, and any subcontractors, to comply with the obligations in Section 21C.4, including the payment of Prevailing Rate of Wages to individuals engaged in theatrical or technical services related to the presentation of a Show. In addition, if Licensee or its contractor (or any subcontractor) fails to comply with these obligations, the City will have all available remedies against Licensee to secure compliance and seek redress for workers who provided the services as described in Section 21C.7, together with the remedies set forth in this License.

(ii) The City may inspect and/or audit any workplace, job site, books and records pertaining to the presentation of a Show at the License Area, and may interview any individual who provides, or has provided, work involving theatrical or technical services for the Show at the License Area.

(iii) Licensee will provide to the City (and to require any contractor or subcontractor who maintains such records to provide to the City), upon request, immediate access to all workers' time sheets, payroll records, and paychecks for inspection in so far as they relate the presentation of a Show at the License Area.

For current Prevailing Wage rates, see www.sfgov.org/olse/prevailingwages or call the Office of Labor Standard Enforcement at 415-554-6235.

(c) **Prevailing Wage Rate Requirement For Special Event or Trade Show Work.** City law entitles individuals engaged in work involving the on-site installation, set-up, assembly, and dismantling of temporary exhibits, displays, booths, modular systems, signage, drapery, specialty furniture, floor coverings, and decorative materials in connection with trade shows, conventions, expositions, and other special events on City property to receive the Prevailing Rate of Wages (including fringe benefits or matching equivalents) fixed by the Board of Supervisors, unless the event is free and open to the public or meets any of the other exemptions in Administrative Code Section 21C.8(b). Capitalized terms in this Section have the meanings provided in Sections 21.C8. Accordingly, Licensee, as a condition of this License, agrees that:

(i) Licensee will comply with the obligations in Administrative Code Section 21C.8, and will require Licensee's contractors and any subcontractors, to comply with the obligations in Section 21C.8, including the payment of Prevailing Wage Rates to workers engaged in On-site work on Trade Shows or Special Events. In addition, if Licensee or its contractor (or any subcontractor) fails to comply with these obligations, the City has all available

remedies against Licensee to secure compliance and seek redress for workers who provided the services as described in Section 21C.7, together with the remedies set forth in this License.

(ii) The City may inspect and/or audit any workplace, job site, books and records pertaining to On-site work on Trade Shows or Special Events at the License Area, and may interview any individual who provides, or has provided, On-site work on Trade Shows or Special Events at the License Area.

(iii) Licensee will provide to the City (and to require any contractor or subcontractor who maintains such records to provide to the City), upon request, immediate access to all workers' time sheets, payroll records, and paychecks for inspection in so far as they relate a Trade Show or Special Event at the License Area.

For current Prevailing Wage rates, see www.sfgov.org/olse/prevailingwages or call the Office of Labor Standard Enforcement at 415-554-6235.

27.17. Prohibition of Political Activity with City Funds. In accordance with Administrative Code Chapter 12.G, no funds appropriated by Port for this License may be expended for organizing, creating, funding, participating in, supporting, or attempting to influence any political campaign for a candidate or for a ballot measure.

27.18. Compliance with Disabled Access Laws. Licensee acknowledges that, pursuant to the Disabled Access Laws, programs, services and other activities provided by a public entity to the public, whether directly or through Licensee or contractor, must be accessible to the disabled public. Licensee will not discriminate against any person protected under the Disabled Access Laws in connection with the use of all or any portion of the License Area and will comply at all times with the provisions of the Disabled Access Laws.

27.19. Protection of Private Information. Licensee agrees to comply fully with and be bound by all of the provisions of Chapter 12M of the Administrative Code (the "**Protection of Information Ordinance**"), including the remedies provided therein. Consistent with the requirements of the Protection of Information Ordinance, Licensee agrees to all of the following:

(a) Neither Licensee nor any of its contractors or subcontractors who receive Private Information from the City in the performance of a contract may disclose that information to a subcontractor or any other person or entity, unless one of the following is true:

(i) The disclosure is authorized by this License;

(ii) Licensee receives advance written approval from the Contracting Department to disclose the information; or

(iii) The disclosure is required by judicial order.

(b) Any disclosure or use of Private Information authorized by this License will be in accordance with any conditions or restrictions stated in this License or the Contracting Department's approval and will not be used except as necessary in the performance of the obligations under the Contract. Any disclosure or use of Private Information authorized by a Contracting Department will be in accordance with any conditions or restrictions stated in the approval.

(c) "**Private Information**" will mean any information that (1) could be used to identify an individual, including name, address, social security number, medical information, financial information, date and location of birth, and names of relative; or (2) the law forbids any person from disclosing.

(d) Any failure of Licensee to comply with the Protection of Information Ordinance will be a material breach of this License. In such an event, in addition to any other remedies available to it under equity or at law, Port may terminate this License, debar Licensee, or bring a false claim action against Licensee.

27.20. Diesel Fuel Measures. Licensee must minimize exhaust emissions from operating equipment and trucks during construction. At a minimum, Licensee will maintain vehicles and equipment in good condition and well-tuned to minimize emissions, ensure that vehicles and equipment run only when necessary, and prohibit running engines when vehicles and equipment are not in use or when queuing. Licensee must also make good faith efforts to use low-emission diesel fuel or alternative low-emission fuels for all petroleum hydrocarbon-powered equipment used on the License Area, and to explore emerging new technologies for reducing diesel particulate matter, such as catalytic particulate traps, which currently are under study by the California Air Resources Board. Identifying sources of viable alternative low-emission fuels, retrofitting or purchasing new or late-model equipment to use such fuels to the extent reasonably feasible, and using low-emission fuels to the extent reasonably practicable are examples of “good faith efforts.” In addition, Licensee will encourage independent truckers contracting with Licensee to move materials to and from the License Area to use low-emission fuels if possible, including if reasonably feasible, providing the truckers with economic incentives to retrofit equipment or take other measures necessary to use low-emission fuels.

27.21. Charter Provisions. This Agreement is governed by and subject to the provisions of the Charter of the City and County of San Francisco.

27.22. Card Check Agreement. Article 6 of Chapter 23 of the Administrative Code presently requires employers of employees in projects that include hotels or restaurants on public property with more than fifty (50) employees to enter into a “card check” agreement with a labor union regarding the preference of employees to be represented by a labor union to act as their exclusive bargaining representative.

27.23. Food Service Waste Reduction Ordinance. Licensee agrees to comply fully with and be bound by all of the provisions of the Food Service Waste Reduction Ordinance, as set forth in Environment Code Chapter 16, including the remedies provided therein and implementing guidelines and rules. By entering into this License, Licensee agrees that if it breaches this provision, City will suffer actual damages that will be impractical or extremely difficult to determine; further, Licensee agrees that the sum of one hundred dollars (\$100.00) liquidated damages for the first breach, two hundred dollars (\$200.00) liquidated damages for the second breach in the same year, and five hundred dollars (\$500.00) liquidated damages for subsequent breaches in the same year is a reasonable estimate of the damage that City will incur based on the violation, established in light of the circumstances existing at the time this License was made. Such amounts will not be considered a penalty, but rather agreed monetary damages sustained by City because of Licensee’s failure to comply with this provision.

27.24. Consideration Of Criminal History In Hiring And Employment Decisions.

(a) Licensee agrees to, and will cause its Agents to, comply with and be bound by all of the provisions of Administrative Code Chapter 12T (Criminal History in Hiring and Employment Decisions; “Chapter 12T”), which are hereby incorporated, including the remedies and implementing regulations as may be amended from time to time, with respect to applicants and employees of Licensee who would be or are performing work at the License Area.

(b) Licensee must incorporate by reference the provisions of Chapter 12T in all Contracts and subcontracts, and must require all its Agents to comply with such provisions. Licensee’s failure to comply with the obligations in this subsection will constitute a material breach of this License.

(c) Licensee and its Agents will not inquire about, require disclosure of, or if such information is received base an Adverse Action on an applicant’s or potential applicant for employment, or employee’s: (1) Arrest not leading to a Conviction, unless the Arrest is undergoing an active pending criminal investigation or trial that has not yet been resolved; (2) participation in or completion of a diversion or a deferral of judgment program; (3) a Conviction that has been judicially dismissed, expunged, voided, invalidated, or otherwise

rendered inoperative; (4) a Conviction or any other adjudication in the juvenile justice system; (5) a Conviction that is more than seven years old, from the date of sentencing; or (6) information pertaining to an offense other than a felony or misdemeanor, such as an infraction.

(d) Licensee and its Agents will not inquire about or require applicants, potential applicants for employment, or employees to disclose on any employment application the facts or details of any conviction history, unresolved arrest, or any matter identified in subsection (c) above. Licensee and its Agents will not require such disclosure or make such inquiry until either after the first live interview with the person, or after a conditional offer of employment.

(e) Licensee and its Agents must state in all solicitations or advertisements for employees that are reasonably likely to reach persons who are reasonably likely to seek employment with Licensee or its Agents at the License Area, that the Licensee or its Agents will consider for employment qualified applicants with criminal histories in a manner consistent with the requirements of Chapter 12T.

(f) Licensee and its Agents must post the notice prepared by OLSE, available on OLSE's website, in a conspicuous place at the License Area and at other workplaces within San Francisco where interviews for job opportunities at the License Area occur. The notice must be posted in English, Spanish, Chinese, and any language spoken by at least 5% of the employees at the License Area or other workplace at which it is posted.

(g) Licensee and its Agents understand and agree that upon any failure to comply with the requirements of Chapter 12T, the City has the right to pursue any rights or remedies available under Chapter 12T or this License, including but not limited to a penalty of \$50 for a second violation and \$100 for a subsequent violation for each employee, applicant or other person as to whom a violation occurred or continued, termination or suspension in whole or in part of this License.

(h) If Licensee has any questions about the applicability of Chapter 12T, it may contact Port for additional information. Port may consult with the Director of the City's Office of Contract Administration who may also grant a waiver, as set forth in Section 12T.8.

27.25. Local Hire. Any undefined, initially-capitalized term used in this Section will have the meaning given to such term in Administrative Code Section 23.62 (the "**Local Hiring Requirements**"). Alterations and other Tenant Improvements (including maintenance and repair of the Premises) are subject to the Local Hiring Requirements in effect as of the Effective Date unless the cost for such work is (i) estimated to be less than \$750,000 per building permit; (ii) is in connection with the set-up, execution and strike of special events of three (3) or fewer days costing in excess of the Threshold Amount; or (iii) meets any of the other exemptions in the Local Hiring Requirements. Licensee agrees that it will comply with the Local Hiring Requirements to the extent applicable. Port and Licensee recognize that Alterations, Licensee Improvements and maintenance and repair of the License Area may require use of Specialized Trades (as defined in Administrative Code Section 6.22(g)(4)(C)(i) for which Local Hiring Requirements are not applicable. Before starting any Licensee Improvements, Alterations or maintenance and repair of the License Area, Licensee will contact City's Office of Economic Workforce and Development ("**OEWD**") to determine which trade work is a Covered Project subject to the Local Hiring Requirements.

Licensee will include, and will require its Agents to include, a requirement to comply with the Local Hiring Requirements in any contract for a Covered Project with specific reference to Administrative Code Section 23.62. Each such contract will name the City and County of San Francisco as a third party beneficiary for the limited purpose of enforcing the Local Hiring Requirements, including the right to file charges and seek penalties. Licensee will cooperate, and require its Agents to cooperate, with the City in any action or proceeding against a contractor

or subcontractor that fails to comply with the Local Hiring Requirements when required. Licensee's failure to comply with its obligations under this Section will constitute a material breach of this License. A contractor's or subcontractor's failure to comply with this Section will enable the City to seek the remedies specified in Administrative Code Section 23.62 against the breaching party.

27.26. San Francisco Bottled Water Ordinance. Licensee is subject to all applicable provisions of Environment Code Chapter 24 (which are hereby incorporated) prohibiting the sale or distribution of drinking water in specified containers at City-permitted events held on the License Area with attendance of more than 100 people, except as otherwise set forth in Environmental Code Chapter 24.

27.27. Vending Machines; Nutritional Standards and Calorie Labeling Requirements; Offerings. Licensee must not install or permit any vending machine on the License Area without the prior written consent of Port. Any permitted vending machine must comply with the food and beverage nutritional standards and calorie labeling requirements set forth in Administrative Code Section 4.9- 1(c), as may be amended from time to time (the "Nutritional Standards Requirements"). Licensee agrees to incorporate the Nutritional Standards Requirements into any contract for the installation of a vending machine on the License Area or for the supply of food and beverages to that vending machine. Failure to comply with the Nutritional Standards Requirements or to otherwise comply with this Section will be deemed a material breach of this License. Without limiting Port's other rights and remedies under this License, Port has the right to require the immediate removal of any vending machine on the License Area that is not permitted or that violates the Nutritional Standards Requirements. In addition, any Restaurant including any employee eating establishment located on the License Area is encouraged to ensure that at least twenty-five percent (25%) of Meals (as capitalized terms are defined in Administrative Code Section 4.9-1) offered on the menu meet the nutritional standards set forth in Administrative Code Section 4.9-1(e), as may be amended.

27.28. All-Gender Toilet Facilities. Licensee must comply with Administrative Code Section 4.1-3 which requires at least one all-gender toilet facility on each floor of any new building on City-owned land and within existing buildings leased by the City, including the License Area, where extensive renovations are made. An "all-gender toilet facility" means a toilet that is not restricted to use by persons of a specific sex or gender identity by means of signage, design, or the installation of fixtures. "Extensive renovations" means any renovation where the construction cost exceeds 50% of the cost of providing the toilet facilities required by this section.

27.29. Licensee's Compliance with City Business and Tax Regulations Code. Licensee acknowledges that under Section 6.10-2 of the San Francisco Business and Tax Regulations Code, the City Treasurer and Tax Collector may require the withholding of payments to any vendor that is delinquent in the payment of any amounts that the vendor is required to pay the City under the San Francisco Business and Tax Regulations Code. If, under that authority, any payment Port is required to make to Licensee under this License is withheld, then Port will not be in breach or default under this License, and the Treasurer and Tax Collector will authorize release of any payments withheld under this Section 28.27 to Licensee, without interest, late fees, penalties, or other charges, upon Licensee coming back into compliance with its San Francisco Business and Tax Regulations Code obligations.

27.30. Consideration of Salary History. Licensee shall comply with San Francisco Administrative Code Chapter 12K, the Consideration of Salary History Ordinance or "Pay Parity Act." For each employment application to Licensee for work that relates to this License or for work to be performed in the City or on City property, Licensee is prohibited from considering current or past salary of an applicant in determining whether to hire the applicant or what salary to offer the applicant. Licensee shall not (1) ask such applicants about their current or past salary or (2) disclose a current or former employee's salary history without that employee's

authorization unless the salary history is publicly available. Licensee is subject to the enforcement and penalty provisions in Chapter 12K. Information about Chapter 12K is available on the web at <https://sfgov.org/olse/consideration-salary-history>.

28. GENERAL PROVISIONS.

28.1. *Time of Performance.*

(a) **Expiration.** All performance dates (including cure dates) expire at 5:00 p.m., San Francisco, California time, on the performance or cure date.

(b) **Weekend or Holiday.** A performance date that falls on a Saturday, Sunday or City holiday is deemed extended to 5:00 p.m. the next business day.

(c) **Days for Performance.** All periods for performance or notices specified herein in terms of days will be calendar days, and not business days, unless otherwise provided herein.

(d) **Time of the Essence.** Time is of the essence with respect to each provision of this License, including the provisions for the payment of any other sums due hereunder.

28.2. *Interpretation of Agreement.*

(a) **Exhibits and Schedule.** Whenever an "Exhibit" or "Schedule" is referenced, it means an attachment to this License unless otherwise specifically identified. All such exhibits and schedules are incorporated herein by reference.

(b) **Captions.** Whenever a section, article or paragraph is referenced, it refers to this License unless otherwise specifically identified. The captions preceding the articles and sections of this License and in the table of contents have been inserted for convenience of reference only. Such captions will not define or limit the scope or intent of any provision of this License.

(c) **Words of Inclusion.** The use of the term "include", "including", "such as", or words of similar import, when following any general term, statement or matter will not be construed to limit such term, statement or matter to the specific items or matters, whether or not language of non-limitation is used with reference thereto. Rather, such terms will be deemed to refer to all other items or matters that could reasonably fall within the broadest possible scope of such statement, term or matter.

(d) **No Presumption Against Drafter.** This License has been negotiated at arm's length and between Persons sophisticated and knowledgeable in the matters dealt with herein. In addition, experienced and knowledgeable legal counsel has represented each Party. Accordingly, this License will be interpreted to achieve the intents and purposes of the Parties, without any presumption against the Party responsible for drafting any part of this License (including California Civil Code Section 1654).

(e) **Fees and Costs.** The Party on which any obligation is imposed in this License will be solely responsible for paying all costs and expenses incurred in the performance thereof, unless the provision imposing such obligation specifically provides to the contrary.

(f) **License References.** 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 and all provisions of this License reasonably related thereto in the context of such reference, unless such reference refers solely to a specific numbered or lettered article, section or paragraph of this License or any specific subdivision thereof.

(g) **Approvals.** Unless otherwise specifically stated in this License, wherever a Party hereto has a right of approval or consent, such approval or consent will not be unreasonably withheld, conditioned or delayed and such approval or consent will be given in writing.

(h) **Legal References.** Wherever reference is made to a specific code or section of a specific Law, the reference will be deemed to include any amendment, restatement or replacement.

28.3. Successors and Assigns. This License is binding upon and will inure to the benefit of the successors and assigns of Port and Licensee. Where the term "Licensee" or "Port" is used in this License, it means and includes their respective successors and assigns. Whenever this License specifies or implies Port as a Party or the holder of the right or obligation to give approvals or consents, if Port (or a comparable public body which has succeeded to Port's rights and obligations) no longer exists, then City will be deemed to be the successor and assign of Port for purposes of this License.

28.4. No Third Party Beneficiaries. This License is for the exclusive benefit of the Parties hereto and not for the benefit of any other Person and will not be deemed to have conferred any rights, express or implied, upon any other Person.

28.5. Real Estate Commissions. Port is not liable for any real estate commissions, brokerage fees or finder's fees that may arise from this License. Licensee and Port each represents that it engaged no broker, agent or finder in connection with this transaction. In the event any broker, agent or finder makes a claim, Licensee will indemnify Port from any Losses arising out of such claim.

28.6. Counterparts. This License may be executed in counterparts, each of which is deemed to be an original, and all such counterparts constitute one and the same instrument.

28.7. Entire Agreement. This License and the other Transaction Documents (for so long as the other Transaction Documents are in effect, as applicable) constitute the entire agreement between the Parties with respect to the subject matter set forth therein, and supersede all negotiations or previous agreements between the Parties with respect to all or any part of the terms and conditions mentioned herein or incidental hereto. No parol evidence of any prior drafts or of other agreement will be permitted to contradict or vary the terms of this License.

28.8. Amendment. Neither this License nor any of the terms hereof may be terminated, amended or modified except by a written instrument executed by the Parties.

28.9. Governing Law; Selection of Forum. This License will be governed by, and interpreted in accordance with, the laws of the State of California. As part of the consideration for Port's entering into this License, Licensee agrees that all actions or proceedings arising directly or indirectly under this License may, at the sole option of Port, be litigated in courts having situs within the State of California, and Licensee consents to the jurisdiction of any such local, state or federal court, and consents that any service of process in such action or proceeding may be made by personal service upon Licensee wherever Licensee may then be located, or by certified or registered mail directed to Licensee at the address set forth herein for the delivery of notices.

28.10. Relationship of the Parties. Nothing contained in this License will be deemed or construed as creating a partnership or joint venture between Port and Licensee or between Port and any other Person, or cause Port to be responsible in any way for the debts or obligations of Licensee or any other Person. The subject of this License is a lease with neither Party acting as the agent of the other Party in any respect except as may be expressly provided for in this License.

28.11. Recordation. This License will not be recorded by either Party.

28.12. Extensions by Port. Upon the request of Licensee, Port may, by written instrument, extend the time for Licensee's performance of any term, covenant or condition of this License or permit the curing of any default upon such terms and conditions as it determines appropriate, including the time within which Licensee must agree to such terms and/or conditions, provided, however, that any such extension or permissive curing of any particular default will not operate to release any of Licensee's obligations nor constitute a waiver of Port's rights with respect to any other term, covenant or condition of this License or any other default in, or breach of, this License or otherwise effect the time of the essence provisions with respect to the extended date or other dates for performance hereunder.

28.13. Further Assurances. The Parties hereto agree to execute and acknowledge such other and further documents as may be necessary or reasonably required to express the intent of the Parties or otherwise to effectuate the terms of this License. The Executive Director of Port is authorized to execute on behalf of Port any closing or similar documents and any contracts, agreements, licenses, permits, memoranda or similar documents with Licensee, State, regional and local entities or enter into any tolling agreement with any Person that are necessary or proper to achieve the purposes and objectives of this License, if the Executive Director determines that the document or agreement is necessary or proper and is in Port's best interests.

28.14. Severability. If any provision of this License, or its application to any Person or circumstance, is held invalid by any court, the invalidity or inapplicability of such provision will not affect any other provision of this License or the application of such provision to any other Person or circumstance, and the remaining portions of this License will continue in full force and effect, unless enforcement of this License as so modified by and in response to such invalidation would be grossly inequitable under all of the circumstances, or would frustrate the fundamental purposes of this License.

29. FEMA DISCLOSURE NOTICE.

The Federal Emergency Management Agency ("FEMA") is revising Flood Insurance Rate Maps ("FIRMs") for San Francisco Bay Area communities. As part of this effort, FEMA plans to prepare a FIRM for the City and County of San Francisco for the first time. That process may have significant impacts for developing new structures and reconstructing or repairing existing structures on San Francisco's waterfront.

FIRMs identify areas that are subject to inundation during a flood having a 1% chance of occurrence in a given year (also known as a "base flood" or "100-year flood"). FEMA refers to an area that is at risk from a flood of this magnitude as a special flood hazard area ("SFHA").

On September 21, 2007, FEMA issued a preliminary FIRM of San Francisco tentatively identifying SFHAs along City's shoreline in and along the San Francisco Bay consisting of "A zones" (areas subject to inundation by tidal surge) and "V zones" (areas subject to the additional hazards that accompany wave action). These zones generally affect City property under the jurisdiction of the Port of San Francisco and other areas of the San Francisco waterfront, including parts of Mission Bay, Hunters Point Shipyard, Candlestick Point, Treasure and Yerba Buena Islands, and an area adjacent to Islais Creek.

FEMA prepares the FIRMs to support the National Flood Insurance Program ("NFIP"), a federal program that enables property owners, businesses, and residents in participating communities to purchase flood insurance backed by the federal government. The San Francisco Board of Supervisors has adopted a floodplain management ordinance governing new construction and substantial improvements in flood prone areas of San Francisco and authorizing the City's participation in NFIP (as amended, the "Floodplain Ordinance"). The Floodplain Ordinance imposes requirements on any new construction or substantial improvement of structures in city-designated flood zones that are intended to minimize or eliminate flood hazard risks. NFIP regulations allow a local jurisdiction to issue variances to its floodplain management ordinance under certain narrow circumstances, without jeopardizing the local jurisdiction's

eligibility in the NFIP. However, the particular projects that are granted variances by the local jurisdiction may be deemed ineligible for federally-backed flood insurance by FEMA.

FEMA is performing detailed coastal engineering analyses and mapping of the San Francisco Bay shoreline in accordance with FEMA's February 2005 Pacific guidelines for new coastal studies. The San Francisco Bay Area Coastal Study includes both regional hydrodynamic and wave modeling of the San Francisco Bay, as well as detailed onshore coastal analysis used to estimate wave run-up and overtopping, as well as overland wave propagation. These onshore analyses will form the basis for potential revisions to the Base Flood Elevations (BFEs) and Special Flood Hazard Areas (SFHAs) within the coastal areas. The new coastal study will revise and update the flood and wave data based on current conditions within the coastal Flood Insurance Study reports and Flood Insurance Rate Maps for each of the nine counties. For San Francisco, the preliminary FIRMs will replace the preliminary FIRMs issued in 2007. FEMA issued preliminary FIRMs for San Francisco in November 2015, with an intended effective date in mid-2016.

The federal legislation and regulations implementing the NFIP are located at 42 U.S.C. §§ 4001 et seq.; 44 C.F.R. Parts 59-78, §§ 59.1-78.14. FEMA also publishes "Answers to Questions About the NFIP" and FEMA Publication 186 entitled "Mandatory Purchase of Flood Insurance Guidelines." Additional information on this matter can be found on the City's and FEMA's websites at the following links: <http://www.fema.gov/plan/prevent/fhm/index.shtm>; [http://www.r9map.org/Docs/Oct13-SanFranCo-FEMA_Factsheet_rev%20\(2\).pdf](http://www.r9map.org/Docs/Oct13-SanFranCo-FEMA_Factsheet_rev%20(2).pdf); <http://www.fema.gov/business/nfip/index.shtm>; and <http://www.sfgov.org>.

This disclosure is provided for information purposes only, and without representation or warranty of any kind by the City, including, without limitation, Port, with regard to any of the matters discussed in this notice. Licensee is entirely responsible for investigating on its own the consequences of the potential inclusion of the License Area in any future FEMA designated SFHA and the consequences of the City's decision to participate or to not participate in the NFIP.

Licensee acknowledges and agrees that the City's participation or failure to participate in the NFIP shall not give rise to any rights, causes of action, or remedies under this License, including, but not limited to any termination or abatement right.

30. DEFINITIONS.

For purposes of this License, initially capitalized terms shall have the meanings ascribed to them in this Section:

"ACMs" is defined in *Section 15.6*.

"Agents" means, when used with reference to either Party to this License, the members, officers, directors, commissioners, employees, agents and contractors of such Party, and their respective heirs, legal representatives, successors and assigns.

"Approve" or "Approval" means a Party's consent to or approval of a request, action, or other matter, and, when appropriate in the context, may mean a Regulatory Approval.

"Approved" and "Approving" have correlative meanings.

"Attorneys' Fees and Costs" means reasonable attorneys' fees (including, if applicable, fees and reasonable costs of the City Attorney), costs, expenses and disbursements, including expert witness fees and costs, travel time and associated costs, transcript preparation fees and costs, document copying, exhibit preparation, courier, postage, facsimile, long-distance and communications expenses, court costs and other reasonable costs and fees associated with any other legal, administrative or alternative dispute resolution proceeding, including such fees and costs associated with execution upon any judgment or order, and costs on appeal.

"Basic License Information" is defined in the Preamble.

“**BCDC**” means the San Francisco Bay Conservation and Development Commission.

“**BCDC DRB**” means BCDC’s Design Review Board.

“**Board**” means the Board of Supervisors of the City and County of San Francisco.

“**Burton Act**” means the provisions of Chapter 1333 of the Statutes of 1968 adopted by the California Legislature, as amended, providing for the transfer to City from State, subject to specified terms, conditions and reservations, of the control and management of the certain tide and submerged lands comprising the Harbor of San Francisco.

“**business day**” means Monday through Friday that is not a City holiday.

“**Cal-OSHA**” is defined in *Section 15.6*.

“**Canopies**” is defined in *Section 6.11*.

“**CEQA**” means the California Environmental Quality Act.

“**Certificate of Completion**” is defined in the LDDA.

“**City**” means the City and County of San Francisco, a municipal corporation. City shall refer to the City operating by and through its Port Commission, where appropriate. All references to City shall include Port unless inappropriate in context.

“**City Attorney**” means the City Attorney of the City and County of San Francisco.

“**City Projects**” is defined in *Section 7.1*.

“**Commencement Date**” is defined in *Section 2.1*.

“**Construction Impacts**” is defined in *Section 7.2*.

“**Construction Lease**” is defined in *Recital F*.

“**Construction Lease Commencement Date**” is defined in *Section 1.7*.

“**County Assessor**” means the Assessor-Recorder of the City and County of San Francisco.

“**DBI**” means the City and County of San Francisco Department of Building Inspections.

“**Development Projects**” is defined in *Section 7.1*.

“**Downtown Ferry Terminal**” is defined in the Basic License Information.

“**Default Rate**” is defined in *Section 21.1*.

“**East Bayside Promenade**” is defined in the Basic License Information and *Recital G*.

“**Embarcadero Plaza**” is defined in the Basic License Information and *Recital G*.

“**Environmental Laws**” means any present or future federal, state or local Laws or policies relating to Hazardous Material (including the Handling, Release, or Remediation) or to human health and safety, industrial hygiene or environmental conditions in the environment, including structures, soil, air, air quality, water, water quality and groundwater conditions, and any environmental mitigation measure adopted under Environmental Laws affecting any portion of the License Area. “Environmental Laws” include the City’s Pesticide Ordinance (Chapter 39 of the Administrative Code), Section 20 of the San Francisco Public Works Code (Analyzing Soils for Hazardous Waste) and the Fats, Oils and Grease Control Ordinance.

“**Environmental Regulatory Action**” when used with respect to Hazardous Materials means any inquiry, Investigation, enforcement, Remediation, agreement, order, consent decree, compromise, or other action that is threatened, instituted, filed, or completed by an Environmental Regulatory Agency in relation to a Release of Hazardous Materials, including both administrative and judicial proceedings.

“Environmental Regulatory Agency” means the United States Environmental Protection Agency, OSHA, any California Environmental Protection Agency board, department, or office, including the Department of Toxic Substances Control and the RWQCB, Cal-OSHA, the Bay Area Air Quality Management District, the San Francisco Department of Public Health, the San Francisco Fire Department, the SFPUC, Port, or any other Regulatory Agency now or later authorized to regulate Hazardous Materials.

“Environmental Regulatory Approval” means any approval, license, registration, permit, or other authorization required or issued by any Environmental Regulatory Agency, including any hazardous waste generator identification numbers relating to operations on the License Area and any closure permit.

“Exacerbate” or **“Exacerbating”** when used with respect to Hazardous Materials means any act or omission that increases the quantity or concentration of Hazardous Materials in the affected area, causes the increased migration of a plume of Hazardous Materials in soil, groundwater, or bay water, causes a Release of Hazardous Materials that had been contained until the act or omission, or otherwise requires Investigation or Remediation that would not have been required but for the act or omission. Exacerbate also includes the disturbance, removal or generation of Hazardous Materials in the course of Licensee’s operations, Investigations, maintenance, repair, Improvements and Alterations under this License. **“Exacerbation”** has a correlative meaning.

“Executive Director” means the Executive Director of Port or his or her designee (except as used in the notice provisions with respect to Licensee).

“Expiration Date” is defined in *Section 2.1*.

“FEMA” is defined in *Article 29*.

“Ferry Information and Wayfinding Signs” is defined in *Section 6.10*.

“Ferry Pier” means the plaza area east of the Ferry Building, bound generally between the North Basin and the South Basin.

“Ferry Terminal Gates” is defined in the Basic License Information.

“Handle” when used with reference to Hazardous Materials means to use, generate, manufacture, process, produce, package, treat, transport, store, emit, discharge or dispose of any Hazardous Material. **“Handled”** and **“Handling”** have correlative meanings.

“Hazardous Materials” means any material that, because of its quantity, concentration or physical or chemical characteristics, is deemed by any federal, state or local governmental authority to pose a present or potential hazard to human health or safety or to the environment. Hazardous Material includes any material or substance defined as a **“hazardous substance,”** or **“pollutant”** or **“contaminant”** under the Comprehensive Environmental Response, Compensation and Liability Act of 1980 (**“CERCLA,”** also commonly known as the **“Superfund”** law), as amended (42 U.S.C. §§ 9601 et seq.), or under Section 25281 or Section 25316 of the California Health & Safety Code; any **“hazardous waste”** is defined in Section 25117 or listed under Section 25140 of the California Health & Safety Code; any asbestos and asbestos containing materials whether or not such materials are 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 are naturally occurring substances on, in or about the License Area and petroleum, including crude oil or any fraction, and natural gas or natural gas liquids.

“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 Release of any Hazardous Materials, including Losses based in common law. Hazardous Materials Claims include Investigation and Remediation costs, fines, natural resource damages,

damages for decrease in value of the License Area or other Port property, the loss or restriction of the use or any amenity of the License Area or other Port property, Attorneys' Fees and Costs and fees and costs of consultants and experts.

"Hazardous Material Condition" means the Release, or threatened Release of Hazardous Materials in, on, under, or about the License Area, other Port property, or the environment, or from any vehicles Licensee, or its Agents and Invitees use during Licensee's occupancy of the License Area.

"HCAO" is defined in *Section 27.2*.

"Impositions" means all taxes (including possessory interest, real and personal taxes), assessments, liens, levies, fees, charges or expenses of every description, whether general or special, ordinary or extraordinary, foreseen or unforeseen, or hereinafter levied or assessed in lieu of or in substitution of any of the foregoing of every character.

"Improvements" means all physical construction on the License Area (and off the License Area where designated in the LDDA's Scope of Development), the Project, any Alterations, all buildings, structures, fixtures, material systems (such as plumbing, sewer, electrical, mechanical and other utility systems), and other improvements erected, built, rehabilitated, placed, installed, constructed, located upon or within the License Area on or after the Commencement Date.

"Indemnified Parties" means City, including all of its boards, commissions, departments, agencies and other subdivisions, including Port, all of the elected officials, Agents of the City, including Port, and all of their respective heirs, legal representatives, successors and assigns, and each of them.

"Indemnify" means indemnify, protect and hold harmless. **"Indemnification"**, **"Indemnity"** and **"Indemnified"** have correlating meanings.

"Investigate" or **"Investigation"** when used with reference to Hazardous Material means any activity undertaken to determine the nature and extent of Hazardous Material that may be located in, on, under or about the License Area, any Improvements within the License Area or which have been, are being, or threaten to be Released into the environment. Investigation shall include preparation of site history reports and sampling and analysis of environmental conditions in, on, under or about the License Area or any Improvements within the License Area.

"Invitees" when used with respect to Licensee means the customers, patrons, invitees, guests, and licensees of Licensee; when used with respect to Port means the invitees, guests and licensees of Port.

"IPM" is defined in *Section 27.8*.

"Late Charge" is defined in *Section 21.2*.

"Law" or **"Laws"** means any one or more present and future laws, ordinances, rules, regulations, permits, codes, authorizations, orders and requirements, to the extent applicable to the Parties or to the License Area or any portion thereof, whether or not foreseen, unforeseen or in the present contemplation of the Parties, including all consents or approvals (including Regulatory Approvals) required to be obtained from or issued by, and all rules and regulations of, and all building and zoning laws of, all federal, state, county and municipal governments, the departments, bureaus, agencies or commissions thereof, authorities, boards of officers, any national or local board of fire underwriters, or any other body or bodies exercising similar functions, having or acquiring jurisdiction of, or which may affect or be applicable to, the License Area or any part thereof, including any subsurface area, the use thereof and of the buildings and Improvements thereon.

"LBEs" is defined in *Section 27.4*.

"LDDA" is defined in *Recital F*.

“**License**” means this agreement, as it may be amended from time to time.

“**License Area**” is defined in the Basic License Information.

“**Licensee**” is defined in the Preamble.

“**Licensee Event of Default**” is defined in *Article 18*.

“**Local Hiring Requirements**” is defined in *Section 27.25*.

“**Long-Term Lease**” is defined in *Recital I*.

“**Loss**” or “**Losses**” when used with reference to any Indemnity means any and all claims, demands, losses, liabilities (including direct or vicarious liabilities), damages (including foreseeable and unforeseeable, incidental and consequential damages), liens, obligations, interest, injuries, penalties, fines, lawsuits and other proceedings, judgments and awards and costs and expenses, (including reasonable Attorneys’ Fees and Costs and consultants’ fees and costs) of whatever kind or nature, known or unknown, contingent or otherwise.

“**Mitigation Monitoring and Reporting Program**” means all of the mitigation and improvement measures set forth in the Final EIR for the Project and described in *Exhibit F*.

“**Noise Ordinance**” means Article 29 of the San Francisco Police Code or its successor.

“**Notice to Cease Prohibited Use**” is defined in *Section 5.2*.

“**NPS**” means the National Park Service.

“**OEWD**” is defined in *Section 27.25*.

“**Official Records**” means, with respect to the recordation of documents and instruments, the Official Records of the City and County of San Francisco.

“**OLSE**” is defined in *Section 27.2(d)*.

“**OSHA**” is defined in *Section 15.6*.

“**Other Projects**” is defined in *Section 7.1*.

“**PACMs**” is defined in *Section 15.6*.

“**Party**” means Port or Licensee, as a party to this License; Parties means both Port and Licensee, as Parties to this License.

“**Pedestrian Bridge**” is defined in *Recital G*.

“**Permitted Activities**” is defined in the Basic License Information.

“**Permitted Agent**” is defined in *Section 4.2*.

“**Permitted Transfer**” is defined in *Section 13.2*.

“**Person**” means any individual, partnership, corporation (including any business trust), limited liability company, joint stock company, trust, unincorporated association, joint venture or any other entity or association, the United States, or a federal, state or political subdivision thereof.

“**Personal Property**” means all moveable fixtures, furniture, furnishings, equipment, machinery, supplies, software and other tangible personal property that is incident to the ownership, development or operation of the Improvements within the License Area and/or the License Area, whether now or hereafter located in, upon or about the License Area, belonging to Licensee and/or in which Licensee has or may hereafter acquire an ownership interest, together with all present and future attachments, replacements, substitutions and additions thereto or therefor. Examples of Licensee’s Personal Property include the Canopies, Ferry Information and Wayfinding Signs, and Ticketing Kiosks. “**Personal Property**” does not include berths,

gangways, benches, weather protection canopies, and docks, as well as any personal property of Port or third parties which may be located in the License Area.

“**Pesticide Ordinance**” is defined in *Section 27.8*.

“**Port**” means the City and County of San Francisco, acting by and through the San Francisco Port Commission.

“**Port’s Termination Right**” is defined in *Section 2.4*.

“**Prevailing Wage Requirements**” is defined in *Section 27.16(a)*.

“**Prohibited Uses**” is defined in *Section 5*.

“**Project**” is defined in *Recital F*.

“**Public Access Area**” is defined in *Section 1.2*.

“**Public Trust**” means the tidelands public trust for commerce, navigation and fisheries, including the statutory trust imposed by the Burton Act set forth in the Burton Act.

“**PV System**” is defined in *Section 6.12*.

“**Qualified Engineer**” means a qualified, California registered structural engineer.

“**Queuing Plan**” is defined in *Section 6.4*.

“**Regulatory Agency**” and “**Regulatory Agencies**” means any local, regional, state or federal governmental agency or political subdivision having jurisdiction over the License Area, including City, any Environmental Regulatory Agency, State Lands, City’s Planning Commission and/or Zoning Administrator, DBI, SFPUC, WDAC, and Port’s Chief Harbor Engineer.

“**Regulatory Approval**” means any authorization, approval, endorsement, determination of trust consistency, amendment of any existing plans, or permit required or issued by any Regulatory Agency.

“**Release**” when used with respect to Hazardous Material means any actual or imminent spilling, introduction, leaking, pumping, pouring, emitting, emptying, discharging, injecting, escaping, leaching, dumping, or disposing in, on, under, or about any existing improvements or any Improvements constructed under this License, the LDDA, or any other Transaction Document, by or on behalf of Licensee, or in, on, under or about the License Area or any portion thereof, or into the environment. “Released” has a correlative meaning.

“**Remediate**” or “**Remediation**” when used with reference to Hazardous Materials means any activities undertaken to clean up, abate, transport, dispose, contain, treat, stabilize, monitor, remediate, remove, or otherwise control Hazardous Materials located in, on, under or about the License Area or which have been, are being, or threaten to be Released into the environment, or to restore the affected area to the standard required by the applicable Environmental Regulatory Agency in accordance with applicable Environmental Laws and any additional Port requirements. Remediation includes those actions included within the definition of “**remedy**” or “**remedial action**” in California Health and Safety Code Section 25322 and “**remove**” or “**removal**” in California Health and Safety Code Section 25323.

“**RWQCB**” means the San Francisco Bay Regional Water Quality Control Board of Cal/EPA, a state agency.

“**Satellite Dish**” means an antennae, telecommunication, or transmission device for transmitting and/or receiving signals.

“**Schematic Drawings**” means conceptual drawings in sufficient detail to describe a development proposal.

“**Seawall**” is defined in *Section 7.1*.

“**Seawall Improvements**” is defined in *Section 7.1*.

“**SFPUC**” means the San Francisco Public Utilities Commission.

“**Sign**” means any sign, whether free-standing or affixed to a structure, flag, advertisement, poster, or banner.

“**State**” means the State of California.

“**State Lands**” means the California State Lands Commission.

“**Term**” is defined in *Section 2*.

“**Ticketing Kiosk**” is defined in *Section 6.10(d)*.

“**Transaction Documents**” means this License, the Long-Term Lease, and any other documents related to the Project or the Downtown Ferry Terminal between Port and Licensee.

“**Transfer**” is defined in *Section 13.1*.

“**Unmatured Licensee Event of Default**” means any default that, with the giving of notice or the passage of time, or both, would constitute a Licensee Event of Default.

“**Vessel**” means any watercraft vessel, ship, or boat, including, Navy vessels, ocean research vessels, water taxis, recreational boats, passenger ferry vessels, barges, work skiffs, floats, tow-boats, excursion vessels, tall ships and vessels engaged in historical or ceremonial maritime events.

“**Vulnerability Study**” is defined in *Section 1.6(b)*.

“**Waterfront Plan**” means the Port of San Francisco Waterfront Land Use Plan, including the Waterfront Design and Access Element, for the approximately 7-1/2 miles of waterfront property under Port jurisdiction.

“**WDAC**” means the Waterfront Design Advisory Committee authorized under Planning Code Section 240.

“**WETA’s Primary Mission**” is defined in *Recital E*.

“**WLUP**” is defined in *Recital A*.

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IN WITNESS WHEREOF, the Parties have executed this License as of the day and year first above written.

Licensee

**SAN FRANCISCO BAY AREA WATER EMERGENCY
TRANSPORTATION AUTHORITY,**
a California public entity created pursuant to Government
Code Section 66540 *et seq.*

DocuSigned by:
Nina Rannells
By: _____
D658EBAD2E2B4AA...
Nina Rannells, Executive Director

APPROVED AS TO FORM:

DocuSigned by:
Madeline Chun
By: _____
88467108AABB45F... Madeline Chun
Name: _____
Title: WETA General Counsel

Port

CITY AND COUNTY OF SAN FRANCISCO,
a municipal corporation, operating by and through the
SAN FRANCISCO PORT COMMISSION

DocuSigned by:
Rebecca Benassini
By: _____
8C69C44597B2453...
Name: Rebecca Benassini
Title: _____ 7/20/2020

APPROVED AS TO FORM:

DENNIS J. HERRERA, City Attorney

DocuSigned by:
Grace Park
By: _____
08E8ABE41E3E40D...
Name: Grace Park
Deputy City Attorney

DS
KN
Kent Nishimura _____
(initials)

License and Long-Term Lease authorized by:

WETA Board Approval on April 6, 2017
Port Commission Resolution No. 17-19 on April 11, 2017

Prior Authorizations for LDDA and Construction Lease:

Port Commission Resolution No. 16-39 (October 11, 2016)

EXHIBIT A-1
SITE PLAN OF LICENSE AREA

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

**REQUEST FOR PROPOSALS FOR WATER TRANSIT SERVICES
RFP #21-014**

**ATTACHMENT F
WETA's License Agreement with the San Mateo County Harbor
District**

AMENDED AND RESTATED GROUND LEASE AND LICENSE

This Amended and Restated Ground Lease and License ("Lease") is made and entered into as of this 29th day of June, 2009, by and between San Mateo County Harbor District ("Landlord"), having its principal place of business at 400 Oyster Point Blvd. Suite 300 South San Francisco, CA 94080, the City of South San Francisco ("City"), having its principal place of business at 400 Grand Avenue South San Francisco, CA 94080, and San Francisco Bay Area Water Emergency Transportation Authority, ("Tenant"), having its principal place of business at Pier 9, Suite 111, San Francisco, CA 94111 with references to the following facts and objectives:

RECITALS

WHEREAS, the City is the owner and Landlord is the operator of those certain parcels of real property and water areas situated in the County of San Mateo, State of California and more commonly known as Oyster Point Marina/Park ("Marina"), the legal description of which is attached hereto as Exhibit A. The Marina is controlled and operated by Landlord pursuant to a Joint Powers Agreement executed by and between Landlord and the City in October 1977, which is in full force and effect for a period of forty-nine (49) years from November 11, 1977. The City desires to be bound by the relevant provisions of this Lease pursuant to the Joint Powers Agreement with Landlord and as successor to Landlord upon expiration of the Joint Powers Agreement.

WHEREAS, Tenant desires to lease from Landlord and Landlord agrees to lease to Tenant a portion of the Marina, more particularly described in Exhibit A attached hereto and by this reference made a part hereof for the sole purpose of constructing and operating the Oyster Point Ferry Terminal ("Terminal") (more particularly described in Exhibit B attached hereto and incorporated by reference herein) pursuant to the Provisions stated in this Lease.

WHEREAS, Landlord grants to Tenant, subject to all of the terms, covenants, and conditions of this Lease, the exclusive right to construct and operate the Terminal (including removal of existing docks 9 and 10 and dredging activities within the leased Premises), land common carrier ferry vessels for the purposes of passenger embarkation and debarkation, use fifty (50) vehicle parking spaces, and refuel ferry vessels at the Terminal located between the Oyster Point Harbor Master's office and Dock 11 of the Marina, conditioned upon the Terminal not including any signs which exceed a total of forty (40) feet in height and Tenant not using any vehicle parking space or area controlled and operated by Landlord without prior written permission from Landlord.

WHEREAS, other than the warranties set forth in Paragraph 7 of this Lease, Tenant acknowledges that Landlord has made no representations, express or implied, to Tenant regarding suitability for Tenant's purposes or the condition of the property, including representations regarding bottom sediments and zoning.

WHEREAS, Landlord, City and the San Francisco Bay Area Water Transit Authority (the "Original Tenant") previously executed a Ground Lease and License dated as of December 28, 2007 (the "Original Lease").

WHEREAS, Tenant is the successor entity to the Original Tenant pursuant to the terms of Senate Bill 976 (2007-08 Session), codified at Cal. Gov't Code Sec. 66540 *et seq.*, which further provides that Original Tenant "shall transfer the title and ownership of all property within its control and ownership to" Tenant.

WHEREAS, Landlord, City and Tenant desire to amend and restate the Original Lease in its entirety.

Now, therefore, for and in consideration of the Premises and of the mutual obligations, agreements, and representations and warranties herein contained, the parties do hereby agree as follows:

1. TERMS AND DEFINITIONS

As used in this Lease, the following words and phrases have the following meanings:

Alteration: any addition or change to, or modification of, the Premises or demolition and construction of new Improvements made by Tenant.

Approvals: those permissions required by law or regulation prior to, or during, the construction and operation of the proposed Terminal.

City: the City of South San Francisco.

Commencement Date: the date upon which Tenant receives its certificate of occupancy or functional equivalent.

Damage: injury, deterioration, destruction, or loss to a person or property; Damage includes death.

Damages: a monetary compensation or indemnity that can be recovered by any Person who has suffered Damage to his Person, property, or rights through another's act or omission.

Default: any condition or event which constitutes or which, after notice or lapse of time, or both would constitute an Event of Default.

Default Rate: 5% of amount due, in addition to amount due, for every thirty days payment is in Default.

Effective Date: Date of execution of the Lease by all parties hereto.

Expiration: the coming to an end of the time specified in the Lease as its duration, including any Extension Term.

Facility: shall mean and refer to the Terminal and/or passenger loading and unloading area on land and/or parking spaces that, subject to the terms and conditions hereof, are to be constructed and operated by Tenant on the Premises.

Good Condition: the good physical condition of the Premises and each portion thereof. "In Good Condition" means in good order and repair, clean, broom clean, free of graffiti and accumulated trash, and fully operative.

Hazardous Material: any hazardous or toxic substance, material or waste that is or becomes regulated by any local government authority, the State of California or the United States Government.

Impositions: all taxes and assessments due during the Lease Term.

Improvements: all buildings (including the Facility), pilings, floats, dock areas, fixtures, sidewalks, curbs, gutters, paved areas, structures, signs, water wells, water supply systems, sewage systems, waste water systems, fencing, utility systems, parking area improvements, service and trash area improvements, landscaping, lighting, exterior fountains, sculptures, flags, banners or historic artifacts, or any other improvements now or hereafter constructed or maintained on the Premises or any alteration or additions thereto, except for Tenant's Personal Property.

Insurance Requirements: all terms of any insurance policy covering or applicable to the Premises or any part thereof, all requirements of the issuer of any such policy, and all orders, rules, regulations and other requirements of the National Board of Fire Underwriters (or any other body exercising similar functions) applicable to or affecting the Premises or any alteration or part thereof or any use or condition of the Premises or any part thereof.

Landlord: San Mateo County Harbor District, constituted pursuant to the Joint Powers Agreement, effective November 11, 1977, recorded on October 15, 1984, as Recorder's Serial No. 84111706, San Mateo County Official Records, and as amended from time to time. "Landlord" shall also mean the City, when it becomes the successor to the interest of San Mateo County Harbor District upon the expiration of said Joint Powers Agreement.

Law: any judicial decision, statute, constitution, ordinance, resolution, regulation, rule, administrative order, or other requirement of any municipal, county, state, federal or other government agency or authority having jurisdiction over the parties or the Premises, in effect either at the time of execution of the Lease or at any time during the Lease Term, including without limitation, any regulation or order of a quasi-official entity or body.

Lease: this Lease.

Legal Requirements: all laws, statutes, codes, acts, ordinances, orders, judgments, decrees, injunctions, rules, regulations, permits, licenses, authorizations, directions and requirements of all governments, departments, commissions, boards, courts, authorities, agencies, officials and officers, foreseen or unforeseen, ordinary or extraordinary, which now or at any time hereafter may be applicable to the Premises or any part thereof or any of the adjoining sidewalks, curbs, streets or ways, or any use or condition of the Premises or any part thereon.

License: The exclusive right to land common carrier Ferry vessels solely for the purpose of refueling and passenger embarkation and debarkation at the Oyster Point Ferry Terminal, which license is incorporated by reference and is a part of this lease.

Maintenance: that replacement, repainting, and cleaning, and such labor and materials as are required, to keep the Facility and any associated landscaping healthy, safe, functional and aesthetically pleasing and in compliance with all Legal Requirements imposed by the City.

Person: any individual, corporation, association, partnership, joint venture, organization, or any other business entity, or a governmental or political unit or agency.

Premises: as defined in the Recitals, herein, and including all improvements constructed by the Tenant thereon during the Lease Term.

Project: development, construction, and operation of the Terminal and all related facilities and appurtenances.

Provision: any Lease term, agreement, covenant, condition, clause, qualification, restriction, reservation, or other stipulation in the Lease that defines or otherwise controls, establishes or limits the performance required or permitted by either party.

Rent: All charges payable by Tenant to Landlord.

Restoration: the reconstruction, rehabilitation, and repairs necessary to return destroyed portions of the Premises and other property to substantially the same physical condition as they were before the Destruction.

Tenant's Personal Property: the equipment, signs, furniture, furnishings, merchandise, and movable property placed in the Premises by the Tenant which have not become fixtures.

Termination: the ending of the Lease Term for any reason before Expiration.

Terminal: the Oyster Point Ferry Terminal and all land and water area, structures and other improvements thereto that are included in Exhibit B of this Lease.

Unavoidable Delays: delays due to strikes, acts of God, governmental restrictions, enemy action, riot, civil commotion, fire, unavoidable casualty or any other causes beyond the control of Landlord or Tenant, as the case may be; provided, however, that no delay may be deemed

unavoidable if Landlord would be in danger of incurring any civil or criminal liability for Tenant's failure to perform any act required by this Lease. In the event of a delay which would qualify as an Unavoidable Delay as defined herein but for the danger of the Landlord incurring civil liability, such delay shall be deemed to be an Unavoidable Delay if Tenant agrees in writing to indemnify Landlord and hold it harmless from and against any liability, damage, cost, expense, claim or cause of action, including without limitation, reasonable attorney's fees incurred by Landlord as a result of such delay. Unavoidable Delays shall not include delays resulting from either (a) Tenant's inability to obtain sufficient funds or firm financing commitments to complete construction or (b) inability of Tenant to obtain a building permit issued by the City.

2. AGREEMENT TO LEASE

2.1 Effect of Original Lease. Tenant, Landlord and City agree that this Lease completely amends and restates the entirety of the Original Lease, which shall be of no further force and effect as of the date that all signatories to this Lease execute the Lease.

2.2. Premises Leased. Upon and subject to the conditions and limitations set forth below, Landlord leases to Tenant, and Tenant leases from Landlord, the Premises, together with all rights-of-way or rights of use servitudes, licenses, tenements, hereditaments, appurtenances and easements now or hereafter belonging or pertaining to any of the Premises. However, this Lease confers no rights with regard to the subsurface of the Premises more than fifteen (15) feet below ground level, except to the extent necessary to install pilings or other support for the Improvements, nor does it confer rights to airspace above the roof of the Facility other than air space rights for signs which may be placed upon the roof of the Facility, provided that the total height of the Facility including the signs, shall not exceed forty (40) feet. The parties hereto agree that said letting and hiring is upon and subject to the terms, covenants and conditions herein set forth and Tenant covenants as a material part of the consideration for this Lease to keep and perform each and all its terms, covenants and conditions. Landlord shall take no action with respect to its reserved subsurface rights that would endanger or impair the Improvements or interfere with the activities taking place on the Premises. The City hereby consents to the Lease as pursuant to the Joint Powers Agreement with Landlord and as successor to Landlord upon expiration of the Joint Powers Agreement.

2.2.1. Purpose of Lease and Related Services. The ultimate purpose of the Lease for the benefit of the public is the complete and continuous use of the Facilities. All facilities and services shall be made available to the public without any illegal discrimination as defined by California and/or Federal law.

The immediate purpose of this Lease is the development of the Premises for construction, operations and Maintenance of the Terminal.

It is agreed that the ultimate and immediate purposes are consistent and compatible. Accordingly, Tenant covenants and agrees to operate said Premises fully and continuously to accomplish said purpose consistent with sound business practice and subject to the terms of this Lease.

2.2.2. Cooperation Among Tenants. Tenant shall cooperate with all other tenants of Landlord who will be operating enterprises in the vicinity of the Premises, and shall conduct its operations so as to avoid interference with the operations of other tenants. Landlord may, but is not required to, resolve any difference or conflict which may arise between Tenant and other tenants operating enterprises in the vicinity of the Premises. If the operations of Tenant are impaired because of any acts or omissions of such other tenants, Tenant shall have no claim against Landlord on that account.

2.3. Lease Term. The term of the Lease (the "Lease Term") shall commence on the Commencement Date and expire at midnight on the same day fifty-five (55) years subsequent thereto, subject to any options to extend. Promptly following commencement of the Lease Term, Landlord, Tenant and the City shall execute an amendment confirming the Commencement and Expiration Dates of the Lease, which shall be recorded if this lease or a memorandum of lease has been recorded. Notwithstanding that the Commencement Date occurs after execution of this Lease, this Lease shall be in full force and effect from and after execution of this Lease by all parties hereto.

2.3.1 Rent Payment. Tenant agrees that Rent in the amount of Three Million Six Hundred Sixty Thousand Dollars (\$3,660,000) ("Rent") shall be owed to Landlord in one lump sum, payable by Tenant. The parties contemplate that the Rent payment will be made by Tenant using State Proposition 1B funds available to the Tenant through the State Office of Homeland Security. Tenant will work closely with Landlord to expedite payment of Rent in full as soon after execution of this Lease as possible, working within the regulations, requirements and restrictions of the funding source and administering agency. Tenant shall make payment of the Rent directly to the Department of Boating and Waterways ("DBW") on or before December 31, 2009, which sum shall be fully applied by DBW only to reduce Landlord's outstanding loan balance. In the event the payment of Rent is not made on or before December 31, 2009, this Lease shall automatically terminate and this lease, the amended contract (State of California Agreement Number 96-102-288 between DBW and Landlord), and the settlement agreement are of no further force and effect, without the need for further action by any of the Parties or DBW, and the State of California Agreement Number 96-102-288 of October 12, 2004, between DBW and Landlord shall be reinstated in full force and effect. Tenant's failure to comply with the Rent requirements of this paragraph does not constitute an event of default under Paragraph 18.1 or grant Landlord the power to exercise a right or remedy pursuant to Paragraph 18.2. Notwithstanding the foregoing, Tenant shall have the right at any time prior to the date Rent has been paid to terminate this Lease upon fifteen (15) days' prior written notice to Landlord, City and DBW.

In addition to the Rent payment required herein, City shall pay to Landlord a single lump sum payment of One Million Three Hundred Forty Thousand Dollars (\$1,340,000) ("Costs") to compensate Landlord for costs directly incurred by Landlord in connection with the Terminal project. This payment of Costs to Landlord by City shall not be governed by procedure set forth in the paragraph above and shall be paid by the City directly to Landlord.

2.3.2 Right of Entry. During the period commencing upon the Effective Date and continuing through the Commencement Date, Tenant shall have a revocable license to enter the Premises for the purpose of conducting studies, investigations and construction of the Facilities. Such license shall be revocable only in the event of a Default by Tenant beyond notice and the expiration of any applicable grace period set forth in this Lease. Notwithstanding the foregoing, Tenant's right of entry shall not include any construction activities until Rent has been paid under the terms of paragraph 2.3.1 herein.

During this period Landlord shall not use the Premises in a manner which results in an increase in construction costs of the Facilities or interferes with the progress of Tenant's construction of the Facilities. Tenant shall have no vested or possessory interest in the Premises during this period except for its right and title to the improvements it constructs thereon.

During this period, Tenant shall maintain insurance coverage as provided elsewhere in this Lease.

2.4. Tenant's First Right to Negotiate. If Landlord desires to continue leasing the Premises following the Expiration of the term of this Lease, Landlord shall notify Tenant in writing ("Landlord's Notification") of such desire at least 180 days but not more than one year prior to the Expiration of the term. Landlord and Tenant will thereafter meet to negotiate in good faith the terms and conditions of a new lease. If within ninety (90) days after Tenant receives Landlord's Notification, Tenant and Landlord are unable to agree on terms for a new Lease, then Landlord shall be permitted to enter into negotiations with any third party for lease of the Premises.

2.4.1. Tenant's Right of First Refusal. In addition to Tenant's other rights as set forth elsewhere in this Lease, during the term of this Lease and for a period of six (6) months following its Expiration, in any instance in which Landlord makes an offer to a third party to lease the Premises, receives an offer from a third party to lease the Premises or negotiates a written lease with a third party to lease the Premises (subject and subordinate to Tenant's prior rights under this Lease so long as this Lease is in effect), Landlord shall, before accepting any such offer or entering into any written lease with a third party for the Premises, give Tenant written notice of all the terms and conditions of said offer or written lease and Tenant shall have sixty (60) days from the date of Landlord's notice to give Landlord written notice that Tenant elects to enter into a written lease of the Premises upon the terms and conditions set forth in Landlord's notice. If Tenant does not elect to accept the terms and conditions of the written lease set forth in Landlord's notice, Landlord shall have a period of six (6) months in which to enter into a written lease with said third party on said terms and conditions: provided however, that in the event of any change in the terms and conditions from those set forth in Landlord's notice, Landlord shall be required to give Tenant a new written notice of the new terms and conditions and Tenant shall have another sixty (60) day period in which to notify Landlord that Tenant accepts the new terms and conditions.

2.5. End of Lease Term.

2.5.1. Surrender. Upon the Expiration or other Termination of the Lease Term, Tenant shall quit and surrender to Landlord, or Landlord's successor in interest, the Premises including all Improvements in Good Condition except for [a] ordinary wear and tear occurring after the last necessary Maintenance made by Tenant, or [b] destruction to the Premises covered by Paragraphs 13.1 and 13.2. Any damage or deterioration of the Premises shall not be deemed ordinary wear and tear if the same could have been prevented by good Maintenance practices. Tenant hereby agrees to execute all documents as Landlord or DBW may reasonably deem necessary to evidence any Termination of the Lease Term.

If Tenant fails to surrender the Premises to Landlord on Expiration or Termination of the Lease Term as required by this Paragraph, Tenant shall indemnify, defend and hold Landlord and DBW harmless from all Damages resulting from Tenant's failure to surrender the Premises, including but not limited to and without limitation, claims made by a succeeding tenant resulting from Tenant's failure to surrender the Premises, and Tenant waives all claims against Landlord for any Damage to Tenant resulting from Landlord's retention or disposition of any Improvements, Alterations, or Tenant's Personal Property. Tenant shall be liable to Landlord for all costs incurred by Landlord for storing, removing, or disposing of any Improvements, Alterations, or Tenant's Personal Property. In addition, Tenant shall be liable to Landlord for any Damages Landlord may sustain as a result of such failure to surrender and shall pay all costs and attorney's fees as may be necessary to evict Tenant.

The voluntary or other surrender of this Lease by Tenant, or a mutual cancellation thereon, shall not work a merger, and shall, at the option of Landlord, operate as an assignment to it of any or all subleases or subtenancies.

2.5.2 Tenant's Personal Property. Tenant shall remove all of Tenant's Personal Property, and shall perform all Restoration made necessary by the removal of such Personal Property, at or prior to the Expiration or Termination of the Lease Term. Landlord may remove any of the Tenant's Personal Property that Tenant has not removed from the Premises on Expiration or Termination of the Lease Term and store Tenant's Personal Property in a public warehouse or elsewhere for such a period of time as may be required by applicable Law, after which time Landlord may retain or dispose of all such property in accordance with applicable Law. Tenant waives all claims against Landlord for any Damage to Tenant resulting from Landlord's retention or disposition of any Tenant's Personal Property as provided herein. Tenant shall be liable to Landlord for Landlord's costs for storing, removing and disposing of any Tenant's Personal Property.

2.5.3 Ownership of Improvements. Upon Expiration or Termination of this Lease, title to such immovable Improvements, including all buildings, structures, Fixtures and facilities constructed or placed within the leased Premises by Tenant, which are or have been within the Lease Term attached or fastened to the ground, deck, floor or walls of a structure, such that they cannot be removed without damage to the Premises, shall become the property of Landlord or Landlord's successor in interest at the Expiration of the Lease or upon earlier Termination thereof, and

Tenant shall execute such instruments as may be reasonably required by Landlord confirming Landlord's title to the improvements located on the Premises.

2.6. Holding Over. Unless the Term of the Lease is extended by the parties, any holding over by Tenant after the Expiration or Termination of this Lease, and any acceptance of Rent by Landlord thereafter, shall not constitute a renewal or give Tenant any rights hereunder in the Premises, except with the prior written consent of Landlord, which consent may be withheld for any reason whatsoever. Any holding over by Tenant after the Expiration or Termination of this Lease, with the written consent of Landlord, shall be construed to be a tenancy from month to month, and shall be terminable upon thirty (30) days written notice given by either Landlord or Tenant. All the terms, covenants, conditions, and Provisions of this Lease shall apply to any such month-to-month tenancy. Landlord shall respond to request to holdover within a reasonable time.

If Tenant holds over after the Expiration or Termination of this Lease without the express written consent of Landlord, Tenant shall become a tenant at sufferance only, and otherwise subject to the terms, covenants, conditions, and Provisions herein specified, so far as applicable. During any holding over period as described by this provision, Tenant shall pay to Landlord a monthly Rent equal to 125% of the monthly pro-rated amount of the one-time, lump-sum payment made by Tenant, adjusted for inflation as measured by the percent change in the U. S. Department of Labor, Bureau of Labor Statistics Consumer Price Index for San Francisco-Oakland-San Jose (1982-1984 base) between the Effective Date of this Lease and the commencement of any holding over period. Nothing in this Paragraph 2.6 shall be construed as consent by Landlord to any holding over by Tenant.

3. IMPOSITIONS

Due to its status as a government entity, Tenant is not subject to real property taxation. Tenant agrees to provide such information as may be requested by Landlord to enable Landlord to comply with any reporting requirements of appropriate taxing authorities under applicable Law.

4. UTILITIES, SERVICES AND ASSESSMENTS

Tenant shall make all arrangements for and pay to the appropriate supplier for all utilities and services directly furnished to or used by it including, without limitation, gas, water, electricity, sewer, and telephone services and for all connection charges for such utilities and services. Tenant, including any future successors and assigns, shall also pay for any applicable taxes and assessments levied upon machines, appliances or property owned or used by Tenant.

Landlord shall not be liable in Damages or otherwise for any failure or interruption of (i) any utility service furnished to the Premises, or (ii) the heating, ventilating, and air conditioning systems.

5. USE, LIMITATIONS ON USE

5.1. Use. Tenant shall use the Premises for constructing and operating the Terminal as set forth in Exhibit B attached hereto and incorporated by reference herein. Upon completion of construction, the Terminal shall be used for vessels operating for the public convenience and necessity in point to point sailings on specific Service Routes as defined in paragraph 5.2.11 below at the Terminal landing docks as set forth in the landing schedule attached hereto and incorporated by reference herein as Exhibit C. A Service Route as used herein is defined as a continuous trip between two or more points, at least one of which is the Terminal. At Tenant's request, Landlord shall allocate up to fifty (50) vehicle parking spaces for use by Tenant in an area designated by Landlord convenient to the Premises. Tenant's use of the Premises for the use provided for herein shall not impede the public's use of the existing public bicycle/pedestrian trail to and along the Marina and San Francisco Bay shoreline.

5.2. Limitations on Use. Tenant's use of the Premises shall be in accordance with this Paragraph 5.2.

5.2.1. Prohibited Uses. The parties hereto agree that the following acts, occurrences or conduct by Tenant on or from the Premises are strictly prohibited:

- a) Engaging in, assisting, aiding or abetting in any act that constitutes a violation of any Law.
- b) Tenant's operations hereunder shall not obstruct vessel or vehicle traffic on Marina waters or land area, including use of Landlord's guest dock by Landlord and guest vessels.

5.2.2. Compliance with Legal Requirements. Tenant at Tenant's sole cost and expense, promptly shall comply with all Laws of any municipal, county, state or federal government or the departments, courts, commissions, boards and officers thereof, or other governmental or regulatory authority with jurisdiction over the Tenant and the Terminal Premises or any Portion thereof, including without limitation, the Landlord (collectively, "Laws") relating to or affecting the condition, use or occupancy of the Terminal Premises in effect either at the time of execution of this Lease or which may hereafter be in effect at any time during the term hereof, whether or not the same are now contemplated by the parties. Tenant's compliance shall include compliance with all provisions and conditions of the Federal Americans with Disabilities Act. Tenant shall obtain and pay for all licenses and permits required for Tenant's construction and occupancy and use of the Premises. Compliance with all Laws shall include compliance with all requirements of each regulatory agency that has jurisdiction over the Premises including but not limited to DBW and the San Francisco Bay Conservation and Development Commission ("BCDC"). Tenant's compliance with BCDC requirements shall include but not be limited to installation of improvements for public access at Tenant's sole cost as required by BCDC as shown in Exhibit D, attached hereto and incorporated by reference herein.

5.2.3. Waste; Nuisance. Tenant shall not cause, maintain or permit any unreasonable annoyance or nuisance in, on, or about the Premises or on any Landlord property or Marina waters. Tenant shall not commit or suffer to be committed any waste in or about the Premises

and shall keep the Premises in first class repair and maintain the same in Good Condition during the Lease Term.

5.2.4 Hazardous Material. Tenant shall not cause or permit any Hazardous Material to be brought upon, kept, or used in or about the Premises except to the extent that such Hazardous Material is necessary or useful to Tenant's business and will be used, kept and stored in a manner that complies with all Laws, including environmental regulations, relating to such Hazardous Material. Tenant agrees to indemnify, defend and hold Landlord, City and DBW harmless from any liabilities, losses, claims, Damages, penalties, or other expenses resulting from or arising out of actions brought by third parties against Landlord in connection with Tenant's use, storage, transportation, release, or disposal of Hazardous Material on or about the Premises by Tenant. Tenant's obligations under this paragraph shall include, but not be limited to, the effects of any contamination or injury to Person, property or the environment created or suffered by Tenant. Tenant is responsible for investigation, removal, remediation, restoration, and/or abatement of Hazardous Material it introduces onto the Premises. Tenant shall not have any responsibility with respect to Hazardous Material existing in, on or under the Premises as of the Effective Date.

5.2.4.1 Requirements for Handling. Neither Tenant nor its Agents or Invitees, shall use, generate, process, produce, package, treat, store, emit, discharge or dispose (collectively, "Handle") in, on or about the Premises any Hazardous Materials without the prior written consent of Landlord, which consent shall not be unreasonably withheld so long as Tenant demonstrates to Landlord's reasonable satisfaction that such Hazardous Material is necessary to Tenant's business, will be Handled in a manner which strictly complies with all laws and will not materially increase the risk of fire or other casualty to the Premises. Notwithstanding the foregoing, Tenant may Handle on the Premises janitorial or office supplies or materials in such limited amounts as are customarily used for general office and janitorial purposes so long as such Handling is at all times in full compliance with all Laws.

5.2.4.2 Tenant Responsibility. Subject to the restrictions set forth in Paragraph 5.2.4.1, Tenant shall Handle all Hazardous Materials discovered on the Premises during the Term of this Lease or introduced on the Premises by Tenant, its Agents or Invitees, in compliance with all Laws. Tenant shall not be responsible for the safe handling of Hazardous Materials introduced on the Premises during the term of this Lease by City, Landlord or their Agents. Tenant shall protect its employees and the general public in accordance with all Laws. Landlord may from time to time request, and Tenant shall be obligated to provide, information reasonably adequate for Landlord to determine that any and all Hazardous Materials are being Handled in a manner which complies with all Laws. Landlord shall have the right to inspect the Premises for Hazardous Materials at reasonable times, pursuant to its rights of entry provided for hereunder.

5.2.4.3 Requirement to Remove. Prior to Termination of this Lease, Tenant, at its sole cost and expense, shall investigate, remove, remediate, and/or abate any and all Hazardous Materials introduced in, on, under or about the Premises by Tenant, its Agents or Invitees. Further, Tenant, at its sole cost and expense, shall remove any Hazardous Material discovered on the Premises during the Term of this Lease which is required to be removed by any governmental agency, including Landlord; provided, however, that Tenant shall not be obligated to remove any

Hazardous Material introduced onto the Premises during or before the Term of this Lease by the City, Landlord or their Agents.

5.2.5 Fueling of Common Carrier Ferry Vessels. Tenant shall have the right to fuel common carrier ferry vessels that operate to and from the Terminal that is described in Exhibit B of this Lease subject to the following terms and conditions:

5.2.5.1 Fueling of vessels by Tenant and any contractor employed by Tenant shall be done only when said vessels are docked securely at the Terminal.

5.2.5.2 Fueling shall be done by Tenant and/or any contractor employed by Tenant only by means of a truck and hose, with the hose connected to a standpipe or similar installation that shall be installed by Tenant at Tenant's sole cost at a location such that the fueling hose shall not cross the public bicycle/pedestrian trail running along the Marina shoreline, or shall be placed underneath the said public trail so as not to cause a safety hazard for trail users.

5.2.5.3 Tenant and/or any contractor employed by Tenant shall obtain, keep current, and provide to Landlord at Landlord's request copies of all permits and approvals necessary to allow fueling of the ferry vessels at the Leased Premises.

5.2.5.4 Tenant and/or any contractor employed by Tenant shall prepare and maintain in current form a Safety Plan to govern fueling operations and provide a copy of said Safety Plan to Landlord.

5.2.5.5 Tenant and/or any contractor employed by Tenant shall prepare and maintain in current form a Fuel Spill Containment Plan and provide a copy of said Containment Plan to Landlord.

5.2.5.6 Tenant and/or any contractor employed by Tenant shall obtain and maintain all insurance, naming Landlord as Additional Insured, covering vessel fueling operations as needed in addition to all other insurance required by this Lease.

5.2.5.7 When carrying out vessel fueling operations, Tenant and/or any contractor employed by Tenant shall take particular care to comply with Paragraphs 5.2.4 and 5.2.8(d) of this Lease.

5.2.6 Cancellation of Insurance. Tenant shall strictly observe all Insurance Requirements and shall not do or permit to be done anything that will cause a cancellation of any insurance coverage of the Premises.

5.2.7 Continuous Operation. Subject to the terms of this Lease, and following completion of the Improvements, Tenant shall continuously and diligently operate the Terminal on the Premises throughout the Lease Term.

5.2.8 Environmental Protection. Tenant shall take all reasonable measures available to:

- a) Avoid any pollution of the atmosphere or littering of land or water caused by or originating in, on, or about Tenants' facilities.
- b) Keep the noise level on the leased Premises to a minimum in compliance with applicable ordinances of the City so that Persons in the general neighborhood will be able to comfortably enjoy other facilities leased by Landlord in the vicinity of the leased Premises.
- c) Keep the lights on the Leased Premises from adversely affecting the operation or other use of boats in the Marina.
- d) Prevent all pollutants, including petroleum products of any nature, from being discharged from the Premises into the harbor waters.
- e) Mitigate exhaust emissions and other operating impact on marine/aquatic life, water quality, and shorelines.

5.2.9 Supervision by Tenant. Tenant may in its sole discretion employ its own personnel or a management contractor experienced and skilled in the management of operations as they are contemplated under this Lease. This management contractor or Tenant's own personnel shall give attention to efficient supervision of Lease operations, using its best skill, and shall keep employed, at all times, a competent supervisor and any necessary assistants. Tenant's personnel or the management contractor's supervisor or assistant shall be present at all times when ferry vessels are loading or unloading passengers and when ferry vessels are being refueled or serviced, and all directions given by the management company's supervisors shall be as binding as if given by Tenant.

5.2.10 Protection of Leased Premises. Tenant shall maintain its facilities in such a manner as to protect Landlord's property from damage, injury, loss, or liability arising from rainfall, and other action of the elements, excepting such as may be caused by fault or negligence of officers, agents, employees or contractors of Landlord.

5.2.11 Service Routes. Ferry vessels operated by Tenant shall operate on those Service Routes to and from the Terminal identified in Exhibit C and incorporated herein.

6. ASSESSMENT OF PREMISES

6.1 Title Report/Survey/Soils Stability Test. Tenant may, at its sole option, obtain at its sole cost and expense: (i) a preliminary title report (PTR) on the Premises from a title company of Landlord's choice and if Tenant so elects (ii) a survey certified by a licensed civil engineer which accurately locates and describes, among other things, the boundary lines of the Premises, topographical elevations of the premises, all rights of way, restrictions, easements, encroachments and utility lines. Tenant at its sole cost and expense, if required by any Law, shall obtain a soil investigation report certified by a licensed civil engineer which discloses, among other things, results of tests with respect to the soil and subsoil on the Premises, whether the soil

is suitable to support the Improvements contemplated herein, and if not suitable, what measures are necessary to render it suitable and what type of foundation support will be required. Tenant shall within thirty (30) days of receipt provide copies of same to Landlord. Within sixty (60) days of receipt of the above the Tenant shall submit to Landlord a statement of requirements for clearing of any title or correcting any physical defects on the Premises. Within sixty (60) days after receipt of said statement, Landlord shall elect either to correct such defects in a manner reasonably acceptable to Tenant or not correct such defects, in which case Tenant may waive the defects not corrected or this Lease shall terminate and each party shall be released from its obligations (except for those obligations incurred prior to such Termination) under this Lease. Landlord shall commence such correction within sixty (60) days and shall proceed with all due diligence to complete same.

Tenant shall be entitled to receive, at Tenant's expense, a commitment for ALTA title insurance insuring Tenant's leasehold interest in the Premises in the amount of two million dollars (\$2,000,000) and Landlord shall correct the physical defects it has agreed to correct, all at Landlord's sole cost and expense, within sixty (60) days after Landlord's election to correct such defects.

6.2 Environmental Site Assessment (Phase II). Tenant may, at its sole option, or shall, if required by any applicable governmental agency, obtain a Phase II Limited Site Characterization Study ("Phase II"). Upon completion of the Phase II study, if Hazardous Material is discovered on the Premises that had been placed on the Premises prior to the Effective Date of this Lease and it becomes necessary to remove such waste, Landlord will elect to perform and pay for the clean up in a reasonable time. If the parties are in disagreement as to whom should bear the cost of the clean up, they will meet and confer and attempt to reach agreement.

6.3 Reports in Possession of Landlord. Landlord shall provide legible copies to Tenant and, upon request, DBW, of the following: (a) existing title reports and surveys on the Premises; (b) reports regarding elevations and cross sections to be used; (c) governmental reports from any and all agencies; (d) any agreements with State, Federal, the City or county agencies, and any studies, reports and (e) agreements with other contiguous and non-contiguous land owners. (f) conditions, covenants and restrictions (CC&R's); (g) drawings, specifications and engineering reports, including, but not limited to, Phase I and Phase II environmental reports, title reports, aerials, demographic reports, drainage reports, marketing studies and zoning documents pertaining to the real property which is to be leased to Tenant and which Landlord has in its Possession or which are in the Possession of the City.

7. WARRANTIES OF LANDLORD

7.1 Power and Authority. Landlord represents and warrants to Tenant that as of the Effective Date (a) Landlord has legal power and full authority to enter into, be bound by, and comply with the terms of this Lease, and (b) Landlord has obtained all necessary authorizations, consents and approvals required for the execution, delivery and performance of this Lease and the consummation of the transaction contemplated herein.

7.2 Taxes and Encumbrances. Landlord represents and warrants to Tenant that as of the Effective Date (i) all taxes on the Premises, except current taxes not delinquent, have been paid; (ii) the Premises are free and clear of all tenancies or other rights of third parties, except for the ownership rights of the City and the collateral and/or lien rights of DBW, whether oral or written, (iii) Landlord is able to and will place Tenant in the peaceful and undisturbed possession on the Premises on said Effective Date; and (iv) Landlord represents and warrants to Tenant that Landlord is responsible for payments on the DBW marina loan balance owed to DBW.

7.3 Conflicts. The execution and delivery of this Lease, the consummation of the transaction contemplated hereby, and the performance of or compliance with the terms, conditions and covenants of this Lease will not violate or conflict with or result in the breach of any of the terms, conditions or provisions of any agreement, judicial order or instrument to which Landlord is a party or by which Landlord or any of its assets are bound.

7.4 Legal Proceedings to Ownership. Landlord represents, to the best of Landlord's knowledge and belief, that no lawsuits or legal proceedings are pending or threatened regarding the ownership, use, or possession of the property, or any part thereof, except as stated in this Lease. Landlord agrees to indemnify and hold Tenant harmless from any and all claims, Damages, judgments, liens, costs or expenses arising from any such lawsuits or legal proceedings which are currently known to exist.

7.5 Condemnation. No condemnation proceedings are pending with respect to the real property to be leased or any part thereof, or interest therein, and, to the best of Landlord's knowledge and belief, none are contemplated.

7.6 Violations. Except as indicated in reports filed with the City by the civil engineering firm CH2M Hill, there is not located on, in, about, or under the Premises to be leased any Hazardous Material of which Landlord is aware and there are no past or present investigations, administrative proceedings, threatened or pending, alleging non-compliance with or violation of any "Law or Regulation" relating to the Premises or to any required environmental permits by Landlord nor any third party. As used herein, "Law or Regulation" means and includes the Comprehensive Environmental Response and Liability Act ("CERCLA" or the Federal Super Fund Act) as amended by the Super Fund Amendments and Reauthorization Act of 1986 ("SARA") and any other laws, ordinance or regulation relating to Hazardous Materials. Landlord will provide to Tenant all reports and investigations commissioned by Landlord or the City and relating to Hazardous Materials on the property that Landlord has in its possession. To the best of Landlord's knowledge, there are no new, nor have there ever been, any above-ground or underground storage tanks in or under the Premises to be leased.

7.7 Hazardous Material or Contamination. Any Hazardous Material or Contamination as defined by any governmental agency having jurisdiction over the Premises, found during or subsequent to the construction of the Project which is not a result of any act of Tenant or caused by Tenant or any agents employee, contractor, subtenant, licensee or contractor of Tenant shall be the responsibility of the City to mitigate to the extent required by a governmental agency with regulatory jurisdiction over the Premises, provided that as long as the District remains Landlord,

it shall be responsible for remediation to the extent that such Hazardous Material or contamination remediation costs are related to the repair and maintenance of the Leachate system constructed pursuant to Section 16, subsection (c) of the Joint Powers Agreement dated July 6, 1977; provided, however, that improvement work beyond the scope of said Leachate system constructed pursuant to the Joint Powers Agreement shall be the responsibility of the City. Without limiting the generality of the foregoing, Landlord or the City, as owner of the property, as the case may be, agrees to indemnify, hold harmless and defend Tenant from any and all claims, losses, liabilities, demands, costs and fees (including attorney's fees) which may relate to or arise out of said Hazardous Material or Contamination which is not a result of any act, omission or negligence of Tenant or caused by Tenant, or any agent, employee, contractor, subtenant, licensee or contractor of Tenant, and shall include the duty to remediate and mitigate (including, but not limited to, satisfying any other governmental agencies or administrative proceedings) and any Hazardous Material or contamination problem concerning the Leachate system or the production of methane which may result from Tenant's construction of the Improvements using normal construction methods (e.g. excavation, pile driving) so long as Tenant is not negligent and does not introduce any Hazardous Materials or contamination to the Premises.

8. IMPROVEMENTS

8.1 Tenant's Obligation to Provide Schematic Drawings. Landlord and Tenant intend to work cooperatively throughout the design process to ensure that the Facility ultimately constructed by Tenant meets with Landlord's approval while satisfying the requirements of the City and other relevant permitting bodies. Landlord has in its possession prior to the Effective Date of this Lease thirty-five percent (35%) terminal design products from Tenant. Notwithstanding Landlord's possession of these design products, Tenant shall deliver to Landlord the design schematic drawings it intends to submit for approval by the City and all other permitting bodies. Landlord acknowledges that the design schematic drawings to be submitted by Tenant for permits will reflect the same design and appearance agreed to by Landlord during the 35% terminal design phase. Landlord shall have the right to approve or request modifications to said drawings consistent with permitting and building code requirements; such approval shall not be unreasonably withheld or delayed. Tenant shall inform Landlord in writing within thirty (30) days after receiving permits or approvals from the City and all other relevant permitting bodies. Tenant hereby agrees to construct the Facility on the Premises at its own cost, in substantial accordance with the schematic drawings submitted to Landlord under the process described in this paragraph.

8.1.1 Tenant shall use its commercially reasonable efforts to submit to the City all necessary application materials, plans, drawings, and specifications for discretionary land use approvals permitting construction of the Terminal no later than three hundred sixty-five (365) days following receipt of written notice from Landlord of approval of the final schematic drawings.

8.1.2 Tenant shall commence construction in an expeditious manner following receipt of all required permits by the City and all agencies having jurisdiction over the Premises for the construction of the Facility.

8.2 Improvement Plans. All Improvements and Alterations constructed by Tenant shall meet all requirements of all government bodies or agencies having jurisdiction over such Improvements or Alterations, and Tenant shall not make, or cause or suffer to be made, any Improvements or Alterations to the Premises until Tenant has procured all regulatory approvals required to be obtained.

8.3.1 Facility Plans. When approval of the building plans for the Facilities has been obtained from the City, Tenant shall deliver two (2) sets of said plans to Landlord.

8.3.2 Agreements with Government Utilities. Landlord agrees that Tenant may enter into any contract, easement or agreement with the City, San Mateo County, the State of California or any other governmental agency or body or public utility with reference to utility connections, street improvements, easements or drainage facilities that are necessary in order for Tenant to use the Leased Premises in accordance with Paragraph 5.1 of this Lease, but notwithstanding the above, Tenant shall notify Landlord of its intent to enter into any such contract, easement, or agreement prior to executing them, and shall assume full financial responsibility for any expenditures or other obligations Landlord may be required to fulfill in order that the Provisions of this Paragraph be carried out.

8.3.3 Prior Notice. Tenant shall provide ten (10) days written notice to Landlord prior to Tenant's first entry on the Premises of the Tenant, its agents, employees, contractors or subcontractors for the purpose of commencing construction; said notice shall specify the nature of the work to be performed.

8.3.4 Landlord's Non-responsibility. Neither Landlord nor DBW assume any liability or responsibility for any defect in any structure by its approval of plans and specifications.

8.3.5 Notice of Non-Responsibility. Landlord may post upon the leased Premises a notice of non-responsibility.

8.3.6 Notice of Completion. Upon completion of construction of any Improvements or Alterations, Tenant shall timely file or cause to be filed a notice of completion.

8.3.7 Construction. Tenant shall be responsible for the construction of Improvements at its sole cost and expense.

8.3.8 Contractors' Compliance with Law. Any contractor selected by Tenant to construct Improvements on the Premises must comply with all relevant Laws and regulations, including the payment of prevailing wages to workers employed by the Contractor.

8.4 Underground Conditions and Grading. Landlord makes no covenants or warranties regarding the condition of the soil or subsoil or any other condition of the Premises.

8.5 Tenant's Duty to Obtain Building Permits. Tenant shall obtain at its sole cost and expense, all permits, approvals, certificates and licenses under applicable zoning, building and safety and land use Laws and regulations as may be required by any and all agencies having jurisdiction over the Premises for the construction of the Facility as contemplated herein.

8.6 Ownership of Improvements During the Lease Term. Other than upon Expiration or Termination of this Lease in accordance with the terms herein, Landlord shall have no right, title, or interest during the Lease Term in any Improvement or Alteration hereafter constructed by Tenant on the Premises.

8.7 Final Approved "As Built" Plans. Tenant shall provide Landlord two (2) complete sets of final approved "as built" plans within ninety (90) days after completion of the Improvements to which they relate.

8.8 Builder's Risk and Other Insurance. Tenant shall provide to Landlord: (i) certificates of insurance evidencing Special Form coverage for "builder's risk", (ii) evidence of workers' compensation insurance covering all Persons employed in connection with the construction of the Improvements and Alterations and with respect to whom death or bodily injury claims could be asserted against Landlord or the Premises, and (iii) evidence that Tenant has paid or caused to be paid all premiums for coverage described in this paragraph 8.8 sufficient to assure maintenance of all insurance required herein during the anticipated course of the construction. Tenant shall maintain, keep in force, and pay all Premiums required for all insurance mentioned herein at all times during which construction work is in progress.

8.9 Performance Bond. Tenant shall provide Landlord with evidence of a performance bond obtained by its general contractor for the construction of the Facility in amount recommended by a licensed civil engineer that will be sufficient to demolish the Facility and return the Premises to the condition it was in on the Effective Date. Tenant covenants that it will return the Premises to the condition it was in on the Effective Date in the event it fails to complete construction of the Facilities.

9. ALTERATIONS AND ADDITIONS

9.1 General. If there is no Event of Default, at the time, under this Lease, Tenant at its sole cost and expense may make reasonable Alterations to the Premises during the term of this Lease after construction of the Facility without the prior written consent of the Landlord; provided, however, that any such Alterations (a) shall not substantially change the exterior character of the Improvements or the gross area of the Improvements, (b) shall not effect any change in the use of the Premises, (c) are completed in a timely manner, in a good and workmanlike manner and in compliance with all Legal Requirements and Insurance Requirements, and (d) are promptly and fully paid for by Tenant. Within thirty (30) days after completion of any such Alterations, Tenant shall furnish Landlord with as-built drawings showing such Alterations. Notice shall be given to Landlord prior to the commencement of any alterations to afford Landlord the opportunity to post a notice of non-responsibility.

Any Alteration that would materially alter the use of the Premises or the exterior of any Improvement must first be approved by Landlord in writing, which consent shall not be unreasonably withheld or delayed.

9.2 Compliance with Laws. Tenant shall make any and all Alterations or repairs on the Premises that may be required by all Laws from time to time applicable thereto. All Alterations and Improvements permitted under this Paragraph 9.2 shall be accomplished in a good and workmanlike manner, in conformity with all Laws, Legal Requirements and Insurance Requirements. Upon completion of any such work, Tenant shall supply Landlord "as built" plans. Tenant shall indemnify and hold Landlord and City harmless from and against all actions, claims and Damages arising by reason of Tenant's failure to comply with the foregoing Provisions.

9.3 Surrender. Upon Expiration or Termination of this Lease as provided herein, any Alteration made by Tenant under Provisions of this Paragraph 9 shall be deemed an Improvement and the Provisions of Paragraph 2.5.3 shall govern the right of the parties with respect thereto.

9.4 Landlord's Obligations. Landlord shall have no obligation to alter, remodel, improve, repair, decorate or paint the Facility or any part thereof during the Lease Term.

9.5 Improvements Part of Realty. All Alterations or Improvements to the Premises made by or on behalf of the Tenant which may not be removed without substantial injury to the Premises shall become part of the realty immediately upon completion, shall be owned by Landlord and shall, at the end of the term hereof, remain in the Premises without compensation to Tenant, unless Landlord first waives its right to the Alterations or Improvements in writing. Notwithstanding the foregoing, Landlord at its option may require Tenant to remove any Alterations and Improvements at Tenant's sole expense regardless of whether title has or has not vested in Landlord, and regardless of whether consent was, or was not given. Tenant shall repair any Damage occasioned by such removal at Tenant's sole cost and expense.

10. CONDITION OF PREMISES, MAINTENANCE

10.1 Existing Conditions. Tenant has made a thorough inspection of the real property and is familiar therewith, and has accepted the Premises in an "as is" physical condition. Neither Landlord nor DBW make any representation or warranty with respect to the condition of the Premises, including without limitation, the seismological condition thereof, or their fitness or availability for any particular use, and neither Landlord nor DBW shall be liable for any latent or patent defect therein.

10.2 Tenant's Maintenance Obligations. Tenant shall, at all times during the Term of this Lease after construction of the Facility, at its sole cost and expense, keep the Premises in Good Condition and maintained in good working order, and condition and repair the Premises and all Improvements and Alterations thereon. Tenant shall provide routine custodial Maintenance of the Premises including Terminal and any parking area allocated to Tenant by Landlord at Tenant's request, in accordance with the provisions of an operation manual prepared by Tenant and

approved Landlord. Routine Maintenance is defined as all ordinary housekeeping maintenance of the Premises and equipment and replacement of supplies that are normally performed on a day-to-day basis in order to keep the Premises operating in an efficient, clean, safe, and Good Condition. Routine Maintenance includes, but is not limited to:

1. Replacing light bulbs as needed where no specialized equipment is required to do so.
2. Regular cleaning of the Terminal area, storage spaces, passenger and vehicle entry/exit lanes, parking areas, regular removal of interior and exterior graffiti, and daily emptying of trash receptacles and ash trays.
3. Tenant may subcontract for major, overall steam cleaning of the parking facilities, wherein the total facility areas are steam cleaned with industrial steam cleaning equipment. Lessee may also subcontract for reduced area steam cleaning as needed in specific areas, including but limited to vehicle and pedestrian access areas. Emphasis is placed on the steam cleaning of pedestrian waiting/standing areas and walkways in maintaining the first class standard of custodial Maintenance as called for by Landlord. All work will be done in accordance with Best Management Practices and all applicable laws and regulations.

Neither Landlord nor DBW shall have any responsibility to perform any Maintenance on the Premises. Neither Landlord nor DBW shall be obligated to make any repairs, replacement or renewals of any kind, nature or description whatsoever to the Premises nor to any Improvements or Alterations now or hereafter located thereon. In the event that the Tenant, its agent or invitees cause any Damage (excepting ordinary wear and tear) to the Premises, Landlord may repair the same at Tenant's expense and Tenant shall immediately reimburse Landlord therefor. Tenant shall make or cause others to make all repairs, replacements or renewals, whether interior or exterior or, structural or non-structural, ordinary or extraordinary, foreseen or unforeseen, necessary or appropriate to maintain the Premises in Good Condition. Tenant shall provide and maintain established standards of public health and cleanliness established by Landlord.

In the event Tenant fails to maintain the Premises in Good Condition as required by this Paragraph 10, Landlord may give Tenant written notice specifying what actions are required to correct the conditions of the Premises. In the event Tenant fails to initiate such actions as are indicated by Landlord in its notice within thirty (30) days after Tenant's receipt of such notice, or thereafter fails to diligently proceed to complete such actions, such failure shall be deemed an Event of Default within the meaning of Paragraph 18 and Landlord shall have all the rights, powers and remedies provided for in this Lease or at Law including the right to enter on the Premises and maintain or cause the Maintenance of the Premises as required by this Paragraph 10. In such event Landlord shall be entitled to reimbursement for any reasonable amounts spent plus a fee of ten percent (10%) of the cost of the work performed which shall be due and payable fifteen (15) days after Tenant receives Landlord's statement therefor. In the event Tenant fails to pay such amounts within such fifteen (15) day period, Landlord shall be entitled to interest thereon at the Default Rate from the end of such fifteen (15) days until paid.

At least once each quarter, representative(s) of Tenant responsible for supporting and overseeing operations of the Terminal shall meet with representative(s) of Landlord and inspect the Premises and confer on status of operations and possible improvements.

10.3 Tenant's Dredging Obligations. Tenant shall be responsible at its sole cost for maintaining channel, fairway, and turning basin depths within the Leased Premises as set forth in Exhibit "A" attached hereto and incorporated by reference herein, to permitted design depths deeper than eight (8) feet by periodic dredging as necessary for the Term of this Lease, except that Landlord shall be responsible at its sole cost for maintaining channel and fairway depths to Landlord's design depth of eight (8) feet only.

10.4 Signage Program. Tenant agrees to comply with Landlord's regulations governing signage, and pay costs and operational expense of installing and maintaining signage for the Terminal and directional signage on Marina property. No signs, directional, guiding, and other stripes, lines, direction and markings shall be installed or painted in or upon the Premises or removed by Tenant without prior written consent of Landlord.

10.5 Use of Premises by Landlord. Landlord acknowledges that Tenant may be required to suspend use of the Premises from time to time. Tenant shall notify Landlord within a reasonable period of time after its determination to suspend use of the Premises or when the Terminal and/or parking area will not be in use for not less than five (5) days. Tenant shall also provide Landlord within a reasonable period of time the approximate date it intends to resume use of the Premises, Terminal or parking area.

10.6 Emergency Plan.

1. Tenant shall work with Landlord to complete a detailed emergency plan. Tenant shall instruct all Persons employed by Tenant in the plan and the employees' responsibilities relating to the plan. Copies of the plan shall be posted in a prominent location on the Premises.
2. In the event of any major emergency or condition (i.e. power outage, flooding, fire, natural catastrophe or any other unanticipated condition that would disrupt normal operation of the Terminal or imperil customer or staff) that may reasonably result in a threat to Persons or property, Tenant shall immediately contact Landlord by telephone and Tenant Manager or Assistant Site Manager shall report to the Terminal and remain until the emergency has been resolved. If the Landlord cannot be reached, Tenant shall make continued efforts to reach other staff Persons as designated by the Landlord until a landlord representative has been notified. Landlord's facility operator is available 24 hours a day and can be reached by calling the Oyster Point Harbor Master, 650-952-0808; alternatively, Tenant's manager may contact 911.
3. Tenant shall immediately erect and maintain such temporary signs, barricades, lights and other devices as may be necessary to warn people of any dangerous or defective

conditions and shall take such actions as may be necessary to reasonably protect people from injury, loss or Damage which might result because of any such condition.

4. Any time a dangerous or defective condition may reasonably be known by Tenant to exist in the Premises or their environs, Tenant shall immediately take reasonable necessary protective action by calling the Oyster Point Marina/Park Harbor Master and immediately notify Landlord by telephone and in writing of such condition and protective action.

10.7 Security of Facilities. The security of the Premises shall be the responsibility of Tenant.

11. INDEMNIFICATION AND EXCULPATION

11.1 Exculpation of Landlord. Landlord shall not be liable to Tenant for any Damage to Tenant or to Tenant's property from any cause other than as a direct result of Landlord's negligence or willful and intentional misconduct.

11.2. Indemnification and Exculpation of Landlord. Tenant shall indemnify and hold Landlord, the City, DBW and their respective elected officials, agents, officers, directors, contractors and employees (collectively, "Agents") harmless from, and shall defend them against any and all claims, demands, direct or vicarious liability, attorney fees, causes of action or judgments, Damage, injury or loss arising directly or indirectly out of: (a) any injury to or death of any person, including employees of Tenant, or Damage to or destruction of any property occurring in, on or about the Premises, or any part thereof, from any cause whatsoever, (b) any Event of Default by Tenant in the observance or performance of any of the terms, covenants or conditions of this Lease, (c) the use, occupancy or condition of the Premises or the activities therein by Tenant, its agents, or clients, customers, invitees, guests, members, licensees, and assignees (collectively, "Invitees") or (d) any release or discharge, or threatened release or discharge, of any substance, waste or material which now or in the future is determined by any state, federal, or local governmental authority to be capable of posing a present or potential risk of injury to health, safety, the environment or property (collectively, "Hazardous Material") caused or allowed by Tenant in, under, on or about the Premises, or into the environment. 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 Lease. This indemnity shall exclude claims, liability, damage or loss resulting solely and exclusively from the willful misconduct of Landlord, the City or DBW which is not contributed to by any act of, or by any omission to perform some duty imposed by Law or agreement on, Tenant, its agents or Invitees.

In addition to Tenant's obligation to indemnify Landlord, City and DBW, Tenant specifically acknowledges and agrees that it has an immediate and independent obligation to defend Landlord, City and DBW from any claim that actually or potentially falls within this indemnification provision, even if the allegations are or may be groundless, false or fraudulent. Tenant's obligation to defend shall arise at the time such claim is tendered to Tenant by Landlord, City and/or DBW and shall continue at all times thereafter. The foregoing obligation to defend shall include without limitation, indemnification from attorney's fees, court costs and all other

litigation expenses. This indemnification by Tenant shall begin from the first notice that any claim or demand is or may be made. The provisions of this paragraph shall survive the termination of this Lease with respect to any Damage, destruction, injury or death occurring prior to the termination of this Lease.

11.2.1 Exculpation. Tenant, as a material part of the consideration to be rendered to Landlord, hereby waives any and all claims against Landlord, City, DBW and their Agents, and agrees to hold Landlord, City, DBW and their Agents harmless from any claims for damages to goods, wares, goodwill, merchandise, equipment, business opportunities and persons in, upon or about said Premises for any cause arising at any time, including without limitation all claims arising from the joint or concurrent negligence of Landlord, City, DBW and/or their Agents, but excluding any intentionally harmful acts committed solely by Landlord, City or DBW, as the case may be.

11.2.2 Indemnification of Tenant. Landlord agrees to indemnify, defend and hold harmless Tenant and DBW from and against, all demands, claims, attorneys' fees, causes of action or judgment for injury to person, loss of life, or Damage to property occurring on said Premises arising from Landlord's negligence, willful or intentional misconduct.

12. INSURANCE

12.1 Comprehensive General Liability Insurance. Prior to Tenant's entry upon the Premises and in any event throughout the term of this Lease, at Tenant's sole cost and expense, Tenant shall keep or cause to be kept in force, at all times, for the protection of Landlord, City, DBW and Tenant and naming Landlord and DBW as Additional Insureds, Comprehensive General Liability Insurance, including coverage for bodily injury, personal injury and property damage liability arising from the use, occupancy, Maintenance, disuse, or condition of the Premises and Improvements. The limits of liability should be usual and customary to the Tenant's industry, but not less than one million dollars (\$1,000,000) per occurrence, two million dollars (\$2,000,000) aggregate, bodily injury and property damage including products and completed operations. In addition, excess liability in an amount not less than five million dollars (\$5,000,000) will also be kept in full force and effect. Tenant shall provide DBW with a written notice at least 30 days prior to the cancellation, expiration or change in an insurance policy specified in this paragraph.

12.2 Tenant's Property Insurance. Throughout the term, at Tenant's sole cost and expense, Tenant shall keep or cause to be kept insured with property insurance at all times for the protection of Tenant, DBW and Landlord and naming Landlord and DBW as Additional Insureds, all Improvements located on or appurtenant to the Premises against loss or Damage by fire and such other risks as are now or hereafter included in the Special Form, vandalism and malicious mischief. The amount of the insurance shall be sufficient to prevent any of Landlord, Tenant, City or DBW from becoming a coinsurer under the Provisions of the policies, but in no event shall the amount be less than one hundred percent (100%) of the then actual replacement cost (herein called Full Insurable Value). Landlord shall not carry any insurance the effect of which would be to reduce the protection or payment to Tenant under any insurance that this Lease obligates Tenant to carry. If any dispute arises as to whether the amount of insurance

complies with the above and said dispute cannot be resolved by agreement, Landlord may, not more often than every two (2) years, request the carrier of the insurance then in force to determine the Full Insurable Value as defined in this Provision, and the resulting determination shall be conclusive between the parties for the purpose of this paragraph. Tenant shall also include DBW as a loss payee to the extent of that mortgage interest. Tenant shall provide DBW with a written notice at least 30 days prior to the cancellation, expiration or change in an insurance policy specified in this paragraph.

12.3 Employer's Liability and Workers' Compensation Insurance. Tenant, at its sole cost and expense shall, during the Lease Term, obtain, maintain and keep in full force and effect, Workers' Compensation Insurance as required by Law and Employer's Liability Insurance with limits or liability as required by Law, but in no event less than \$1,000,000 per each accident.

12.4 Additional Insurance. In the event of any significant change in the use of the Premises, Landlord and DBW shall have the right, during the Lease Term, to require Tenant at its sole cost and expense to obtain, maintain and keep in full force and effect such other insurance with respect to the Premises in such amounts and against such insurable hazards as would be reasonable under the circumstances. In addition, Tenant shall meet all insurance requirements applicable to it pursuant to that certain Three Party Agreement Regarding Distribution and Use of San Mateo County Measure A Funds for Ferry Service Between South San Francisco and Oakland by and between Tenant, City and San Mateo County Transportation Authority dated as of June 10th, 2009.

12.5 Waiver of Subrogation Rights. The parties release each other, and their respective authorized representatives, from any claims for Damage to the Premises or to the fixtures, personal property, improvements or alterations of either District or Tenant in or on the Premises which are caused by or result from risks insured against under any property insurance policies carried by the parties and in force at the time of any such Damage, to the extent such claims for damage are paid by such policies. Each party shall cause each property insurance policy obtained by it to provide that the insurance company waives all right of recovery by way of subrogation against the other party and DBW in connection with any Damage covered by any policy.

12.6 Other Insurance Matters. All the insurance required under this Lease shall: (i) be issued by insurance companies authorized to do business in the State of California with a current financial rating of at least an A Class XV or better as rated in the most recent edition of Best's Key Rating Guide; (ii) be issued as a primary policy; (iii) contain an endorsement requiring thirty (30) days written notice from the insurance company to both Landlord and DBW before cancellation or material change. Tenant shall name Landlord and DBW as additional insureds on any and all liability insurance policies.

Each insurance policy required hereunder, or a Certificate of the policy, shall be deposited with both Landlord and DBW prior to the Commencement Date of this Lease and not less than thirty (30) days before expiration of the term of any policy then in force, except that the policy described in paragraph 12.1 or a certificate thereof shall be delivered to both Landlord and DBW prior to Tenant's entry upon the Premises.

12.7 Failure to Procure Insurance. If Tenant fails or refuses to procure or to maintain insurance required by this Lease or fails or refuses to furnish Landlord or DBW with required proof that the insurance has been procured and is in full force and effect and paid for, Landlord shall have the right, but not the obligation, upon five (5) days written notice to Tenant, to procure and maintain such insurance. The premiums paid by Landlord shall be chargeable to Tenant and shall bear interest at the legal rate then in effect in the State of California from the date when the premium is paid by Landlord.

12.8 Increase in Amount. Landlord may require Tenant to increase the minimum dollar amounts for insurance required by this Lease, but every such increase shall be reasonable under the circumstances and in no event shall such increases more than double in any ten (10) year period. If there is any dispute regarding any increase, Landlord and Tenant shall submit this issue to an arbitrator and the matter shall be arbitrated pursuant to Paragraph 29.4 of this Lease.

12.9 Insurance during Construction. Before Tenant commences making major Alteration to Tenant's Premises and before construction begins, Tenant shall obtain appropriate Certificates of Insurance naming both Landlord and DBW as Additional Insureds from any contractor employed by Tenant to make said alteration and provide both Landlord and DBW with copies of said Insurance Certificates.

13. DAMAGE OR DESTRUCTION

13.1 Destruction Due to Risk Covered by Insurance. If a total destruction (the rendering totally unusable of fifty percent (50%) or more of Tenant's improvements on the Leased Premises), or a partial destruction (less than fifty per cent (50%)) occurs to Tenant-owned improvements, the loss is covered by the insurance described in paragraph 12.2, Tenant shall within ninety (90) days thereafter commence and diligently prosecute the repair, restoration, or replacement such that the completed work, which may be different in design, shall be equal in value, quality and use to the condition of the improvements before the event giving rise to the work.

13.2 Destruction Due to Risk Not Covered by Insurance. If any of the Tenant-owned improvements are damaged or destroyed by any casualty not covered by the insurance Provisions of this Lease and if the leased Premises are hereby rendered unfit for the uses prescribed herein, Tenant shall have the option of clearing the land and returning it as it was at the time of the inception of this Lease, including repairs of Docks 9 and 10, in which event, Tenant may terminate this Lease, or rebuild the structure(s) in such a way that it would be comparable in use and value (but not necessarily design) to the structure(s) which had existed prior to the casualty.

14. TAKING

14.1 Definition. "Taking" means: (i) the acquisition of the Premises, or a portion thereof, or an interest therein, by any governmental power, whether through legal proceedings or otherwise, by a condemnor and (ii) a voluntary sale or transfer of the Premises, or a portion thereof or an

interest therein, by Landlord to any condemnor, either under threat of condemnation or while legal proceedings for condemnation are pending.

14.2 Tenant Notice. Upon receipt by Landlord or Tenant of any notice that taking proceedings are to be instituted the receiving party shall immediately notify in writing the other party to the Lease, as well as DBW. Landlord, Tenant and DBW may each file and prosecute their respective claims for an award, to the extent such claims are otherwise permitted by law.

14.3 Total Taking. This Lease shall terminate on the day of transfer of title or possession to the condemning agency, whichever is first. Tenant may then present evidence of the worth of remaining use of leasehold improvements and fixtures. Landlord shall also present evidence of the value of the land. All sums, including damages and interest, awarded shall be deposited promptly with a mutually agreeable escrow agent and shall be distributed in the following order of priority. The foregoing having been stated, Landlord and Tenant agree that Tenant may seek separately from the condemning agency its loss of good will or business opportunity, and said proceeds, if any, shall be kept separate and apart from the other condemnation proceeds being deposited into the mutually agreeable escrow account.

First, all real and personal property taxes, if applicable, constituting a lien on the property or the improvements;

Second, the balance due under any note secured by a leasehold mortgage to which the fee is not subordinated or other interests of any lender with respect to this Lease;

Third, the parties shall negotiate an equitable division of the balance of the award, failing which the allocation shall be determined by arbitration in accordance with Paragraph 29.4 hereof. The arbitrator(s) shall take into account the respective interests of the parties including but not limited to the City's fee interest in the Premises and the bonus value, if any, of Tenant's leasehold interest.

In the event the condemning agency is neither City nor Landlord, then the award shall be distributed in the following order of priority:

First, all real and personal property taxes constituting a lien on the property or the improvements;

Second, to Landlord and City, collectively, an amount equal to the fair market value of the real property excluding the Improvements, subject to the terms of this Lease;

Third, the balance due under any note secured by a leasehold mortgage to which the fee is not subordinated or other interests of any lender with respect to this Lease;

Fourth, if the fair market value of the improvements exceeds the amount payable to the leasehold mortgage as provided above, from the balance of the award, if any, such excess amount shall be allocated to Tenant in the proportion that the number of years (including any fraction of a year)

of the Term then unexpired bears to fifty-five, and the balance shall be allocated to Landlord and City, collectively;

Fifth, the bonus value of this Lease, if any, shall be divided among the Landlord, City and Tenant. The share of the Tenant shall be a portion that the number of years (including any fraction of a year) of the Term then unexpired bears to fifty-five. The balance shall be awarded to City and Landlord, collectively; and

Sixth, any balance to Landlord and City, collectively.

For the purpose of this paragraph, wherever there is reference to a portion of a condemnation award being paid to Landlord and City, collectively, the amount payable (the "Proceeds") shall be allocated between Landlord and City as follows:

There shall be distributed to Landlord an amount equal to the amount of rent Landlord would have received from the Lease for the number of years unexpired on the Joint Powers Agreement, or any extension thereof to be paid on an annual basis and not to exceed the condemnation award received collectively by City and Landlord.

In the event the parties are unable to agree upon any of the valuations required to distribute a condemnation award under this Article 14, each party will appoint an appraiser and the two appraisers so appointed shall select a third appraiser and the three appraisers so selected shall make the determination(s) of value. If the appraisers are unable to agree, the valuation in dispute shall be determined by averaging the three valuations of the appraisers. Each appraiser shall be MAI-qualified and shall have not less than five (5) years' experience in appraising commercial real estate in San Mateo County.

14.4 Partial Taking. (i) In the event of a partial taking leaving the remainder unusable for operation of the Terminal, Tenant may elect to terminate this Lease as of date of transfer of title or possessions in which event the parties shall negotiate an equitable division of the condemnation award. If the parties are unable to agree upon such allocation it shall be determined by arbitration in accordance with Paragraph 29.4 hereto provided that the award shall first go to pay the balance due under any note secured by a leasehold mortgage to which the fee is not subordinated, and the arbitrator(s) shall take into account the respective interests of the parties as provided in Paragraph 14.3 above. If the Tenant does not terminate, compensation shall be as if the remainder is usable.

(ii) In the event of a partial taking leaving the remainder usable for operation of the Terminal, this Lease shall remain in full force and effect, covering the remaining property.

Tenant must give notice to Landlord of any of the above elections within forty-five (45) days after the taking occurs. Tenant will be deemed to have knowledge of the impending acquisition on Tenant's entry into negotiations with the taking agency's representatives, on receipt of service of complaint and summons, or order for immediate possession, or on receipt of a letter of inquiry from the Landlord advising Tenant of the impending acquisition and requesting notice of

Tenant's resulting elections and contentions. If such notice is mailed but not signed by any authorized agent of Tenant within ten (10) days of mailing, Tenant shall pay the cost of notifying a Manager by personal service.

Tenant's notice shall contain a clear and unequivocal statement of the Tenant's election, reasons for this election, Tenant's contention of compensation, and the reasons for these contentions. Time is of the essence and the express purpose of the required notice of election, contentions, and reasons is so the Landlord may rely on them in negotiations or litigation with the taking agency. Tenant's contentions shall not be conclusive as to the amount of compensation, or usability, or fair market value of the remainder, and any dispute of these issues shall be resolved by arbitration in accordance with Paragraph 29.4 hereof.

Tenant's failure to give notice of election, contentions, and reasons shall constitute a waiver of all rights to compensation.

14.5 Restoration. In the event of a partial taking leaving the remainder usable for operation Tenant shall alter or reconstruct the improvements as necessary to render the operation of the Facility economically viable. The condemnation award shall be utilized by Tenant for this purpose and any balance shall be paid to Landlord.

15. NO CLAIMS AGAINST LANDLORD; NO PARTNERSHIP

Nothing contained in this Lease gives the Tenant any right, power, or authority to contract for or permit the performance of any labor or services or the furnishing of any material or other property in such a fashion as would permit the making of any claim against Landlord or its interest in the Premises. None of the Provisions or agreements herein contained is intended, nor shall the same be deemed or construed, to create a partnership between Landlord and Tenant, to make them joint ventures, or to make Landlord in any way responsible for the debts or losses of Tenant.

16. INTEGRATED AGREEMENT; MODIFICATION

This Lease contains all of the agreements of the parties hereto with respect to any matter for which Provision is made in this Lease, and no prior agreement or understanding, oral or written, express or implied, pertaining to any such matter shall be effective for any purpose. No Provisions of this Lease may be amended or added to and no consent or waiver shall be effective except by an instrument in writing signed by the party to be bound by such instrument. The parties acknowledge that all prior agreements, representations and negotiations are deemed superseded by the execution of this Lease to the extent they are not incorporated herein. Notwithstanding the foregoing, the parties hereto acknowledge the existence of certain loan documents between Landlord and DBW, and except for the provisions of Paragraph 32 herein, nothing in this Lease supersedes, amends or modifies any provision of any loan document between Landlord and DBW, including but not limited to that certain Settlement Agreement dated as of June 24th, 2009 and acknowledged by WETA.

17. TRANSFER OF TENANT'S INTEREST

Tenant shall not assign or otherwise transfer this Lease or any right or interest hereunder, or in or to any of the Improvements, or sublet or license the use of the Premises, except as approved in writing by Landlord. No other assignment or transfer, whether voluntary or involuntary, by merger or under legal process, through receivership or bankruptcy, or otherwise, and no such subletting or licensing shall be valid or effective.

18. DEFAULT AND REMEDIES

18.1 Events of Default.

(a) If one or more of the following events ("Events of Default") shall occur, Landlord may exercise any of the rights and remedies specified in Paragraph 18.2:

(1) City fails to pay the one-time lump-sum rent payment as specified in Paragraph 2.3.1 when and as the same becomes due and payable and such failure continues for a period of thirty (30) days after written notice thereof is delivered to City and thereafter City fails to reimburse Landlord pursuant to Paragraph 2.3.1;

(2) Tenant fails to comply with any Insurance Requirement, if such failure continues for thirty (30) days after written notice thereof from Landlord to Tenant;

(3) Tenant fails to perform or comply with any other term or condition of this Lease and such failure shall continue for sixty (60) days after written notice thereof from Landlord, and Tenant does not, subject to Unavoidable Delays, within such period commence with due diligence and dispatch the curing of such Default;

(4) Tenant makes a general assignment for the benefit of creditors, or admits in writing its inability to pay its debts as they become due or files a petition in bankruptcy, or is adjudged bankrupt or insolvent, or accepts or files a petition seeking any reorganization, arrangement, composition, readjustment, liquidation, dissolution or similar relief under any present or future statute, Law or regulation; and/or

(5) Within one hundred twenty (120) days after the commencement of any proceeding against Tenant seeking any reorganization, arrangement, composition, readjustment, liquidation, dissolution or similar relief under any present or future statute, Law or regulation, such proceeding is not dismissed, or Tenant fails to commence defense of such action and thereafter continues to prosecute such defense, or, if within one hundred twenty days (120) days after the appointment without the consent or acquiescence of Tenant, of any Trustee, receiver or liquidator any material part of its assets, such appointment is not vacated, or Tenant fails to commence defense of such action and thereafter continue to prosecute such defense of such action.

(b) This paragraph and Paragraph 18.2 do not apply to Tenant's failure to make Rent payment as required in Paragraph 2.3.1.

18.2 Landlord's Remedies. Upon any Event of Default Landlord shall have the following remedies:

18.2.1 Tenant's Right to Possession Not Terminated. Except in the case of nonpayment of rent as set forth in paragraph 2.3.1, Landlord may continue this Lease in full force and effect, and the Lease will continue in effect as long as Landlord does not terminate Tenant's right to possession.

18.2.2 Termination of Tenant's Right to Possession. Landlord may terminate Tenant's right to possession of the Premises in the event of any event of Default as specified in Paragraph 18.1 and should such event of Default continue for sixty (60) days after receipt of written notices by Tenant from Landlord it shall be lawful for Landlord to terminate this Lease and enter upon and take possession of said Premises. The Landlord may retain or dispose of the Premises in accordance with applicable Law.

18.2.3 Landlord's Right to Cure Tenant's Default. Landlord at any time after the Tenant commits a Default, may cure the Default at Tenant's cost. If Landlord at any time, by reason of Tenant's Default, pays any sum or does any act that requires the payment of any sum, the sum paid by Landlord shall be due immediately from Tenant to Landlord.

18.3 Interest on Unpaid Sums. Sums not paid when due pursuant to paragraph 2.3.1 of this Agreement shall bear interest at the Default Rate from the date due until paid. No interest shall accrue or be paid for payments made no later than fifteen (15) days after the due date.

18.4 Late Charge. Late payment by Tenant to Landlord or DBW of any sums due hereunder will cause Landlord or DBW to incur costs not contemplated by this Lease, the exact amount being impractical to fix. When a payment is not timely made and such failure continues for fifteen (15) business days after written notice thereof is delivered to Tenant, an additional late charge of five percent (5%) of the amount due will be paid by Tenant to Landlord or DBW, as the case may be.

18.5 Right of Termination. For and after the date revenue ferry service begins at the Terminal, in the event Tenant fails to operate any ferry service to or from the Terminal for a continuous period of two (2) years or more, which failure is not due to Unavoidable Delays, the City shall have the right to terminate this Lease on thirty (30) days' advance written notice. If City terminates the Lease pursuant to this Paragraph 18.5, Tenant shall have a continuing license to use the Premises for the purpose of providing emergency services and operations to and from the Facility during the entirety of the Lease Term. For the purposes of this Paragraph 18.5, "Unavoidable Delay" shall include failure to obtain financing for operation of the Terminal. Landlord hereby recognizes and accepts the City's right of termination pursuant to this Paragraph 18.5.

19. SURVIVAL OF TENANT'S OBLIGATIONS; LANDLORD'S EQUITABLE RELIEF

No Expiration or Termination of this Lease or by operation of Law or otherwise, shall relieve Tenant of its liabilities and obligations hereunder which have then accrued, which shall survive such Expiration or Termination, including, without limitation the right of Landlord and of DBW for indemnification against liability for personal injuries or for property Damage occurring prior to the later of (i) Termination of this Lease or (ii) Tenant's vacation of the Premises, nor shall

anything in this Lease be deemed to affect the right of Landlord to equitable relief where such relief is appropriate.

20. NO WAIVER BY LANDLORD

The failure of the Landlord or DBW to seek redress for violation of, or to insist on strict performance of, any term or Provision of this Lease shall not be deemed a waiver of such violation or subsequent act which would have originally constituted a violation from having all the force and effect of an original violation. No delay or omission in the exercise or any right or remedy of Landlord upon any Default by Tenant shall impair such a right or remedy or be construed as a waiver. No act or conduct of Landlord, including, without limitation, the acceptance of keys to the Premises, shall constitute an acceptance of the surrender of the Premises by Tenant before the Expiration or Termination of this Lease. Only a written notice from Landlord to Tenant shall constitute acceptance of the surrender of the Premises and accomplish a Termination of this Lease. Landlord's consent to or approval of any act by Tenant requiring Landlord's consent or approval shall not be deemed to waive or render unnecessary Landlord's consent to or approval of any subsequent act by Tenant. DBW's consent to or approval of any act by Tenant requiring DBW's consent or approval shall not be deemed to waive or render unnecessary DBW's consent to or approval of any subsequent act by Tenant. Any waiver by Landlord or DBW of any Default must be in writing and shall not be a waiver of any other Default concerning the same or any other Provision of the Lease.

21. REMEDIES CUMULATIVE

Each right, power and remedy of Landlord and DBW provided for in this Lease now or hereafter existing at Law or in equity or by statute or otherwise shall be cumulative and concurrent and shall be in addition to every other right, power or remedy provided for in this Lease.

22. ENTRY BY LANDLORD

22.1 Entry for Inspection. Landlord and its respective authorized representatives shall have the right to enter the Premises without notice at any time during normal business hours and subject to Tenant's normal security requirements and, if required, accompanied at all times by a representative of Tenant for the purpose of inspecting the same or for the purpose of doing any work hereunder, necessitated by an Event of Default, and to take all such action thereon as may be necessary or appropriate for any such purpose (but nothing herein contained in this Lease shall create or imply any duty on the part of Landlord to make any such inspection or do any such work).

22.2 Emergency Entry. Landlord may enter the Premises at any time, subject to government security requirements, without notice, in the event of an emergency. Landlord shall have the right to use any and all means that Landlord may deem proper in such an emergency in order to obtain entry to the Premises. Entry to the Premises by any of said means, or otherwise, shall not under any circumstances be construed or deemed to be a forcible or unlawful entry into, or a detainer of the Premises, or an eviction of Lease from the Premises or any Portion of them.

22.3 No Liability. Landlord shall not be liable in any manner, and Tenant hereby waives any claim for damages, for any inconvenience, disturbance, loss of business, nuisance, or other damage, including without limitation any abatement or reduction in Lease fees due hereunder, arising out of Landlord's entry onto the Premises as provided in this Provision, except Damage resulting solely from the active negligence or willful misconduct of Landlord or its authorized representatives.

22.4 Non-Disturbance. Landlord shall use its best efforts to conduct its activities on the Premises as allowed in this paragraph, in a manner which, to the extent reasonably practicable, will cause the least possible inconvenience, annoyance or disturbance to Tenant.

23. PERFORMANCE ON BEHALF OF TENANT

In the event that Tenant shall fail to make any payment or perform any act required hereunder to be made or performed by Tenant, then Landlord may, but shall be under no obligation to, provide Tenant with written notice and an opportunity to cure as specifically set forth herein, following which Landlord may make such payment or perform such act, if appropriate under the circumstances given the nature of Tenant's operations at the Premises, with the same effect as if made or performed by Tenant; provided however, that nothing contained in this paragraph shall limit Landlord's obligation to provide written notice to Tenant under paragraph 18 of this Lease. Entry by Landlord upon the Premises for such purpose shall not waive or release Tenant from any obligation or Event of Default hereunder. Tenant shall reimburse (with interest at the Default Rate) Landlord for all sums so paid by Landlord in connection with the performance of such act. Additionally, in the event that Tenant shall fail to make any payment required hereunder to be made by Tenant, then DBW may, but shall be under no obligation to, provide Tenant with written notice and an opportunity to cure as specifically set forth herein, following which DBW may make such payment, with the same effect as if made or performed by Tenant. If DBW provides such written notice, Tenant shall, within thirty (30) days of the date of written notice, reimburse (with interest at the Default Rate) DBW for all sums so paid by DBW.

24. ACCEPTANCE OF SURRENDER

No modification, Termination or Surrender of this Lease or surrender of the Premises or any part thereof or any interest therein by Tenant (except surrender upon Expiration or Termination of this Lease) shall be valid or effective unless agreed to and accepted in writing by Landlord and no act by any representative or agent of Landlord, other than such a written agreement and acceptance by Landlord shall constitute an acceptance thereof.

25. ESTOPPEL CERTIFICATE BY TENANT

Tenant will execute, acknowledge and deliver to either Landlord or DBW within thirty (30) days after receipt of Landlord's or DBW's written request, as the case may be, therefor a certificate certifying: (a) that this Lease is unmodified and in full force and effect (or if there have been modifications, that this Lease is in full force and effect as modified, and stating the

modification); (b) the dates, if any, to which any sums payable hereunder have been paid; (c) that no notice has been received by Tenant of any Default which has not been cured except as to Defaults specified in said certificate; (d) that Landlord is not in default hereunder except as to Defaults specified in said certificate; and (e) any other matters reasonably requested and related to this Lease. In the event Tenant fails to execute and return such certificate to Landlord within said thirty (30) day period, Landlord may execute such certificate on Tenant's behalf and agrees to provide Tenant with a copy of said certificate. Any such certificate, whether executed by Tenant or Landlord on Tenant's behalf, shall be binding upon Tenant and may be relied upon by any prospective purchaser or mortgagee of the Premises or any part thereof.

26. ESTOPPEL CERTIFICATE BY LANDLORD

Landlord will execute, acknowledge and deliver to Tenant within thirty (30) days of Tenant's written request, a Certificate certifying: (a) that this Lease is unmodified and in full force and effect (or if there have been modifications, that this Lease is in full force and effect as modified, and stating the modification); (b) the dates, if any, to which any sums payable hereunder have been paid; (c) whether or not to the knowledge of Landlord there are then existing any Defaults under this Lease (and so specify the same); and (d) such other matters related to this Lease as are reasonably requested by the requesting party. Any such certificate shall be binding on Landlord and may be relied upon by any prospective transferee of Tenant's interest under this Lease. In the event Landlord fails to execute and return such certificate to Tenant within said thirty (30) day period, Tenant may execute such certificate on Landlord's behalf and agrees to provide Landlord with a copy of said Certificate.

27. CONVEYANCE BY LANDLORD

In case the original or any successor Landlord shall convey or otherwise dispose of Premises or its interest therein, it shall thereupon be released from all liabilities and obligations of Landlord under this Lease (except those accruing prior to such conveyance or other disposition) and such liabilities and obligations shall be binding solely on the then owner of the Premises. Tenant waives the protection of any statute or rule of law that gives or purports to give Tenant any right to terminate this Lease or surrender possession upon the transfer of Landlord's interest. Tenant hereby recognizes that City is the successor in interest to Landlord in the event Landlord dissolves or otherwise discontinues by operation of law or otherwise.

28. PROVISIONS SUBJECT TO APPLICABLE LAW

Rights, powers and remedies provided herein may be exercised only to the extent that exercise thereof does not violate any applicable Law, and are intended to be limited to the extent necessary so that they will not render this Lease invalid or unenforceable.

29. NOTICES

Whenever any notice is required or permitted hereunder, such notice shall be in writing and shall be personally delivered, sent by U.S. Registered or Certified Mail, return receipt requested,

postage prepaid, or sent by a nationally recognized overnight carrier service to the address set forth below or at such other addresses as are specified by written notice delivered in accordance herewith:

Landlord: SAN MATEO COUNTY HARBOR DISTRICT
400 Oyster Point Blvd. Suite 300
South San Francisco, CA 94080

Tenant: SAN FRANCISCO BAY AREA WATER EMERGENCY
TRANSPORTATION AUTHORITY
Pier 9, Suite 111
San Francisco, CA 94111

DBW: DEPARTMENT OF BOATING AND WATERWAYS
2000 Evergreen Street, Suite 100
Sacramento, CA 95815-3888

Any notice personally delivered as hereinabove provided shall be deemed effectively given on the date of receipt of such notice. Any notice sent by U.S. Registered or Certified Mail or by a nationally recognized overnight courier service shall be deemed effectively given on the date of delivery or attempted delivery thereon, whichever is sooner.

29.1 Service of process. Concurrently with the execution of this Lease a form for the irrevocable appointment of an agent to receive service of process on behalf of the other party shall be executed by each party.

29.2 Disputes Subject to Mediation and Arbitration. Any dispute between the parties relating to the interpretation and enforcement of their rights and obligations under this Lease shall be resolved solely by mediation and arbitration in accordance with the Provisions of Paragraphs 29.3 et seq. of this Lease.

29.3 Initial Mediation. With respect to any dispute between the parties that is to be resolved by arbitration, the parties shall attempt in good faith first to mediate such dispute and use their best efforts to reach agreement on the matters in dispute. Within five (5) days of the request of any party, the requesting party shall attempt to employ the services of a third Person mutually acceptable to the parties to conduct such mediation within twenty-one (21) days of his appointment. If the parties are unable to agree on such third Person, or, if on completion of such mediation, the parties are unable to agree and settle the dispute, the dispute shall be referred to arbitration in accordance with Paragraph 29.4.

29.4 Arbitration. Any dispute between the parties that is to be resolved by arbitration as provided in Paragraph 29.2 shall be settled and decided by arbitration conducted in accordance with the Commercial Arbitration Rules of the American Arbitration Association, as then in effect, except as provided below. Any such arbitration shall be held and conducted in the County

of San Mateo by an arbitrator, who shall be selected by mutual agreement of the parties; if agreement is not reached on the selection of an arbitrator within fifteen (15) days, then Landlord and Tenant shall each choose an arbitrator, each of whom shall agree to select a third arbitrator who would actually arbitrate the dispute between the parties.

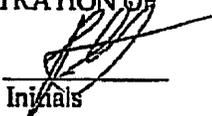
The provisions of the Commercial Arbitration Rules of the American Arbitration Association shall apply and govern such arbitration, subject, however, to the following:

- (a) Any demand for arbitration shall be in writing and must be made within a reasonable time after the claim, dispute or other matter in question has arisen. In no event shall the demand for arbitration be made after the date that institution of legal or equitable proceedings based on such claim, dispute, or other matter would be barred by the applicable statute of limitations.
- (b) The arbitrator or arbitrators appointed must be former or retired judges or "attorneys" with at least ten (10) years experience in real property and commercial matters.
- (c) All proceedings involving the parties shall be reported by a certified shorthand court reporter and written transcripts of the proceedings shall be prepared and made available to the parties.
- (d) The arbitrator or arbitrators shall prepare in writing and provide to the parties factual findings and the reasons on which the decision of the arbitrator or arbitrators is based.
- (e) A final decision by the arbitrator or arbitrators must be made within ninety (90) days from the date the arbitration proceedings are initiated.
- (f) The prevailing party shall be awarded reasonable attorneys fees, expert and non-expert witness costs and expenses, and other costs and expenses incurred in connection with the arbitration, unless the arbitrator or arbitrators for good cause determine otherwise.
- (g) Costs and fees of the arbitrator or arbitrators shall be borne by the non-prevailing party, unless the arbitrator or arbitrators for good cause determine otherwise.
- (h) The award or decision of the arbitrator or arbitrators, which may include equitable relief, shall be final and judgment shall be entered on it in accordance with applicable law in any court having jurisdiction over the matter.

NOTICE: BY INITIALING IN THE SPACE BELOW YOU ARE AGREEING TO HAVE ANY DISPUTE ARISING OUT OF THE MATTERS INCLUDED IN THE "ARBITRATION OF DISPUTES" PROVISION DECIDED BY NEUTRAL ARBITRATION AS PROVIDED BY CALIFORNIA LAW AND YOU ARE GIVING UP ANY RIGHTS YOU MIGHT POSSESS

TO HAVE THE DISPUTE LITIGATED IN A COURT OR JURY TRIAL. BY INITIALING IN THE SPACE BELOW YOU ARE GIVING UP YOUR JUDICIAL RIGHTS TO DISCOVERY AND APPEAL, UNLESS THOSE RIGHTS ARE SPECIFICALLY INCLUDED IN THE "ARBITRATION OF DISPUTES" PROVISION. IF YOU REFUSE TO SUBMIT TO ARBITRATION, AFTER AGREEING TO THIS PROVISION, YOU MAY BE COMPELLED TO ARBITRATE UNDER THE AUTHORITY OF THE CALIFORNIA CODE OF CIVIL PROCEDURE. YOUR AGREEMENT TO THIS ARBITRATION PROVISION IS VOLUNTARY.

WE HAVE READ AND UNDERSTAND THE FOREGOING AND AGREE TO SUBMIT DISPUTES ARISING OUT OF THE MATTERS INCLUDED IN THE ARBITRATION OF DISPUTES PROVISION TO NEUTRAL ARBITRATION.



Initials



Initials



Initials

30. ATTORNEY'S FEES

Tenant shall reimburse Landlord and/or DBW, upon demand, for any reasonable costs or expenses incurred by Landlord and/or DBW in connection with an Event of Default under this Lease, whether or not suit is commenced or judgment entered. Such costs shall include legal fees, costs for experts or other professional services, and costs incurred for the negotiation of a settlement, any enforcement of rights or otherwise. If either party commences an action against the other party arising out of or in connection with this Lease, the prevailing party shall be entitled to have and recover from the losing party reasonable attorney's fees and costs of suit.

Litigation Expenses. If either party hereto brings an action or proceeding (including any cross-complaint or counterclaim) against the other party by reason of a Default, or otherwise arising out of this Lease, the prevailing party in such action or proceeding 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 paragraph 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.

Appeals. Attorneys' fees under this paragraph shall include attorneys' fees and all other reasonable costs and expenses incurred in connection with any appeal.

31. QUIET ENJOYMENT

Upon Tenant's tender of the one-time lump-sum payment due hereunder for Rent, Tenant shall have quiet possession of the Premises for the Lease Term. If, at any time, Landlord's title is disputed, or there is a change of ownership of Landlord's estate by any act of the parties or operation of Law, Tenant may deposit in escrow any monies thereafter due until Tenant is furnished proof satisfactory to it as to the party entitled thereto.

32. RECOGNITION OF LEASE

The parties acknowledge that this Lease is presently subject to certain lien rights of DBW. In the event such lien continues to apply to the Premises after approval of this Lease by DBW, and if DBW succeeds to Landlord's interest in the Premises, Tenant (or its authorized successors and assigns, if any) shall, immediately and without further action by DBW, Tenant or any other party, automatically become the tenant of and attorn to and recognize DBW as the Landlord under this Lease for the time period through November 10, 2026, and DBW shall, immediately and without further action by Landlord or Tenant, automatically become the landlord to and recognize Tenant as the tenant under the Lease, without modification or revision. Notwithstanding that the foregoing provisions of this paragraph are self-operative, upon request of Landlord or DBW, Tenant shall execute and deliver to Landlord and to DBW an attornment agreement in recordable form confirming the foregoing and otherwise in form and substance acceptable to Landlord and DBW. Tenant hereby constitutes and appoints Landlord or its beneficiary as the Tenant's attorney in fact to execute any such instruments of attornment for and on behalf of Tenant. This paragraph shall be self-operative, and no further instrument of attornment need be required by DBW. DBW hereby grants its consent to these provisions by its execution of the Lease. DBW and Tenant hereby recognize the following: (i) that City is the successor in interest to Landlord in the event Landlord dissolves or otherwise discontinues by operation of law or otherwise, (ii) that DBW's position is that it has lien rights when and if City succeeds to Landlord and (iii) that this Article 32 shall continue to apply in the event such lien rights continue.

33. MISCELLANEOUS PROVISIONS

33.1 Time is of the Essence. Time is of the essence with respect to the performance of each Provision of this Lease.

33.2 Only Agreement. This Lease is the entire and only agreement between the Parties, and supersedes any and all other leases, covenants, and agreements between the Parties. This Lease shall not be effective until execution and delivery of the Lease by each of Landlord, Tenant, and City and either written approval or execution and delivery of the Lease by DBW.

33.3 Payments by Tenant. Except as otherwise expressly provided herein, all sums payable by Tenant to Landlord under this Lease shall be paid without notice. All sums payable by Tenant shall be paid by good check in the currency of the United States.

33.4 Status of Parties on Termination of Lease. Except as provided in Paragraph 18, if either Landlord or Tenant elects to Terminate this Lease as provided herein, on the date the Lease terminates the parties shall be released from further liabilities and obligations not accrued as of the date of Termination.

33.5 Exhibits/ Incorporation in Lease. All exhibits referred to in this Lease are attached to this Lease and are incorporated herein by this reference.

33.6 Governing Law. This Lease shall be construed and interpreted in accordance with the Laws of the State of California, and venue for any action relating thereto shall be in San Mateo County.

33.7 Singular and Plural and Gender. When required by the context of this Lease, the singular shall include the plural, the male the female, and vice versa.

33.8 Severability. The unenforceability, invalidity, or illegality of any Provision of this Lease shall not render the other Provisions of this Lease unenforceable, invalid or illegal, and this Lease shall remain in force and effect as if such unenforceable, invalid or illegal Provision had never been a part of this Lease.

33.9 Binding Effect. Each and every Provision, agreement, terms, covenant and condition of this Lease to be performed kept and observed by Landlord and Tenant shall be binding on any party who legally acquires any rights or interest in this Lease from Landlord or Tenant.

33.10 Third Party Beneficiaries. Except as to a third party beneficiary right or power that may be exercised by DBW under the law, there are no third party beneficiaries of this Lease.

33.11 Interpretation. This Lease shall conclusively be presumed to have been drafted jointly by both parties hereto.

33.12 Authority. If any Party has a governing Board of Directors or similar governing body, that party shall deliver to the other Parties upon the execution of this Lease evidence of that Board's or governing body's approval. The Parties certify that the persons executing this Lease have been given such authority by their respective Board or governing body.

33.13 Captions. Captions are included in this Lease for convenience only and do not constitute a part of this Lease.

33.14 Paragraph Headings. The paragraph heading contained herein are for convenience in reference and are not to be used to construe the intent of this Agreement or any part thereof, nor to modify, amplify, or aid in the interpretation or construction of any of the Provisions thereof.

33.15 Successors and Assigns. Subject to the terms of Article 17, the terms, covenants and conditions contained in this Lease shall be binding upon and inure to the benefit of the heirs, successors, executors, administrators and assigns of the parties to this Lease.

33.16 Consents. Wherever the consent of a Party is required under this Lease, such consent shall not be unreasonably withheld, conditioned or delayed.

33.17 Amendments. All amendments to this Lease shall be in writing and executed by each of the parties hereto. All parties agree to provide DBW with reasonable prior notice, which shall be thirty (30) days to the extent possible, of any intended amendment to this Lease. The parties further agree that reasonable prior notice may be significantly shortened in the event of an emergency sufficient to cause an Unavoidable Delay. All parties further acknowledge that DBW must approve any future amendments to this Lease before such amendments become effective.

34. MEMORANDUM OF LEASE

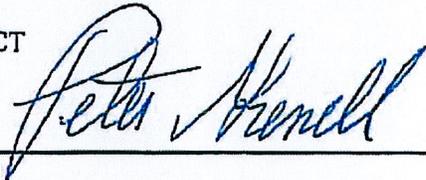
Concurrently with execution of this Lease, the parties shall execute and acknowledge a Memorandum of Lease identifying the Lease to be recorded in San Mateo County. Upon the request of either party, the parties shall execute and acknowledge further Memoranda of any future amendments of this Lease.

The parties hereto ratify, confirm and adopt all of the terms and conditions of the Lease.

IN WITNESS WHEREOF, the Parties have executed this Lease on the day and year first above written.

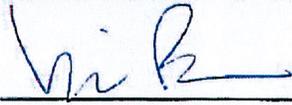
SAN MATEO COUNTY HARBOR DISTRICT

DATED: JUNE 17, 2009

BY: 

SAN FRANCISCO BAY AREA WATER EMERGENCY TRANSPORTATION AUTHORITY

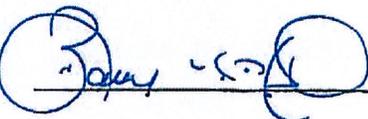
DATED: JUNE 18, 2009

BY: 

Agreed to and approved by:

CITY OF SOUTH SAN FRANCISCO

DATED: JUNE 19, 2009

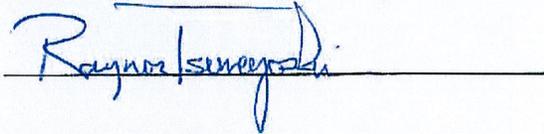
BY: 

CONSENT TO THE TERMS OF THE LEASE IS HEREBY GRANTED:

CALIFORNIA DEPARTMENT OF BOATING AND WATERWAYS

DATED: 6/29/09

BY:



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

**REQUEST FOR PROPOSALS FOR WATER TRANSIT SERVICES
RFP #21-014**

**ATTACHMENT G
South San Francisco Ferry Service Feasibility Study**



Staff Report

DATE: May 25, 2021
TO: Mayor, Vice Mayor, and Councilmembers
FROM: Philip Vitale, Deputy Capital Projects Manager

Report regarding Sea Level Rise at Oyster Point and Expansion of Commuter Ferry Service
(*Philip Vitale, Deputy Capital Projects Manager*)

RECOMMENDATION

It is recommended that the City Council receive an update on efforts to address sea level rise at the Spit at Oyster Point and expand commuter ferry service and provide feedback to City Staff.

I. Introduction

City Staff are engaged in a three-pronged feasibility study examining (1) how best to address Sea Level Rise at the Spit at Oyster Point; (2) possible construction of a ferry terminal building at the Spit; and (3) possible expansion of commuter ferry service to Oyster Point, utilizing the Spit area. This entailed examining engineering approaches to address flooding and seawater inundation of the capped landfill at the Spit, while exploring options to build off the shoring improvement to expand water transportation services and create indoor and outdoor programmable spaces to serve residents, commuters, boaters, users of the Bay Trail and the general public.

The following sections describe the recommended engineering approach to fortify the Spit, potential ferry building designs, North-South transportation routes, ridership potential, and space programming opportunities.

II. Project Description

Located East of 101 in the area known as Oyster Point, the Spit is owned by the City of South San Francisco and includes Harbor Master Road, the Harbor Master's Office and provides access to the Guest Dock and Dock Seven. The Spit itself is adjacent to the Kilroy Oyster Point Development which is currently under construction.



Figure A: Location Map

Site Background:

The Oyster Point Landfill is a closed, unlined Class III landfill regulated by the California Regional Water Quality Control Board, (RWQCB) San Francisco Bay Region under Title 27 of the California Code of Regulations. The landfill operated between 1956 and 1970 and was primarily used for the disposal of solid wastes. Prior to 1956, the existing Oyster Point Landfill area consisted of tidal marshlands and upland bedrock and soils. Waste disposal operations resulted in the extension of the shoreline approximately 3,000 feet to the east of the pre-landfill shoreline. Consistent with landfill practices at that time, no liner was installed at the site. Instead, the waste materials were placed directly onto the Younger Bay Mud and soils overlying bedrock.

Between 1956 and 1970, the City leased the site to the now defunct landfill operator The South San Francisco Scavenger Company (Scavenger). Between 1970 and 1977, the City conducted maintenance activities at the closed landfill. The City operated a marina constructed in 1962 adjacent to a portion of the former landfill. Since 1977, the San Mateo County Harbor District (Harbor District) has operated the municipal marina and a park at the landfill and manages property leases for other facilities under an Operating Agreement with the City. The marina was expanded in 1978.

After landfill operations ceased in 1970, the City and Scavenger conducted various site closure activities. Between 1971 and 1976, the upper surface of the landfill was compacted, and a 2-foot layer of low-permeability soil was placed on top of the compacted fill. Additional remedial measures were constructed between 1979 and 1981, including installation of a 2- to 3-foot thick Bay Mud cap across the site, placement of additional riprap and Bay Mud along the Marina, construction of bentonite-cement trenches between the landfill and the drainage channel and along an approximately 300-foot length of shoreline on the west basin (beach area), and realignment of the drainage channel. In addition, Bay Mud was placed along the southern boundary of the landfill

where leachate seepage had been observed. In 1987, a Bay Mud leachate cutoff trench was constructed along the northern landfill boundary, between the mole and beach area. A gas barrier trench consisting of compacted soil (85%) and chlorinated polyethylene (CPE) liner (20 mils thick) was also installed along the western landfill boundary. On June 21, 2000, the RWQCB issued the City Order No 2000-046 which updated its Waste Discharge Requirements for the landfill to incorporate general provisions for anticipated site development and to bring the landfill into compliance with appropriate portions of Title 27.

The images shown in **Figures B, C, D, and E** show the evolution of the Oyster Point Landfill. The image in **Figure B** shows the initial placement of landfill in 1958 prior to the filling of the Spit. **Figure C** shows the landfill in 1963 and includes the Spit and the new City operated marina facility. The image in **Figure D** is from 1972 and shows the full Oyster Point Landfill after landfilling operations ceased but prior to the closure activities being completed. **Figure E** shows the landfill in 1979 at the completion of major landfill remedial improvements and harbor improvements. Note that the remedial work performed at the Spit in 1979 resulted in a larger footprint of the landfill as compared to the image in 1972.

Figure B

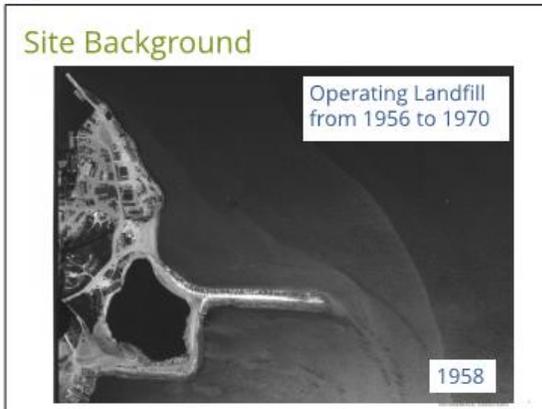


Figure C

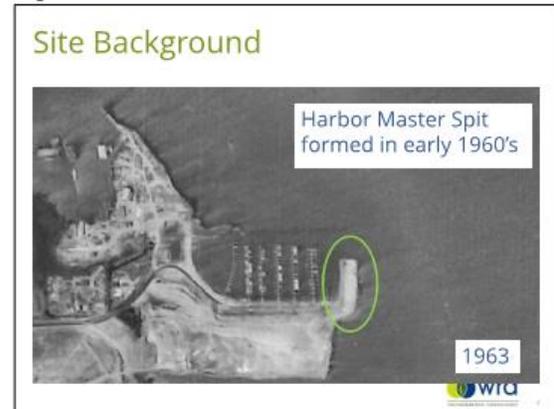


Figure D

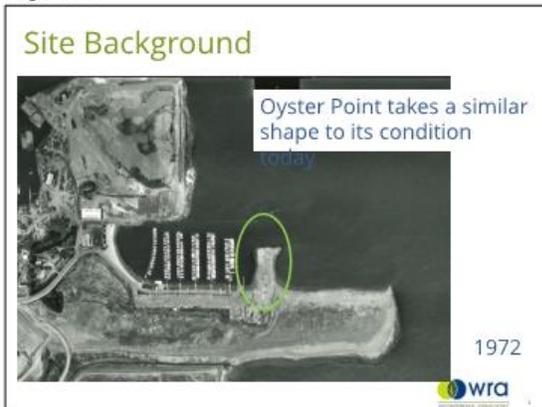


Figure E



Since the remedial landfill improvements were completed in 1979, the refuse and underlying Bay Mud settled in various locations on the Oyster Point landfill. In 2005, the City received a letter from the RWQCB requiring the City to correct a violation of Order No. R2-2000-046 since water was observed ponding on the landfill. Ponding and flooding on a landfill site can impact

groundwater and surface water quality and can potentially cause erosion of the landfill cap which as a result could expose refuse material, create leaching of waste pollutants, and exacerbate settlement of the site. To date, there is no evidence these negative possibilities have occurred, and most of the potential concerns are being corrected as part of the Kilroy Oyster Point Development improvements. However, the Spit area is outside of the boundary of the Kilroy Development.

Typically, several times each year during King tides, portions of the Spit area experiences water overtopping for short periods of time. Future sea level rise projections indicate this may become a more common occurrence. The image shown in **Figure F** was taken during a King tide event.

Figure F



III. Engineering Study

Three options are being considered for resolving the flooding at the Spit as follows:

Option 1: Elevate the Spit to accommodate the predicted Sea Level Rise in the year 2100.

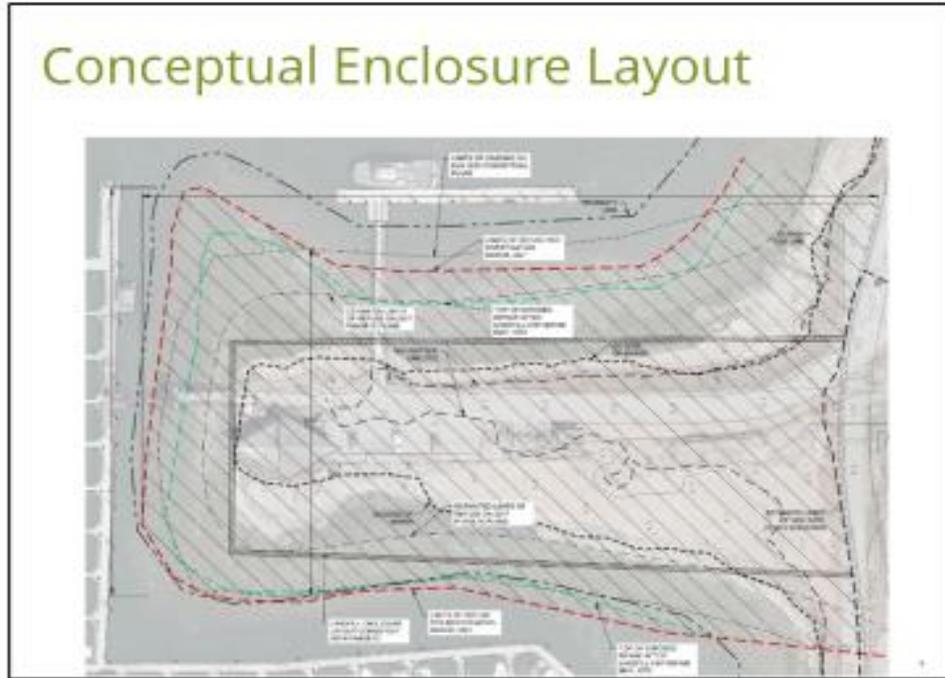
Option 2: Elevate the Spit to accommodate the predicted Sea Level Rise in the year 2050 but provide for adapting to future rise in sea level.

Option 3: Remove all the landfill within Spit and return the area to Bay waters.

Both Option 1 and Option 2 would include the installation of a steel sheet pile retaining wall along the perimeter of the landfill refuse and the import of engineered fill material to raise the grades of the site. Both these options would be designed to accommodate future commercial development

on the Spit. **Figure G** shows a plan view of the Spit and the proposed location of the containment wall.

Figure G



Figures H and I show the cross section of the proposed improvements relative to the tide elevations.

Figure H

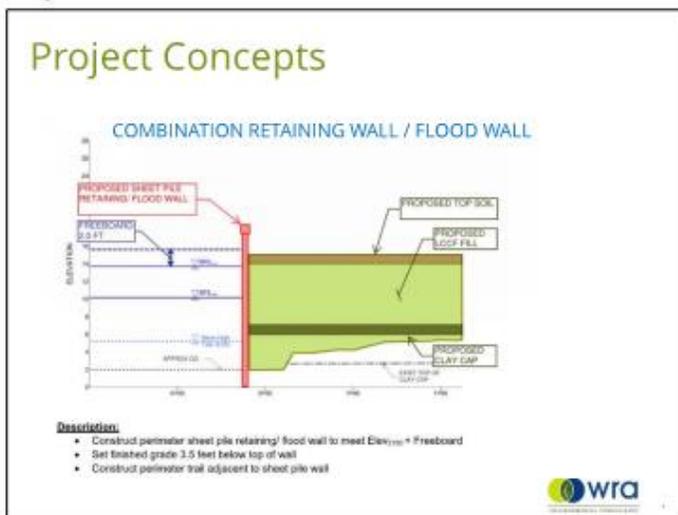
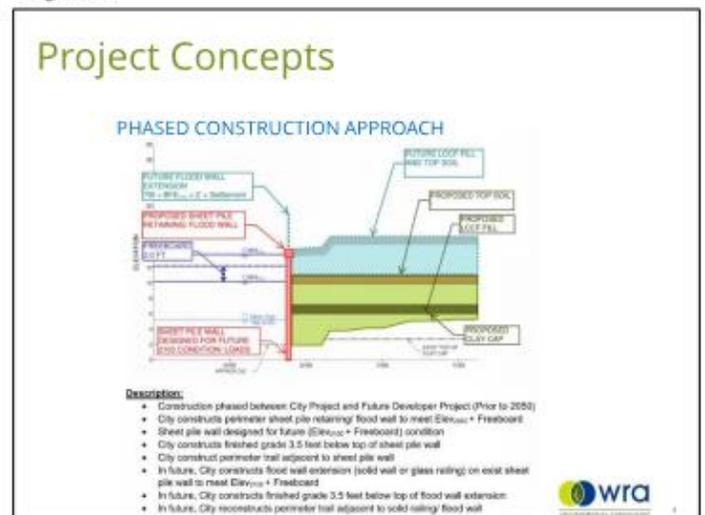


Figure I



Option 3 is complete removal of all soil and refuse from the Spit, returning the area to the Bay. This requires installation of a temporary cofferdam surrounding the perimeter of the Spit to keep the Bay waters from entering the project area during the excavation and disposal of all soil and refuse material encapsulated within the landfill. The refuse material would most likely be disposed of at a Class I RCRA Hazardous Waste landfill. In addition, any landfill leachate water encountered during the excavation would be disposed of as hazardous material. There would also be a significant amount of environmental soil testing needed of the waste material and confirmation samples of the underlying bay mud to verify that all hazardous material is removed before the site is returned to Bay waters.

Pros and Cons of the Various Options:

	Description and Estimated Cost	Pros	Cons
Option 1	Elevate Spit to accommodate the predicted SLR in 2100. Best Case: \$17M Worst Case: \$34M	<ul style="list-style-type: none"> Resolves the long-term flooding and RWQCB violation as one project. Accommodates future development. 	<ul style="list-style-type: none"> More expensive than Option 2 Predictions for SLR in 2100 could change over the next 50 years and require further mitigations.
Option 2	Elevate Spit to accommodate the predicted SLR in 2050 but provide for adapting to future SLR. Best Case: \$15M Worst Case: \$30M	<ul style="list-style-type: none"> Resolves the immediate flooding and RWQCB violation. Less expensive than Option 1 in the short term. Allows more flexibility for adapting design to more accurate SLR predictions. Accommodates future development. 	<ul style="list-style-type: none"> Requires a future project to accommodate SLR projected for 2100. May make more difficult the construction of a ferry terminal
Option 3	Remove landfill contained within the Spit and return the area to Bay waters. Est. Cost: \$45	<ul style="list-style-type: none"> Resolves the RWQCB violation. An environmental improvement to SF Bay. 	<ul style="list-style-type: none"> The highest cost solution. No future development opportunity on the Spit

IV. Future Use of the Fortified Site

With an expanded footprint, the fortified Spit presents the opportunity to serve South San Francisco residents, commuters and visitors through indoor and outdoor spaces for recreation, retail, and entertainment. Working with SB Architects, staff identified programs that complement current Oyster Point activities and users as well as the increased daytime and weekend

population the Kilroy Oyster Point Development is slated to bring to the area. **Figure J**, below, shows the orientation of the site relative to other developments and highlights the directional view of the Bay.

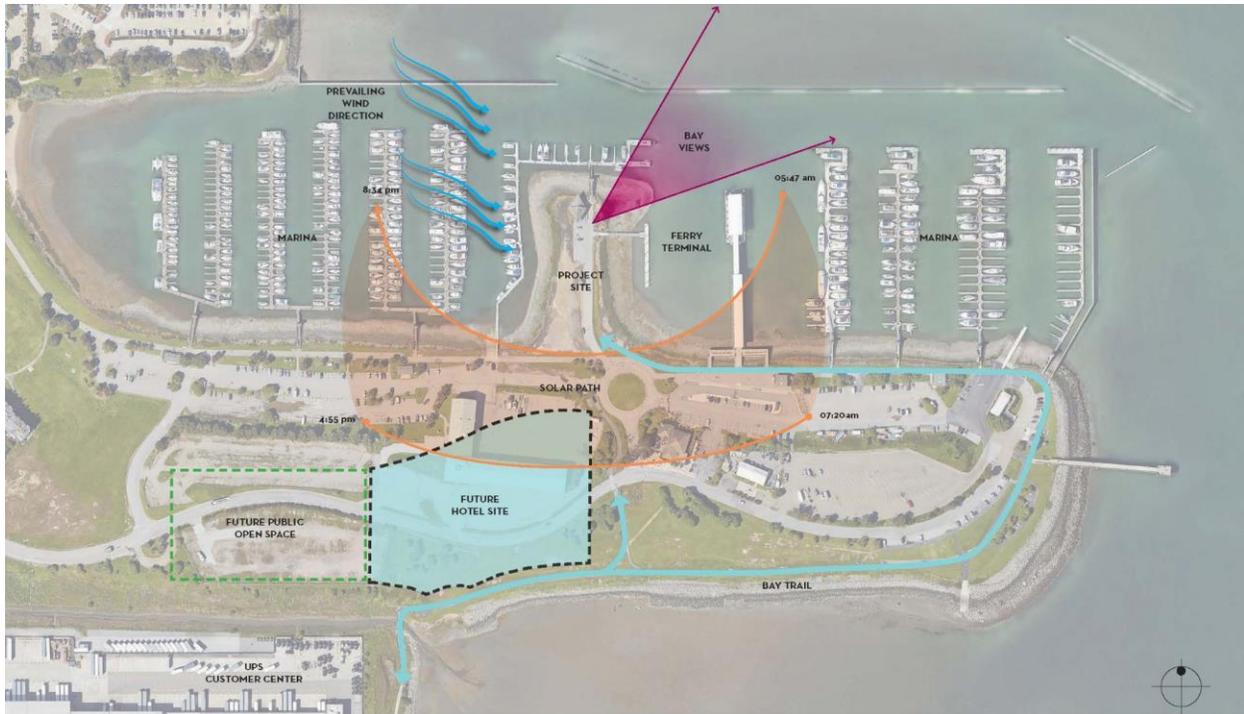


Figure J: Conditions Map

Site Programs & Amenities

Outdoor spaces are proposed to include a perimeter walking path offering breathtaking views along with access to docks for non-motorized boating such as kayaks, canoes and dragon boats. Flexible plaza spaces would offer opportunities for events, performances and markets. First and last mile amenities such as bike and scooter rental could serve commuters as well as offer recreational activities for residents.

Utilizing the existing Guest Dock, the addition of an accessible ramp, ticketing kiosk and shelter for protection from the elements would allow for weekday commuter services to San Francisco Mission Bay and The Ferry Building as well as weekend service to destinations such as The Chase Center and Pier 39.

Building Programs & Amenities

In addition to kiosks that could provide grab & go items such as coffee, pastries and sandwiches, the building structure itself is proposed to include multipurpose rooms for Parks & Recreation to classes and activities as well as rented for events such as weddings, celebrations and conferences with pre-function, catering and storage. Public restrooms would serve users of both indoor and outdoor spaces. A minimal amount of office space could accommodate the Harbor Master and/or Recreation staff.

The building and site design are intended to harmonize with the new structures coming in as part of the beach and waterfront improvements as well as the new Kilroy Developments with a mixture of materials suitable for the marine environment. The building orientation along the west side of the Spit would offer protection from western breezes for the bulk of the outdoor gathering and programmable spaces on the east side of the spit. Use of glass would offer views out to the Bay while creating a transparent and inviting space for visitors.

Engagement

Conceptual direction for Spit fortification and expanded ferry service was presented as an informational item to the City-San Mateo County Harbor District Liaison Committee on December 12, 2020. Additionally, City staff have met with Harbor District staff to ensure close collaboration on plans moving forward. Additional engagement with stakeholders including the Dragon Boat Club, residents living on boats at Oyster Point Marina, businesses, residents, commuters and recreation users of the area would further inform the program opportunities and design.

Precedent imagery along with site and building designs are included as *Attachment A: Site and Architecture Package*.

V. Market Analysis

Increasing Traffic Demand

The East of 101 area (E101) is among the Bay Area's fastest growing employment districts. Home to approximately 28,000 employees, E101 represents an international hub for life science and biotechnology as well as a regional center for industry, logistics, and travel. Over the next two decades, E101 is expected to add over 13 million square feet of mostly office and research & development (R&D) space, roughly doubling its daytime population to over 55,000 employees. Approximately half of this growth is already approved or under construction, while the remainder is expected to be approved and developed in the future.

A significant investment in transportation infrastructure and services is needed to accommodate and realize expected growth. E101's few points of vehicle access constrain travel to a few congested traffic bottlenecks, while transit and active transportation options are limited. The temporary closure of the South Airport Boulevard Bridge in 2018 illustrated the lack of resilience in the transportation system. Moreover, regional forces beyond the City's control – housing affordability, jobs-housing imbalance, and an overburdened freeway system – may increasingly constrict the Area's accessibility and competitiveness.

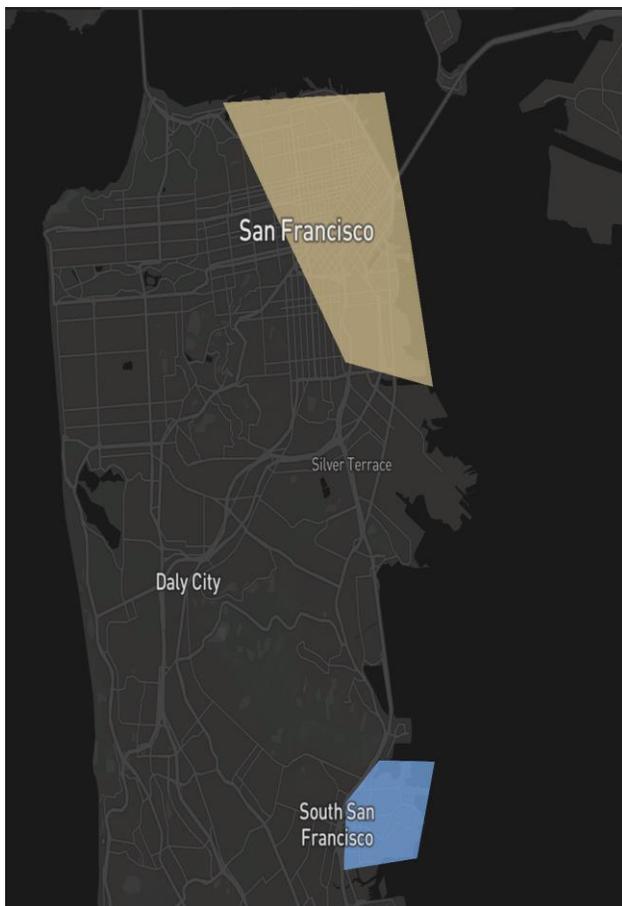
As outlined in the City's E101 Master Traffic Plan, Mobility 2020, the City established transportation commitments in five policy areas including:

1. Expanding Throughput Capacity
2. Maintaining Efficient Street Operations
3. Reducing Vehicle Miles Traveled (VMT)
4. Reducing Drive Alone Mode Share
5. Improve Safety to all street users

These policy objectives are difficult to attain as transportation infrastructure has not kept up with the changing needs and the evolution of the employment base east of Highway 101. Alternative transit modes are needed in order to expand throughput, reduce VMT, and reduce single occupancy vehicles. Ferry service is explored in this report as a possible alternate mode of travel.

Potential Routes & Farebox

New transit alternatives are necessary in order for the area to remain competitive globally. While existing ferry service is provided by WETA, currently only East-West routes are available. The City hired a consultant, Tideline Marine (Tideline), to analyze and study potential routes and ridership between South San Francisco's Oyster Point Marina and popular commuter hubs in San Francisco. Tideline provided an analysis of potential North-South routes beginning with an analysis of ridership and farebox recovery.



Tideline defined the trip origin and destination regions to capture users who lived and worked in close proximity to the ferry landing locations on both ends. The yellow shaded region (figure 1) represents the region in San Francisco used for the data analysis. The blue region represents the South San Francisco region used. Third party data sources modeled average daily trips taken from San Francisco to South San Francisco and from South San Francisco to San Francisco in 2019. Data showed the average number of trips taken per day across different time periods adjusted for seasonality.

Ridership analysis projected increases based on 3% growth year-over-year. The total trips include round trip information from San Francisco to South San Francisco. Ranging from a conservative 5% growth to a robust 20% growth, ferry service has the capacity to grow from a couple of hundred daily passengers in 2021 to over 1,200 daily riders in five years. By Year 2026, at 5% ridership, we anticipate 304 daily riders and at 20% ridership, 1,215 daily riders.

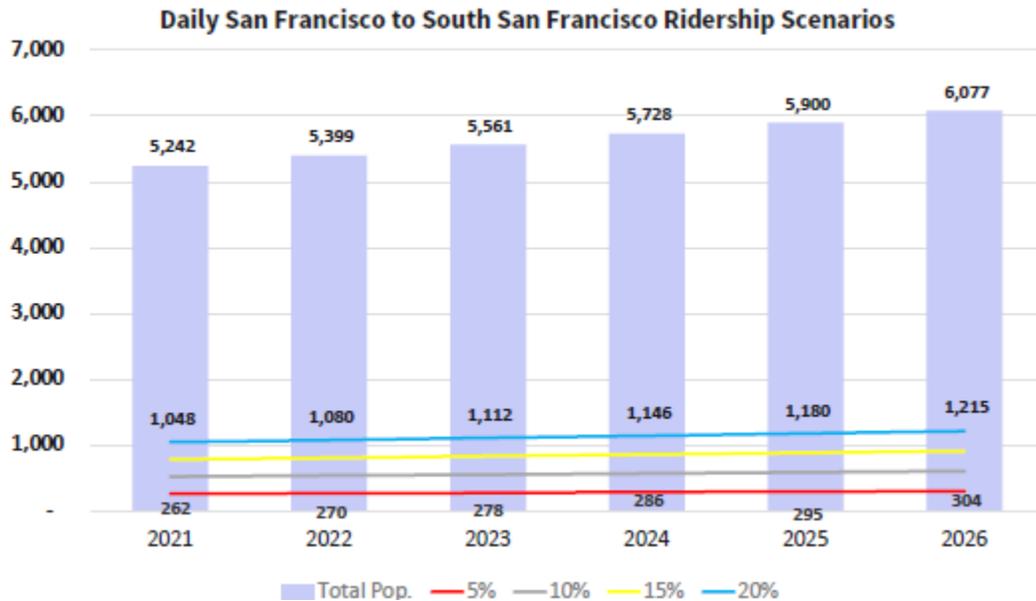


figure 2

Ridership analysis (figure 2) shows that in order to meet the minimum farebox for a breakeven level of service, a ferry operator would have to meet the minimum threshold of 5% ridership utilizing a 50-passenger vessel. In order to breakeven utilizing a 150-passenger vessel, the minimum threshold is 5% of potential riders beginning in 2024. Anything less than the minimum threshold of 5% does not meet the minimum break-even level for service.

Ridership Analysis						
Year	2021	2022	2023	2024	2025	2026
5% passengers	525	540	557	573	590	608
50 passenger vessels	✓	✓	✓	✓	✓	✓
150 passenger vessels	✗	✗	✗	✓	✓	✓

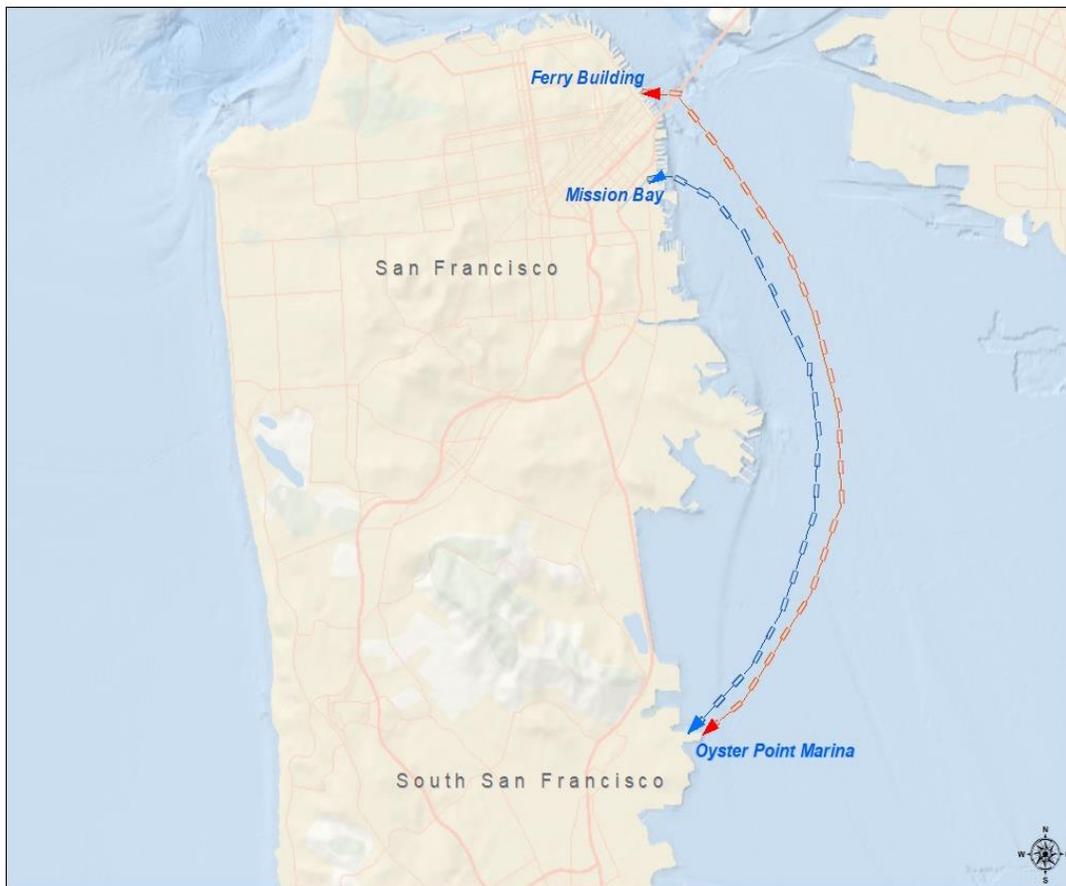
x- farebox does not meet break-even threshold

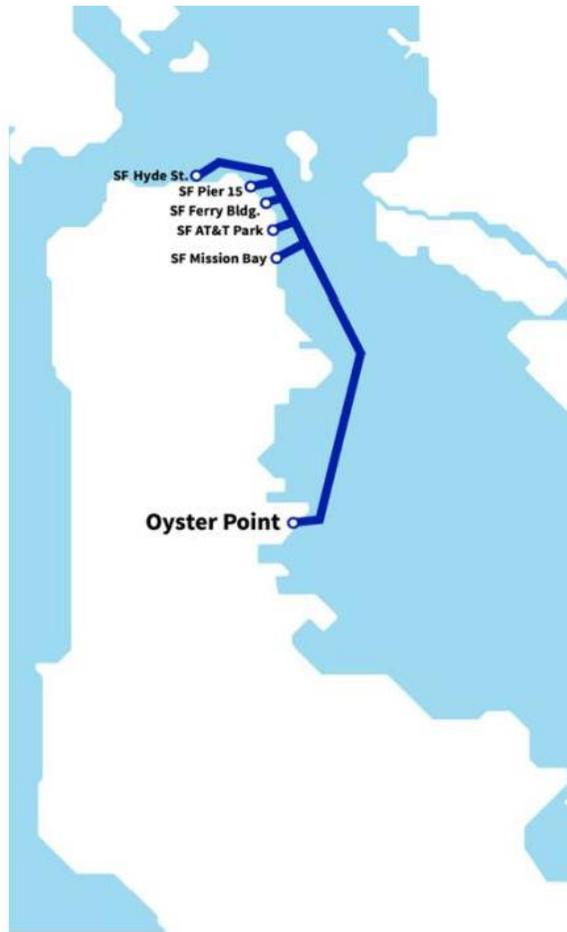
figure 3

Expansion of ferry service remains an attractive alternative to single occupancy automobile commute. Tideline proposed various routes, with a focus on the North-South connection currently

lacking at Oyster Point Marina. Ferry service provides amenities traditionally provided on other modes of transit including WiFi, concessions onboard, and bike storage.

Weekday commuter service from Oyster Point Marina's guest dock (adjacent to the SPIT) to San Francisco's Mission Bay ferry landing and the Ferry Building was analyzed with various vessel sizes and landing options. The Mission Bay ferry landing provides a connection between two life science clusters as well as having the potential for expanded weekend service for events at the adjacent Chase Center. The Ferry Building landing connects South San Francisco commuters to the nearby economic center of San Francisco, the Financial District. Compared to traditional bus transit and auto travel, the ferry service transit time between Oyster Point Marina and Mission Bay/Ferry Building is competitive at 35 minutes. During commute hours, the same trip by car can take up to 50 minutes and traditional bus transit 90 minutes.





Additionally, Tideline explored future weekend service between Oyster Point Marina and other San Francisco ferry landings including Mission Bay, Oracle Park, Ferry Building, Pier 15, and Hyde Street. Expansion of weekend service benefits our residents with convenient transit service to Oracle Park and the Chase Center for live events.

Potential weekend service to all five stops could provide 2 roundtrip trips per day and hold up to 150 passengers. This ferry service would take between 30-90 minutes roundtrip. Comparatively speaking, an automobile trip may take anywhere between 16-50 minutes and traditional transit may take up to 60 minutes.

The weekend ferry service would be ADA accessible, provide concessions onboard, WiFi, bike storage, and restrooms.

Cost for construction of a ferry terminal and associated ferry dock is approximately between \$9 million to \$12 million.

Employee Survey

During the annual Transportation Demand Management program, staff provided employers with an optional ferry service survey to gauge the interest of employees East of 101. In light of the pandemic, the response sample size was limited at 129 responses. Survey questions focused on the likelihood of employees taking a ferry between San Francisco's Ferry Building, Oracle Park, Chase Center, and Berkeley Marina and South San Francisco Oyster Point Marina. Additionally, survey questions requested more information on the employee's arrival and departure times.

The majority of employees responded that they would be more likely to take a direct ferry from the Ferry Building to Oyster Point (47%) over other San Francisco locations (Oracle Park and Chase Center). Interestingly, employees did express a likelihood to take a direct ferry from the Berkeley Marina to Oyster Point.

Eighty-two percent of employees also indicate that the majority of them would arrive between 7am-9am with 3% arriving before 7am and 15% after 9am. Seventy-nine percent of employees would depart from Oyster Point between 4-6pm with 12% departing after 6pm.

This ferry survey supplemented the optional TDM reporting requirement this year. Due to COVID-19, staff did not mandate that employers respond to this survey. Post pandemic, it is staff's hope to procure more data to better understand employee needs going forward.

VI. Financial Plan

Financing the fortification of the Spit and follow-on ferry terminal will require many partners to assist with the cost. Depending upon the option chosen, potential funders may include:

Foundation Work Only

- State and/or Federal Sea Level Rise Grants
- City Funding

Foundation Work and Ferry Terminal/Pier

- Developers
- Biotech / Tech Companies
- SMC Transportation Authority
- State and/or Federal Sea Level Rise Grants
- Transit Grants
- City Funding

VII. Next Steps

Pending direction from City Council, Staff intends to continue required engineering and design work on sea level rise fortification and construction of a ferry terminal with expanded commuter ferry service. This includes engaging with the numerous regulatory agencies, from which permits and guidance are required before construction. All options being considered must be vetted for Regulatory Permits by the US Army Corps of Engineers, BCDC, the RWQCB, and the Department of Fish and Game and will require various biological and other studies as part of the Environmental clearance required under CEQA and NEPA.

Moving forward with the project requires a substantial amount of preliminary engineering to further develop the project alternatives. Direction from the City Council will be needed for the desired Option to pursue with the Regulators but the ultimate decision will be at the discretion of the Regulators and what they will permit to be constructed.

Staff will also engage with potential funding partners to develop a solid financing plan for the needed and desired improvements.

STRATEGIC PLAN

Fortification against Sea Level Rise and expansion of commuter ferry service helps achieve the following goals/objectives of the City's Strategic Plan:

- Priority #2 Quality of Life – Complete preliminary design of spit area sea level rise protection plan, and develop construction funding plan.
- Priority #2 Quality of Life – Progress on design of new ferry building, and develop construction funding plan.

FISCAL IMPACT

Fortification of the Spit may require a substantial investment of funds from various sources, including the City. The proposed fiscal year 2021-2022 Capital Improvement Plan budget includes a request to City Council for \$1,000,000 to continue engineering study and design, moving this project closer to construction.

CONCLUSION

Staff recommends that the City Council receive the update on fortification against Sea Level Rise and expansion of commuter ferry service and provide feedback to Staff as appropriate.

Attachments:

- A: Site and Architecture Package
- B: Presentation

Attachment H Facility Security Plan

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 Vessel Security Officer (VSO) 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.

Security Awareness and Suspicious Activity Reporting

- A) Examples of Suspicious Activities** - Suspicious activities may be any unusual activity or behavior as compared to what is normal for your area and method of operation. What is normal in one area may be out of the ordinary in another. Following are examples of suspicious activities:
- Unknown persons or vessels in the vicinity of bridge piers or supports
 - Out of the ordinary unknown persons, vehicles or vessels attempting to gain access to the property
 - Unusually inquisitive or persistent waterfront photographers
 - Unknown persons requesting company security plans, SOPs or operational details
- B) Security Incident Procedures** – For each MARSEC Level the VSO and vessel security personnel must be able to:
- Respond to security threats or breaches of security and maintain critical interface operations to include:
 - Prohibiting entry into affected area
 - Denying vessel access to all non-essential personnel
 - Securing all non-critical operations
 - Notification of shoreside authorities
 - Evacuation of vessel
 - Implement MARSEC Level 3 throughout the vessel, and
 - Stop cargo handling operations (if applicable)
- C) Suspicious Activity and Security Incident Reporting** – The Coast Guard National Response Center (NRC) has been designated as the clearinghouse for all suspected or actual terrorist attack information in the U.S. domestic marine industry.

❖ INFORM LOCAL AUTHORITIES

❖ CONTRACTOR CONTACT NAME and PHONE NUMBER

- Contractor's Security Officer : _____
- Contractor's Alternate Security Contact: _____

❖ REPORT ALL SUSPICIOUS ACTIVITY TO:
USCG NATIONAL RESPONSE CENTER (NRC)
1-800-424-8802 (24 hours per day)

❖ Local USCG Sector
415 399 3547

❖ Local USCG Search and Rescue
415 399 3547

❖ Department of Homeland Security's National Cyber security
and Communications Integration Center (NCCIC) for cyber
incidents that do not also involve physical or pollution effects.
1-888-282-0870
<https://www.us-cert.gov/forms/report>

❖ Provide a completed copy of Declaration of Security (DoS)
as necessary to WETA's Project Manager, Rachel
Rodriguez at Rodriguez@watertransit.org

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

**REQUEST FOR PROPOSALS FOR WATER TRANSIT SERVICES
RFP #21-014**

**ATTACHMENT I
Declaration of Security Form (DoS)**

DECLARATION OF SECURITY (DoS)

Name of vessel(s)

Name of Facility
(NA if no facility is involved)

Company name, address, and telephone

This DoS is valid from _____ until _____, for the above vessel or vessels and waterfront facility.

ACTIVITY

(Initial blank or check N/A)
VESSEL FACILITY N/A

- | | | | |
|--|-------|-------|-------|
| 1. Communications established between the vessel and waterfront facility. | _____ | _____ | _____ |
| a. Means of raising alarm between vessel and waterfront facility. | _____ | _____ | _____ |
| b. Vessel/waterfront facility report; any noted security non-conformities; notify appropriate government agencies. | _____ | _____ | _____ |
| 2. Verification of increased MARSEC level and implementation of additional protective measures. | _____ | _____ | _____ |
| 3. Establish protocol to deal with acts that threaten either the Vessel and/or the waterfront facility. | _____ | _____ | _____ |
| 4. Establish entity responsible for joint security when applicable. | _____ | _____ | _____ |
| 5. Establish procedures for TWIC verification (as appropriate) | _____ | _____ | _____ |

Vessel Security Officer

Facility Security Officer

Date

Date

SIGNATURE

SIGNATURE

PRINT NAME

PRINT NAME