

Estuary Water Shuttle Pilot Project Agreement

This Estuary Water Shuttle Pilot Project Agreement ("**Agreement**"), dated as of _____, 2024 ("**Effective Date**"), is entered into by and between the City of Alameda ("**City**") and the San Francisco Bay Area Water Emergency Transportation Authority ("**WETA**") (collectively, the "**Parties**" and individually a "**Party**") to define the rights and responsibilities of the Parties in connection with the operation of pilot public water shuttle service in the Oakland Estuary between the cities of Alameda and Oakland.

RECITALS

1. The City is a municipal corporation located in Alameda County, California and duly organized and validly existing under the laws of the State of California with the power to carry on its business as it is now being conducted under the statutes of the State of California and the Charter of the City.
2. WETA is a regional public transit agency tasked with operating and expanding ferry service on the San Francisco Bay and with coordinating the water transit response to regional emergencies. Pursuant to California Government Code Section 66540.7(a), WETA has "the responsibility within the area of its jurisdiction to study, plan, and implement any improvements, expansion, or enhancements of existing or future public transportation ferries and related facilities and services."
3. The Parties, along with the Alameda Transportation Management Association ("**TMA**"), Big Yellow Boat, LLC ("**BYB**"), and a number of other private and public organizations and agencies, are planning to implement a two-year pilot program involving small vessel public water shuttle service in the Oakland Estuary between Alameda and Oakland ("**Project**").
4. The Project includes planning efforts for the public water shuttle operations in the Oakland Estuary between Alameda and Oakland ("**Service**"), leasing an appropriate vessel ("**Vessel**") to be used exclusively for the Service, marketing the Service, maintaining said Vessel, and operating the Service. The Service is a pilot – intended to test and prove a concept of operations that will provide connections between Alameda and Oakland. The City is the recipient of a grant from the Alameda County Transportation Commission ("**Alameda CTC**"), which will partially fund the Project, along with funding from private partners and in-kind staffing contributions, for up to two years of operations.
5. The City worked with WETA, the TMA and BYB to mutually agree on the Vessel that is suitable for the Service, and that will be staffed by WETA's contract operator. The Vessel was purchased and is owned by BYB. BYB will lease the Vessel to City for the Service.
6. WETA and the City now desire to enter into this Agreement to establish the rights and responsibilities of the Parties in connection with the Project.

AGREEMENT

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

1. **Recitals.** The recitals described above are incorporated into and made a part of this Agreement.
2. **Term of Agreement and Termination.** Notwithstanding the Effective Date, the term of this Agreement will commence on August 14, 2023 and will remain in effect through December 31, 2026. Either Party may terminate the Agreement for any reason upon 30 days written notice to the other Party.
3. **City's Rights and Responsibilities.** City's rights and responsibilities in connection with the Project are as follows:
 - a. The City will enter into a separate agreement with BYB to lease the Vessel, which lease will allow the City to provide the Vessel to WETA for the duration of the Project for the exclusive use of the Service. The lease terms with BYB will be coextensive with the term of this Agreement.
 - b. The City will reimburse WETA for its Project-related expenses ("**Project Expenses**") for the Service, which are any expenses necessary for planning and operating the Service (for instance, fuel costs, payments to WETA's contract operator, payments for maintenance of the Vessel for the duration of the Service, incremental insurance costs for the Vessel and Service, and expenses associated with procuring and modifying the Vessel such as travel outside of the Bay Area by WETA and contract operator staff, and contract operator staffing time). Project Expenses do not include WETA staff time, which is being provided in-kind, and estimated to be valued at \$190,000 for purposes of the Alameda CTC grant. The Parties agree to the following method of payment:
 - i. Within seven business days of the Effective Date, the City will provide WETA with a deposit in the amount of \$18,000, being an approximation of WETA's Project Expenses incurred or required to be allocated prior to the commencement of Service.
 - ii. Thirty days prior to the mutually-agreed-upon target start date of Service, the City will provide a second deposit in the amount of \$97,000 for anticipated expenses for the first month of operations.
 - iii. The City will endeavor to reimburse WETA within 30 days of receipt of an acceptable request for reimbursement, per Section 4.b.
 - iv. Upon termination, expenses incurred by WETA in providing the Service will be reimbursed according to the limits of this Agreement. The City will

reimburse all WETA Project Expenses that WETA incurs prior to termination, as well as all costs of its operator necessary to wind down any Service in effect at the time of termination and any other Project Expenses associated with termination that WETA cannot reasonably stop prior to termination.

c. City Dock:

- i. The City will allow WETA to use the 10' x 200' floating concrete dock at Bohol Circle Immigrant Park located at the foot of Fifth Street (part of APN 74-1373-2-1) ("City Dock"), as depicted in Exhibit A, which the City owns and maintains, for the Service. The City Dock provides public access areas to accommodate transient recreational boats and kayaks and an approximately 88' long shuttle launch platform to accommodate boarding access to a small vessel, and is accessed by a single gangway.
 - ii. The City also owns and maintains the landside promenade at the water's edge next to the City Dock. Water shuttle passengers will wait in a designated waiting area, to be approved by the San Francisco Bay Conservation and Development Commission ("BCDC"), to prevent blocking the Bay Trail, the gangways, and the docks, and will utilize the gangway to access the shuttle launch platform, where passengers will enter and exit the Vessel.
 - iii. The City Dock will continue to accommodate transient recreational boats and kayaks, even during operation of the Service, as those uses will be separated, utilizing different sides of the floats.
 - iv. Overnight layberthing of the Vessel will not be permitted at the City Dock.
 - v. The City will maintain the City Dock, including the water shuttle launch platform, the gangway connecting the dock to the landside, and other ancillary improvements including signage and handrails, and a passenger waiting area along the promenade at the water's edge.
 - vi. The City shall post a limited amount of temporary signage, in compliance with the anticipated BCDC permit, to help control the operations in a manner that does not unduly interfere with reasonable access to the shuttle launch platform and public use of adjacent public access areas.
- d. With coordination support from WETA, as necessary, the City will obtain permission from the Port of Oakland or its representative that is necessary to allow WETA exclusive use of the necessary space on the public dock at the foot of Broadway for Service
- e. City will coordinate with BYB to secure a berthing location for the Vessel prior to the start of Service. WETA will coordinate with the City on finding a berthing location, once the Vessel is service-ready, but before the Service begins.
- f. The City shall obtain and maintain all appropriate and/or necessary permits or authorization from BCDC to operate the Service, including those that are consistent with the authorization and requirements of the Alameda Landing; BCDC Permit No. 2018.004.00; Special Condition II.B.4.d – "Dock and Kayak Launch."

- g. The City will lead the marketing and customer outreach efforts associated with the Project, in collaboration with WETA and other stakeholders. The City will develop the project logo, develop and purchase all necessary signage for the Project, post signage at the City Dock, and provide signage to other dock owners to post. The City will have marketing materials printed and develop on-line schedules, flyers, and all other marketing materials. The City will develop and maintain the project web page. The City will provide WETA with copies of all such materials and links, and WETA will market the Service to its customers and on its web pages.
 - h. The City may suspend the Service in the event of an emergency or natural disaster. In such an event, the City will provide WETA with immediate notice as appropriate under the circumstances.
4. **WETA's Rights and Responsibilities.** WETA's rights and responsibilities in connection with the Project are as follows:
- a. Beginning on a date determined by WETA in consultation with City, WETA will provide the Service, utilizing the Vessel. There are no back-up vessels available for the Service. The core Service will be from the public dock located at the foot of Broadway in Oakland to the City Dock at the foot of Fifth Street in Alameda. Other locations, including at a private dock, may be incorporated into the Service if the Parties agree. In operating the Service, WETA will provide the following:
 - i. Daily crewing and operation of the Vessel.
 - ii. Regular scheduled maintenance of the Vessel, as described in subsection k.vi. below.
 - iii. Administrative functions related to scheduling, budgeting, customer service, passenger communication, and data collection.
 - iv. Arrange for the overnight berthing of the Vessel, anticipated to be provided at no cost with the assistance of CIM Group, the property management firm for Jack London Square. WETA shall prohibit any third-party water shuttle/boat operator from overnight or permanent layberthing of the water shuttle vessel at the City Dock.
 - b. WETA will invoice the City monthly, by the 15th of each month, beginning the month after Service commences, with a request for reimbursement in arrears for WETA's Project Expenses associated with the previous calendar month. WETA may include in the first invoice those expenses incurred prior to Service that are greater than the City's \$18,000 deposit, or in the alternative, will apply any remaining funds in the City's deposit to the first invoice. WETA will work with the City to ensure it has the documents needed to submit complete requests for reimbursement from the funding agency, Alameda CTC, including:
 - i. A listing of all expenses incurred and supporting documentation, including copies of invoices from vendors, consultants, or contractors.
 - ii. Documentation of its staff time expended on the project for the entire Agreement period, in order to verify its in-kind contributions.

- c. WETA shall obtain and maintain during the term of this Agreement, all appropriate permits, certificates and licenses, with the exception of those required by BCDC, that are required for the Service.
- d. WETA will determine, in consultation with the City and other stakeholders and within the available budget, the service levels and schedule appropriate for the Service. Initially, the Parties intend that the schedule and service plan will be as set forth in Exhibit B. While the Service is underway, WETA may make minor schedule and service level changes with notice to the City. Any material schedule or service level changes will be made in consultation with the City.
- e. WETA will operate the Service in a manner that is consistent with the standard of care with which WETA operates other Bay Area ferry services.
- f. WETA will operate the Service such that it is publicly accessible and ADA accessible, and will not charge fares for the Service.
- g. WETA may suspend or cancel Service for any reason, for instance due to weather, or in the event of an emergency, or if the Vessel or crew is unavailable. In such an event, WETA will provide City with prompt notice as appropriate under the circumstances.
- h. WETA will support the City's marketing and customer outreach efforts through WETA's social media and web site. WETA and the City will meet to collaborate on such efforts.
- i. WETA will count the numbers of riders and bicycles at each stop of the Service, and hand out customer surveys, as developed by City. WETA will provide ridership data to the City on a weekly basis for the first three months of service, and monthly, with invoices, after that.
- j. WETA will cooperate with the City to ensure compliance with all provisions in the Alameda CTC Funding Agreement (Agreement No. A23-0030) that are relevant to Service operations, and provide any necessary documentation, as requested and as feasible.
- k. Vessel:
 - i. WETA agrees to use the Vessel, owned by BYB and leased to the City solely for purpose of the Service.
 - ii. WETA will store and utilize, as needed, any Vessel spare parts, including a spare motor, to keep the Service in operation.
 - iii. Before Service begins, WETA will advise on what modifications are needed to make the Vessel service-ready, and their estimated cost.
 - iv. WETA will coordinate and advise on which vendor(s) to use to make the Vessel modifications, including those needed to meet all United States Coast

Guard (USCG) certification requirements, and will provide construction management services for all of the vendor's work at no cost to the City.

- v. WETA will coordinate and lead the process of applying for the required permissions and certifications from the USCG. If for any reason, the Vessel does not meet USCG requirements, any Party may terminate the Agreement as set forth in Section 2. WETA will also serve as the lead in arranging for any required permissions from the California Air Resources Board.
- vi. WETA will take all reasonable steps to care for and to maintain the Vessel to industry standards, and will perform regular maintenance on the Vessel, using best practice standards. Regular maintenance shall include up to eight (8) hours a week of engine maintenance and up to eight (8) hours a week of routine maintenance.
- vii. Maintenance will be reimbursed on a time and materials basis. For fiscal year 2023-2024, the hourly engineering labor rate is \$73.78. This rate may be adjusted each fiscal year in accordance with applicable union Memorandums of Understanding.
- viii. Should any damage occur to the Vessel, the parties will cooperate in filing insurance claims as applicable. In accordance with sub-paragraph ix, below, the parties will meet and confer as to the ultimate responsibility for any costs not covered by insurance based on principles of comparative fault.
- ix. In the event WETA determines that the Vessel requires unscheduled maintenance or any repairs or other modifications that are estimated to cost less than \$2,000, WETA will arrange for such repairs or modifications and will provide all construction management services associated with such maintenance, repairs, or modifications. In the event WETA determines that the Vessel requires unscheduled maintenance or any repairs or other modifications that are estimated to cost \$2,000 or greater, the Parties and BYB, or its authorized representative, will meet and confer to agree on whether to perform the needed maintenance, repairs, or modifications, and how such costs will be shared, based on principles of comparative fault, or whether to cancel the Service and terminate this Agreement. Unscheduled maintenance and repairs or modifications performed in accordance with this paragraph are Project Expenses eligible for reimbursement by the City.

I. Safety:

- i. As between WETA and the City, and subject to the provisions of Section 6, Indemnification, WETA will be solely and completely responsible for the safety of all persons and property during performance of the Service. This requirement will apply continuously and not be limited to normal working hours.
- ii. WETA will comply with and will require any third-party water shuttle/boat operator to comply with all safety provisions in conformance with U.S. Department of Labor Occupational Safety and Health Act, any equivalent state law, and all other applicable federal, state, county and local laws, ordinances, and codes.

- iii. WETA will submit written reports, using their standard forms, of all incidents and notify the City promptly, ordinarily within 24 hours of any incident of death, serious personal injury or substantial property damage that occurs in connection with the performance of this Agreement. This report shall include, as attachments, the name and address of WETA's liability insurance carrier and a police report, if available. Such reports will also be provided with each monthly invoice.
5. **Insurance.** From the date that the Vessel is first moved from the boatyard in Richmond, California to the berthing location at the Jack London Square Marina, through the Term of this Agreement, WETA shall obtain, or arrange to obtain, and thereafter maintain or cause to be maintained, the following property and liability insurance, the incremental cost of which shall be considered a Project Expense:
- a. **Property and Liability Insurance**
 - i. **Required Types and Amounts of Insurance.**
 - 1. **Property Insurance.** Property insurance on all of WETA's personal property, improvements and alterations, in, on, or about the Project, property insurance on an all risk form, excluding earthquake and flood, to the extent of full replacement value. The proceeds from any such policy shall be used by WETA for the replacement of WETA's personal property.
 - 2. **Commercial General Liability Insurance.** 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 operations, blanket contractual liability (to the extent possible under the above-referenced policy form or under a separate policy form), 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 Five Million Dollars (\$5,000,000) per occurrence and annual aggregate, and Ten Million Dollars (\$10,000,000) products and completed operations aggregate, and deleting any exclusions for care, custody and control of real property or damage to the vessel. 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.
 - 3. **Workers' Compensation Insurance.** Worker's compensation insurance as required by law, U.S. Longshore and Harborworker's Act Insurance and Jones Act insurance with employer's liability limit not less than One Million Dollars (\$1,000,000) for each accident, on employees eligible for each. WETA'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 \$1,000,000.00. In the event WETA is self-insured, it shall furnish Certificate of Permission to Self-Insure signed by Department of Industrial Relations, Administration of Self Insurance, Sacramento, California.

4. Business Automobile Insurance. Business automobile liability insurance covering all owned, non-owned or hired motor vehicles (including electric carts) to be used by WETA and its agents in connection with WETA's obligations under the Project, affording protection for bodily injury (including death) and property damage in the form of Combined Single Limit Bodily Injury and Property Damage policy with limits of not less than Two Million Dollars (\$2,000,000) per accident and annual aggregate.
5. Protection and Indemnity Liability. Protection and Indemnity Liability Insurance acceptable to City, with limits not less than Five Million Dollars (\$5,000,000) per each occurrence, including coverages for owned and non-owned watercraft.
6. Vessel Pollution Liability. Vessel Pollution Liability Insurance with combined single limit of Five Million Dollars (\$5,000,000.00) each claim, Five Million Dollars (\$5,000,000.00) aggregate, and with coverage to include legal liability arising from the sudden and accidental release of pollutants, and no less than a one-year extended reporting period.
7. Hull and Machinery Protection. Hull and Machinery Protection in a form and with limit of market value of the Vessel.
8. Bumbershoot; Umbrella; Excess Insurance with policy limits of no less than Five Million Dollars (\$5,000,000).

ii. General Requirements.

1. Except as provided differently herein, 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;
2. As to property insurance required hereunder, such insurance will name WETA as the first named insured, and will name the City, the Alameda County Transportation Commission, TMA and BYB as an insured as their interests may appear.

3. As to commercial general liability, automobile liability, protection and indemnity liability, vessel pollution liability, and umbrella or excess liability insurance, such insurance will name as additional insureds by written endorsement: "CITY OF ALAMEDA ITS COUNCIL MEMBERS, BOARD AND COMMISSION MEMBERS, COMMITTEE MEMBERS, OFFICERS, AGENTS, VOLUNTEERS AND EMPLOYEES" and "ALAMEDA COUNTY TRANSPORTATION COMMISSION, ITS GOVERNING BODY, OFFICERS, EMPLOYEES AND CONSULTANTS" and "BIG YELLOW BOAT, LLC, ITS GOVERNING BODY, OFFICERS, AGENTS, EMPLOYEES AND CONSULTANTS" and "ALAMEDA TRANSPORTATION MANAGEMENT ASSOCIATION, ITS GOVERNING BODY, OFFICERS, AGENTS, EMPLOYEES AND CONSULTANTS." The Additional Insured Endorsement for commercial general liability insurance shall include primary and non-contributory coverage at least as broad as the CG 2010.
4. 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 City;
5. As to commercial general liability, automobile liability insurance, protection and indemnity liability, and vessel pollution liability, 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. Such insurance is not additional to or contributing with any other insurance carried by or for the benefit of the City.
6. As to commercial general liability, automobile, worker's compensation, protection and indemnity liability, vessel pollution, 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;
7. All insurance will be subject to the approval of City, which approval will be limited to whether or not such insurance meets the terms of this Agreement;
8. If any of the policies of liability required hereunder is provided under a claims-made form of policy, WETA will maintain such coverage continuously throughout the Term, and following the

expiration or earlier termination of the Term, WETA will maintain, or require to be maintained, such coverage without lapse for a period of five (5) years beyond the expiration or earlier termination of this Agreement.

- iii. Certificates of Insurance; Right of City to Maintain Insurance. WETA will furnish City certificates with respect to the policies required and additional insured endorsements in form satisfactory to City, (i) on or prior to the date when the Vessel is first moved from the boatyard in Richmond, California, to the berthing location at the Jack London Square Marina, (ii) for such policies required to be carried such 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 City's request, WETA also will provide City with copies of each such policy, or will otherwise make such policy available to City for its review. If at any time WETA fails to maintain the insurance required, or fails to deliver certificates and/or endorsements as required pursuant to this section then, upon ten (10) days' written notice to WETA, City may obtain and cause to be maintained in effect such insurance by taking out policies with companies satisfactory to City. Within ten (10) days following demand, WETA will reimburse City for all amounts so paid by City, together with all costs and expenses in connection therewith and interest thereon at the Default Rate.

- iv. Insurance by Others. To the extent WETA maintains, utilizes or contracts with contractors, subcontractors or others in connection with their use or occupancy of, or their activities in, on, under, or in connection with the Project, WETA will require that their insurance policies be endorsed to include the CITY OF ALAMEDA ITS COUNCIL MEMBERS, BOARD AND COMMISSION MEMBERS, COMMITTEE MEMBERS, OFFICERS, AGENTS, VOLUNTEERS AND EMPLOYEES as additional insureds, as well as ALAMEDA COUNTY TRANSPORTATION COMMISSION, ITS GOVERNING BODY, OFFICERS, EMPLOYEES AND CONSULTANTS, and BIG YELLOW BOAT, LLC, ITS GOVERNING BODY, OFFICERS, AGENTS, EMPLOYEES AND CONSULTANTS and ALAMEDA TRANSPORTATION MANAGEMENT ASSOCIATION, ITS GOVERNING BODY, OFFICERS, AGENTS EMPLOYEES AND CONSULTANTS. Notwithstanding the foregoing, WETA will require all agents, contractors and sub-contractors performing work in, on, under, or in connection with the Project to carry the following coverages: (i) commercial general liability with limits of not less than Two Million Dollars (\$2,000,000) per occurrence and Four Million Dollars (\$4,000,000) 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 in connection with the Project, (iv) automobile insurance in an amount not less than \$2,000,000 combined single limit covering use of owned, non-owned or hired vehicles utilized in

the performance of work in, on, under, or in connection with the Project, and (v) Contractors' Pollution Legal Liability (if project involves environmental hazards) with limits no less than \$2,000,000 per occurrence or claim, and \$4,000,000 policy aggregate.

- v. SUFFICIENCY OF INSURANCE: The insurance limits required by the City are not represented as being sufficient to protect WETA. WETA is advised to consult WETA's insurance broker to determine adequate coverage for WETA. The coverage and limits shall be (1) the minimum coverage and limits specified in this Agreement; or (2) the broader coverage and maximum limits of the coverage carried by or available to WETA; whichever is greater.
- vi. EXCESS OR UMBRELLA LIABILITY: If any Excess or Umbrella Liability policies are used to meet the limits of liability required by this Agreement, then said policies shall be true "following form" of the underlying policy coverage, terms, conditions, and provisions and shall meet all of the insurance requirements stated in this Agreement, including but not limited to, the additional insured, SIR, and primary insurance requirements stated therein. No insurance policies maintained by the indemnified parties or Additional Insureds, whether primary or excess, and which also apply to a loss covered hereunder, shall be called upon to contribute to a loss until all the primary and excess liability policies carried by or available to the WETA are exhausted.

6. **Indemnity.**

- a. Except to the extent caused, or alleged to have been caused, by City's negligence or willful misconduct, WETA will indemnify, defend (with counsel reasonably acceptable to City) and hold harmless City, its Council members, Board and Commission members, committee members, officers, agents, volunteers and employees ("**City Indemnitees**") from any and all claims, liability, costs, penalties, fines, damages, injuries, judgments, forfeitures, losses or expenses (including without limitation attorneys' fees, consultant fees, testing and investigation fees, expert fees and court costs) to the extent arising out of, or in any way related to, or resulting directly or indirectly from WETA's actions in furtherance of the Project, including performance of its obligations under this Agreement.
- b. Except to the extent caused, or alleged to have been caused, by WETA's negligence or willful misconduct, City will indemnify, defend (with counsel reasonably acceptable to WETA) and hold harmless WETA, its Board members, directors, officers, agents and employees ("**WETA Indemnitees**") from any and all claims, liability, costs, penalties, fines, damages, injuries, judgments, forfeitures, losses or expenses (including without limitation attorneys' fees, consultant fees, testing and investigation fees, expert fees and court costs) to the extent arising out of, or in any way related to, or resulting directly or indirectly from City's actions in furtherance of the Project, including performance of its obligations under this Agreement.

- c. The indemnification of each Party to the other will expressly survive the termination or expiration of this Agreement.
7. **Assignment.** Neither Party may assign any of its rights nor transfer any of its obligations under this Agreement without the other Party's prior written consent.
8. **Compliance with All Applicable Laws.** The Parties agree to comply with all applicable local, state, and federal laws.
9. **Waiver.** No waiver by WETA or City of a breach of any of the terms, covenants, or conditions of this Agreement by the other Party will be construed or held to be a waiver of any succeeding or preceding breach of the same or any other term, covenant or condition herein contained. No waiver of any default by WETA or City will be implied from any omission by the other Party to take any action on account of such default if such default persists or is repeated, and no express waiver will affect a default other than as specified in such waiver. The consent or approval by WETA or City to or of any act by the other Party requiring the consent or approval of the first Party will not be deemed to waive or render unnecessary such Party's consent or approval to or of any subsequent similar acts by the other Party.
10. **Limitation of Damages.** Neither WETA nor City will have any liability to the other for business interruption, punitive, speculative or consequential damages as a result of default or termination of this Agreement.
11. **Costs and Attorneys' Fees.** In any litigation, including administrative proceedings, relating to this Agreement, including but not limited to any action or suit by any party, assignee or beneficiary against any other party, beneficiary or assignee, to enforce, interpret, seek relief from any provision or obligation arising out of this Agreement, regardless of whether such action or proceeding is prosecuted to judgment, and in addition to any other remedy, the parties and litigants shall bear their own attorneys' fees and costs. No party or litigant shall be entitled to recover any attorneys' fees or costs from any other party or litigant, regardless of which party or litigant might prevail.
12. **Notices.** All notices and communications related to this Agreement deemed by either Party to be necessary or desirable must be in writing and may be given by e-mail, or mail, personal delivery, or nationally recognized overnight courier to a representative of the Parties addressed as follows:

To WETA: Attention: Seamus Murphy
 San Francisco Bay Area Water Emergency Transportation
 Authority
 Pier 9, Suite 111
 San Francisco, CA 94111
 Email: murphy@watertransit.org

To City: Attention: Jennifer Ott

City of Alameda
2263 Santa Clara Avenue
Alameda, CA 94501
Email: jott@alamedaca.gov

Additional Copy to: Attention: City Attorney
City of Alameda
2263 Santa Clara Avenue, Room 280
Alameda, CA 94501
Email: cityattorney@alamedacityattorney.org

Additional Copy to: Attention: Lucy Gigli, TDM Manager
Alameda Transportation Management Association
950 West Mall Square, Suite 239
Alameda CA 94501
Email: info@alamedatma.org

The address to which mailings may be made may be changed from time to time by written notice mailed as described above. Any notice given by mail shall be deemed given on the day after that on which it is deposited in the United States Mail as provided above.


13. **Dispute Resolution.** The Parties agree that any dispute arising from this Agreement that is not resolved within thirty (30) business days by the Parties' representatives responsible for the administration of this Agreement will be set forth in writing by each Party and delivered to the attention of both WETA's Executive Director ("ED") and the City Manager for resolution. In the event resolution cannot be reached by the ED and the City Manager, the Parties agree to meet and confer to discuss the appropriate method of resolution. The Parties may agree to an alternative dispute resolution process, including mediation and/or arbitration.
14. **Amendments.** Except as otherwise provided herein, this Agreement may be amended or modified only by a written instrument executed by City and WETA.
15. **Governing Law.** This Agreement will be governed by and construed in accordance with the laws of the State of California. Venue will be in the State Superior Court in Alameda County.
16. **Severability.** If any phrase, clause, sentence, paragraph, section, article, or other portion of this Agreement becomes illegal, null or void or against public policy, for any reason, or is held by any court of competent jurisdiction to be illegal, null or void or against public policy, the remaining portions of this Agreement will not be affected thereby and will remain in force and effect to the fullest extent permissible by law.

17. **Counterparts.** This Agreement may be executed in any number of counterparts, each of which will be deemed an original, and all of which counterparts together will constitute one agreement.

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IN WITNESS WHEREOF, the Parties have signed this Agreement as of the date first set forth above.

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

By: 
Seamus Murphy, Executive Director

Date: 31/01/2024

Approved as to form:

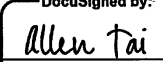
Steven Miller
Attorney for WETA

CITY OF ALAMEDA

By: _____
Jennifer Ott, City Manager

Date: _____

Recommended for approval:

By: 
Allen Tai, Planning, Building and Transportation Director

Approved as to form:

By: 
Michael Roush, Special Counsel

0-1352825

Exhibit B:**Oakland Estuary Water Shuttle Service and Schedule**

At launch, it is anticipated that the Service will be:

-- five (5) days per week;

-- for approximately eight (8) months of each year (March to October), there will be full day service (approximately 12 hours of service per day); and

-- for approximately four (4) months (November to February), there will be shorter day service (approximately 6.5 hours of service per day).

The initial service and schedules will be further refined before the Service launches.

Below is a sample of a Full Day Schedule.

Trip	Departure Location	Arrival Location	Departure Time	Arrival Time
1	Oakland	Alameda	6:30	6:40
2	Alameda	Oakland	6:45	6:55
3	Oakland	Alameda	7:00	7:10
4	Alameda	Oakland	7:15	7:25
5	Oakland	Alameda	7:30	7:40
6	Alameda	Oakland	7:45	7:55
7	Oakland	Alameda	8:00	8:10
8	Alameda	Oakland	8:15	8:25
9	Oakland	Alameda	8:30	8:40
10	Alameda	Oakland	8:45	8:55
11	Oakland	Alameda	9:00	9:10
12	Alameda	Oakland	9:15	9:25
13	Oakland	Alameda	9:30	9:40
14	Alameda	Oakland	9:45	9:55
	Crew Lunch		10:00	10:30
15	Oakland	Alameda	10:35	10:45
16	Alameda	Oakland	10:50	11:00
17	Oakland	Alameda	11:05	11:15
18	Alameda	Oakland	11:20	11:30
19	Oakland	Alameda	11:35	11:45
20	Alameda	Oakland	11:50	12:00
21	Oakland	Alameda	12:05	12:15
22	Alameda	Oakland	12:20	12:30
23	Oakland	Alameda	12:35	12:45
24	Alameda	Oakland	12:50	13:00

25	Oakland	Alameda	13:05	13:15
26	Alameda	Oakland	13:20	13:30
	Crew Change		13:35	14:05
27	Oakland	Alameda	14:10	14:20
28	Alameda	Oakland	14:25	14:35
29	Oakland	Alameda	14:40	14:50
30	Alameda	Oakland	14:55	15:05
31	Oakland	Alameda	15:10	15:20
32	Alameda	Oakland	15:25	15:35
33	Oakland	Alameda	15:40	15:50
34	Alameda	Oakland	15:55	16:05
35	Oakland	Alameda	16:10	16:20
36	Alameda	Oakland	16:25	16:35
37	Oakland	Alameda	16:40	16:50
38	Alameda	Oakland	16:55	17:05
39	Oakland	Alameda	17:10	17:20
40	Alameda	Oakland	17:25	17:35
	Crew Lunch		17:40	18:10
41	Oakland	Alameda	18:15	18:25
42	Alameda	Oakland	18:30	18:40
43	Oakland	Alameda	18:45	18:55
44	Alameda	Oakland	19:00	19:10
45	Oakland	Alameda	19:15	19:25
46	Alameda	Oakland	19:30	19:40
47	Oakland	Alameda	19:45	19:55
48	Alameda	Oakland	20:00	20:10
49	Oakland	Alameda	20:15	20:25
50	Alameda	Oakland	20:30	20:40
	Vessel Berthing, Fueling		20:45	21:30






WETA-City Estuary Pilot Service Agreement_Final_v2_rollup

Final Audit Report

2024-01-23

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