

LEASE AGREEMENT

This Lease Agreement (“Agreement”) is entered into as of this ___ day of _____, 2024 (“Effective Date”), between Big Yellow Boat, LLC (“BYB” or “Lessor”) and the City of Alameda, a municipal corporation (“City” or “Lessee”) (collectively, the “Parties” and individually a “Party”) to define the rights and responsibilities of the Parties in connection with the leasing of a vessel to be used for the pilot public water shuttle operations 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. **BYB** is a limited liability company formed to acquire and own a vessel which will be used to operate the Estuary Water Shuttle.
3. The Parties, along with the San Francisco Bay Area Water Emergency Transportation Authority (“WETA”), the Alameda Transportation Management Association (“ATMA”) and a number of other private organizations, are implementing 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 to be used for the Service, marketing the Service, maintaining said Vessel, and operating the Service. The Service will operate for two years (“Service Period”), be free, open to the general public and ADA-accessible. The Service is a pilot – intended to test and prove a concept of operations that will provide connections between Alameda and Oakland.
5. 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.
6. BYB has purchased a vessel, (“Vessel”) with the name “Woodstock” and identification number 1165032, and BYB will purchase one spare engine for the Vessel. BYB will hold title to the Vessel and will lease the Vessel to the City and make the one spare engine for the Vessel available to the City, under the terms and conditions of this Agreement.

AGREEMENT

ACCORDINGLY, for good and valuable consideration, the receipt and adequacy of

which are hereby acknowledged, BYB and City agree as follows:

1. **Recitals.** The recitals described above are incorporated into and made a part of this Agreement.
2. **Term of Agreement.** Notwithstanding the Effective Date, the term of this Agreement will commence on November 10, 2023 and will terminate ninety days after the end of the Service Period or upon the occurrence of any of the events in paragraph 6, whichever is earlier.
3. **City's Rights and Responsibilities.** City's rights and responsibilities are as follows:
 - a. For the Term of this Agreement, unless this Agreement is terminated earlier, City will lease from BYB the Vessel, have available to it from BYB one spare engine, and shall make the following payments:
 - i. The Base Monthly Rent will be \$12,250.00, starting with the commencement of Service. Should this Agreement terminate before the end of two years from the commencement of Service, the City's obligation to pay the Base Monthly Rent shall end but the Parties may negotiate a new monthly rent.
 - ii. City shall pay for any unscheduled maintenance of the Vessel, only as described in paragraph 5 of this Agreement.
 - b. The City will provide the Vessel and spare engine to WETA as set forth in that certain Agreement between the City and WETA dated _____, a copy of which is attached hereto for reference ("**WETA Agreement**"). As provided in the WETA Agreement, WETA will manage the Vessel modifications, maintain the Vessel, and will operate the Service for the duration of the Project. The Vessel will be used only for the Service, and, if authorized by City, charter service.
 - c. Should any damage occur to the Vessel, City and BYB, with assistance from WETA, will cooperate in filing insurance claims as applicable. In accordance with paragraph 5.b., the Parties will meet and confer as to the ultimate responsibility for any costs not covered by insurance and in excess of \$2,000.
 - d. The City will arrange for a zero-cost overnight berthing location for the Vessel, anticipated to be provided at the Jack London Square Marina, via an in-kind contribution from CIM Group, the property management firm for Jack London Square. Such berthing location will be provided at zero-cost until the end of the Service Period or upon the occurrence of any of the events in paragraph 6, whichever is earlier.
 - e. The City will fund the costs to, or otherwise make arrangements to provide, landside/pier/wharf improvements necessary to operate the Service.

- f. The City will fund the marketing required for the vessel, including any costs related to vessel rebranding for the Service and dockside signage.
- g. The City will advise BYB should WETA temporarily suspend or cancel Service for any reason, for instance due to weather, in the event of an emergency, or if the Vessel or crew is unavailable.

4. **BYB's Rights and Responsibilities.** BYB's rights and responsibilities are as follows:

- a. BYB will lease the Vessel to the City and make the spare engine available to the City as set forth in paragraph 3.a. BYB will invoice the City monthly.
- b. BYB will complete the application for the berthing location at the Jack London Square Marina, to be used after Vessel modifications are complete and during the Service Period.
- c. BYB will be responsible for all of the following expenses:
 - i. Vessel ownership.
 - ii. Modifications made to the Vessel to prepare it for Service.
 - iii. All permitting, inspection and registration costs.
 - iv. Boatyard fees.
 - v. Ferrying the Vessel between boatyard and the berthing location.
 - vi. Spare engine, including repairs and replacement thereof.

5. **Unscheduled Maintenance.**

- a. Unscheduled maintenance or any repairs or other modifications to the Vessel that WETA determines are required and that are estimated to cost less than \$2000 will be paid by the City. In these instances, as provided in the WETA Agreement, WETA will arrange for such maintenance, repairs or modifications and will provide all construction management services associated with such maintenance, repairs, or modifications.
- b. As provided in the WETA Agreement, unscheduled maintenance or any repairs or other modifications to the Vessel that are estimated to cost \$2,000 or greater that WETA determines are required will be subject to the Parties' and WETA's meeting and conferring whether to perform the needed maintenance, or make the repairs or modifications, and how such costs will be shared. If the Parties and WETA are unable to reach agreement, this Agreement will terminate.

6. **Termination.** This Agreement may be terminated (i) for cause as a remedy for default under paragraph 12, (ii) if Service is cancelled, (iii) as provided in paragraph 5.b., (iv) as provided in paragraph 14.b., or (v) on conditions acceptable to both Parties.

7. **Compliance with Insurance.** WETA's insurance obligation for the Service as well as for the Vessel are set forth in the WETA Agreement. The Parties shall not do, or permit to be done, to the Vessel anything that will invalidate any fire or extended coverage or

any other insurance policy covering the Vessel, or that will make such insurance coverage unavailable on commercially reasonable terms and conditions, and shall comply with all rules, orders, regulations and requirements of the insurers of the Vessel.

8. Choice of Law, Proper Venue.

- a. Choice of Law. The laws of the State of California shall govern this lease.
- b. Proper Venue. For purposes of filing litigation, venue shall be in the Superior Court for the County of Alameda.

9. Liens.

- a. BYB shall not perform, or cause to be performed, furnish materials, or cause materials to be furnished, or incur, or cause to be incurred obligations concerning the Vessel. If BYB breaches any of the prior sentence resulting in liens against the Vessel, BYB shall be responsible for removing such liens.
- b. Should BYB fail to discharge any lien of the nature described in paragraph 9.a., City, at City's discretion, may pay such claim or post a bond or otherwise provide security to eliminate the lien as a claim and the cost for doing so shall be immediately due from BYB.
- c. As lessee of the Vessel, City shall keep the Vessel free from any liens arising out of work performed, materials furnished or obligations unless such work, materials or obligations were incurred by BYB without the permission of City or WETA.

10. Indemnification.

- a. BYB shall indemnify City, its officers, agents, and employees (collectively, "City's Agents"), against, and to protect, defend, and save them harmless from, all demands, claims, causes of action, liabilities, losses and judgments, and all reasonable expenses incurred in investigating or resisting the same (including reasonable attorneys' fees), brought or claimed by a third party, for death of or injury to person or damage to property arising out of (i) BYB's use of the Vessel and (ii) any act or omission of BYB, its officers, agents, and employees, except to the extent caused by the negligence or willful misconduct of City's Agents. BYB's obligation under this paragraph 10.a. shall survive the expiration or earlier termination of this Agreement.
- b. City shall indemnify BYB, its officers, agents, and employees (collectively, "BYB Agents") against, and to protect, defend, and save them harmless from all demands, claims, causes of action, liabilities, losses, and judgments, and all reasonable expenses incurred in investigating or resisting the same (including reasonable attorneys' fees), brought or claimed by a third party, for death or injury to persons or damage to property arising out of (i) the City's use of the Vessel, and (ii) any act or omission of the City, its officers, employees and agents, except to the extent caused by the negligence or willful misconduct of BYB Agents. The City's obligations

under this paragraph 10.b. shall survive the expiration or termination of this Agreement.

11. **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 BYB's President and the City Manager for resolution. In the event resolution cannot be reached, the Parties shall 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.

12. **Defaults and Remedies.**
 - a. **Defaults.** The occurrence of any one or more of the following events shall constitute a default under this Agreement:
 - i. The failure by BYB or City to observe or perform any obligation to be performed by BYB or City, where such failure continues for a period of thirty (30) days after written notice from the non-defaulting Party to the defaulting party; provided, however, that if the nature of the default is such that more than thirty (30) days are reasonably required to cure the default, then the defaulting party shall not be deemed to be in default if the defaulting party commences such cure within said thirty (30) day period and thereafter diligently continues the same to completion. Such notice shall be in lieu of, and not in addition to, any notice required under state law;
 - ii. BYB makes an assignment for the benefit of creditors;
 - iii. A receiver, trustee or custodian is appointed to, or does, take title, possession or control of all, or substantially all, of BYB's assets;
 - iv. An order for relief is entered against BYB pursuant to voluntary or involuntary proceeding commenced under any chapter of the Bankruptcy Code;
 - v. Any involuntary petition is filed against BYB under any chapter of the Bankruptcy Code and is not dismissed within ninety (90) days.
 - b. **Remedies.**
 - i. **Termination.** In the event of a default by BYB, and at any time thereafter, and without limiting City in the exercise of any right or remedy which City may have, City shall be entitled to terminate this Agreement.

13. **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,

above.

16. Miscellaneous.

- a. Headings. The paragraph headings of this Agreement are not a part of this Agreement and shall have no effect upon the construction or interpretation of any part hereof.
- b. Time. Time is of the essence with respect to the performance of every provision of this Agreement in which time of performance is a factor.
- c. Consents. Whenever consent or approval of either Party is required, that Party shall not unreasonably withhold or delay such consent or approval, except as may be expressly set forth to the contrary.
- d. Entire Agreement. The terms of this Agreement are intended by the Parties as a final expression of their agreement with respect to the terms as are included herein, and may not be contradicted by evidence of any prior or contemporaneous agreement.
- e. Severability. Any provision of this Agreement which proves to be invalid, void, or illegal, shall in no way affect, impair or invalidate any other provision, and such other provisions shall remain in full force and effect.
- f. Successors and Assigns. Each of the covenants, conditions, and agreements herein shall inure to the benefit of and shall apply to and be binding upon the Parties and their respective heirs, legatees, devisees, executors, administrators, successors, assigns, sublessees, or any person who may come into possession of the Vessel.
- g. Notices. Any notice or other communication required or permitted to be given hereunder must be in writing and may be given by personal delivery, by facsimile transmission, by electronic mail or by U.S. mail, and if given by personal delivery,
- h. Authority to Execute Lease. BYB and City each acknowledge that it has all necessary right, title and authority to enter into and perform its obligations under this Agreement, that this Agreement is a binding obligation of such Party and has been authorized by all requisite action under the Party's governing instruments, that the individuals executing this Agreement are duly authorized and designated to do so, and that no other signatories are required to bind such party.
- i. Counterparts. This Agreement may be executed in one or more counterparts, each of which shall constitute an original.
- j. No Partnership. City and BYB are not partners and nothing herein contained shall be construed to create a partnership or joint venture in any sense, nor to constitute City the agent of BYB for any purposes.
- k. Waiver and Modification. No provision of this Agreement may be modified, amended or added to except by a mutual agreement in writing. The waiver by City of

any breach of any term, covenant or condition herein contained shall not be deemed to be a waiver of any subsequent breach of the same or any other term, covenant or condition herein contained.

- l. Both Parties shall not discriminate in any manner against any person or persons on account of a person's protected class including but not limited to the providing of goods, services, facilities, privileges, advantages, and the holding and obtaining of employment.
- m. 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.
- n. 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.

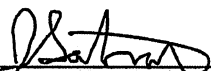
BIG YELLOW BOAT, LLC

By: 

Michael S. O'Hara
Officer

Date: 1.24.24

Approved as to form:



Attorney for BYB

CITY OF ALAMEDA

By: _____
Jennifer Ott, City Manager

Date: _____

Recommended for approval:

DocuSigned by:
By: 
Allen Tai, Planning, Building and Transportation Director

Approved as to form:

DocuSigned by:
By: 
Michael Roush, Special Counsel