

**MEMORANDUM OF UNDERSTANDING  
(Harbor Seal Haul Out)**

THIS MEMORANDUM OF UNDERSTANDING (Harbor Seal Haul Out) (“MOU”) is entered into as of March \_\_, 2015 (“Effective Date”) by and between the CITY OF ALAMEDA, a charter city and municipal corporation (the “City”), and the SAN FRANCISCO BAY AREA WATER EMERGENCY TRANSPORTATION AUTHORITY, a California public entity created pursuant to Government Code Section 66540 *et seq.* (“WETA”). The City and WETA are collectively referred to as the “Parties” and individually as a “Party” to this MOU.

**RECITALS**

This MOU is entered into upon the basis of the following facts, understandings, and intentions of the Parties:

A. WETA and City have submitted for approval and execution that certain Lease Agreement by and between the Parties (the “Lease”), which will allow WETA to construct and operate its Central Bay Maintenance Facility (the “Project”) on certain waterside and landside property more particularly described in the Lease (the “Premises”). All capitalized terms not defined herein shall have the meanings ascribed to them in the Lease.

B. In the course of planning and development for the Project, WETA determined that harbor seals use an existing structure located on a portion of the Premises as a haul out site (the “Existing Haul-Out Site”). WETA concluded a consultation process with the state and federal environmental agencies with jurisdiction over marine mammals, including the San Francisco Bay Conservation and Development Commission (“BCDC”) and the National Oceanic and Atmospheric Administration (“NOAA”), and WETA has informed the City that such agencies do not require WETA to take any affirmative steps with respect to the harbor seals or the Existing Haul-Out Site.

C. In order to alleviate community concerns regarding the harbor seals use of the Existing Haul-Out Site, WETA has agreed to fund, design, construct, and maintain a new harbor seal haul-out site (the “New Haul-Out Site”) in a location mutually acceptable to the Parties, on the terms and conditions in this MOU.

D. The Parties agree this MOU and all actions taken pursuant to this MOU shall not constitute a project-specific mitigation measure for the Project.

NOW, THEREFORE, in consideration of the foregoing and the mutual covenants and agreements set forth in this MOU, the Parties hereby agree as follows:

1. **Establishment of Funds Account.**

1.1 Within thirty (30) days of execution of the Lease by both Parties, WETA shall establish a holding account in the amount of One Hundred Thousand Dollars (\$100,000) (the “Funds”), which shall be earmarked for planning, design, construction and development of the New Haul-Out Site.

2. **Design, Permitting and Construction of New Haul-Out Site**

2.1 Site Selection. The Parties shall meet and confer in good faith to select a mutually acceptable site for the New Haul-Out Site suitable for harbor seals.

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2.2 Design. WETA shall diligently prosecute to completion the design of the New Haul-Out Site and submittal of the construction drawings and specification to the City for its review, which review shall not be unreasonably withheld, conditioned or denied.

2.3 Permits and Approvals. The Parties shall cooperate, and WETA will be the lead Party responsible for, diligently pursuing and obtaining all necessary permits and approvals for development and construction of the New Haul-Out Site (collectively, the "Permits").

2.4 Construction. WETA shall commence construction of the New Haul-Out Site on or before August 2016 and prior to demolition of the Existing Haul-Out Site in connection with construction of the Project unless WETA has not obtained all Permits issued by governmental agencies other than the City ("**Third-Party Permits**"). WETA shall continue to diligently seek to obtain the Third-Party Permits. Upon receipt of all such Third-Party Permits, WETA shall promptly commence construction of the New Haul-Out Site during the earliest available applicable environmental work window for construction within San Francisco Bay that is not less than ninety (90) days after receipt of the Third-Party Permits to take into consideration the timing reasonably necessary for WETA's procurement procedures.

2.5 Maintenance. Upon completion of construction of the New Haul-Out Site by WETA (or the City pursuant to Section 3 below), WETA shall, at its sole cost and expense, keep and maintain the New Haul-Out Site in good order and repair and in keeping the New Haul-Out Site in good order, condition and repair, shall exercise and perform good maintenance practices. WETA's obligation shall include restorations, replacements and renewals when necessary, as reasonably determined by WETA to keep the New Haul-Out Site and all improvements thereon or a part thereof in good order, condition and state of repair. The term of the maintenance obligations shall be coterminous with the term of the Lease unless otherwise agreed to by the Parties in writing.

### 3. **City Right to Construct.**

3.1 Takeover and Reimbursement. If the City reasonably determines that WETA is unable to commence construction of the New Haul-Out Site by August 2016, and the inability of WETA to commence construction is solely due to the inability of WETA to obtain all Permits issued by governmental agencies other than the City and not the result of Force Majeure (as defined below), then the City shall deliver written notice (the "**Takeover Notice**") of such determination to WETA. If within the fifteen (15) day period immediately following delivery of the Takeover Notice, WETA has not provided the City with evidence reasonably satisfactory to the City that it will be able to commence and complete construction of the New Haul-Out Site, then the City shall have the right, but not the obligation, to construct the New Haul-Out Site. In such event, WETA shall (i) deliver to the City and its contractors and consultants such drawings, specifications, Permits and other documents and information as they shall reasonably request to enable them to construct the New Haul-Out Site, and (ii) reimburse the City from the Funds within thirty (30) days following the City's demand for any reasonable, out-of-pocket funds advanced and costs incurred by the City to construct the New Haul-Out Site up to the amount of the Funds.

3.2 Force Majeure Definition. As used herein, "**Force Majeure**" means delay due to strikes, acts of God, shortages of labor or materials, war, terrorist acts, pandemics,

civil disturbances and other causes beyond the reasonable control of the performing party, or act or failure to act of any public or governmental agency or entity having jurisdiction over the New Haul-Out Site (other than the act of the City which shall not excuse performance by the City unless such performance is beyond the City's control).

**4. Miscellaneous**

4.1 Time. Time is of the essence of this Lease and each and all of its provisions.


4.2 Governing Law. This MOU shall be interpreted and enforced in accordance with the laws of the State of California and the Parties hereby irrevocably consent to the jurisdiction and proper venue of such state.

4.3 Amendments. Neither this MOU nor any term or provisions hereof may be changed, waived, discharged or terminated, except by a written instrument signed by both Parties hereto or except as otherwise expressly provided herein.

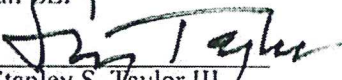
4.4 Counterparts. This MOU may be executed in two or more counterparts, each of which shall be deemed an original, but all of which taken together shall constitute one and the same instrument.

IN WITNESS WHEREOF, the parties hereto have executed this MOU as of the date first set forth above.

SAN FRANCISCO BAY AREA WATER EMERGENCY TRANSPORTATION AUTHORITY:

By:   
Name: NINA RANNELLS  
Title: EXECUTIVE DIRECTOR

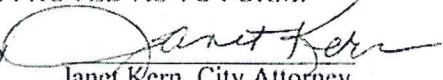
APPROVED AS TO FORM  
Nossaman ~~LLP~~

By:   
Stanley S. Taylor III  
WETA General Counsel

CITY OF ALAMEDA

By: John A. Russo, City Manager

APPROVED AS TO FORM:

By:   
Janet Kern, City Attorney