

**LICENSE AGREEMENT**  
**SEAPLANE LAGOON FERRY TERMINAL**

This LICENSE AGREEMENT ("**Agreement**") is entered into effective \_\_\_\_\_, 2020 ("**Effective Date**"), by and between the CITY OF ALAMEDA, a municipal corporation ("**City**"), and the SAN FRANCISCO BAY AREA WATER EMERGENCY TRANSPORTATION AUTHORITY, a regional public transit agency ("**WETA**"). In consideration of the mutual promises contained herein, and for other good and valuable consideration, the receipt of which is hereby acknowledged, City and WETA agree as follows:

1. Background.

A. Alameda Point is comprised of approximately 1,560 acres of land and 1,115 acres of water located at the western third of Alameda, bounded by the San Francisco Bay on the south and west, and the Oakland/Alameda Estuary on the north ("**Alameda Point**").

B. City and WETA have entered into that certain Seaplane Lagoon Ferry Terminal Operating Agreement of even date herewith ("**Operating Agreement**") in connection with the design, construction and operation of the Seaplane Lagoon Ferry Terminal at Alameda Point ("**Seaplane Terminal**"), and ferry service connecting Alameda Point and San Francisco.

C. City owns certain real property located at Alameda Point and identified in the Operating Agreement as the Landside Area, described more particularly in Exhibit A attached hereto (the "**Landside Area**").

D. City also owns a submerged area of land located at Alameda Point and identified in the Operating Agreement as the Waterside Area, as described more particularly in Exhibit A (the "**Waterside Area**"). Within the Waterside Area are located certain personal property that will be owned by WETA, including, a gangway connecting the pier to the passenger boarding float, a passenger boarding float for entering and exiting a ferry vessel, an access control gate to be located on the passenger walkway on the pier to provide access to the gangway, the portion of walkway on the pier on which the access gate is located, and fixed piles for the gangway (collectively, the "**Waterside Assets**").

E. The Landside Area and Waterside Area shall be collectively referred to herein as the "**License Area**." Use of the License Area by WETA shall be as described in Section 4.

F. WETA desires to obtain a license from City to access and use the License Area for the operation of the Seaplane Terminal Ferry Service as contemplated in the Operating Agreement.

G. City desires to grant to WETA a license to use the License Area. The terms of this Agreement shall govern WETA's use of and access to the License Area.

2. Grant of License. City hereby grants to WETA a license for access and entry onto the License Area for the operation of the Seaplane Terminal, subject to all of the terms and conditions hereof and the terms and conditions set forth in the Operating Agreement.

3. Term. The Term of this Agreement shall commence on \_\_\_\_\_, 2020, and shall expire on \_\_\_\_\_, 2086. City and WETA acknowledge and agree that the license granted under this Agreement is revocable and terminable by either party pursuant to Section 12.

4. Use of the License Area. The License Area and each portion thereof may be used by WETA in the manner and to the extent described below.

(a) Waterside Area. The Waterside Area shall be utilized by WETA solely for the purpose of operating the Seaplane Terminal Ferry Service, including: the initial fit-up (i.e., hiring, training, purchasing and obtaining all personnel and equipment required to operate Seaplane Terminal) of the Waterside Assets; maintenance, repair, remediation and replacement of all Waterside Assets and the Waterside Area (as further described in the Operating Agreement); providing ferry service in accordance with the terms of the Operating Agreement; and general operation, management and oversight of the Seaplane Terminal.

(b) Landside Area. The Landside Area shall be utilized by WETA on a non-exclusive basis for access to the Waterside Area and Waterside Assets. Specifically, WETA and its employees, contractors and agents shall have (i) ingress and egress rights over and across the Landside Area, and (ii) the right to park within the parking lot(s) on the Landside Area in connection with operation of the Seaplane Terminal.

5. License/Use Fees. WETA shall pay a fee of \$1.00 per year for use of the License Area beginning on the date of this Agreement (“**License Fee**”). Payments shall be made at the address set forth for City after its signature block.

6. Compliance with Laws. The use of the License Area by WETA shall be in accordance with all applicable laws, permits, licenses and other governmental authorizations, rules, ordinances, orders, decrees and regulations now or hereafter enacted, issued or promulgated by federal, state, county, municipal and/or other governmental agencies, bodies and courts having or claiming jurisdiction over all or any part of the License Area or the Seaplane Terminal, and all insurance companies insuring all or any part of the License Area or the Seaplane Terminal. WETA agrees to comply with all rules and regulations applicable to the License Area or the Seaplane Terminal whether in force now or adopted in the future.

7. Restrictions on Use of the License Area. WETA shall not use or permit the License Area to be used in any manner which would violate any license, permit or other governmental authorization which is required for lawful access to, and use and operation of, the License Area or the Seaplane Terminal or which would interfere with the operation of the Seaplane Terminal or use of the Seaplane Terminal by riders of the ferry and/or any third parties, which third-party operator use shall be subject to the requirements of Section 8 of this Agreement and Section 6 of the Operating Agreement. If any license, permit, or other governmental authorization is required for the lawful access to, and use and operation of, the License Area and/or Seaplane Lagoon, WETA shall procure and maintain the same throughout the term of this Agreement. WETA shall not commit any waste or permit or suffer any waste to be committed on the License Area.

8. Restrictions on Third Party Use. WETA has the exclusive right to permit third party ferry/boat operators to use the Seaplane Terminal to land boats, so long as any third party

ferry/boat operators agree in writing to assume all liability and risk arising from or related to their use of the Seaplane Terminal. WETA will require any third party ferry/boat operator to indemnify and insure the City to the same extent as it requires the third party ferry/boat operator to indemnify and insure WETA. WETA agrees to notify the City in writing if it permits a third party ferry/boat operator to use the Seaplane Terminal to land boats and to provide written evidence to City that the above requirements have been met.

9. Insurance. WETA shall, at all times during the term of this Agreement, obtain and keep in force at its sole cost and expense the following insurance coverages:

**A. Property and Liability Coverage.**

(i) Required Types and Amounts of Insurance. Except as more specifically provided in this Section 9, WETA shall, at no cost to the City, obtain and maintain, and cause to be in effect at all times from the Effective Date to the later of (i) the last day of the Term, or (ii) the last day WETA (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, the following types and amounts of

(1) Property Insurance. WETA, at its sole cost and expense, shall procure and maintain on all of its personal property, improvements and alterations, in, on, or about the License Area, 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. WETA 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 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. 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 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.

(4) Business Automobile Insurance. WETA 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 WETA and its agents in connection with WETA'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 Property Damage policy with limits of not less than Five Million Dollars (\$5,000,000) per accident and annual aggregate.

(5) Protection and Indemnity Liability. WETA will maintain, or require to be maintained, 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. WETA will maintain, or require to be maintained, 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. WETA will maintain, or require to be maintained, 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) 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 as an insured as its interest may appear. 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."**

(3) 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;

(4) 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.

(5) 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;

(6) 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;

(7) 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, or, in the case of construction, for five (5) years after issuance of a Certificate of Occupancy for the applicable Improvements; and

(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 Effective Date (to the extent such policy is required to be carried as of the Effective Date), (ii) for such policies required to be carried after the Effective 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 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, or about the License Area, WETA will require that such 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. Notwithstanding the foregoing, WETA will require all agents, contractors and sub-contractors performing work in, on, under, 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, or about the License Area, and (v) contractors' pollution legal liability (if project involves environmental hazards) with limits no less than \$1,000,000 per occurrence or claim, and \$2,000,000 annual general aggregate.

10. Hazardous/Toxic Materials. WETA shall use the License Area in compliance with all federal, state or local environmental, health and/or safety-related laws, regulations, standards, permits currently existing or as amended or adopted in the future from time to time which are or become applicable to WETA or the License Area, including, without limitation, all environmental laws, and the speed restrictions set forth in Mitigation Measure 4.E-4a (Marine Craft Access Corridor) of the Seaplane Lagoon Ferry Terminal Addendum Mitigation Monitoring and Reporting Program, attached to and incorporated into the Operating Agreement ("**Environmental Laws**"). WETA shall not cause or permit or allow any of its agents, contractors, employees, or Third Party Operators to cause or permit, any hazardous or toxic materials to be stored, generated, treated or disposed of on or about the License Area. As used herein, hazardous and toxic materials means any chemical, substance or material which is now or becomes in the future listed, defined or regulated in any manner by any Environmental Law based upon, directly or indirectly, its detrimental properties or effects.

11. Indemnification. The Parties' indemnity obligations to each other are as set forth in Section 12 of the Operating Agreement.

12. Termination. City may terminate this Agreement upon failure by WETA to perform any material obligation hereunder or to otherwise comply with the terms and conditions imposed herein, or to timely perform any material obligation under the Operating Agreement (each, a "**Default**"). Upon a Default by WETA, City shall provide written notice to WETA demanding that the Default be cured within ninety (90) days of receipt of the default notice. If WETA fails to timely cure its Default, or provide a reasonably acceptable plan, as determined by City in its sole and absolute discretion, City may immediately terminate this Agreement and the Operating Agreement and may also exercise all other rights and remedies available at law and equity. This Agreement shall automatically terminate if WETA terminates the Operating Agreement pursuant to Section 15 therein.

13. Notices. All notices required hereunder shall be given in the same manner described in Section 19 of the Operating Agreement.

14. Dispute Resolution. Disputes under this Agreement shall be resolved pursuant to the dispute resolution process set out in Section 20 of the Operating Agreement.

15. Authority to Enter Agreement. Each party warrants that the individuals who have signed this Agreement have the legal power, right, and authority to enter into this Agreement so as to bind each respective party to perform the conditions contemplated herein.

16. Severability. If any portion of this Agreement is declared by a court of competent jurisdiction to be invalid or unenforceable, the remaining provisions of this Agreement shall continue in full force and effect.

17. Time is of the Essence. Time is of the essence in this Agreement, and all parties agree to execute all documents and to proceed with due diligence to complete all covenants and conditions set forth herein.

18. Attorneys' Fees and Costs. If any legal action or other proceeding is brought for the enforcement of this Agreement or because of an alleged dispute, breach, default, or misrepresentation in connection with any provisions of this Agreement, the successful or prevailing party shall be entitled to recover reasonable attorneys' fees and other costs incurred in that action or proceeding, in addition to any other relief to which it may be entitled.

19. Governing Law and Venue. This Agreement shall be construed in accordance with and governed by the laws of the State of California. Any lawsuit brought to enforce this Agreement shall be brought in the appropriate court in Alameda County, State of California.

20. Waiver. No waiver of any provision of this Agreement shall be deemed or shall constitute a waiver of any other provision, whether or not similar, nor shall any waiver constitute a continuing waiver. No waiver shall be deemed a waiver and no waiver shall be binding unless executed in writing by the party making the waiver.

21. Entire Agreement. This Agreement, as supplemented by the Operating Agreement, contains the entire agreement of the City and WETA relative to the subject matter herein and supersedes any prior or written statements or agreements between City and WETA. No supplement, modification, or amendment of this Agreement shall be binding unless executed in writing by both parties.

22. Assignments and Subletting. WETA shall not transfer, assign or sublet, voluntarily, involuntarily, directly or indirectly (collectively, “**Transfer**”), WETA's interest under this Agreement. This Agreement is personal to WETA and shall not be Transferred by WETA without prior written consent by City, and any attempt to Transfer this Agreement by WETA without City's consent shall be void. City may Transfer this Agreement to a successor owner. Notwithstanding the foregoing, each and every term and condition of this Agreement shall be binding on and shall inure to the benefit of the successors and assigns of both parties.

23. Invalidity. The illegality of any provision of this Agreement shall not affect the remainder of this Agreement.

24. Counterparts. This Agreement may be signed in counterparts, each of which shall constitute an original and which collectively shall constitute one instrument.

25. Captions. The captions of the various articles and paragraphs of this Agreement are for the convenience and ease of reference only, and do not define, limit, augment, or describe the scope, content, or intent of this Agreement or of any part or parts of this Agreement.

26. Construction. In all cases, the language in all parts of this Agreement shall be construed simply, according to its fair meaning and not strictly for or against any party, it being agreed that the parties or their agents have all participated in the preparation of this Agreement.

27. Cooperation/Further Acts. The parties shall fully cooperate with one another in attaining the purposes of this Agreement and, in connection therewith, shall take any such additional further acts and steps and sign any such additional documents as may be necessary, appropriate and convenient as related thereto.

28. Exhibits. The Exhibits of this Agreement are incorporated by reference as though fully set forth herein.



IN WITNESS WHEREOF, the undersigned have executed this Agreement as of the day and year first hereinabove set forth.

**WATER EMERGENCY  
TRANSPORTATION AUTHORITY**

**CITY OF ALAMEDA**

By: \_\_\_\_\_  
Nina Rannells, Executive Director

By: \_\_\_\_\_  
Eric J. Levitt, City Manager

Date: \_\_\_\_\_

Date: \_\_\_\_\_

Approved as to form:

Recommended for approval:

\_\_\_\_\_  
Attorney for WETA

By: \_\_\_\_\_  
Debbie Potter, Community Development  
Director

Approved as to form:  
City Attorney:

By \_\_\_\_\_  
Lisa Nelson Maxwell, Assistant City Attorney

**Address for Notices:**

Attention: Nina Rannells  
San Francisco Bay Area Water Emergency  
Transportation Authority  
Pier 9, Suite 111  
San Francisco, CA 94111  
Email: rannells@watertransit.org

**Address for Notices:**

Attention: Debbie Potter  
City of Alameda  
950 West Mall Square  
Alameda, CA 94501  
Email: dpotter@alamedaca.gov

**Additional copy to:**

Attention: City Attorney  
City of Alameda  
2263 Santa Clara Avenue, Room 280  
Alameda, CA 94501  
Email: yshen@alamedacityattorney.org  
and lmaxwell@alamedacityattorney.org

**Exhibit A**  
Legal Description of Waterside Area



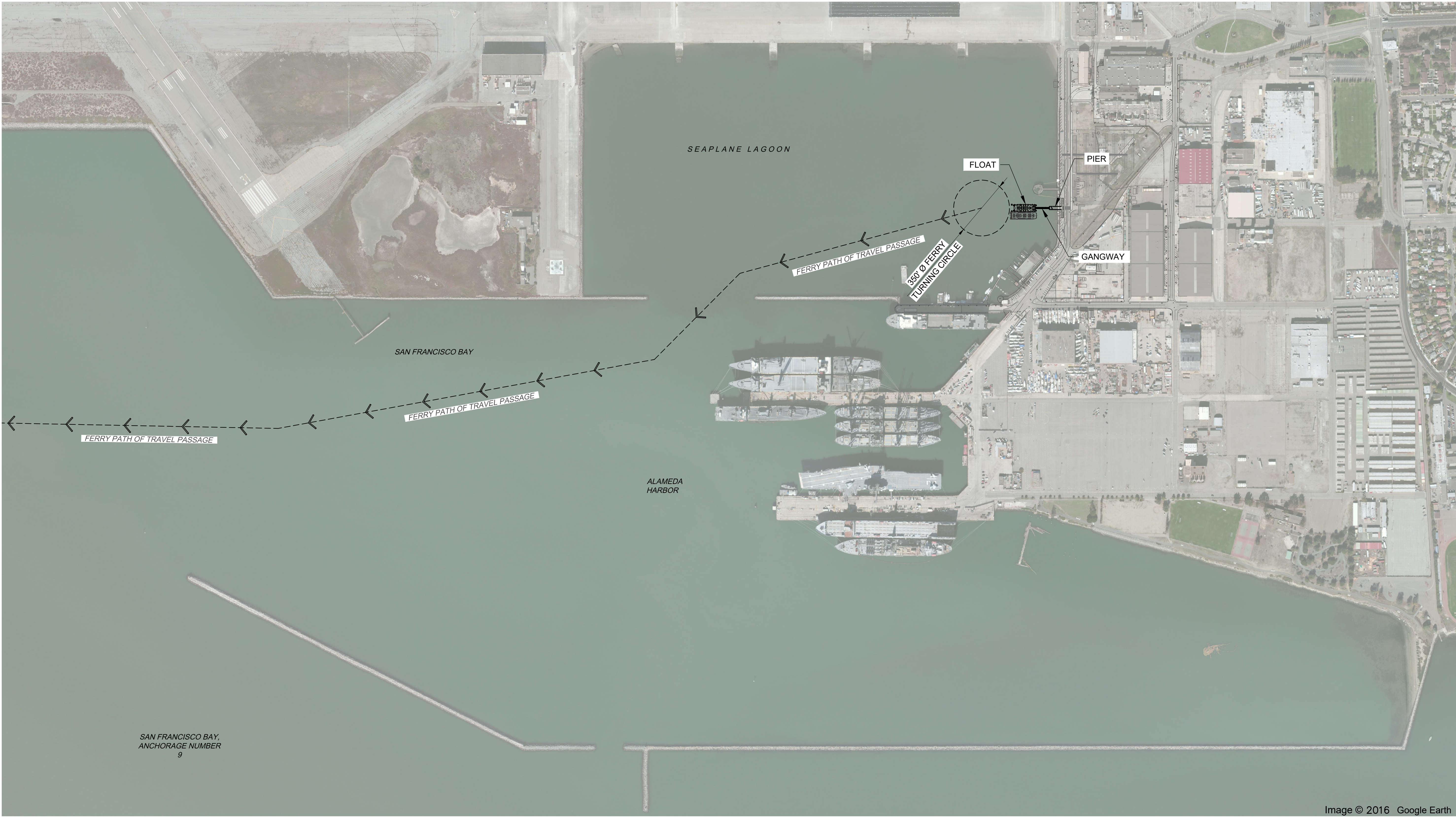
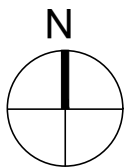


Image © 2016 Google Earth

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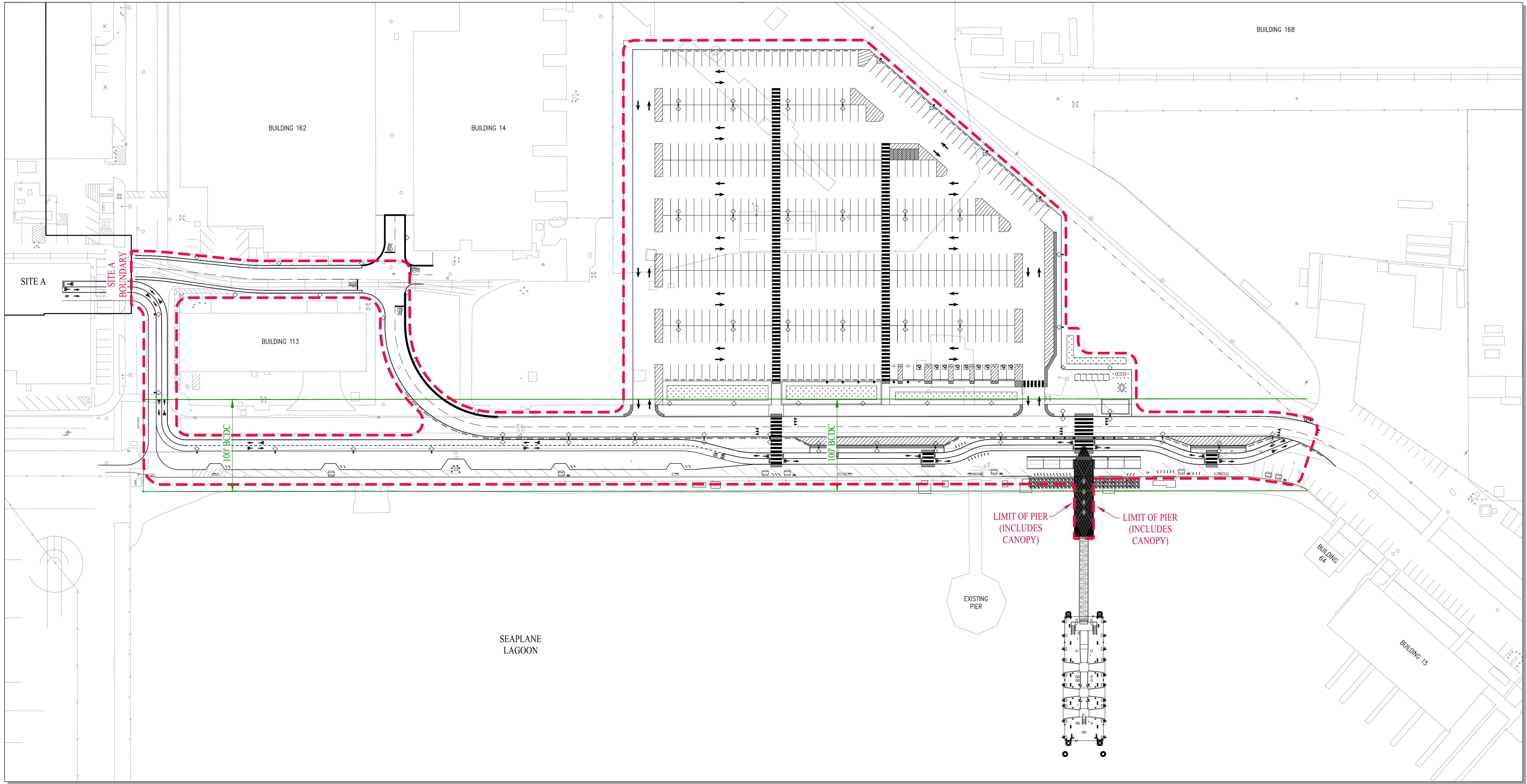
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<div>CITY OF ALAMEDA</div> <div>SRM ERNST MADISON MARQUETTE THOMPSON DORFMAN PARTNERS TRAMMELL CROW RESIDENTIAL</div> <div></div>	<div>Client</div> <div><b>CITY OF ALAMEDA</b> Michelle Giles</div>	<div>Architects</div> <div><b>MARCY WONG DONN LOGAN ARCHITECTS</b> Tel: 510.843.0916 Email: office@wonglogan.com</div>	<div>Civil Engineer</div> <div><b>BKF</b> Tel: 925.940.2214 Email: dschaefter@bkf.com</div>	<div>Landscape Architect</div> <div><b>GROUNDWORKS OFFICE</b> Email:brennan@groundworksoffice.com</div>	<div>Stamp</div> <div></div>	<div>Project</div> <div><b>SEAPLANE LAGOON FERRY TERMINAL</b></div>	<div>Revisions</div> <div>Issue _____ Date _____</div>	<div>Project No.</div> <div>1801</div>	<div>Sheet Name</div> <div></div>
	<div>Developer</div> <div><b>ALAMEDA POINT PARTNERS</b> Stephanie Hill</div>	<div>Marine/Structural Engineer</div> <div><b>COWI NORTH AMERICA INC</b> Tel: 510.267.7164 Email: jmc@cowi.com</div>	<div>Electrical Engineer</div> <div><b>THE ENGINEERING ENTERPRISE</b> Tel: 510.263.1522 Email: paul@engent.com</div>	<div>Lighting Design</div> <div><b>HORTON LEES BROGDEN</b> Tel: 415.348.8273 Email:AMoore@hnbllighting.com</div>	<div>03/07/2019</div>	<div>0 Ferry Point Road, Alameda CA 94501</div>	<div>_____</div>	<div>Phase</div> <div>SKETCH</div>	<div>Sheet No.</div> <div></div>
							<div>_____</div>	<div>Date</div> <div>08/19/2019</div>	
							<div>_____</div>	<div>Drawn by</div> <div>NIF</div>	
							<div>_____</div>	<div>Checked by</div> <div>JPC</div>	
							<div>_____</div>	<div>Scale at Sheet Size</div> <div>22X34</div>	

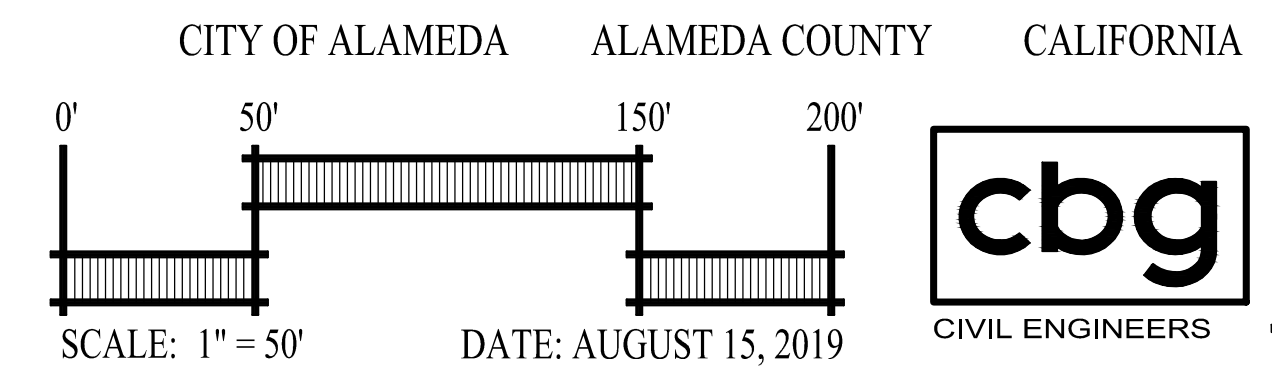
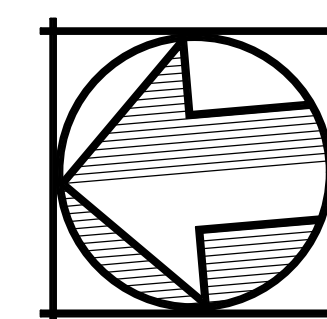


**Exhibit B**  
Legal Description of Landside Area



**LEGEND**

--- DEMARCATON OF LANDSIDE EASEMENT



SAN RAMON    (925) 866-0322  
SACRAMENTO    (916) 375-1877  
WWW.CBANDG.COM  
CIVIL ENGINEERS    SURVEYORS    PLANNERS