

**FIRST AMENDMENT
TO
FERRY SERVICE OPERATIONS TRANSFER AGREEMENT**

This First Amendment to Ferry Service Operations Transfer Agreement (“**Amendment**”) is entered into effective _____, 2021 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**”).

RECITALS

- A.** City is a charter city and a municipal corporation located in Alameda County, California and is the successor agency to the Alameda Reuse and Redevelopment Authority.
- B.** 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."
- C.** On February 25, 2011, the Parties executed a Ferry Service Operations Transfer Agreement (“**Transfer Agreement**”) applicable to the Main Street Ferry Terminal and Harbor Bay Ferry Terminal (“**Ferry Terminals**”) and contemplated possible future ferry service at the Seaplane Lagoon Ferry Terminal.
- D.** The Transfer Agreement identified ongoing obligations of the Parties related to the Ferry Terminals, including ownership of the real property and physical assets, maintenance responsibilities, funding, and long-term operation of ferry services. Under the Transfer Agreement, WETA was granted ownership of the waterside assets for the Ferry Terminals, generally including passenger floats, gangways, pile supported structures and fixed piles. The City maintained ownership of all real property comprising the Ferry Terminals, including submerged lands. The City also maintained ownership of the landside assets, with WETA responsible for daily operations and maintenance of those landside assets. The Transfer Agreement established provisions for infrastructure maintenance and repair, which obligated WETA to assume financial responsibility for the Ferry Terminals, including property management and funding for ongoing costs of maintaining, repairing, and replacing waterside and landside assets.
- E.** In 2014, the City adopted the Alameda Point Transportation Demand Management Plan, and in 2018 the City adopted the Transportation Choices Plan. Both plans call for active management and pricing of ferry terminal parking in Alameda.
- F.** On January 14, 2020, the Parties executed the Seaplane Lagoon Ferry Terminal Operating Agreement (“**Seaplane Agreement**”). The Seaplane Agreement defined the rights and responsibilities for of the Parties in connection with operation of ferry service at Seaplane

Lagoon Ferry Terminal, which was anticipated to open for operations on or around August 13, 2020. Under the Seaplane Agreement, the City owns and maintains, at its sole expense, the Seaplane Lagoon Terminal landside area, submerged lands and landside assets including the fixed pier. WETA is the owner of the Seaplane Lagoon Terminal waterside assets and is responsible, at its sole expense, to maintain, repair, and replace these assets. On January 14, 2020, the Parties entered into a License Agreement granting reciprocal access rights to the landside and waterside areas of the Seaplane Lagoon Terminal, all as further described in the Seaplane Agreement.

- G. The Seaplane Agreement identified the goal of amending the Transfer Agreement to transfer the maintenance and operations obligations for the Main Street Terminal and Harbor Bay Terminal landside improvements from WETA to the City. It also acknowledged the possibility of the City instituting parking fees at all three Alameda ferry terminals to provide funding for maintenance of those facilities.
- H. In October 2018 and again in December 2019, the WETA Board was presented with a service concept that introduces commuter service at the Seaplane Lagoon Terminal while maintaining midday and weekend service at the Main Street Terminal. The concept would allow parking to be “split” between the two terminals in western Alameda, allowing sufficient capacity at the Main Street Terminal for ferry passengers to park on one of three paved parking lots without relying on the unpaved parking in the area.
- I. The Parties now desire to amend the Transfer Agreement to modify certain rights and responsibilities of the Parties in connection with the responsibility for day-to-day management, operations and long-term maintenance, repair and replacement of landside assets and improvements at the Ferry Terminals as set forth herein.

AGREEMENT

- 1. **Defined Terms.** Capitalized terms used in this Amendment without definition shall have the same meaning given to such terms in the Transfer Agreement.
- 2. **City's Rights and Responsibilities.**

A. The following definitions shall apply to this Section 2:

"Landside Assets" means the **"Harbor Bay Terminal Landside Assets"** and the **"Main Street Terminal Landside Assets."**

"Harbor Bay Terminal Landside Assets" means the following improvements located at the Harbor Bay Terminal, which are depicted and identified in Exhibit A:

- Parking facilities;
- Passenger drop-off and pick-up area and/or “Kiss and Ride” area;
- Public restroom facilities;
- Covered and partially enclosed passenger waiting area;
- San Francisco Bay Trail and other public access pathways;

- Bike access routes and bike parking areas;
- Bike racks and electronic bike lockers; and
- Other ancillary improvements and assets including landscaping, irrigation, drainage, signage, electrical infrastructure, and lighting.

"Main Street Terminal Landside Assets" means the following improvements located at Main Street Terminal, which are depicted and identified in Exhibit B:

- All improvements to the landside at the point of junction of the sea wall (or comparable structure) and the shoreline;
- Parking facilities;
- Passenger drop-off and pick-up area and/or "Kiss and Ride" area;
- Public restroom facilities;
- Covered and partially enclosed passenger waiting area;
- San Francisco Bay Trail and other public access pathways;
- Bike access routes and bike parking areas;
- Bike racks and electronic bike lockers with in and adjacent to the Ferry Terminal Waiting Area; and
- Other ancillary improvements and assets including landscaping, irrigation, drainage, signage, electrical infrastructure, and lighting.

B. Notwithstanding anything to the contrary in the Transfer Agreement, the City's rights and responsibilities in connection with maintenance and repair of the Landslide Assets are as follows:

- i. The City must maintain and manage, at its sole expense, all Landside Assets. In particular, and without limiting the generality of the previous sentence, the City must maintain and manage the City Lot, the Authority Lot, and the Harbor Bay Parking Lot, as those terms are defined in Section 11.6 of the Transfer Agreement (collectively "**Parking Lots**"). To the extent the Transfer Agreement provides for any limits on the City's obligations to maintain and manage the Parking Lots, those limits are deleted. To the extent the Transfer Agreement imposes any obligations on WETA to maintain and manage the Parking Lots, those obligations are deleted. To the extent the Transfer Agreement requires the City to transmit Alameda Lighting and Landscaping Assessment District ("**LLAD**") funds to WETA for maintenance of the Harbor Bay Landside Assets, pursuant to Section 11.2 of the Transfer Agreement, those requirements are deleted. The City's control over the Parking Lots includes the exclusive right to establish, collect, and retain public parking fees for the use of Parking Lots, and determine the use of the fees collected in its sole discretion. City agrees to consult with WETA on parking policy and fees. The forgoing obligations shall supersede those obligations set forth in Sections 11.4 and 11.6 of the Transfer Agreement. To the extent there is a conflict between this Amendment and the Transfer Agreement, this Amendment shall control.
- ii. The City must pay for all utility charges associated with the Landside Assets.

- iii. The City shall have the exclusive right to use, and permit third parties to use, Landside Assets for recreational, commercial, or other uses, provided that the use does not disrupt WETA's provision of ferry service, or WETA's use of Waterside Assets in association with its provision of ferry service. City agrees to notify WETA in advance if it permits a third-party to use any Landside Assets.

3. **WETA's Rights and Responsibilities.**

A. The following definitions shall apply to this Section 3:

"Waterside Assets" means the **"Harbor Bay Terminal Waterside Assets"** and the **"Main Street Terminal Waterside Assets."**

"Harbor Bay Waterside Assets" means the following personal property located at the Harbor Bay Terminal and shown on Exhibit A:

- Pier serving as a passenger walkway from the land to the gangway;
- An access control gate located on the pier to provide access to the gangway;
- A gangway connecting the pier to the passenger boarding float;
- The awning over the gangway to provide protection from the elements while passengers are loading the ferry;
- A passenger boarding float for entering and exiting a ferry vessel;
- Fixed piles supporting the float, gangway and pier;
- Channel markers and Harbor Bay Ferry lighting; and
- Any other waterside equipment WETA deems necessary for operation of the Harbor Bay Terminal.

"Main Street Waterside Assets" means the following personal property located at the Main Street Terminal which are as depicted and identified in Exhibit B:

- Pier serving as a passenger walkway from the land to the gangway;
- An access control gate located on the pier to provide access to the gangway;
- A gangway connecting the pier to the passenger boarding float;
- The awning over the pier and gangway to provide protection from the elements while passengers are waiting for and loading the ferry;
- A passenger boarding float for entering and exiting a ferry vessel;
- Fixed piles supporting the float, gangway and pier; and
- Any other waterside equipment WETA deems necessary for operation of the Main Street Terminal.

B. Notwithstanding anything to the contrary in the Transfer Agreement, WETA's rights and responsibilities in connection with maintenance and repair of the Waterside Assets are as follows:

- i. Maintain, repair and replace (as and to the extent determined necessary by WETA), at its sole expense, all Harbor Bay Waterside Assets and Main Street Waterside Assets.
 - ii. Pay for all utility charges associated with the Harbor Bay Waterside Assets and Main Street Waterside Assets.
 - iii. Pay for any additional waterside equipment, as and to the extent determined necessary by WETA for ferry service operation, and all dredging activity (again, as and to the extent determined necessary by WETA for ferry service operations). Any such additional waterside equipment paid for by WETA shall be considered Waterside Assets as set forth above in this Amendment. With respect to dredging activities for which WETA is responsible under this paragraph, WETA shall be responsible for obtaining, at its cost, all required permits and approvals, and the City shall reasonably cooperate with such efforts and serve as the applicant to the extent necessary.
- C. WETA shall have the exclusive right to permit third party ferry/boat operators to use the Waterside Assets 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 Main Street and Harbor Bay ferry terminals. WETA shall 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 if it permits a third-party ferry/boat operator to use the Main Street and Harbor Bay terminals to land boats and to provide evidence to City that the above requirements have been met.
- D. In the event of a conflict between this Amendment and the Transfer Agreement with regard to WETA's rights and responsibilities in connection with maintenance and repair of the Waterside Assets, this Amendment shall control.
- 4. **Funding.** Pursuant to Section 11.2(b) of the Transfer Agreement, the Parties agree to meet and confer within one year of execution of this Amendment to review and examine the City's transportation funding priorities for Harbor Bay and WETA's funding needs for the Alameda/Harbor Bay Ferry Service to determine whether a portion or all of the Alameda Transportation Improvement Funds ("**TIF**") continue to be necessary to fund operation of the Alameda/Harbor Bay Ferry Service. Any decision to continue the City's subsidy of Alameda/Harbor Bay Ferry Service with TIF shall be by mutual agreement.
- 5. **Notices.** Section 13.1 of the Transfer Agreement is replaced with the following provision: All notices and communications related to this Transfer Agreement deemed by either Party to be necessary or desirable must be in writing and may be given by e-mail, plus mailing the same postage prepaid; 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: Eric J. Levitt
City of Alameda
2263 Santa Clara Avenue
Alameda, CA 94501
Email: ele vitt@alamedaca.gov

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

6. **Miscellaneous.** Except as modified by this Amendment, in all other respects the Transfer Agreement is hereby ratified and affirmed and remain in full force and effect. This Amendment may be executed in one or more counterparts.

[Remainder of page intentionally left blank; signatures to follow]

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

WATER EMERGENCY TRANSPORTATION AUTHORITY

By: _____
Seamus Murphy, Executive Director

Date: _____

Approved as to form:

Attorney for WETA

CITY OF ALAMEDA

By: _____
Eric J. Levitt, City Manager

Date: _____

Recommended for approval:

By: _____
Andrew Thomas, Planning, Building and Transportation Director

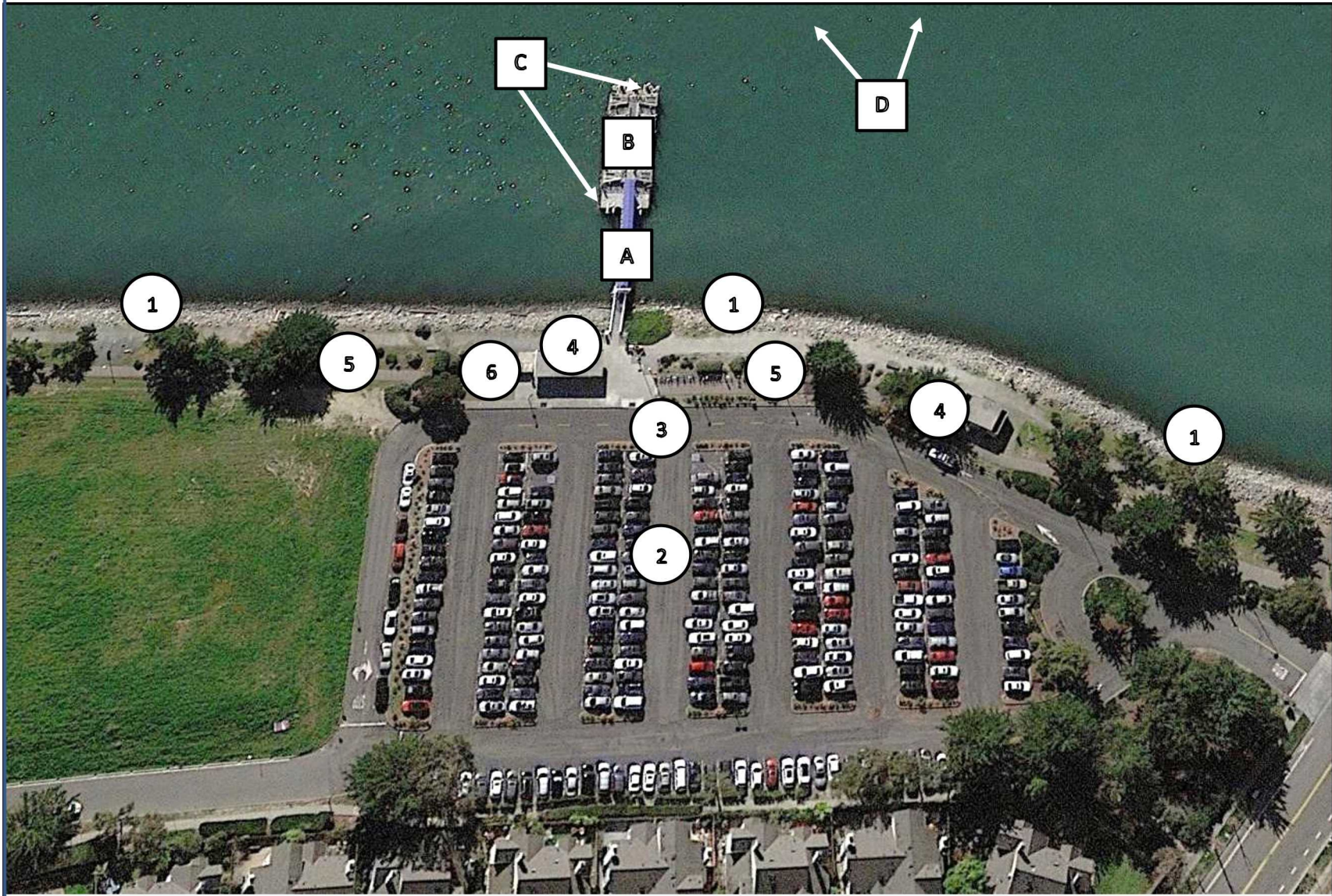
Approved as to form:
City Attorney:

By: _____
J. Aaron Duffy, Staff Counsel

EXHIBIT A

Harbor Bay Terminal Landside and Waterside Assets

EXHIBIT A – HARBOR BAY TERMINAL LANDSIDE AND WATERSIDE ASSETS



Landside Assets

- 1 – Seawall/Shoreline
- 2 – Parking Facilities
- 3 – Passenger drop-off and pick-up area
- 4 – Public Restroom and Passenger Waiting Area
- 5 – Bike Access Routes and Bike Parking Area
- 6 – Bike Racks and Electric Bike Lockers

Waterside Assets

- A – Pier, Access Gate, Awning Gangway
- B – Passenger Boarding Float
- C – Fixed Piles
- D – Channel Markers (not shown on aerial above)

EXHIBIT B

Main Street Terminal Landside and Waterside Assets

EXHIBIT B - MAIN STREET TERMINAL LANDSIDE AND WATERSIDE ASSETS



Landside Assets

- 1 – Seawall/Shoreline
- 2 – Parking Facilities
- 3 – Passenger drop-off and pick-up area
- 4 – Public Restroom and Passenger Waiting Area
- 5 – Bike Access Routes and Bike Parking Area
- 6 – Bike Racks and Electric Bike Lockers



Waterside Assets

- A – Pier, Access Gate, Awning Gangway
- B – Passenger Boarding Float
- C – Fixed Piles

