FERRY SERVICE OPERATIONS TRANSFER AGREEMENT

by and among

CITY OF ALAMEDA,

ALAMEDA REUSE AND REDEVELOPMENT AUTHORITY,

and

SAN FRANCISCO BAY AREA WATER
EMERGENCY TRANSPORTATION AUTHORITY

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FERRY SERVICE OPERATIONS TRANSFER AGREEMENT

THIS FERRY SERVICE OPERATIONS TRANSFER AGREEMENT ("**Agreement**") is made and effective as of the 25 day of February, 2011 ("**Effective Date**") by and among the CITY OF ALAMEDA ("**City**"), the ALAMEDA REUSE AND REDEVELOPMENT AUTHORITY ("**Authority**"), and the SAN FRANCISCO BAY AREA WATER EMERGENCY TRANSPORTATION AUTHORITY ("**WETA**").

RECITALS

A. WETA was established pursuant to California Senate Bill 976, as amended by Senate Bill 1093, codified as the San Francisco Bay Area Water Emergency Transportation Response and Disaster Recovery Act, California Government Code sections 66540 *et seq.* (as so amended, "**Act**") which authorizes the consolidation of San Francisco Bay Area regional ferry services;

B. The Act authorized implementation of the transition of the Alameda/Oakland Ferry Service and the Alameda/Harbor Bay Ferry Service from City to WETA through the transfer and lease (or alternative property rights transfer arrangements) to WETA of City's assets used in operating the Alameda/Oakland Ferry Service and the Alameda/Harbor Bay Ferry Service ("**Transition**");

C. In furtherance of the Transition, WETA approved a Transition Plan in June 2009, which received input from City and other relevant agencies;

D. Since adoption of the Transition Plan, WETA and City have refined the proposed approach to the Transition to provide for direct transfer of certain personal property, licensing of landing and mooring rights, operation of the landside ferry terminal area, including parking areas, by City, and assignment of certain rights and obligations from City and Authority to WETA;

E. WETA and City share a mutual desire to maintain high quality ferry service for the benefit of the citizens of and visitors to City and the region and anticipate the establishment of a ferry maintenance facility in City to enhance WETA's continued ability to provide such service;

F. Financial support historically contributed to the Alameda/Harbor Bay Ferry Service and the Alameda/Oakland Ferry Service by local and regional funding sources has been essential to City's ability to provide high quality ferry service, and the parties acknowledge that continued availability and contribution of such local and regional funds is a key to enable WETA to continue the provision of high quality ferry service;

G. WETA acknowledges that ongoing planning and development in City may result in the establishment of a new ferry terminal in City at Seaplane Lagoon; and

H. WETA and City further acknowledge that City's ferry service needs may evolve over time as new communities are developed in City, and WETA and City are mindful of the need to anticipate such future needs in connection with the Transition.

NOW, THEREFORE, in consideration of the mutual promises herein contained and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged by the Parties, City, Authority, and WETA hereby agree as follows:

ARTICLE 1

DEFINITIONS

"**Acquired Assets**" means all of City's and Authority's right, title and interest in and to all of the following listed items, together with entitlements of every kind and nature, absolute or contingent, associated with operating the Services (other than the Excluded Assets), including:

(a) the Assigned Contracts;

(b) the Assigned Contract Rights;

(c) the Vessels;

(d) the Waterside Assets;

(e) the Transaction Cash;

(f) the Books and Records;

(g) the Authorizations;

(h) the Proprietary Rights;

(i) the Warranties; and

(j) the Spare Parts and Equipment.

"**ACTC**" means the Alameda County Transportation Commission.

"**Additional Insureds**" is defined in Section 9.1(b)(iii).

"**Alameda/Harbor Bay Ferry Service**" means regularly scheduled ferry service between the Harbor Bay Ferry Terminal and the San Francisco Ferry Building at the Port of San Francisco.

"**Alameda/Harbor Bay Ferry Service Agreement**" is defined in Section 4.5.

"**Alameda/Angel Island Service**" means excursion ferry service between the Main Street Ferry Terminal and Angel Island in San Francisco Bay.

"**Alameda/Oakland Ferry Service**" means the regularly scheduled ferry service between the Main Street Ferry Terminal and the San Francisco Ferry Building at the Port of San Francisco, including up to one intervening Oakland stop.

"**Alameda/San Francisco Ferry Service**" means regularly scheduled ferry service between the Main Street Ferry Terminal (or, the Seaplane Lagoon Ferry Terminal to the extent the Main Street Ferry Terminal is decommissioned and such ferry service is relocated so that it originates from the Seaplane Lagoon Ferry Terminal) and the San Francisco Ferry Building at the Port of San Francisco, with no intervening Oakland stop.

"**Ancillary Documents**" means one or more Bills of Sale and the Assignment and Assumption Agreement, substantially in the forms attached as Exhibit A through Exhibit D, respectively.

"**Assigned Contracts**" means the contracts that pertain exclusively to the Services and other contracts to the extent they pertain to the Services (each of which is listed on Schedule 1), and are assigned to WETA as part of this Transaction.

"**Assigned Contract Rights**" means all of City's rights and obligations under the Assigned Contracts, and City's rights and obligations under certain specified provisions of contracts that are partially assigned to and/or assumed by WETA as described in Schedule 1, and as shall be more particularly set forth in the relevant assignment and assumption agreement pertaining to such Assigned Contract Rights.

"**Assignment and Assumption Agreement**" means an agreement between City and WETA substantially in the form of the Assignment and Assumption Agreement attached as Exhibit D.

"**Assumed Liabilities**" means all liabilities and obligations of City and/or Authority with respect to the Acquired Assets, whether accruing before, on, or after the Closing Date (other than the Excluded Liabilities) including:

(a) all liabilities for Taxes levied on the Acquired Assets, including any Taxes levied on the Acquired Assets arising in connection with the consummation of the transactions contemplated herby;

(b) all liabilities of City or Authority under any Laws with respect to the Acquired Assets;

(c) all liabilities of City or Authority under any Laws with respect to the Services; and

(d) all liabilities and obligations of City or Authority under the Assigned Contracts or with respect to the Assigned Contract Rights.

"**Authority Lot**" is defined in Section 11.6(a).

"**Authorizations**" means any permit, license, authorization, order, decree, ruling, certificate, registration, filing, legislation, ordinance, resolution or other consent or approval (including Environmental Permits) granted by any Governmental Authority to City or WETA for a Service, which is a condition to the lawful operation of a Service or consummation of the transactions contemplated hereby as listed on Schedule 3, to the extent transferable.

"**Bay Ship & Yacht**" means Bay Ship & Yacht Co., a California corporation, or any of its successors, assigns, affiliates, or successor operator of the shipyard currently located and operated on City property immediately to the east of the Main Street Ferry Terminal.

"**Bifurcated Services**" means the possible future Alameda/San Francisco Ferry Service between the San Francisco Ferry Building and the proposed Seaplane Lagoon Ferry Terminal, and the possible future WETA-operated ferry service between the Port of Oakland and the San Francisco Ferry Building, that may be operated if WETA determines to cease operation of the Alameda/Oakland Ferry Service and implement two distinct ferry services, one serving Oakland passengers between Jack London Square and the San Francisco Ferry Building, and one serving passengers between the proposed Seaplane Lagoon Ferry Terminal and the San Francisco Ferry Building.

"**Bifurcation**" means cessation of operation of the Alameda/Oakland Ferry Service and implementation of two distinct ferry services, one serving Oakland passengers between Jack London Square and the San Francisco Ferry Building, and one serving passengers between the proposed Seaplane Lagoon Ferry Terminal and the San Francisco Ferry Building.

"**Blue & Gold Fleet Agreement**" is defined in Section 4.3.

"**Board**" means the governing body of a Party, as applicable.

"**Bonds**" means City of Alameda Improvement Bonds, Harbor Bay Business Park Assessment District 84-4, Series B.

"**Books and Records**" means all books, records, files and papers of City relating to the Services, including all contracts and agreements to which City is a party or by which it is bound, its general and other ledgers, records of administrative proceedings, Tax records, financial statements, documents of title, personnel records, salary and wage records, inventory records, sales documentation, "as built" drawings, and specifications for the Waterside Assets except the YC Float (and, as to Authority, "as built" drawings and specifications for the YC Barge), all to the extent in City's possession and/or control, regardless of the medium in which the same are fixed, but excluding confidential employee records, attorney-client privileged documents or communications, and other privileged materials; provided, however that City will cooperate with and assist WETA in making such documents, records and materials available to WETA to the extent reasonably necessary to assist WETA in connection with any Legal Proceedings to which WETA may become a party as a result of the Transition but which pertain to facts or events concerning the City prior to the Closing Date.

"**Caltrans Grant Assignment Agreement**" is defined in Section 6.1(u).

"**Certificate Regarding Truth of Representations and Warranties**" is defined in Section 7.1(e).

"**CEQA**" means the California Environmental Quality Act.

"**Change Considerations**" means WETA's regional system needs balanced with City's interest in maintaining existing Service Levels for City's residents and businesses when compared to other existing WETA passenger ferry services on the San Francisco Bay (with due consideration allowing for "ramping up" in the early years of a start-up service).

"**City Lot**" is defined in Section 11.6(a).

"**Claim**" or "**Claims**" means any and all present and future liabilities, claims, demands, obligations, assessments, losses, costs, damages, and expenses of any nature whatsoever, including any damages to property or injuries to persons, including accidental death (including attorneys' fees and costs) directly or indirectly related to ownership or operation of the Services (including reasonable attorneys' fees and court costs), whether known or unknown, and whether now existing or hereafter arising.

"**Closing**" means the consummation of transfer of the Services from City and Authority to WETA (including transfer of all Acquired Assets from City and Authority to WETA, and WETA's assumption of related obligations and payment of monies) as set forth in this Agreement.

"**Closing Date**" means the date on which Closing occurs.

"**Costs and Charges**" is defined in Section 3.1(b).

"**Crane**" is defined in Section 9.4(a).

"**Default**" means (a) a material breach of any Assigned Contract or Authorization, (b) the occurrence of an event that with the passage of time or the giving of notice or both would constitute a material breach of any Assigned Contract or Authorization, or (c) the occurrence of an event that with or without the passage of time or the giving of notice or both would give rise to a right of termination, renegotiation or acceleration under any Assigned Contract or Authorization or result in a material modification of the terms thereof.

"**Desired Maintenance Schedule**" is defined in Section 11.7(a).

"**Encumbrance**" means any claim, lien, pledge, option, charge, security interest, deed of trust, mortgage, building or contractual use restriction, conditional sales agreement, right of termination, forfeiture or cancellation, encumbrance or other similar right, whether voluntarily incurred or arising by operation of Law, and includes any agreement to give any of the foregoing in the future, and any contingent sale or other title retention agreement or lease in the nature thereof.

"**Environmental Condition**" means (a) any Release or threatened Release into, at, on, under or in the Landside Assets (including the surface water, groundwater, surface soil,

subsurface soil air, land or soil vapor thereof), or (b) any environmental contamination or pollution in violation of Environmental Laws existing at, on, under, or in the Landside Assets.

"**Environmental Laws**" means those Laws which regulate (a) the protection or clean-up of the environment, (b) the use, treatment, storage, transportation, generation, manufacture, processing, distribution, handling or disposal of, or emission, discharge or other Release or threatened Release, and (c) the preservation or protection of waterways, groundwater, drinking water, air, wildlife, plants or other natural resources, or the health and safety of persons or property, including protection of the health and safety of employees. Environmental Laws include the Federal Water Pollution Control Act, Resource Conservation & Recovery Act, Clean Water Act, Safe Drinking Water Act, Atomic Energy Act, Occupational Safety and Health Act, Toxic Substances Control Act, Clean Air Act, Comprehensive Environmental Response, Compensation and Liability Act, Hazardous Materials Transportation Act and all analogous or related Laws, whether federal, state, or local.

"**Environmental Permits**" means all permits, authorizations, registrations, certificates, licenses, approvals or consents required under or issued by any Governmental Authority pursuant to Environmental Laws and related to or required for operation of the Services or maintenance of the Landside Assets or the Waterside Assets, including the Retained Authorizations.

"**Equitable Funding Level**" is defined in Section 11.9(b)(iv).

"**Escrow**" means the escrow of documents and funds to be administered by Escrow Holder in accordance with the terms of this Agreement.

"**Escrow Holder**" means Chicago Title Company.

"**Excluded Assets**" means:

(a) originals of all personnel records and other original Books and Records that City is required to retain in its possession;

(b) the Retained Authorizations, which are identified on Schedule 7;

(c) the Landside Assets; and

(d) all Authorizations whose transfer is prohibited by Law.

"**Excluded Liabilities**" means and includes only the following: any obligation of City or Authority to WETA under this Agreement or the Ancillary Documents; obligation of City or Authority under any Retained Authorization (except to the extent such obligation under the Retained Authorization pertains to the Waterside Assets, as expressly identified in Schedule 7); any Environmental Condition (provided, however, that any Environmental Condition which City or Authority prove by a preponderance of evidence (as determined by written agreement among the Parties or a court of competent jurisdiction) is the result of a Release caused by WETA or any WETA Parties, shall be the responsibility of WETA); and any liability arising out of events occurring prior to the Closing Date, except for payment obligations under the Assigned Contracts

which shall be considered part of the Assumed Liabilities (but excluding those payment obligations arising as express or implied indemnity obligations under the Assigned Contracts, if any).

"**Excess Payment**" is defined in Section 12.9(a)(i).

"**Ferry Service Agreement**" is defined in Section 4.1.

"**Ferry Terminal**" and "**Ferry Terminals**" means the Harbor Bay Ferry Terminal and the Main Street Ferry Terminal, including associated restrooms and any and all passenger waiting areas and paths of travel to and from the Vessels and Waterside Assets. The Ferry Terminals are part of the Landside Assets and do not include the Waterside Assets.

"**Force Majeure**" means a material delay beyond the reasonable control of the delayed Party caused by labor strikes, lock-outs, industry wide inability to procure materials, extraordinary restrictive governmental laws or regulations (such as gas rationing), mass riots, war, military power, sabotage, fire or other casualty, an act of God or other event of a similar nature or magnitude.

"**Force Majeure Event**" means any event caused by Force Majeure and any other event specifically identified herein as a Force Majeure Event.

"**Governmental Authority**" means any federal, regional, state, local or other governmental agency, legislative body, court, authority, administrative agency, regulatory body, commission, joint powers agency or instrumentality, including any multinational authority having governmental or quasi-governmental powers, but unless the context otherwise requires, excluding City, Authority, and WETA.

"**Harbor Bay Fees**" is defined in Section 11.5(c)(iii).

"**Harbor Bay Ferry Terminal**" means the ferry terminal located at 2 Mecartney Road, Alameda, California, out of which the Alameda/Harbor Bay Ferry Service is operated as of the Effective Date.

"**Harbor Bay Grant of Easement**" is defined in Section 11.6(b)(i).

"**Harbor Bay Mooring Period**" is defined in Section 11.5(c)(i).

"**Harbor Bay Parking Lot**" is defined in Section 11.6(b)(i).

"**Hazardous Materials**" means any substance, material, or waste which is or becomes regulated by any local governmental authority, the State of California, or the United States Government, including any material or substance which is: (a) defined as a "hazardous waste," "extremely hazardous waste," or "restricted hazardous waste" under sections 25117, 25115 or 25122.7 of the California Health and Safety Code, or listed pursuant to California Health and Safety Code Section 25140; (b) defined as a "hazardous substance" under California Health and Safety Code Section 25316 (Carpenter-Presley-Tanner Hazardous Substance Account Act); (c) defined as a "hazardous material," "hazardous substance," or "hazardous waste" under

California Health and Safety Code Section 25501 (Hazardous Materials Release Response Plans and Inventory); (d) defined as a "hazardous substance" under California Health and Safety Code Section 25281 (Underground Storage of Hazardous Substances); (e) petroleum; (f) friable asbestos; (g) polychlorinated biphenyls; (h) listed under Article 9 or defined as "hazardous" or "extremely hazardous" pursuant to Article 11 of Title 22 of the California Administrative Code, Division 4, Chapter 20; (i) designated as "toxic pollutants" pursuant to Section 311 of the Clean Water Act (33 U.S.C. §1317); (j) defined as a "hazardous waste" pursuant to Section 1004 of the Resource Conservation and Recovery Act, 42 U.S.C. Section 6903; or (k) defined as "hazardous substances" pursuant to Section 101 of the Comprehensive Environmental Response, Compensation, and Liability Act, 42 U.S.C. Section 9601, *et seq.*, as the foregoing statutes and regulations now exist or may hereafter be amended, regardless of whether such materials in the preceding subsections (a) to (k) are solid, liquid or gas.

"**HBBPA**" is defined in Section 11.2(d).

"**HBBPA Agreement**" is defined in Section 11.6(b)(ii).

"HBIA/HBM 2004 Assignment" is defined in Section 11.3(d).

"**Indemnitees**" is defined in Section 9.5(a).

"**Infrastructure Agreement**" is defined in Section 11.2(a).

"**Inspection Period**" is defined in Section 3.2(a).

"**Knowledge**" or "**Known**" means the current, actual knowledge of the designated representative of the Party making the representation or warranty.

"**Landside Assets**" means the property of City, of Authority, and/or of HBBPA (but only to the extent pledged to or owned or controlled by City for Service purposes only), located at or above the top of the San Francisco Bay shoreline embankment as of the Effective Date, and the shoreline embankment rip-rap extending from the top of the shoreline embankment into the water and solely dedicated to, operated, or maintained, in connection with and necessary to provision of the Services (including the City Lot, the Authority Lot, the Harbor Bay Parking Lot, the Ferry Terminals, and shoreline embankment, and expressly excluding the bicycle paths and pedestrian paths that traverse the Ferry Terminals but exist independent of such Ferry Terminals).

"**Law**" means any decision, statute, ordinance, resolution, decree, order, writ, rule or regulation of a Governmental Authority, including City and Authority.

"**Legal Proceeding**" or "**Legal Proceedings**" means any claim, action, suit, labor dispute or complaint, proceeding or investigation before any Governmental Authority, whether brought, initiated, asserted or maintained by a Governmental Authority or any other Person, or arbitral action. For purposes of this definition, Legal Proceedings include disputes by and between City and Authority. Legal Proceedings include those existing or threatened matters listed in Schedule 4.

"**License 12192**" is defined in Section 4.2.

"**License 12194**" is defined in Section 4.4.

"**Main Street Channel**" means the portion of the channel offshore from the Main Street Ferry Terminal as depicted and identified on Exhibit O.

"**Main Street Fees**" is defined in Section 11.5(a)(iii)(C).

"**Main Street Ferry Terminal**" means the ferry terminal located at 2990 Main Street, Alameda, California, out of which the Alameda/Oakland Ferry Service is operated as of the Effective Date.

"**Main Street Land**" means the real property, including the Main Street Ferry Terminal, which is used to provide parking and ancillary facilities in connection with the Alameda/Oakland Ferry Service as of the Effective Date, as depicted and identified on Exhibit P.

"**Main Street Mooring Period**" is defined in Section 11.5(a)(i).

"**Main Street Rights**" is defined in Section 11.5(a)(iii).

"**Main Street Rights Area**" is defined in Section 11.5(a)(iii).

"**MARSEC**" means the three-tiered United States Coast Guard Maritime Security system created to be compatible with, and respond in a unison mode to, the federal Department of Homeland Security's Homeland Security Advisory System.

"**Material Adverse Change**" or "**Material Adverse Effect**" means (a) with respect to any Party pre-Closing, any adverse change, circumstance, or effect that, individually or in the aggregate, is likely to be materially adverse to the affected Party's position, the Acquired Assets, the Assumed Liabilities, or the Services and would impair or limit a Party's ability to perform its obligations under this Agreement; and (b) with respect to WETA, MTC, or the Services post-Closing, any change, circumstance or effect, including increase in insurance, maintenance or repair costs, that, individually or in the aggregate, has a significant negative economic impact on the Service operations, assets, liabilities, financial condition, or Service Levels, or causes or results in suspension of any Services for more than ninety (90) calendar days, or such longer time period as may be agreed upon by the City Manager in his or her sole discretion, for a reason within WETA's control that is not otherwise permitted or excused hereunder (including pursuant to a Force Majeure Event), or cancellation or termination of any of the Services.

"**Measure B**" means Alameda County's half-cent transportation sales tax, originally approved in 1986 and reauthorized by voters in November 2000.

"**Mooring/Emergency Ferry Uses**" is defined in Section 11.5(a)(iii)(B).

"**MTC**" means the Metropolitan Transportation Commission created by the California Legislature in 1970 (California Government Code §66500 *et seq.*), responsible for the transportation planning, coordinating and financing for the nine-county San Francisco Bay Area.

"**No Longer Operated**" means that applicable Service has been terminated, or that the Services Level for the applicable Service has been or will be suspended for a period of more than one hundred eighty (180) calendar days (except to the extent such suspension is caused by (a) a Force Majeure Event; (b) as to the Alameda/Oakland Ferry Service or the Alameda/San Francisco Ferry Service material interference with WETA's ability to use the Main Street Ferry Terminal by a third party granted access to the Main Street Channel or Main Street Land by City; (c) temporary closure of a ferry terminal due to needed repairs or capital improvements; (d) a Hazardous Materials Release that prevents use of a ferry terminal for the applicable Service; provided, however, that such exception shall not apply in the event WETA fails to meet its obligations under Section 9.6 herein to indemnify the Indemnitees with respect to such Hazardous Materials Release to the extent required by Section 9.6; (e) Hazardous Materials remediation related to a Hazardous Materials Release that prevents use of a ferry terminal for the applicable Service; provided, however, that such exception shall not apply in the event WETA fails to meet its obligations under Section 9.6 herein to indemnify the Indemnitees with respect to such remediation to the extent required by Section 9.6; (f) an injunction or other court order or official action of a governmental agency with jurisdiction over the applicable Service or the ferry terminal preventing WETA from using a ferry terminal for the applicable Service, for any reason other than WETA's breach of this Agreement; or (g) suspension of a Service's landing rights at the Port of San Francisco downtown ferry terminals due to inability to extend Landing Rights License 12914 and 12912 and delay in WETA's obtaining a direct license of landing rights for a Service from the Port of San Francisco) or such longer period to which the City and WETA may agree in writing. City hereby delegates to its City Manager or Acting City Manager the authority to enter into such an agreement on City's behalf, and WETA hereby delegates to its Executive Director the authority to enter into such an agreement on WETA's behalf.

"**Party**" or "**Parties**" shall respectively mean and refer to each of WETA, City and Authority, individually and collectively.

"**Permitted Encumbrances**" means, with respect to an Acquired Asset, all of the following:

(a) Any Encumbrance for Taxes, assessments and other governmental charges not yet due, payable and delinquent or which is currently being contested in good faith by appropriate Legal Proceedings.

(b) Leases, reservations or other rights of others in, or minor defects and irregularities in title to, Acquired Assets, provided that such leases, reservations or other rights, defects or irregularities do not materially impair the use of such Acquired Assets for the purpose for which they are to be held by WETA.

(c) Assigned Contracts.

(d) Any Encumbrance arising by, through or under WETA.

(e) Any Encumbrance which City or Authority has elected not to remove, to the extent WETA has not terminated this Agreement pursuant to Section 3.2(c).

(f) Any Assumed Liability.

"**Person**" means an individual, a partnership (whether general or limited), a corporation, a limited liability company, an association, a joint stock company, a trust, a joint venture, an unincorporated organization, or a Governmental Authority (or any department, agency, or political subdivision thereof).

"**Personalty**" means the Vessels, the Waterside Assets, the Assigned Contracts and Assigned Contract Rights, the Spare Parts and Equipment, the Proprietary Rights, the Warranties, the Transaction Cash, and the Books and Records for each of the Services.

"**Pier Head**" is defined in Section 9.4(a).

"**Port of Oakland**" means the City of Oakland, acting by and through the Port of Oakland, a component unit of the City of Oakland.

"**Proposition 1B**" means the California Highway Safety, Traffic Reduction, Air Quality, and Port Security Bond Act of 2006 (SB 1266: Chapter 25, Statutes of 2006).

"**Proprietary Rights**" means, to the extent transferable: (a) all copyrights, copyright registrations, proprietary processes, trade secrets, license rights, specifications, technical manuals and data, drawings, inventions, designs, patents, patent applications, trade names, trademarks, service marks, product information and data, know-how and development work-in-progress, customer lists, software, business and marketing plans and other intellectual or intangible property embodied in or pertaining to a Service operation in which City holds a right or interest, whether pending, applied for or issued, whether filed in the United States or in other countries, together with all associated goodwill; (b) all things in which City holds a right or interest authored, discovered, developed, made, perfected, improved, designed, engineered, acquired, produced, conceived or first reduced to practice by City or any of its employees or agents that are embodied in, derived from or related to a Service operation, in any stage of development, including modifications, enhancements, designs, concepts, techniques, methods, ideas, flow charts, coding sheets, notes and all other information in which City holds a right or interest relating to the Service operation; and (c) any and all design and code documentation, methodologies, processes, trade secrets, copyrights, design information, product information, technology, formulae, routines, engineering specifications, technical manuals and data, feasibility studies, market studies, traffic studies or projections, drawings, inventions, know-how, techniques, engineering work papers, and notes, development work-in-process, and other proprietary information and materials of any kind relating to the Services operation, in which City holds a right or interest; all to the extent dedicated to, operated or maintained in connection with provision of the Services. Proprietary Rights include those listed in Schedule 6.

"**Reimbursement Agreement**" means the Administrative Costs Funding Agreement for Transition of Ferry Services between WETA and City dated as of February 1, 2010.

"**Release**" means any intentional or unintentional release, discharge, spill, leaking, pumping, pouring, emitting, emptying, injection, disposal or dumping of Hazardous Materials in violation of the Environmental Laws.

"**Retained Authorizations**" means those Authorizations required to be retained by City under the terms of this Agreement as listed on Schedule 7.

"**RM-1**" means Regional Measure 1 adopted by voters in November 1988 to authorize a standard auto toll of $1 for all state-owned Bay Area toll bridges.

"**RM-2**" means Regional Measure 2, the March 2004 Ballot Measure (SB 916-Perata) to increase bridge tolls on state-owned bridges in the San Francisco Bay Area, to fund various transportation projects within the region that have been determined to reduce congestion or to make improvements to travel in the toll bridge corridors, as identified in SB 916 (Chapter 715, Statutes of 2004).

"**Seaplane Lagoon**" means that portion of the former Naval Air Station at Alameda Point, in the City of Alameda, California, as generally depicted on Exhibit L.

"**Seaplane Lagoon Ferry Terminal**" is defined in Section 11.9.

"**Service**" and "**Services**" means (a) the Alameda/Oakland Ferry Service in existence as of the Effective Date or the Alameda/San Francisco Ferry Service after Bifurcation, and (b) the Alameda/Harbor Bay Ferry Service, individually and collectively.

"**Service Level**" or "**Service Levels**" is defined in Section 11.3(a).

"**Spare Parts and Equipment**" means all tools and equipment, spare parts, and any other equipment and other tangible personalty owned by City wherever located (including in the possession of any of City's contractors, suppliers or other vendors) held for use in connection with the Services.

"**Supplemental Insurance**" is defined in Section 9.2(b).

"**Tax**" or "**Taxes**" means any federal, state, local or foreign license, payroll, employment, excise, severance, stamp, occupation, premium, environmental, customs duties, capital stock, franchise, profits, withholding, social security, unemployment, disability, real property, possessory interest, documentary, personalty, special assessment, sales, use, transfer, registration, value added, alternative or add-on minimum, estimated, or other tax of any kind whatsoever, including any interest, penalty, or addition thereto, whether disputed or not.

"**Term**" means the period commencing as of Closing and expiring on (a) the expiration or other termination of the Harbor Bay Mooring Period as to those aspects of this Agreement relating to the Alameda/Harbor Bay Ferry Service; (b) the expiration or termination of the Main Street Mooring Period as to those aspects of this Agreement relating to the Alameda/Oakland Ferry Service; and (c) the later of the expiration or termination of the Main Street Mooring Period or expiration or termination of the Harbor Bay Mooring Period as to those aspects of this Agreement which relate to both or neither the Alameda/Harbor Bay Ferry Service or the Alameda/Oakland Ferry Service.

"**TIF/LLAD Equivalent**" is defined in Section 11.2(a).

"**Title Abstract**" is defined in Section 3.2(c).

"**Transaction**" means implementation of the Transition pursuant to the terms and conditions contained in this Agreement.

"**Transaction Cash**" means all receivables, operating, and reserve account balances of funds in City's possession specifically designated for operation, maintenance, repair or rehabilitation of the Services, the Spare Parts and Equipment, the Waterside Assets or net payments under any Assigned Contracts.

"**Transition**" is defined in the Recitals.

"**Triple Net Costs**" is defined in Section 11.7(c)(i).

"**Vallejo Transit Agreement**" is defined in Section 12.9(a).

"**Vessels**" means the vessels specified in Schedule 8, including MV Harbor Bay Express II, MV Bay Breeze, MV Encinal, and MV Peralta.

"**Warranties**" means any service, repair, replacement, construction and other obligation, warranty, representation or guaranty based upon or arising out of any express or implied warranty, made or deemed to be made in connection with the acquisition, sale or lease, or to the extent applicable, construction or repair of any Vessel, Waterside Assets or Spare Parts and Equipment, or the performance of service by any seller, distributor, or manufacturer thereof or any other Person providing services to City in respect of the Vessels, Waterside Assets or Spare Parts and Equipment.

"**Waterside Assets**" means (a) with respect to each Service, the pilings, aluminum passenger ramps, passenger gates, ramp awnings and the related gangways used in connection with operation of each Service, (b) the YC Float located at the Main Street Ferry Terminal, (c) the float currently used in connection with the Alameda/Harbor Bay Ferry Service, and (d) the navigational channel markers located off of the Harbor Bay Ferry Terminal; all located below the top of the San Francisco Bay shoreline embankment as of the Effective Date, as more particularly described in Schedule 5 (but specifically excluding the Crane, Pier Head and shoreline embankment rip-rap).

"**WETA Parties**" is defined in Section 9.5(a).

"**YC Float**" means that certain float located off of the Main Street Ferry Terminal and which is owned by Authority, as depicted and identified on Exhibit R.

"**YC Float Bill of Sale**" is defined in Section 2.5.

"**YC Float Price**" is defined in Section 2.5.

ARTICLE 2

AGREEMENT TO TRANSFER ACQUIRED ASSETS

Section 2.1 Transfer of Acquired Assets.

(a) By City. Subject to the terms and conditions of this Agreement, and subject to Section 2.3 below, City shall assign, convey, and transfer to WETA, and WETA shall accept from City as of the Closing Date, free and clear of all Encumbrances except for Permitted Encumbrances, all of the Acquired Assets to which City holds a right, title, or interest.

(b) By Authority. Subject to the terms and conditions of this Agreement, and subject to Section 2.3 below, Authority shall assign, convey, transfer and deliver to WETA, and WETA shall accept from Authority as of the Closing Date, free and clear of all Encumbrances except for Permitted Encumbrances, all of Authority's right, title, and interest in and to the YC Float.

Section 2.2 Acceptance by WETA.

(a) Acquisition of Assets. WETA agrees to assume ownership of and become responsible for, on and subject to the terms and conditions of this Agreement, all of the Acquired Assets at Closing. WETA will not assume or have any responsibility, however, with respect to any of the Excluded Liabilities.

(i) Assumption of Liabilities. WETA agrees to assume and become responsible for, on and subject to the terms and conditions of this Agreement, all of the Assumed Liabilities at Closing. WETA will not assume or have any responsibility, however, with respect to any of the Excluded Liabilities.

(ii) Retained Authorizations. WETA agrees to assume responsibility for complying with the provisions of and performing the City's and the Authority's obligations under the Retained Authorizations to the extent that they pertain to the Waterside Assets, as set forth in detail in Schedule 7 at Closing. WETA will not assume or have any responsibility, however, with respect to any Excluded Liabilities.

Section 2.3 "AS IS" Transfer; UCC Disclaimer.

(a) Except as specifically stated in this Agreement or in any document of conveyance of the Vessels, the Waterside Assets, or the Spare Parts and Equipment, neither City nor Authority is making or has made, nor shall City or Authority be deemed to make or have made, any express or implied representation or warranty of any kind or nature as to the Vessels, the Waterside Assets, or the Spare Parts and Equipment, including the physical condition or safety of such property, or the accuracy or completeness of the Title Commitment, any inspection documents or consultant reports. Without limiting the foregoing, WETA hereby acknowledges that the Vessels, the Waterside Assets, and the Spare Parts and Equipment will be transferred to WETA, and WETA will acquire the same, "AS IS," "WHERE IS" and "WITH ALL FAULTS" and, except for the express City and Authority representations and warranties contained in Section 5.1 and Section 5.2 hereof or any document of conveyance of such property to WETA from City or Authority (as applicable), there are no representations or warranties, express or implied, made by City or Authority in connection with the Transaction.

(b) EXCEPT AS EXPRESSLY SET FORTH IN THIS AGREEMENT, IT IS UNDERSTOOD AND AGREED THAT NEITHER AUTHORITY NOR CITY IS MAKING OR HAS AT ANY TIME MADE ANY WARRANTIES OR REPRESENTATIONS OF ANY

KIND OR CHARACTER, EXPRESS OR IMPLIED, WITH RESPECT TO THE VESSELS, THE WATERSIDE ASSETS (INCLUDING THE YC FLOAT), OR THE SPARE PARTS AND EQUIPMENT, INCLUDING ANY WARRANTIES OR REPRESENTATIONS AS TO MERCHANTABILITY, OR FITNESS FOR A PARTICULAR PURPOSE.

WETA SPECIFICALLY ACKNOWLEDGES AND AGREES THAT EXCEPT TO THE EXTENT SPECIFICALLY AND EXPRESSLY SET FORTH HEREIN OR IN THE AGREEMENT, NEITHER CITY NOR AUTHORITY HAS MADE OR MAKES (AND EACH CITY AND AUTHORITY SPECIFICALLY NEGATES AND DISCLAIMS) ANY REPRESENTATIONS, WARRANTIES, PROMISES, COVENANTS, AGREEMENTS OR GUARANTIES OF ANY KIND OR CHARACTER WHATSOEVER, WHETHER EXPRESS OR IMPLIED, ORAL OR WRITTEN, PAST, PRESENT OR FUTURE, OF, AS TO, CONCERNING OR WITH RESPECT TO THE VESSELS, THE WATERSIDE ASSETS (INCLUDING THE YC FLOAT), OR THE PERSONALTY (INCLUDING THE SPARE PARTS AND EQUIPMENT), INCLUDING ANY WARRANTIES OR REPRESENTATIONS AS TO MERCHANTABILITY, OR FITNESS FOR A PARTICULAR PURPOSE.

Section 2.4 Transfer of Vessels. At Closing, City shall transfer to WETA all of City's right, title and interest in and to the Vessels. City shall cooperate with and assist WETA in obtaining the transfer of the interests owned by the Port of Oakland, to WETA concurrent with or as soon as possible following Closing, provided, however, that Closing shall not be contingent upon the Port of Oakland's transfer of its interest in the Vessels. At Closing, the Bareboat Charter Agreements dated as April 14, 2010, November 15, 2009, September 1, 2009, and December 3, 2009, between the City and WETA for use of WETA's Taurus, Gemini and Pisces vessels, respectively, shall be deemed cancelled. The estoppel agreement to be obtained from Blue & Gold Fleet, L.P. as a condition to Closing shall include Blue & Gold Fleet's acknowledgement of its ongoing responsibility to operate the Taurus and Gemini Vessels in accordance with the terms of the Bareboat Charter Agreements for such Vessels referenced as exhibits in the Alameda/Oakland Ferry Service Agreement between City and Blue & Gold Fleet, as amended by the First through Thirteenth Amendments thereto, that will be assigned to WETA at the Closing. The estoppel agreement to be obtained from Harbor Bay Maritime, Inc. as a condition to Closing shall include Harbor Bay Maritime's acknowledgement of its ongoing responsibility to operate the M.V. Pisces Vessel in accordance with the terms of the Bareboat Charter Agreements for such Vessel referenced as exhibits in the Amended and Restated Operating Agreement for the Alameda Harbor Bay Ferry Service between City and Harbor Bay Maritime, Inc., as amended by the First through Eighth Amendments thereto, that will be assigned to WETA at the Closing.

Section 2.5 YC Float. At Closing, Authority shall transfer to WETA all of Authority's right, title and interest in and to the YC Float in exchange for WETA's payment to Authority of the sum of Ninety Thousand Dollars ($90,000) together with any applicable Costs and Charges (defined in Section 3.1(b)) in the form of a certified or cashier's check, electronic transfer of federal funds or other immediately available funds ("**YC Float Price**") into Escrow and pursuant to a bill of sale in substantially the form attached hereto as Exhibit C ("**YC Float Bill of Sale**"). City and Authority shall cooperate with and assist WETA in effecting the transfer thereof. As provided in Section 9.4(b), the YC Float Price shall be held and remain in Escrow until such time as City has entered into a contract for removal or retrofit of the Crane as provided in Section

9.4(a). Upon City's execution of such contract, City and Authority shall notify Escrow Holder thereof, and Escrow Holder shall be authorized to release the YC Float Price to Authority ten days following receipt of written confirmation from City and Authority, a copy of which shall be delivered concurrently to WETA, certifying to Escrow Holder and WETA that a notice to proceed has been issued to the removal/retrofit contractor.

Section 2.6 Other Acquired Assets. At Closing, City shall take all other actions and execute all documents reasonably necessary to transfer all of City's right, title and interest in the other Acquired Assets to WETA, including execution and delivery of the Ancillary Documents and any other bills of sale, transfers of registrations and accounts, and assignments of contracts, permits and licenses.

ARTICLE 3

ESCROW; DUE DILIGENCE REVIEW OF ASSETS

Section 3.1 Escrow.

(a) Opening of Escrow. Within two (2) business days after the Effective Date, the Parties shall open an Escrow with Escrow Holder and deposit a fully executed copy of this Agreement with Escrow Holder. Escrow Holder shall hold this Agreement and all deposits in the Escrow until Closing (except that the YC Float Price shall remain in Escrow and be administered as provided in Section 2.5, Section 9.4(a) and Section 9.4(b)) or earlier termination of this Agreement in accordance with the provisions hereof.

(b) Costs and Charges. WETA shall solely bear all costs and charges of Escrow, Closing, and consummation of the Transaction and Transition including any Taxes, escrow costs, fees, or charges, and recording and filing fees ("**Costs and Charges**"). WETA shall deposit such Costs and Charges into Escrow; under no circumstances shall any portion of the Transaction Cash be used to pay any Costs and Charges.

(c) Assumed Liabilities. To the extent known to or quantifiable by City , usual and customary costs incurred by or chargeable to City in connection with the Services which remain due and payable as of Closing shall be deducted from the Transaction Cash and paid from such deducted amounts at or before Closing. Costs incurred by or chargeable to City in connection with the Services which become known to or quantifiable by City after Closing comprise part of the Assumed Liabilities. City shall submit invoices for such costs to WETA and WETA shall promptly remit full payment therefor directly to the creditor prior to the payment due date, and shall provide City with proof of timely payment. To the extent WETA does not timely pay undisputed amounts of such invoices in full, City may remit full or partial payment (including late charges and interest due) to the applicable creditor, and WETA shall reimburse City for such payment within thirty (30) calendar days after City's presentation of an invoice or other materials evidencing such payment. To the extent WETA does not timely reimburse City for such payments made by City to creditors for invoiced amounts that are not disputed by WETA in good faith, City may deduct such sums from the next installment of the TIF/LLAD Equivalent to reimburse itself using such deducted sums.

Section 3.2 Due Diligence.

(a) Review of Assets. WETA shall have the right to cause a third party to inspect the Waterside Assets, and to directly inspect or cause a third party to inspect the other Acquired Assets, at any time after the Effective Date and from time to time prior to February 28, 2011 ("**Inspection Period**") by delivery of not fewer than five (5) business days prior notice to City. WETA has provided an initial proposed inspection Schedule to City and Authority, and an outline of steps to be implemented by WETA to ensure that inspections not reduce or delay any scheduled Service, departures or required carrying capacity. City, at no expense to City, shall reasonably cooperate and assist WETA in such inspections. Authority, at no expense to Authority, shall reasonably cooperate and assist WETA in inspection of the YC Float. If WETA so requests, City shall arrange for the inspection of the Vessels, provided that WETA shall direct the nature and extent of all such inspections and pay all costs incurred by City to conduct such inspections (including on-board labor, marine surveyor, shipyard dry-dock, fuel, operator and City administrative costs, and the cost of providing replacement vessels of similar or greater size if needed, as determined by City in its reasonable discretion), within thirty (30) calendar days after City's presentation of an invoice itemizing such costs.

(b) Access to City Books and Records. During the Inspection Period, City shall give WETA and its accountants and consultants, upon five (5) business days prior written notice, full access during normal business hours to all Books and Records, documents, properties, files, contracts, and other instruments pertaining to the Services (except confidential employee records, attorney client privileged documents or communications, or other privileged materials), relating to the Acquired Assets and Assumed Liabilities to be transferred to or assumed by WETA or City's conduct of the Services, and will allow WETA to make copies of the same, all at WETA's expense.

(c) Abstract of Title. Within the Inspection Period, WETA shall request an Abstract of Title for the Vessels from the United States Coast Guard ("**Title Abstract**"). City shall cooperate with WETA's efforts to perform and obtain a current and comprehensive UCC lien and judgment search with respect to the Acquired Assets. No more than ten (10) business days after expiration of the Inspection Period, and in no event fewer than thirty (30) calendar days before the Closing Date, WETA shall notify City in writing of any Encumbrances identified in the Title Abstract or UCC lien and judgment search that are disapproved by WETA. Such notice shall be sent by certified mail, facsimile, or email to the Acting City Manager (Lisa Goldman, facsimile: (510) 747-4704, email: lgoldman@ci.alameda.ca.us) with a copy to City's public works department (Matthew T. Naclerio, facsimile: (510) 749-5867, email: mnaclerio@ci.alameda.ca.us). Within ten (10) business days after City's receipt of WETA's notice, City shall advise WETA in writing whether or not City will clear the disapproved Encumbrances. City's failure to respond to WETA within such time period shall be deemed to be City's election not to remove the Encumbrances. WETA, as its sole remedy for City's election or deemed election not to remove the disapproved Encumbrances, shall have the right to terminate this Agreement upon written notice to City within ten (10) business days after City's election (or deemed election) not to clear an Encumbrance that was disapproved by WETA in its written notice. City's failure to remove any Encumbrance or failure to respond to WETA's notice of disapproval of any Encumbrance shall not constitute a Default under this Agreement. WETA's failure to terminate this Agreement shall operate as WETA's acceptance of such

Encumbrances. Any Encumbrance identified in the Title Abstract that is approved by WETA, or that City does not remove (to the extent WETA does not terminate this Agreement) shall be a "**Permitted Encumbrance**." To the extent WETA has not terminated this Agreement, or timely notified City of any disapproved Encumbrance, as provided herein, WETA shall either unconditionally accept such Encumbrance or bear all costs associated with removal thereof.

ARTICLE 4

CITY AND WETA'S AGREEMENT TO USE GOOD FAITH EFFORTS TO RENEW CERTAIN CONTRACTS AND RIGHTS

Section 4.1 Alameda/Oakland Ferry Service Agreement. If WETA has not entered into a separate agreement with the Port of Oakland that will be effective prior to or concurrent with Closing, then, subject to the consent of the Port of Oakland, City shall assign to WETA all of City's rights and obligations as set forth in that certain Amended and Restated Ferry Service Agreement between the City of Alameda and the Port of Oakland dated as of July 1, 2005, as amended by that certain First Amendment to Ferry Service Agreement dated as of July 1, 2006, Second Amendment to Ferry Service Agreement dated as of July 1, 2007, Third Amendment to Ferry Service Agreement dated as of July 1, 2008, Fourth Amendment to Ferry Service Agreement dated as of July 1, 2009 and Fifth Amendment to Ferry Service Agreement dated as of July 1, 2010 (collectively, the "**Ferry Service Agreement**") subject to the consent, if required, of the Port of Oakland.

Section 4.2 License 12192. City shall use good faith efforts to renew the Agreement for Landing Rights License 12192 between City and the Port of San Francisco covering the Alameda/Oakland Ferry Service at the Port of San Francisco's Downtown Ferry Terminals, AT&T Park and China Basin ("**License 12192**") on terms and conditions reasonably acceptable to WETA. If WETA has not entered into a separate agreement with the Port of San Francisco for landing rights for the Alameda/Oakland Ferry Service that will be effective prior to or concurrent with Closing, City shall assign City's rights and obligations under License 12192 to WETA, subject to the consent (if required) of the Port of San Francisco. WETA shall have the right to review and comment on any such renewed License 12192 prior to Closing.

Section 4.3 Blue & Gold Fleet Agreement. Prior to the Effective Date, City has entered into an extension until June 30, 2011 of the Alameda/Oakland Ferry Service Agreement between City and the Blue & Gold Fleet, L.P., a Delaware limited partnership, dated as of August 1, 2004 (collectively, the "**Blue & Gold Fleet Agreement**") as amended by the Second through Thirteenth Amendments thereto, for the continued operation of the Alameda/Oakland Ferry Service. City shall assign its rights and obligations under the Blue & Gold Fleet Agreement to WETA, subject to the consent (if required) of Blue & Gold Fleet, L.P.

Section 4.4 License 12194. City shall use good faith efforts to renew the Agreement for Landing Rights License 12194 between City and the Port of San Francisco covering the Alameda/Harbor Bay Ferry Service at the Port of San Francisco's Downtown Ferry Terminals ("**License 12194**"). If WETA has not entered into a separate agreement with the Port of San Francisco for landing rights for Alameda/Harbor Bay Ferry Service that will be effective prior to or concurrent with Closing, City shall assign City's rights and obligations under License 12194

to WETA, subject to the consent (if required) of the Port of San Francisco. WETA shall have the right to review and comment on any such renewed License 12194 prior to Closing.

Section 4.5 Alameda/Harbor Bay Ferry Service Agreement. Prior to the Effective Date, City and Harbor Bay Maritime, Inc. entered into the Eighth Amendment to the Sixth Amended and Restated Operating Agreement for the Alameda/Harbor Bay Ferry Service (collectively, the "**Alameda/Harbor Bay Ferry Service Agreement**"), for the continued operation of the Alameda/Harbor Bay Ferry Service until June 30, 2011. City shall assign City's rights and obligations under the Alameda/Harbor Bay Ferry Service Agreement to WETA, subject to the consent (if required) of the Harbor Bay Maritime, Inc.

Section 4.6 Cooperation. City and WETA, all at WETA's expense, shall cooperate with each other in the renewals and renegotiations referenced herein, including giving of any other required third party notices, and use diligent good faith efforts to obtain required Authorizations, third party consents, estoppel certificates, make any filings, and take other steps reasonably necessary to consummate the Transaction; provided, however, that City's failure to so cooperate shall constitute neither a breach nor a default by City under this Agreement.

ARTICLE 5

REPRESENTATIONS, WARRANTIES AND COVENANTS

Section 5.1 Representations and Warranties of City. As of the Effective Date, City represents and warrants the following, each of which shall be ratified as of Closing:

(a) City is a duly organized and validly existing California charter city. City has the legal power and full authority to enter into, be bound by, and comply with the terms of this Agreement to which it is a Party, and has obtained all necessary authorizations, consents and approvals required to be obtained by City for the execution, delivery and performance of this Agreement and the consummation of the Transaction.

(b) To its Knowledge, the execution and delivery of this Agreement, the consummation of the Transaction, and the performance of or compliance with the terms, conditions and covenants of this Agreement will not violate or conflict with or result in the breach of any of the terms, conditions or provisions of any agreement, judicial order or instrument to which City is a party or by which City or any of City's assets are bound.

(c) To its Knowledge, the interests to be transferred to WETA or granted pursuant to the terms of this Agreement constitute sufficient interests for WETA to operate the Services in substantially the same manner as they are being operated by City as of the Effective Date.

(d) To its Knowledge, the Vessels to be transferred to WETA are free and clear of Encumbrances other than the Permitted Encumbrances specified in Schedule 10.

(e) To its Knowledge, there are no pending or anticipated condemnation proceedings with respect to the Ferry Terminals.

(f) To its Knowledge, the Transaction will not result in the material breach of any of the Assigned Contracts by City.

(g) City has not sold or placed or suffered to be placed any lien or claim on or against the Acquired Assets, except as set forth in the Schedule of Permitted Encumbrances.

(h) To its Knowledge, all Books and Records delivered by City to WETA are true and accurate as of the date of such statements.

(i) To its Knowledge, City has not received any notice that the Ferry Terminals are in violation of any applicable Laws, except for those matters specified in Schedule 11.

(j) To its Knowledge, all required Authorizations for operation of the Services have been obtained and are effective and in good standing and all required Authorizations except for the Retained Authorizations will be included in the Assigned Contracts, except for any matters identified in Schedule 12.

(k) Except as otherwise disclosed by City in Schedule 13, no notice from any Governmental Authority has been received by City indicating that the Services currently fail to comply with one or more applicable Laws.

(l) To its Knowledge, except as otherwise disclosed by City in Schedule 14, there are no pending or threatened Legal Proceedings against City directly related to the Services or to the Transaction, nor are there any Assumed Liabilities, which would result in a Material Adverse Change or affect City's ability to validly close the Transaction, or WETA's ability to operate the Services at the Service Levels contemplated by this Agreement.

(m) To its Knowledge, all schedules and exhibits to this Agreement that pertain to City are true, accurate and complete.

(n) To its Knowledge, except as listed in Schedule 15, there are no Defaults existing under the Assigned Contracts to which City is a party.

(o) To its Knowledge, the Assigned Contracts represent all material agreements necessary for WETA to operate the Services in substantially the same manner as they are being operated by City as of the Effective Date.

(p) To its Knowledge, there are no pending or threatened claims of any third party against City with respect to City's ownership or operation of the Ferry Terminals, the Acquired Assets or the Services, nor are there in existence any facts or circumstances in existence with respect to City's ownership or operation of the Ferry Terminals, the Acquired Assets or the Services that may give rise to a third party claim against City with respect thereto.

The representations and warranties set forth in this Section 5.1 shall survive for a period of three (3) years following the Closing Date. As referenced above, "Knowledge" of City means the Knowledge of Ernest Sanchez, who is most knowledgeable about the matters specified in this

Section 5.1 and who is City's designated representative for purposes of these representations and warranties.

Section 5.2 Representations and Warranties of Authority. As of the Effective Date, Authority, represents and warrants the following, each of which shall be ratified as of Closing:

(a) Authority is a duly organized and validly existing California joint powers authority. Authority has the legal power and full authority to enter into, be bound by, and comply with the terms of this Agreement to which it is a Party, and has obtained all necessary authorizations, consents and approvals required to be obtained by Authority for the execution, delivery and performance of this Agreement and the consummation of the transaction contemplated herein.

(b) To its Knowledge, the execution and delivery of this Agreement, the consummation of the Transaction, and the performance of or compliance with the terms, conditions and covenants of this Agreement will not violate or conflict with or result in the breach of any of the terms, conditions or provisions of any agreement, judicial order or instrument to which Authority is a party or by which Authority or any of Authority's assets are bound.

(c) To its Knowledge, there are no pending or anticipated condemnation proceedings with respect to the City Lot or the Authority Lot.

(d) To its Knowledge, the Transaction will not result in the material breach of any of the Assigned Contracts by Authority.

(e) To its Knowledge, Authority has not received any notice that the Authority Lot or the YC Float are in violation of any applicable Laws, except for those matters specified in Schedule 11.

(f) To its Knowledge, except as otherwise disclosed by Authority in Schedule 13 to this Agreement, no notice from any Governmental Authority has been received by Authority indicating that the use of Authority assets in connection with the Services currently fails to comply with one or more applicable Laws.

(g) To its Knowledge, except as otherwise disclosed by Authority in Schedule 14 to this Agreement, there are no pending or threatened Legal Proceedings against Authority directly related to the Services or the Transaction, which would result in a Material Adverse Change or affect Authority's ability to validly close the Transaction.

(h) To its Knowledge, all schedules and exhibits to this Agreement that pertain to Authority are true, accurate and complete.

(i) To its Knowledge, except as listed in Schedule 15 to this Agreement, there are no Defaults existing under any of the Assigned Contracts to which Authority is a party.

(j) To its Knowledge, there are no pending or threatened claims of any third party against Authority with respect to Authority's lease or operation of Authority Lot or the YC

Float, nor are there in existence any facts or circumstances in existence with respect to Authority's lease or operation of the Authority Lot or the YC Float that may give rise to a third party claim against Authority, City or upon Closing, WETA, with respect thereto.

The representations and warranties set forth in this Section 5.2 shall survive for a period of three (3) years following the Closing Date. As referenced above, "Knowledge" of Authority means the Knowledge of Nanette Mocanu Banks, who is most knowledgeable about the matters specified in this Section 5.2, and who is Authority's designated representative for purposes of these representations and warranties.

Section 5.3 Representations and Warranties of WETA. As of the Effective Date, WETA hereby represents and warrants the following, each of which shall be ratified as of Closing:

(a) WETA is a duly organized and validly existing California transportation authority. WETA has legal power and full authority to enter into, be bound by, and comply with the terms of this Agreement to which it is a Party, and has obtained all necessary Authorizations required to be obtained by it for the execution, delivery and performance of this Agreement and the consummation of the Transaction.

(b) To its Knowledge, the execution and delivery of this Agreement, the consummation of the Transaction, and the performance of or compliance with the terms, conditions and covenants of this Agreement will not violate or conflict with or result in the breach of any of the terms, conditions or provisions of any agreement, judicial order or instrument to which WETA is a party or by which WETA or any of WETA's assets are bound.

(c) All consents of any entity related to or affiliated with WETA that are necessary to consummate the Transition and the Transaction have been obtained.

(d) To its Knowledge, there are no pending or threatened Legal Proceedings that would affect WETA's ability to validly close the Transaction or consummate the Transition.

(e) To its Knowledge, no licenses from or consents of any other person are required in connection with the Transition or Transaction, except as are listed in Schedule 9.

(f) To its Knowledge, all required Authorizations for operation of the Services have been obtained and are effective and in good standing, and all such Authorizations except for the Retained Authorizations will be included in the Assigned Contracts, except for any matters identified in Schedule 12.

(g) To its Knowledge, except as otherwise disclosed in Schedule 13 to this Agreement, no notice from any Governmental Authority has been received by or is known to WETA indicating that the Services currently fail to comply with one or more applicable Laws.

(h) To its Knowledge, all schedules and exhibits to this Agreement are true, accurate and complete.

(i) Subject to the terms of this Agreement, WETA shall use its best efforts to continue to operate the Services in substantially the same manner as they are being operated by City as of the Effective Date.

The representations and warranties set forth in this Section 5.3 shall survive for three (3) years following the Closing Date. As referenced above, "Knowledge" of WETA means the Knowledge, as of the Effective Date, of Nina Rannells, WETA Executive Director, who is most knowledgeable about the matters specified in this Section 5.3 and WETA's designated representative for purposes of the above representations and warranties.

Section 5.4 Changes in Representations and Warranties. The Parties shall give each other prompt notice of any occurrence making a representation or warranty untrue, inaccurate or incomplete. If the Party receiving notice determines in its reasonable discretion that the untruthfulness, inaccuracy or incompleteness of such representation or warranty will have a Material Adverse Effect on the Services or the Transaction, then the Parties shall meet and confer to determine any steps to be taken to address such Material Adverse Effect, which may include termination of this Agreement by the Party for whose benefit such representation or warranty has been made.

Section 5.5 Covenants of City. City covenants that it shall take each of the following actions:

(a) From the Effective Date to the Closing Date, and subject to funding availability, City agrees to operate each Service in substantially the same manner (but subject, however, to reasonably prudent transit industry standards) as the relevant Service has been operating during fiscal year 2010/11. The operation of each Service shall include maintenance of facilities, advertising and provision of regular and excursion ferry service.

(b) From the Effective Date to the Closing Date, City agrees to perform all of City's material obligations under the Assigned Contracts to which City is a Party.

(c) From the Effective Date to the Closing Date, City agrees that it shall not sell or encumber or authorize any liens being filed against the Acquired Assets in which it has an interest.

(d) From the Effective Date to the Closing Date, City shall allow WETA, at WETA's expense, to observe supervision and oversight of Assigned Contracts so that seamless transition of responsibility may occur as of Closing. WETA's activities shall not unreasonably impact Service operations.

(e) From the Effective Date and continuing to and after Closing, City shall provide WETA with reasonable access to the Books and Records, at WETA's expense and as City staffing allows.

Section 5.6 Covenants of Authority. Authority covenants that it shall take each of the following actions:

(a) From the Effective Date to the Closing Date, Authority agrees to perform all of Authority's material obligations under the Assigned Contracts to which Authority a Party.

(b) From the Effective Date to the Closing Date, Authority agrees that it shall not encumber or authorize any liens being filed against the Acquired Assets in which it has an interest.

ARTICLE 6

CONDITIONS PRECEDENT TO CLOSING

Section 6.1 Conditions Precedent. The following are Conditions Precedent to Closing and consummation of the Transaction, each or any one or more of which may be waived in writing by the Party for whose benefit such Condition Precedent exists.

(a) Within the Inspection Period, WETA shall have inspected and reasonably approved of the condition of the Acquired Assets to be transferred to WETA, and all such assets are in their condition as when inspected and approved by WETA and in compliance with all Authorizations and Laws.

(b) All Authorizations necessary to WETA's legal operation of the Services are validly issued and effective as of the Closing Date.

(c) All required insurance is issued and effective.

(d) WETA, City, and Authority have all taken the necessary Board actions to approve the Transaction.

(e) No Material Adverse Change in operation of a Service has occurred between the Effective Date and the Closing Date.

(f) There are no Encumbrances against the Vessels, the Waterside Assets, or the Spare Parts and Equipment, other than the Permitted Encumbrances, existing as of the Closing Date.

(g) For the benefit of WETA, there are no Defaults by City or Authority.

(h) For the benefit of City and Authority, there are no Defaults by WETA.

(i) There are no Legal Proceedings challenging the Agreement, the Transition, the Transaction, or any other matter affecting the operation or proposed transfer of the Services.

(j) There are no material inaccuracies in the representations or warranties of the Parties hereunder.

(k) All documents required for consummation of Closing shall have been delivered to Escrow Holder.

(l) The Parties shall have performed all obligations necessary for consummation of Closing.

(m) Any funds required shall have been deposited into Escrow by WETA and City.

(n) WETA shall have received United States Coast Guard approval of WETA's facilities security plan for providing MARSEC required security to the Ferry Terminals.

(o) All required consents to assignment of the Assigned Contracts and Assigned Contract Rights shall have been obtained from all necessary third-parties, and City shall have validly assigned all Assigned Contracts to WETA as of the Closing Date, and such Assigned Contracts, as assigned to WETA, shall be in full force and effect.

(p) WETA and City shall have deposited the duly executed Assignment and Assumption Agreement into Escrow.

(q) City and Authority (as applicable) shall have deposited duly executed Bill(s) of Sale and the YC Float Bill of Sale, into Escrow.

(r) WETA shall have deposited the YC Float Price into Escrow.

(s) All insurance policies and coverages required by this Agreement shall be in place.

(t) The Supplemental Insurance policy shall be in place (which condition is solely for the City's benefit).

(u) City and WETA shall have entered into that certain Assignment and Assumption Agreement between City as "Assignor" and WETA as "Assignee," substantially in the form attached hereto as Exhibit Q ("**Caltrans Grant Assignment Agreement**") with respect to all of Assignor's right, title and interest in and to the Leases, Licenses and Other Agreements and all amendments thereto, that are described on Exhibit 1 attached to the Caltrans Grant Assignment Agreement, together with all security deposits and other deposits held by Assignor under the terms of said Leases, Licenses and Other Agreements, and Caltrans shall have delivered to Escrow Holder Caltrans' written consent to such Caltrans Grant Assignment Agreement.

(v) WETA shall have obtained a satisfactory estoppel certificate from Blue & Gold Fleet, L.P. with respect to the Blue & Gold Fleet Agreement, evidencing Blue & Gold Fleet, L.P.'s acknowledgement that it shall be obligated to continue to comply with the terms of the Bareboat Charter Agreements previously between WETA and City that are incorporated by reference as exhibits to the Blue & Gold Fleet Agreement.

(w) WETA shall have obtained a satisfactory estoppel certificate from Harbor Bay Maritime, Inc. with respect to the Alameda/Harbor Bay Ferry Service Agreement, evidencing Harbor Bay Maritime, Inc.'s acknowledgement that it shall be obligated to continue

to comply with the terms of the Bareboat Charter Agreement previously between WETA and City that are incorporated by reference as exhibits to the Alameda/Harbor Bay Ferry Service Agreement.

(x) WETA shall have entered into a Landing Rights License Agreement with the Port of San Francisco pursuant to which WETA shall the rights required for operation of the Services from the Port of San Francisco, or City will have in place valid extensions of License 12192 and License 12194 or valid replacement licenses providing the necessary authorization of the Port of San Francisco for operation of the Services at the Port of San Francisco.

(y) Documentation shall have been obtained evidencing extension or renewal of that certain City and County of San Francisco City of Alameda Inter-System Passenger Transfer Agreement dated as of February 1, 2000, or other current agreement for inter-system passenger transfers between the Services and City and County of San Francisco transit options.

ARTICLE 7

CLOSING

The exchange of money and documents described in this ARTICLE 7 shall be deemed to have occurred when each of the concurrent conditions set forth in Section 7.1 and Section 7.2 have been either satisfied or waived. Closing shall be conducted through the Escrow held by Escrow Holder on March 31, 2011 or on such other date as City and WETA mutually agree, but not later than April 30, 2011. At or prior to Closing, each of City and Authority shall perform the obligations set forth in, respectively, Section 5.5 and Section 5.6, the performance of which obligations shall be concurrent conditions. In the event Closing does not take place on or before April 30, 2011, this Agreement may be extended upon mutual agreement of the Parties, which agreement shall not be unreasonably withheld by either Party. If the Parties, acting in good faith, do not agree to an extension as provided above, the Agreement may be terminated at the option of either Party hereto and all documents and monies placed in escrow shall be returned to the Party that deposited them.

Section 7.1 WETA's Obligations at Closing. At Closing, WETA shall deliver or cause to be delivered to City and Authority (as applicable) through the Escrow the following:

(a) Evidence of Authority. Such organizational and authorizing documents of WETA as shall be reasonably required by the Escrow Company, City or Authority to evidence WETA's authority to execute this Agreement and any documents to be executed by WETA at Closing, and to consummate the Transaction.

(b) Assignment and Assumption Agreement. Four (4) original duly executed and acknowledged counterparts of the Assignment and Assumption Agreement substantially in the form attached to this Agreement as Exhibit D.

(c) Estimated Settlement Statement. Four (4) original, duly executed counterparts of an estimated settlement statement in form and content reasonably satisfactory to City and WETA.

(d) Evidence of Insurance. Evidence acceptable to City and Authority that upon Closing, all insurance that WETA and/or its operator is required to maintain pursuant to this Agreement will be in place and effective as required herein.

(e) Certificate Regarding Truth of Representations and Warranties. WETA's duly executed Certificate Regarding Truth of Representations and Warranties certifying that all representations and warranties of WETA made in this Agreement remain true, accurate and complete as of the Closing Date, substantially in the form of the Certificate Regarding Truth of Representations (WETA) attached as Exhibit F.

(f) Form CG-1258. Original, duly executed Application for Initial Issue, Exchange, or Replacement of Certificate of Documentation; Re-documentation (Form CG-1258) for transfer of the Vessels to WETA, substantially in the form attached as Exhibit A.

(g) YC Float Price and Bill of Sale. The YC Float Price together with two (2) original, duly executed counterparts of the YC Float Bill of Sale for transfer of the YC Float from Authority to WETA.

(h) Costs and Charges. WETA shall deposit all costs and charges into Escrow.

(i) Other Documents. Such additional documents, resolutions, consents and affidavits reasonably necessary or advisable to effect Closing; provided, however, that such other documents shall not be inconsistent with the terms and provisions of this Agreement.

Section 7.2 City's and Authority's Obligations at Closing. At Closing, City (and/or where specifically identified, Authority) shall deliver or cause to be delivered the following to WETA through Escrow:

(a) Evidence of Authority. Such organizational and authorizing documents of City and Authority as shall be reasonably required by the Escrow Company or WETA evidencing City's and Authority's authority to execute this Agreement and any documents to be executed by City and Authority at Closing, and to consummate the Transaction.

(b) Assignment and Assumption Agreement. Four (4) original duly executed and acknowledged counterparts of the Assignment and Assumption Agreement substantially in the form attached as Exhibit D.

(c) Estimated Settlement Statement. Four (4) original, duly executed counterparts of an estimated settlement statement in form and content reasonably satisfactory to City, Authority, and WETA.

(d) Evidence of Insurance. Evidence acceptable to WETA that upon Closing, if any, all insurance that either City or Authority is required to maintain pursuant to this Agreement will be in place and effective as required herein.

(e) Certificate Regarding Truth of Representations and Warranties. City's and Authority's duly executed Certificates Regarding Truth of Representations certifying that all

representations and warranties of City and Authority made in this Agreement remain true, accurate and complete as of the Closing Date, substantially in the form of the Certificate Regarding Truth of Representations (City/Authority) attached as Exhibit G.

(f) Transaction Cash. All Transaction Cash (less deductions authorized under this Agreement) is to be transferred to WETA upon Closing, together with a certificate of City attesting that such net funds constitute the entire balance thereof, substantially in the form of the Certificate of Ferry Service Account Balances attached as Exhibit H.

(g) US CG-1340. An original, duly executed Bill of Sale in United States Coast Guard Form CG-1340, evidencing the transfer of City's interest in each of the Vessels to WETA.

(h) Bill of Sale. Duly executed original Bill(s) of Sale evidencing the transfer of City's interest in the Waterside Assets (except the YC Float), the Spare Parts and Equipment, and any other Acquired Assets for which a Bill of Sale is appropriate to evidence transfer of City's interest to WETA.

(i) YC Barge Bill of Sale. Authority shall delivery two (2) original, duly executed counterparts of the YC Float Bill of Sale for transfer of the YC Float from Authority to WETA.

(j) Consents to Assignment. Original, duly executed Consents to Assignment as required for the Assigned Contracts and Assigned Contract Rights as listed in Schedule 1.

(k) Escrow Company Documents. Any and all affidavits, undertakings, certificates or other documents required to be delivered by City or, subject to the reasonable approval of City and its counsel, otherwise customarily required by the Escrow Company in order to close Escrow.

(l) Estoppel Certificates. Original estoppel certificates, duly executed by the counter-parties to the Assigned Contracts, substantially in the form attached as Exhibit I.

(m) Other Documents. Such additional documents, resolutions, consents and affidavits reasonably necessary or advisable to effect the valid consummation of Closing; provided, however, that such other documents shall not be inconsistent with the terms and provisions of this Agreement.

Section 7.3 Obligations of Escrow Holder. At Closing, Escrow Holder, which shall be subject to a separate escrow agreement in substantially the form of Exhibit R hereto, shall:

(a) Deliver Funds to WETA. Deliver the Transaction Cash to a bank account designated by WETA in writing to Escrow Holder prior to Closing.

(b) Administer YC Float Price. Administer the YC Float Price as provided in Section 9.4(b).

(c) Deliver Documents to City and WETA. Deliver to each of City and WETA two (2) fully executed counterparts of the Assignment and Assumption Agreement and any other documents consistent with the respective escrow instructions delivered by City or WETA.

(d) Deliver Documents to Authority and WETA. Deliver to each of Authority and WETA one (1) fully executed counterpart of the YC Float Bill of Sale and any other documents related to the YC Float consistent with the escrow instructions delivered by Authority and WETA.

(e) Filings. File the documents provided for in Section 7.1(f) and Section 7.2(g) with the United States Coast Guard in accordance with instructions from WETA.

(f) Settlement Statement. Deliver to City and WETA (i) an estimated settlement statement prepared by Escrow Holder and approved by City and WETA not less than two (2) business days prior to Closing and (ii) a final settlement statement within one (1) business day after the later of Closing or when the documents specified in Section 7.1(f) and Section 7.2(g) are filed with the United States Coast Guard.

Section 7.4 Possession and Deliveries.

(a) Authority shall deliver to WETA possession of the YC Float at Closing, subject to the terms and conditions of Section 2.3, Section 2.5, and the YC Float Bill of Sale.

(b) City shall deliver exclusive possession of the Acquired Assets to WETA at Closing, subject only to the Permitted Encumbrances and rights of counter-parties to the Assigned Contracts together with all keys and passcards for the Vessels or other Acquired Assets in the possession of City.

(c) City shall deliver the following items to WETA outside Escrow within ten (10) business days after the Closing Date: (i) originals of the Assigned Contracts to the extent in City's possession, or copies of any Assigned Contracts not in City's possession together with an affidavit from City as to such copies being true and complete copies of the Assigned Contract(s), (ii) copies of the Books and Records pertaining to the Assigned Contracts, (iii) originals of any other items which City was required to furnish WETA copies of or make available pursuant to this Agreement, including the Books and Records, and (iv) notices to the counter-parties under the Assigned Contracts, advising them of the Transition and directing them to direct future correspondence to WETA at the place designated by WETA.

ARTICLE 8

DEFAULT AND REMEDIES

Section 8.1 Breach by City or Authority.

(a) Pre-Closing. City or Authority (as applicable) shall be deemed to be in default under this Agreement if it fails to perform under this Agreement, to meet, comply with, or perform any covenant, agreement, or obligation required on its part in the manner required in

this Agreement prior to Closing and/or fails to consummate the Transaction; provided, however, that neither City nor Authority shall be in default under this Agreement to the extent the applicable failure was caused by the failure of a condition precedent to City's or Authority's obligation, caused by WETA, or caused by a Force Majeure Event. In the event of such a default, WETA, shall notify the defaulting Party in writing. If the defaulting Party fails to cure its default within ten (10) business days after notice from WETA of the nature of such default, or to commence to cure any noticed default that is incapable of being cured within such ten (10) business day period and thereafter diligently prosecute the cure to completion, then as WETA's sole and exclusive remedy, WETA may either: (i) terminate this Agreement as to the defaulting Party or both City and Authority, in WETA's discretion; or (ii) seek specific performance of the defaulting Party's obligations hereunder.

(b) Post-Closing. After Closing, in the event of any breach of City's or Authority's (as applicable) covenants, representations or warranties hereunder or under any other agreement, document, certificate or instrument delivered by City or Authority (as applicable) to WETA and which survives Closing, or if City or Authority fails to perform under this Agreement, WETA shall notify the defaulting Party in writing. Except to the extent the defaulting party's breach was caused by WETA, or caused by a Force Majeure Event, if the defaulting Party fails to cure such a default within ten (10) business days after notice from WETA of the nature of such default, or to commence to cure any noticed default that is incapable of being cured within such ten (10) business day period and thereafter diligently prosecute the cure to completion, then as WETA's sole and exclusive remedy (except for any right of WETA to indemnification or defense provided in this Agreement, or the provisions of this Agreement providing for payment of attorneys' fees in the event of a dispute), WETA may seek specific performance and/or the recovery of direct actual damages incurred by WETA to the extent caused by such default; provided, however, that to the extent that the default is curable, prior to WETA's exercise of any right or remedy as a result of such default, WETA will first deliver written notice to the defaulting Party and give the defaulting Party ten (10) additional business days thereafter in which to cure or commence to cure (as applicable) said default.

(c) Limit on Damages. Notwithstanding anything to the contrary contained in this Agreement, neither City nor Authority shall have any liability to WETA for business interruption, punitive, speculative, or consequential damages.

(d) In addition, City may pursue any or all of the foregoing remedies against Authority in the event of an Authority breach under this Agreement.

Section 8.2 Breach by WETA.

(a) Pre-Closing.

(i) WETA shall be deemed to be in default under this Agreement if WETA fails to meet, comply with, or perform any covenant, agreement, or obligation required on its part in the manner required in this Agreement prior to Closing and/or fails to consummate the Transaction; provided, however, that WETA shall not be in default under this Agreement to the extent the applicable failure was caused by the failure of a condition precedent to WETA's obligation, caused by City or Authority, or caused by a Force Majeure Event. In the event of

such a default (and except as to any default which relates to payment of the YC Float Price), City or Authority (as applicable) shall notify WETA in writing. If WETA fails to cure such default within ten (10) business days after such notice of the nature of the default, or to commence to cure any noticed default incapable of cure within such ten (10) business day period and thereafter diligently prosecute such cure to completion, as City's or Authority's (as applicable) sole and exclusive remedy (except for any right to indemnification or defense provided in this Agreement, or the provisions of this Agreement providing for payment of attorneys' fees in the event of a dispute), City or Authority (as applicable) may either (i) terminate this Agreement, and receive reimbursement from WETA of City's or Authority's (as applicable) actual costs incurred in connection with this Agreement, the Transfer, and the Transition, to the extent not already reimbursed by WETA pursuant to the Reimbursement Agreement or (ii) seek specific performance of WETA's obligations hereunder.

(ii) If WETA's default relates to payment of the YC Float Price, and WETA fails to cure such default within ten (10) business days after notice from Authority, then as Authority's sole and exclusive remedy (except for any right of Authority to indemnification or defense provided in this Agreement, or the provisions of this Agreement providing for payment of attorneys' fees in the event of a dispute), Authority may terminate this Agreement as to any Authority obligations hereunder (including transfer of the YC Float), and receive reimbursement from WETA of Authority's actual third-party costs incurred in connection with this Agreement, the Transfer, and the Transition.

(b) Post-Closing. After Closing, in the event of any breach of WETA's covenants, representations or warranties hereunder which survive Closing, or under any of the Assigned Contracts or Assumed Liabilities, or if WETA fails to perform under this Agreement, City or Authority (as applicable) shall notify WETA in writing. Except to the extent WETA's breach was caused by City or Authority, or caused by a Force Majeure Event, if WETA fails to cure such default within ten (10) business days after notice, or to commence to cure any default incapable of cure within such ten (10) business day period and thereafter diligently prosecute such cure to completion, as City's or Authority's sole and exclusive remedies (except for any right of City to indemnification or defense provided in this Agreement, or the provisions of this Agreement providing for payment of attorneys' fees in the event of a dispute) City and/or Authority (as applicable) may seek specific performance and/or the recovery of direct actual damages incurred by City or Authority (as applicable) to the extent caused by WETA's post-closing default.

(c) Limit on Damages. Notwithstanding anything to the contrary contained in this Agreement, WETA shall have no liability to City or Authority for business interruption, punitive, speculative, or consequential damages.

(d) In addition, City may pursue any or all of the foregoing remedies against Authority in the event of an Authority breach under this Agreement.

ARTICLE 9

INSURANCE AND INDEMNIFICATION

Section 9.1 WETA Insurance.

(a) Coverages. WETA, and/or the operator of the applicable Service at the direction of WETA, shall procure and maintain in full force and effect the following insurance coverage during the Term:

(i) Workers' compensation insurance in the full statutory limits as required by (i) the State of California, and (ii) the laws of the United States (including, to full statutory limits, the Longshoremen and Harbor Workers Act) as applicable.

(ii) Employers' Liability insurance in an amount not less than One Million Dollars ($1,000,000) per occurrence.

(iii) Commercial general liability insurance in an amount not less than Two Million Dollars ($2,000,000) per occurrence, covering all legal liability for personal injury, bodily injury, death or property damage which may arise out of (1) operation of the Services, and/or (2) operation of the Landside Assets, including the Ferry Terminals, the City Lot and the Authority Lot. Coverage shall be extended to include coverage for Terminal Operations, Action Over Indemnities, Contractual Liability and Blanket Additional Insureds and any watercraft exclusion deleted. General liability insurance shall also include a no host alcohol endorsement. Pursuant to the HBBPA Agreement, HBBPA provides Commercial General Liability insurance for the Harbor Bay Parking Lot. So long as HBBPA continues to provide such coverage, naming City and WETA as additional insureds, in accordance with Section 11(E) of the HBBPA Agreement or upon such other terms as may be approved by the City's Risk Manager, WETA shall have no obligation to provide Commercial General Liability insurance for the City with respect to the Harbor Bay Parking Lot. If HBBPA's obligation to provide such insurance terminates, then WETA shall provide Commercial General Liability Insurance for the Harbor Bay Parking Lot on the same terms and conditions as are set forth herein with respect to the Ferry Terminals, the City Lot and the Authority Lot.

(iv) Protection and Indemnity insurance pursuant to Form SP-23 (Revised 1/56) or equivalent, including, without limitation, Jones Act Insurance, with a minimum of One Million Dollars ($1,000,000) per occurrence. Insurance to include, or be provided under a separate policy, War & Terrorism coverage in accordance with American Hull Insurance Syndicate War Risk Protection & Indemnity Clauses.

(v) Pollution and environmental liability insurance, including coverage for damages, cleanup and restoration costs, with an amount not less than One Million Dollars ($1,000,000) per occurrence.

(vi) With respect to the Vessels and any other vessels to be owned or operated by or on behalf of WETA, insurance covering navigating hull and machinery, subject to the terms and conditions of the American Institute Hull Clauses policy (6/2/1977) and the American Institute Liner Negligence Clause (6/2/1977) or equivalent, in an amount equal to such

vessels' agreed value. Insurance to include, or be provided under a separate policy, War & Terrorism coverage in accordance with American Institute Hull War and Strikes Clauses, including damage by acts of vandalism, sabotage or malicious mischief.

(vii) Automobile liability (bodily injury and property damage) in an amount not less than One Million Dollars ($1,000,000) combined single limit extending to owned, non-owned, and hired vehicles.

(viii) Bumbershoot liability in the amount of Nine Million Dollars ($9,000,000) each occurrence in excess of the primary limits specified in Section 9.1(a)(ii), (iv), (v) and (vii) above covering all legal liability for personal injury, bodily injury or death to passengers and crew; property damage; and pollution and environmental liability, which may arise out of the Services.

(b) General Requirements.

(i) All insurance required or provided pursuant to this Agreement shall be effected under valid enforceable policies issued by insurers of recognized responsibility having a rating of at least A-VII in the most current edition of Best's Insurance Reports.

(ii) All insurance policies, except workers' compensation, required or provided pursuant to this Agreement shall be endorsed or otherwise provide the following:

(A) Name City, the Port of Oakland, the Navy, Authority, the City and County of San Francisco, the Port of San Francisco, and the MTC, and their respective councils, boards, commissions, department, officers, employees, agents and volunteers as additional insureds ("**Additional Insureds**") to be covered as insured as respects liability arising out of the Services. The coverage shall contain no special limitations on the scope of protection afforded to any Additional Insureds. Any owner limitations applicable to the Protection and Indemnity insurance shall be deleted. An Additional Insured named herein shall not be held liable for any premium, deductible portion of any loss, or expense of any nature on the policies required hereunder or any extension thereof. Any other insurance, self-insurance, or joint self-insurance held by an Additional Insured shall not be required to contribute anything toward any loss or expense covered by the insurance required hereunder and shall be considered excess as to the Additional Insured. To the extent WETA is required to provide Commercial General Liability Insurance for the Harbor Bay Parking Lot pursuant to Section 9.1(a)(iii), WETA shall name HBBPA and its officers, employees, agents and volunteer as additional insureds, and such additional insureds shall be included in the definition of the term Additional Insureds.

(B) All policies shall be endorsed to provide thirty (30) calendar days' advance written notice to City's Risk Manager of cancellation, except in the case of cancellation for nonpayment of premium, in which case cancellation shall not take effect until ten (10) business days prior written notice has been given. WETA covenants and agrees to give City reasonable notice in the event that it learns or has any reason to believe that any such policy may be canceled or that the coverage of any such policy may be reduced. WETA shall provide thirty (30) calendar day prior notice to City of any material change to the policy terms and conditions.

(iii) All insurance coverage shall be primary insurance to any other insurance available to the Additional Insureds (including self-insurance or joint self-insurance), with respect to any claims arising out of operation of the Services and/or the Landside Assets, including the Ferry Terminals, the City Lot, the Authority Lot, and the Harbor Bay Parking Lot, and that insurance applies separately to each insured against whom claim is made or suit is brought. All policies shall include provisions denying such respective insurer the right of subrogation and recovery against City, the Port of Oakland, the Navy, Authority, City and County of San Francisco, the Port of San Francisco, and the MTC, and HBBPA if HBBPA is an Additional Insured. Such policies shall also provide for severability of interests and that an act or omission of one of the named insureds which would void or otherwise reduce coverage shall not reduce or void the coverage as to any insured, and shall afford coverage for all claims based on acts, omissions, injury or damage which occurred or arose (or the onset of which occurred or arose) in whole or in part during the policy period.

(iv) Any deductibles or self-insured retentions shall be declared and approved by City's Risk Manager.

(v) All insurance coverage shall apply separately to each insured against whom claim is made or suit is brought, except with respect to the limits of the insurer's liability.

(vi) The amounts of required insurance may be increased from time to time by City upon one hundred twenty (120) calendar days' written notice to WETA, provided however such increases shall not be required more than once every five (5) years, and the required increased policy amount shall in all instances be commercially reasonable and consistent with prudent transit industry insurance practices.

(vii) City and WETA agree to consider reasonable adjustments in the amounts of required insurance if and to the extent a material change in use occurs at Main Street Ferry Terminal or Harbor Bay Ferry Terminal, as applicable. WETA or the City may upon written notice request a review of the required policy amounts pursuant to the foregoing. In all instances insurance is to be commercially reasonable and consistent with prudent transit industry insurance practices and taking into account the nature of the actual use.

(c) Certificates. On or before the commencement of the Term, WETA shall deliver to City and Authority certificates of insurance in a form reasonably satisfactory to City's Risk Manager, evidencing the coverages required hereunder ("**Evidence of Insurance**"), and WETA shall provide City with Evidence of Insurance thereafter before the expiration dates of expiring policies. Such certificates shall also contain substantially the following statement:

> "Should any of the above insurance covered by this Certificate be canceled or coverage reduced before the expiration date thereof, the insurer afforded coverage shall provide thirty (30) days' advance notice to the City of Alameda by certified mail, Attention: Risk Manager."

(d) Endorsements. In addition to the insurance certificates required under Section 9.1(c) above, to the extent one or more of the above required policies of insurance will be provided by WETA's operator(s), WETA shall ensure that its operator(s), and each insurer providing coverage on behalf of such operator(s), provides a policy endorsement in favor of City and Authority in form reasonably satisfactory to City's Risk Manager, and in favor of HBBPA with respect to the Alameda/Harbor Bay Ferry Service, containing substantially the following statement:

> "Insurer confirms, represents, and warrants that the City of Alameda ("**City**") and Alameda Reuse and Redevelopment Authority ("**ARRA**"), and Harbor Bay Business Park Associates ("**HBBPA**") with respect to the Alameda/Harbor Bay Ferry Service, are each an additional insured under the policy to which this endorsement is attached, and that the coverage afforded by such policy extends to City and ARRA in accordance with their status as additional insureds. The coverage provided to City and ARRA as additional insureds is on the same terms, clauses and conditions as the first named insured on the policy. City and ARRA's status as additional insureds, and HBBPA's status as an additional insured with respect to the Alameda/Harbor Bay Ferry Service is not prejudiced in any way by the absence of contract between *[insert name applicable operator/first named insured]* and City and/or ARRA and/or HBBPA with respect to the Alameda/Harbor Bay Ferry Service.
>
> Insurer shall advise City and ARRA in writing promptly of any actual or pending lapse of any insurances or coverage's under the policy attached to this endorsement, whether by expiration, termination, failure to renew or otherwise and of any default in payment of any premium and any other act or omission on the part of *[insert name applicable operator/first named insured]*. In addition, Insurer will provide at least thirty (30) days prior written notice by certified mail to City and ARRA, Attn: Risk Manager, and to HBBPA with respect to the Alameda/Harbor Bay Ferry Service, in the event of cancellation for non-payment of premium or any reduction in coverage."

(e) Failure to Secure. If WETA at any time during the Term hereof should fail to secure or maintain or fail to cause to be secured or maintained the foregoing insurance, City shall be permitted to obtain such insurance in WETA's name or as an agent of WETA; provided, however, City shall notify WETA in writing thereof and WETA shall have a thirty (30) calendar day cure period to allow WETA to correct any such deficiencies. If WETA fails to correct such deficiencies during the cure period, City shall be compensated by WETA for the costs of the insurance premiums, plus interest at the maximum rate permitted by law computed from the date such premiums have been paid. WETA shall indemnify and hold harmless City and Authority from any Claims arising from the failure to maintain any of the insurance policies required above.

Section 9.2 City Insurance.

(a) For the duration of the Term, City shall maintain, or shall ensure that HBBPA maintains pursuant to the HBBPA Agreement or other agreement between City and HBBPA, all-risk (excluding flood and earthquake) insurance or an insurance equivalent (such as that offered through and by a joint powers authority, pooled funds or similar collective) insuring the buildings and improvements on the Landside Assets similar to that carried by City on its other properties. In the event of an insured loss or casualty of City-owned buildings or improvements at the Landside Assets, City shall use available insurance or insurance equivalent proceeds to make the necessary repairs to such City-owned buildings or improvements. WETA shall be obligated to reimburse City as part of the Triple Net Costs for the cost of any deductibles or self insured retentions under such City property casualty insurance policies or insurance equivalents, not to exceed Twenty Five Thousand Dollars ($25,000) in the aggregate for any such loss or casualty, or such other increased amounts as agreed to by City and WETA from time to time during the Term with respect to the Main Street Ferry Terminal and with respect to the Harbor Bay Ferry Terminal, but only to the extent that payment of such deductible is not HBBPA's obligation pursuant to the HBBPA Agreement or any other agreement between City and HBBPA, and the cost of any premiums for such property casualty insurance policies or insurance equivalents to the extent applicable to the Main Street Ferry Terminal and/or the Harbor Bay Ferry Terminal.

(b) City, at its sole option, may obtain commercial general liability insurance coverage insuring City and Authority for claims up to Five Hundred Thousand Dollars ($500,000) to the extent related to or arising out of the Services, Landside Assets or Waterside Assets, which claims may have accrued pre-Closing but have not been reported against City or Authority as of the Closing ("**Supplemental Insurance**"). City shall invoice WETA for the premium for such Supplemental Insurance. WETA shall pay the invoice within thirty days from receipt.

Section 9.3 Risk Allocation.

(a) Pre-Closing Condemnation. If, after the Effective Date but prior to Closing, an action is initiated to take any of the Landside Assets by eminent domain proceedings or by deed in lieu thereof, City or Authority (as applicable) shall promptly upon learning thereof give WETA written notice of any such action together with all relevant information concerning such proceedings, and if WETA determines that such taking is reasonably likely to have a Material Adverse Effect on a Service, WETA may elect (either at or prior to Closing by delivering written notice to City, Authority, and Escrow Holder) to terminate this Agreement in its entirety (and not as to the affected Service only).

(b) Pre-Closing Casualty. City shall promptly notify WETA in writing upon learning of a casualty prior to Closing to any of the Acquired Assets, or to the Landside Assets that City, in its reasonable discretion, believes would have a Material Adverse Effect on operation of any of the Services and shall advise WETA whether or not City, at its sole option, elects to repair such damage. If the Acquired Assets, or any part thereof, suffers any unfunded damage in excess of Twenty Five Thousand Dollars ($25,000) prior to Closing from fire or other casualty which City, at its sole option, does not elect to repair, or the Landside Assets incur any

damage that would have a Material Adverse Effect on operation of the Services which City, at its sole option, does not elect to repair, then WETA may either at or prior to Closing by delivering written notice to City and Escrow Holder within ten (10) business days after WETA has received written notice from City (i) terminate this Agreement in its entirety (and not as to the affected Service only), or (ii) consummate Closing, in which latter event all of City's right, title and interest in and to the proceeds of any insurance covering such damage (less an amount equal to any expenses and costs incurred by City to collect or adjust such insurance and to repair or restore the damaged property, all of which shall be payable to City), shall be assigned to WETA at Closing. If the Landside Assets incur any damage which would not have a Material Adverse Effect on operation of the Services, or the Acquired Assets, or any part thereof, suffers any damage equal to or less than Twenty Five Thousand Dollars ($25,000) prior to Closing, WETA agrees that it will consummate the Transaction and accept the assignment of the proceeds of any insurance covering damage to the Acquired Assets only.

(c) Catastrophic Loss. In the event of unfunded catastrophic damage to the Landside Assets which causes either or both Services to be No Longer Operated, City and WETA shall work cooperatively to seek application of insurance proceeds or other source of funding for the necessary repairs. Such catastrophic damage shall be considered a Force Majeure Event, and WETA shall have no obligation to reimburse City for unfunded costs that City may incur if City elects to repair such damage. If, after taking into account the Change Considerations, and meeting and conferring with City, WETA reasonably determines that an event of unfunded catastrophic damage to the Landside Assets or the shoreline embankment requires WETA to discontinue or relocate the relevant Service to other facilities until necessary repairs are completed, WETA shall provide City with a good faith estimate of the duration of such discontinuance or relocation, and shall make good faith efforts to offer regularly scheduled ferry service at Service Levels equivalent to the affected Service.

Section 9.4 Crane and Pier Head.

(a) City is evaluating the possibility of removing or retrofitting the Crane (defined below). Subject to compliance with applicable Law, including CEQA, City shall prepare necessary environmental documents and seek approval of the Alameda Historic Advisory Board and other responsible party/ies (to the extent any such approval(s) is/are required), to permit the removal or retrofitting of the crane situated on the pier head located] as shown on Exhibit N (**"Crane" and "Pier Head"** respectively). City shall exercise good faith efforts to obtain such approval prior to the first anniversary of the Effective Date. Subject to compliance with applicable Law, including CEQA, receipt of necessary approvals, and receipt of reasonable cost estimates/bids, City shall commit City, and/or other local funds to pay for such work and enter contracts for removal and/or retrofitting of the Crane. Subject to Section 9.4(b), Authority will commit the YC Float Price to pay for such work. City's contracts for removal and/or retrofitting shall require that any contractor(s) performing such removal or retrofitting obtain and maintain a commercial general liability insurance policy in an amount and on terms reasonably acceptable to WETA, naming City, Authority, and WETA as additional insureds thereunder. City shall provide WETA with a copy of a Certificate of Insurance evidencing that WETA is an additional named insured under such policy prior to City authorizing such contractor(s) to commence work on the Crane. City shall further require such contractor(s) to

cooperate with WETA in scheduling any work on the Crane so as to minimize interference with the Services.

(b) Authority agrees that the YC Float Price shall be held and remain in Escrow until such time as City has entered into a contract for removal or retrofit of the Crane as provided in Section 9.4(a), above. If City has not entered into such a contract by the second anniversary of the Closing Date, then the Parties agree that the YC Float Price (including all accrued interest thereon) shall be disbursed from Escrow to WETA upon WETA's instruction, and may be used by WETA, solely for purposes of Crane protection, removal or retrofit, Pier Head maintenance and repair and/or to pay the cost of any uninsured or unfunded loss, liability, cost or expense incurred by WETA to the extent caused by the existence or condition of the Crane; and Authority shall not have and hereby waives any right of reimbursement from City therefor. Upon City's or Authority's request, and provided that City or Authority is in WETA's reasonable judgment making diligent good faith progress towards removal or retrofitting of the Crane, WETA shall extend the foregoing two (2) year time period by an additional time period which is reasonably necessary to effect such removal or retrofitting.

(c) Interruption of WETA's ability to operate the Alameda/Oakland Ferry Service due to failure or collapse of the Crane and/or Pier Head or unreasonable interference by the City's contractor during initial retrofitting and/or removal of the Crane as described in Section 9.4(a), shall constitute a Force Majeure Event. If the cost to repair such collapse or failure is not funded by insurance, WETA and City shall cooperate in seeking to obtain alternative funding required to repair damage caused by such failure or collapse. If the Parties are unable to identify and secure reasonably acceptable funding within a reasonable period of time (not to exceed ninety (90) calendar days) and if the failure or collapse of the Crane and/or Pier Head prevents WETA from operating the Alameda/Oakland Ferry Service out of the Main Street Ferry Terminal for a period of ninety (90) calendar days, then City may propose that WETA operate such service out of an alternative location in Alameda provided by City on substantially the same terms as set forth in this Agreement with respect to the Main Street Ferry Terminal, and WETA in good faith shall consider whether such proposed alternative location is reasonably feasible and, if it is, use diligent good faith efforts to relocate the Alameda/Oakland Ferry Service to such alternative location proposed by City, or to another reasonably feasible alternative location in Alameda identified by WETA. If WETA determines that no reasonably feasible alternative location exists, WETA shall have the right to suspend the Alameda/Oakland Ferry Service until the earlier of (i) implementation of a feasible alternative location, (ii) availability of the Seaplane Lagoon Ferry Terminal, or (iii) restoration of the ability to operate the Alameda/Oakland Ferry Service out of the Main Street Ferry Terminal. Suspension of the Alameda/Oakland Ferry Service out of the Main Street Ferry Terminal for such reason, or temporary relocation of the Alameda/Oakland Ferry Service to another location, shall not result in a determination that the Alameda/Oakland Ferry Service is "No Longer Operated" out of the Main Street Ferry Terminal.

(d) Notwithstanding the foregoing, or anything in this Agreement to the contrary, City, Authority and WETA each disclaims ownership of, dominion and control over, or liability or responsibility for either or both of the Crane or Pier Head. The Parties agree that no insuring of the Crane and/or Pier Head, removal, retrofitting, maintenance, repair, similar activity, or lack thereof related to the Crane and/or Pier Head, or request for, payment of, or non-

payment of monies related to the Crane and/or Pier Head (whether by or on behalf of City, Authority or WETA) is intended or shall be construed to demonstrate, create, or admit any City, Authority or WETA ownership of, dominion or control over, or liability or responsibility for either or both of the Crane or Pier Head. Each Party expressly acknowledges and agrees that it shall not use any such acts or omissions by another Party as evidence thereof.

Section 9.5 WETA Waiver and Release.

(a) WETA and its officers, directors, agents, contractors, managers, employees, parents, affiliates, partners, members, subsidiaries, successors, assigns, tenants, grantees, attorneys, and licensees (individually and collectively, "**WETA Parties**") hereby fully waive, release, and discharge Authority and City and its and their respective officers, officials, employees, volunteers, agents and representatives and each of them (collectively, "**Indemnitees**") from and against any and all Claims arising out of or in any way connected with or otherwise based upon any or all of the following:

(i) Obligations of WETA or WETA Parties to comply with all applicable Laws with respect to the Transition, the Transaction, or any of the Services.

(ii) Any material default or breach by WETA or any WETA Parties of any provision of this Agreement.

(iii) The operation, maintenance or management of any of the Services accruing on or after Closing, except to the extent caused by the fraud, gross negligence or willful misconduct of any Indemnitee or directly related to the Excluded Liabilities.

(iv) Assumed Liabilities, including but not limited to Assumed Liabilities with respect to (A) the Assigned Contract Rights set forth in the HBIA/HBM 2004 Assignment, and (B) the provisions of the Retained Authorizations to the extent that they pertain to the Waterside Assets, as specifically defined in Schedule 7.

(v) Any Release which City proves, by a preponderance of the evidence, was caused by WETA or any WETA Parties as determined by written agreement among the Parties or a court of competent jurisdiction.

(b) California Civil Code Section 1542. It is hereby intended that the waivers and releases contained in this Section 9.5 relate to Claims that either WETA or any WETA Parties may have, or claim to have, against Indemnitees with respect to the subject matter contained in Section 9.5(a) or the events relating thereto. By waiving, releasing and forever discharging such Claims which are related to or which arise under or in connection with the items set out above, WETA on behalf of itself and all WETA Parties expressly waives any rights under California Civil Code Section 1542, which provides:

> A general release does not extend to claims which the creditor does not know or suspect to exist in his or her favor at the time of executing the release, which if known by him or her must have materially affected his or her settlement with the debtor.

(c) The waiver and release in this Section 9.5 does not extend to any Claims arising out of the Excluded Liabilities.

Section 9.6 Indemnification. WETA shall defend (with counsel reasonably acceptable to Authority and City, as applicable), indemnify, assume all responsibility for, and hold Indemnitees harmless from and against any and all present and future Claims arising out of or in any way connected with or otherwise based upon the matters set forth in Section 9.5. Notwithstanding any other provision of this Agreement, WETA's indemnity obligations contained in this Agreement expressly exclude Claims to the extent caused by City's or Authority's fraud, gross negligence or willful misconduct and Claims to the extent directly related to the Excluded Liabilities, as determined by written agreement among the Parties or a court of competent jurisdiction. In instances where City is shown to have engaged in fraud, gross negligence or willful misconduct, and where such City fraud, gross negligence or willful misconduct accounts for only a percentage of the liability involved, the obligation of WETA as to City will be limited to that portion or percentage of liability not attributable to the fraud, gross negligence or willful misconduct of City. In instances where Authority is shown to have engaged in fraud, gross negligence or willful misconduct, and where such Authority fraud, gross negligence or willful misconduct accounts for only a percentage of the liability involved, the obligation of WETA as to Authority will be limited to that portion or percentage of liability not attributable to the fraud, gross negligence or willful misconduct of Authority. WETA acknowledges and agrees that the defense, indemnification, protection and hold harmless obligations of WETA under this Section 9.6 are material elements of the consideration to City and Authority for the performance of their obligations under this Agreement, and that City and Authority would not have entered this Agreement unless such obligations were as provided for herein.

Section 9.7 Survival. WETA's obligations under this ARTICLE 9, including Section 9.5 and Section 9.6, shall survive expiration or other termination of this Agreement.

ARTICLE 10

ESCROW HOLDER PROVISIONS

Section 10.1Escrow Holder Obligations.

(a) Escrow Holder is not a party to this Agreement. Escrow Holder is not bound by, or charged with notice of any agreement out of which the Escrow may arise, other than as specified in Agreement, including this ARTICLE 10 and ARTICLE 7. Escrow Holder shall hold all deposits in accordance with the terms and provisions of this Agreement. Escrow Holder shall comply with all reporting requirements of Section 6045 of the Internal Revenue Code of 1986 and the regulations promulgated thereunder. Escrow Holder undertakes to perform only such duties as are expressly set forth in this Agreement and no implied duties or obligations shall be read into this Agreement against Escrow Holder.

(b) This Agreement constitutes joint escrow instructions of the Parties and Escrow Holder is hereby empowered to act thereunder. The Parties hereto agree to do all acts reasonably necessary to close Escrow in the shortest possible time. All funds received in Escrow

shall be deposited with other escrow funds in an interest-bearing account with a state or national bank doing business in the State of California. All disbursements shall be made by check or wire transfer from such account. All interest on the escrow funds shall belong, and be disbursed to, WETA, except as to interest on the YC Float Price, which shall be treated as provided in Section 9.4(b).

(c) Any Party may execute supplemental escrow instructions and/or require that the parties sign supplemental joint escrow instructions if, in the opinion of such Party, it is necessary or convenient in order to accomplish Closing of the Transaction, provided that if there is any inconsistency between this Agreement and any supplemental escrow instructions, then the provisions of the Agreement shall control. The Parties agree to execute such other and further documents as may be reasonably necessary, helpful or appropriate to effectuate the provisions of this Agreement. Escrow Holder is instructed to release settlement statements to each Party.

Section 10.2Authority of Escrow Holder. Escrow Holder is authorized to, and shall:

(a) Promptly execute the acknowledgment of this Agreement as provided following the Parties' signature page, and return the acknowledgment to each Party by email or facsimile and regular mail.

(b) Pay and charge WETA for all Costs and Charges.

(c) Subject to satisfaction of the Conditions Precedent, implement the Transaction as provided in this Agreement.

(d) Do such other actions as necessary to fulfill Escrow Holder's obligations under the Agreement.

(e) Prepare and file with all appropriate governmental or taxing authorities a uniform settlement statement, closing statement, tax withholding forms including an IRS 1099-S form, and be responsible for withholding taxes, if any such forms are provided for or required by Law.

(f) Verify that all documents were properly dated and executed personally, not under power of attorney, by the Party named as the signatory as set forth therein, initialed, and where applicable, witnessed and acknowledged, and that all exhibits were appended.

(g) Do such other actions as necessary to fulfill Escrow Holder's obligations under the Agreement.

Section 10.3Reliance. Escrow Holder may act in reliance upon any writing or instrument or signature which it, in good faith, believes, and any statement or assertion contained in such writing or instrument, and may assume that any person purporting to give any writing, notice, advice or instrument in connection with the provisions of this Agreement has been duly authorized to do so. Escrow Holder shall not be liable in any manner for the sufficiency or correctness as to form, manner and execution, or validity of any instrument deposited in escrow, nor as to the identity, authority, or right of any person executing the same, and Escrow Holder's duties under this Agreement shall be limited to those provided in this Agreement.

Section 10.4Liability of Escrow Holder. The Parties acknowledge that Escrow Holder is acting solely as a stakeholder at their request and for their convenience, that Escrow Holder shall not be deemed to be the agent of any of the Parties, and that Escrow Holder shall not be liable to any of the Parties for any action or omission, mistakes of fact or errors of judgment on its part taken or made in good faith, and not in disregard of this Agreement; provided, however, that Escrow Holder shall be liable for its negligent acts, willful misconduct, and for any loss, cost or expense incurred by City, Authority, or WETA resulting from Escrow Holder's mistake of Law respecting the scope or nature of its duties. WETA shall indemnify and hold Escrow Holder harmless from and against all costs, claims and expenses, including reasonable attorneys' fees, incurred in connection with the performance of Escrow Holder's duties hereunder, except with respect to actions or omissions taken or made by Escrow Holder in bad faith, in disregard of this Agreement, or involving negligent acts or willful misconduct on the part of Escrow Holder, or Escrow Holder's mistake of Law respecting the scope or nature of its duties.

Section 10.5Counsel. Escrow Holder may consult with counsel of its own choice and have full and complete authorization and protection in accordance with the opinion of such counsel.

Section 10.6Compliance. If Escrow Holder cannot comply with all of the foregoing terms and conditions or receives inconsistent instructions from any Party, Escrow Holder is not authorized to close Escrow and in such event should contact each Party's designated representative or the attorneys identified in Section 13.1, without delay for further instruction. Each Party reserves the right to withdraw any and all documents and funds submitted herewith or under separate cover at any time prior to the close of Escrow. The delivery of documents and funds into Escrow in no way binds any Party.

ARTICLE 11

POST-CLOSING OBLIGATIONS OF THE PARTIES

Section 11.1Post-Closing Obligations. Each of the Parties agrees that certain aspects of the relationship between City, Authority, and WETA shall not terminate as of Closing and that certain matters require ongoing obligations of the Parties, as specified in ARTICLE 9 and this ARTICLE 11. If desired by the Parties, City, Authority (if applicable), and WETA shall enter into a Services Operations Agreement, containing substantially the terms of ARTICLE 9 and this ARTICLE 11, to govern the relationship of the City, Authority (if applicable) and WETA from and after Closing.

Section 11.2Funding. City and WETA mutually desire to provide for continued funding of the Services from a combination of local, regional and federal funding sources, as more fully set forth below.

(a) "**TIF/LLAD Equivalent**" means funds (from whatever source available to City) in amounts equivalent to:

(i) the traffic improvement funds (A) that are actually received by City in each partial or full fiscal year following Closing pursuant to the Infrastructure Agreement

between City, Harbor Bay Isle Associates, Harbor Bay Village Four Associates, and Harbor Bay Village Five Associates dated April 4, 1989 ("**Infrastructure Agreement**") or (B) that would have been actually received by City but for City's failure to enforce its rights under the Infrastructure Agreement or release of its right to receive funds thereunder; but not to exceed $500,000 per fiscal year; plus

(ii) the landscape and lighting district funds (A) that are actually received by City in each partial or full fiscal year following Closing pursuant to the Island City Landscaping & Lighting District 84-2 assessment levy, including the Engineer's Report dated May 12, 1988, or (B) that would have been actually received by City but for City's failure to enforce its rights under such assessment levy or release of its right to receive funds thereunder; but not to exceed $78,194 (*i.e.*, the amount for the Alameda/Harbor Bay Ferry Service as identified in the fiscal year 2010/11 Budget for the Services, a copy of which is attached as Exhibit E) per fiscal year.

(b) As consideration for WETA to operate or cause to be operated the Alameda/Harbor Bay Ferry Service as provided in this Agreement, and so long as traffic improvement funds and landscape and lighting district funds pursuant to the Infrastructure Agreement, are available to and actually received by City for the Alameda/Harbor Bay Ferry Service, City shall pay the TIF/LLAD Equivalent to WETA exclusively for WETA's operation of the Alameda/Harbor Bay Ferry Service. Beginning with the first full fiscal year following Closing, City shall remit to WETA the TIF/LLAD Equivalent in four (4) quarterly payments. Thirty days prior to the first business day of each fiscal quarter, WETA shall submit to City's Finance Director a written request for payment and City shall make the TIF/LLAD Equivalent payment on the first business day of each fiscal quarter. If Closing occurs on a date other than the first day of the fiscal year, then City shall pay to WETA an amount equal to the difference of the full amount of such fiscal year's TIF/LLAD Equivalent, less the amount of traffic improvement and landscape and lighting district funds expended by City on costs related to the Alameda/Harbor Bay Ferry Service prior to Closing during such partial fiscal year. City shall provide an accounting to WETA at Closing of all such traffic improvement and landscape and lighting district funds expended by City prior to Closing. Notwithstanding anything in this Agreement to the contrary, WETA shall dedicate the entirety of the TIF/LLAD Equivalent exclusively to the Alameda/Harbor Bay Ferry Service, and for no other purpose, and shall reserve any TIF/LLAD Equivalent surpluses for future Alameda/Harbor Bay Ferry Service operating deficits. In addition, any and all landscape and lighting district monies used to fund the TIF/LLAD Equivalent shall be used exclusively for purposes of paying Harbor Bay Ferry Terminal maintenance costs and other expenses as allowed by applicable Law. From time to time during the Term, but not more than once every ten (10) years, City may request that WETA meet and confer with City to review and examine whether the TIF/LLAD Equivalent funds continue to be necessary to fund operation of the Alameda/Harbor Bay Ferry Service. If the TIF/LLAD Equivalent is no longer necessary to meet the ongoing operational needs of the Alameda/Harbor Bay Ferry Service or fund reserves for such ongoing operational needs, as determined by WETA in its reasonable discretion, the TIF/LLAD Equivalent shall be reduced or eliminated as appropriate. Notwithstanding anything in this Agreement to the contrary, if the Alameda/Harbor Bay Ferry Service is No Longer Operated for any reason other than a Force Majeure Event, then, unless otherwise agreed by City and WETA, the City Manager, in his/her reasonable discretion, may suspend City's obligation to contribute the TIF/LLAD Equivalent or

other sums until such time as the Alameda/Harbor Bay Ferry Service resumes operation if the City's suspension of payment of the TIF/LLAD contribution will not have a Material Adverse Effect on the Alameda/Harbor Bay Ferry Service.

(c) Provided that (i) RM-1 remains in effect, and (ii) City is in compliance with City's covenants set forth in Section 11.2(b), above and is continuing to pay WETA the TIF/LLAD Equivalent in an amount provided in Section 11.2(a) above, and (iii) the Alameda/Harbor Bay Ferry Service and either the Alameda/Oakland Ferry Service or the Bifurcated Services are operating, then WETA shall provide a continuing commitment of WETA's regional funds for the Services (including the Alameda/Harbor Bay Ferry Service and either the Alameda/Oakland Ferry Service or the Bifurcated Services, as the case may be) in an amount equivalent to at least (A) 51.4% of total annual RM1-5% ferry operating revenues (including southern and northern bridge group totals) actually allocated to WETA, plus (B) if the Alameda/Oakland Ferry Service is operating, an additional amount of RM-2 revenues in an amount equivalent to at least 3.9% of the then current fiscal year budgeted operating expenses for the Alameda/Oakland Ferry Service, or if the Bifurcated Services are operating, an equitable amount of RM-2 revenues as determined by WETA taking into consideration then current budgeted operating expenses for the Bifurcated Services (in each case such RM-2 funds shall only be made available to the extent necessary to cover operating deficits other than deficits caused by City's failure to make its TIF/LLAD Equivalent contribution). In addition, WETA shall commit all Measure B funds allocated to WETA by ACTC, exclusively to support either or both of the Services serving City; provided, however, WETA may, in its sole discretion, substitute other funds secured by WETA in place of Measure B funds, so long as the substitute funding is in an amount equal to the Measure B funds allocated by ACTC to WETA.

(d) City shall assist WETA in WETA's efforts to seek ongoing contributions toward the Alameda/Harbor Bay Ferry Service from the Harbor Bay Business Park Association ("**HBBPA**") and shall as soon as practicable request that HBIA and HBM adopt general resolutions of support for their current voting practices with respect to funding for the Harbor Bay Ferry Service. City shall assist WETA in WETA's efforts to seek ongoing contributions from the Port of Oakland toward the Alameda/Oakland Ferry Service, in amounts at least equivalent to those in the fiscal year 2010/11 Budget for the Services.

(e) WETA may implement periodic fare increases, consistent with City's current practice of every two (2) to three (3) years or a system-wide WETA policy, to adjust fares commensurate with increases in the Consumer Price Index for All Urban Consumers, San Francisco-Oakland-San Jose Metropolitan Statistical Area and/or other relevant cost indices as WETA may determine necessary or appropriate to cover operating expenses, and/or to ensure that the Services continue to meet grant funding performance requirements.

(f) If new ferry transit funding sources, including gas taxes, vehicle license fees or additional bridge toll revenues, become available to WETA in the future, WETA will endeavor to equitably allocate funds from such sources among the Services and other ferry services operated by WETA. City shall work collaboratively with WETA in support of efforts to obtain additional funding sources for the Services, and reauthorization of Measure B funds to support the Services.

(g) In order to generate additional ferry service revenues, WETA may desire to explore advertising, snack/beverage concessions, and parking fees on or about the Landside Assets ("**Revenue Agreements**"). Subject to existing agreements and commitments (including service contracts, licenses, and this Agreement) and applicable Law (including City of Alameda Municipal Code Chapter VI, Article 6, as it may be amended), the City will cooperate with WETA in exploring and entering into Revenue Agreements with respect to the Landside Assets. WETA shall be entitled to payments made by third-parties in connection with the Revenue Agreements to the extent due or payable during the Main Street Mooring Period or Harbor Bay Mooring Period (as applicable), less City's actual costs incurred in connection with any such Revenue Agreements (including staff time, consultant and attorneys fees, financing costs, facilities, capital improvement and any other costs or obligations of City or Authority related thereto), which payments shall be used by WETA exclusively to support the Services. Any and all related agreements or commitments (including service contracts and licenses) approved by WETA or to which WETA is a party shall require that parties to any Revenue Agreement obtain and maintain a commercial general liability insurance policy in an amount and on terms reasonably acceptable to City, naming City, Authority, and WETA as additional insureds thereunder, and that WETA and all third parties indemnify City and Authority in connection therewith.

(h) WETA shall commit and use all additional revenues generated by the Services (including farebox, charter and advertising revenue) exclusively to support the Services.

Section 11.3Service Levels.

(a) "**Service Level**" or "**Service Levels**" means established services levels for the applicable Services, as may be adjusted pursuant to this Section 11.3. Core service levels for the Seaplane Lagoon Ferry Service shall be established as provided in Section 11.9(b). Except as expressly provided in this Section 11.3, WETA shall inform City and, upon request of City, WETA staff shall make an informational presentation at a duly noticed meeting of the Alameda City Council and provide City staff, officials, representatives and citizens with an opportunity to comment and provide input to WETA: (i) before any Service Level is reduced below applicable fiscal year 2010/11 service levels, and (ii) before further reductions are made to any Service Levels which have been reduced to or are then below the applicable fiscal year 2010/11 service levels. Schedules showing the fiscal year 2010/11 service levels for each Service are attached as Exhibit M. The Parties acknowledge and agree that in the event of Bifurcation, references to Service Levels shall mean and include the Service Level for the Alameda/Harbor Bay Ferry Service and the new service level adopted by WETA for the Alameda/San Francisco Ferry Service.

(b) Subject to the terms of this Section 11.3(b), WETA shall continue to maintain and operate the Services at the Service Levels, provided that projected revenues and other funding for each Service, taking into account the Change Considerations and Assumed Liabilities, remain sufficient to cover such Service's operating expenses without incurring a deficit that is likely to cause a Material Adverse Effect.

(i) The Parties acknowledge that it is WETA's intent to undertake a procurement for a consolidated operating agreement for the Services following Closing.

Pursuant to the current Blue & Gold Fleet Agreement, the current operator of the Alameda/Oakland Service provides a boat and crew for an additional 5:20 p.m. weekday departure from Pier 41 to Jack London Square ("**5:20 Run**"). If WETA no longer contracts with a ferry operator having or able to secure landing rights at Pier 41 and landing rights at another facility on the San Francisco waterfront location cannot be secured, and, after meeting and conferring with City, WETA reasonably determines that a contract for the consolidated Services cannot be procured that includes the 5:20 Run at a reasonable cost, then WETA may eliminate the 5:20 Run from the Alameda/Oakland Ferry Service.

(ii) The Parties further acknowledge and agree that the current operator of the Alameda/Oakland Ferry Service provides the Alameda/Angel Island Service and ferry service to AT&T Park. Procurement of a consolidated operating agreement may require changes in such destinations and services, including adjustments in times for departures and arrivals. If, after taking into account the Change Considerations, and meeting and conferring with City, WETA reasonably determines that such changes are required by the applicable consolidated operating agreement, then WETA shall be entitled to make such changes.

(c) In the event of a projected budget shortfall for a Service, WETA, taking into account the Change Considerations, shall in good faith consider options for resolving the projected budget shortfall without reducing Service Levels, including identifying alternative funding sources, including increasing RM-2 funding; utilizing Service operating surpluses from prior years; utilizing other system reserves; implementing fare increases (in addition to the regular periodic fare increases referenced in Section 11.2(e), above); deferring capital projects; modifying Service operator contracts; reducing administrative overhead expenses; and/or reducing service operations costs; all to levels commensurate with the increased costs and/or reduced revenue. In the event WETA determines that a projected funding shortfall requires Service reductions below the Service Levels, WETA shall notify City and they shall meet and confer in good faith to cooperatively and expeditiously resolve the funding shortfall. WETA and City shall in good faith work together to consider all options available to minimize Service Level reductions and avoid Material Adverse Effects. Prior to final approval of a reduction in any Service Level (excluding ferry service to Angel Island, AT&T Park and the 5:20 Run) by WETA, WETA shall notify City, and if requested by City, shall make an informational presentation at a duly noticed meeting of the Alameda City Council and provide City staff, officials, representatives and citizens with an opportunity to comment and provide input to WETA regarding the proposed Service Level reduction.

(d) In the event that WETA determines either or both Services shall be eliminated or suspended for a period of more than one hundred eighty (180) calendar days, then subject to City being lawfully able to operate ferry service in the San Francisco Bay, WETA and City shall negotiate in good faith to provide City with the opportunity to reacquire the Acquired Assets and applicable federal, state, regional and local funding sources and Service reserves as necessary for City's operation of the relevant Service(s). The relevant assignment and assumption agreement for each Authorization and Assigned Contract Right shall provide that WETA shall reassign such Authorizations and Contract Rights (a) to City in the event that City reacquires the Alameda/Oakland Ferry Service, and/or (b) to Harbor Bay Isle Associates/Harbor Bay Maritime, Inc. (as applicable) consistent with Section 7 of that certain Agreement Regarding Certain Licenses, Permits and Obligations Under Planning Approvals for the Marine Portions of the Harbor Bay Ferry Terminal dated May 5, 2004, by and between Harbor Bay Isle Associates, Harbor Bay Maritime Inc. and City ("**HBIA/HBM 2004 Assignment**").

(e) If WETA desires to eliminate the Oakland stop from the Alameda/Oakland Ferry Service, WETA shall notify City and, upon City's request, shall make an informational presentation at a duly noticed meeting of the Alameda City Council.

Section 11.4Infrastructure Maintenance and Repair.

(a) Subject to the provisions of this Agreement, WETA shall assume financial responsibility for funding ongoing costs of maintaining, repairing, and replacing the Waterside Assets, the Ferry Terminals, the Landside Assets, and other capital facilities and vessels required to support Services operations. Subject to other provisions of this Agreement with respect to funding levels, WETA shall fund such costs from RM-1, RM1-2%, RM-2, Proposition 1B, or other regional, state, federal or other funds that are available to WETA, or shall become available to WETA in the future.

(b) WETA shall assume City's existing grant requirements set forth in Schedule 10.

(c) WETA shall secure and provide access to additional ferries and vessels to support current and future Services as needed.

(d) For so long as WETA operates the Services, WETA shall fund maintenance, repair, replacement and capital improvements necessary for the sustainable and ongoing operation of the Landside Assets, including parking facilities owned and managed by City or Authority for use by ferry passengers in their current configuration; such funding shall be in accordance with an annual budget for such improvements to be developed and agreed to by City and WETA as set forth in Section 11.7. WETA shall not be required to pay any increase in the cost of parking facilities attributable to any improvements that City or Authority may make to the City Lot or the Authority Lot as they exist on the Effective Date or at any new location to which a Ferry Terminal may relocate as provided herein, unless such improvements are made at WETA's request or with WETA's consent and agreement to pay increased costs. Upon WETA's request, City shall cooperate in locating a ticket vending machine or machines at the Ferry Terminals, provided that WETA shall purchase the machines and pay, as part of the Triple Net Costs, all of City's costs in connection therewith. WETA acknowledges that the ability to make improvements is subject to City's easement rights or other interests in the applicable property and applicable third party agreements.

Section 11.5 Landing and Mooring Rights.

(a) Main Street Ferry Terminal.

(i) "**Main Street Mooring Period**" means that period of time which starts as of Closing and ends on the earliest of: (A) sixty-six (66) years after Closing; or (B) when all of the Alameda/Oakland Ferry Service, Alameda/San Francisco Ferry Service, and Mooring/Emergency Ferry Uses are No Longer Operated out of the Main Street Ferry Terminal, and City has given WETA written notice of City's intent to terminate the Main Street Mooring Period due to WETA's failure to use the Main Street Ferry Terminal to operate at least one of the Alameda/Oakland Ferry Service, the Alameda/San Francisco Ferry Service, or Mooring/Emergency Ferry Use, and WETA has failed to recommence use of the Main Street Ferry Terminal for at least one of such purposes within thirty (30) days of receipt of such notice (which notice may be given no sooner than thirty (30) days prior to the end of the one hundred eighty (180) day period triggering the "No Longer Operated" status of the Alameda/Oakland Ferry Service) the Alameda/San Francisco Ferry Service, or Mooring/Emergency Ferry Use, as applicable; or (C) on the effective date of termination set forth in City's notice to WETA pursuant to Section 11.5(a)(ii).

(ii) The Parties acknowledge that City must retain flexibility for future use of City-owned property, including to enrich the lives of Alameda citizens and for revenue generation. As such, City shall have the right to terminate the Main Street Mooring Period (and automatically therewith terminate the Main Street Rights) as follows:

(A) If both the Alameda/Oakland Ferry Service and the Alameda/San Francisco Ferry Service are No Longer Operated out of the Main Street Ferry Terminal, but WETA is operating Mooring/Emergency Ferry Uses out of the Main Street Ferry Terminal, and City, Authority or any other entity created by City desires to enter into an agreement with Bay Ship & Yacht (or an affiliate of Bay Ship & Yacht or a third party whose use is a component of Bay Ship & Yacht's operations) for use of the Main Street Ferry Terminal, the Main Street Land, and/or the Main Street Channel, then City may elect to terminate the Main

Street Mooring Period upon ninety (90) calendar days prior written notice to WETA; provided, however that any such agreement between City, Authority, or any other entity created by City, and Bay Ship & Yacht (or an affiliate of Bay Ship & Yacht or a third party whose use is a component of Bay Ship & Yacht's operations) shall: (I) contain provisions substantially similar to those delineated in Section 11.5(b)(i) clauses (A) through (G) with respect to the Mooring/Emergency Ferry Uses; and (II) additionally require Bay Ship & Yacht to (1) provide adequate facilities at the Main Street Ferry Terminal or an equivalent-sized area that is substantially equivalent in convenience and terms and conditions of use, for Mooring/Emergency Ferry Uses and to accommodate activation of the Mooring/Emergency Ferry Uses at such area (upon such advance notice from WETA as is reasonable under the circumstances) to the extent the need for such activation is triggered by a Force Majeure Event, (2) provide WETA with a mooring space for one ferry vessel, all at no expense to WETA, and (3) provide that WETA shall be a third party beneficiary of such provisions of the Agreement. WETA and City agree that the fair market value of any free mooring space provided by Bay Ship & Yacht to WETA in any fiscal year pursuant to the preceding sentence shall reduce the amount of City's required annual TIF/LLAD Equivalent payment obligation for such fiscal year under Section 11.2 above. The fair market value of such free mooring space shall be determined taking into consideration the economic terms of the new City/Bay Ship & Yacht agreement.

(B) If both the Alameda/Oakland Ferry Service and the Alameda/San Francisco Ferry Service are No Longer Operated out of the Main Street Ferry Terminal, but WETA is operating Mooring/Emergency Ferry Uses out of the Main Street Ferry Terminal, and City desires to enter into an agreement with a third party other than Bay Ship & Yacht for use of the Main Street Ferry Terminal, Main Street Land, and/or the Main Street Channel, then City may terminate the Main Street Mooring Period upon ninety (90) calendar days prior written notice to WETA.

(iii) Main Street Rights.

(A) Generally. During the Main Street Mooring Period, WETA shall have the exclusive (subject to paragraph (C), below) right to locate and maintain at the Main Street Ferry Terminal the Waterside Assets associated with the Alameda/Oakland Ferry Service and the Alameda/San Francisco Ferry Service operated by WETA out of the Main Street Ferry Terminal, and exclusive (subject to paragraph (C) below) landing and mooring rights at the existing Main Street Ferry Terminal for the Alameda/Oakland Ferry Service, the Alameda/San Francisco Ferry Service, and such occasional ferry operations and third party charter and occasional vessel operations that WETA may approve in its discretion (collectively "**Main Street Rights**"), all at the locations shown on the map attached as Exhibit O (collectively, "**Main Street Rights Area**"). The Main Street Rights are intended by the Parties to be, and shall be construed as, a personal license from City to WETA, and not a property interest, and shall remain in effect only so long as the Main Street Mooring Period has not expired or otherwise been terminated. WETA's ongoing payment of all Triple Net Costs incurred by City for maintenance, repair, and replacement of the Landside Assets at the Main Street Ferry Terminal as provided in Section 11.7(c) ("**Main Street Fees**") shall constitute the consideration for the Main Street Rights during the Main Street Mooring Period. The Parties acknowledge that the map attached as Exhibits O and P are provided to illustrate the intended dimensions of the Main

Street Rights Area but are not reflective of an official survey of the Main Street Channel and the Main Street Land.

(B) Mooring/Emergency Ferry Uses. During the Main Street Mooring Period, even if both the Alameda/Oakland Ferry Service and the Alameda/San Francisco Ferry Service are No Longer Operated out of the Main Street Ferry Terminal, WETA may continue to so locate and maintain the Waterside Assets associated with the Main Street Ferry Terminal and exercise its landing and mooring rights at the Main Street Ferry Terminal on a calendar year quarter-to-quarter basis for purposes of maintaining emergency or backup ferry service capabilities and mooring of WETA's ferry ("**Mooring/Emergency Ferry Uses**"), which rights shall thenceforth constitute the Main Street Rights.

(C) Third Party Landing. During the Main Street Mooring Period, City shall have no right without WETA's prior written consent (which shall not be unreasonably withheld, conditioned, or delayed) to allow scheduled or unscheduled landings at the Main Street Ferry Terminal. If City desires to permit landing at the Main Street Ferry Terminal by third parties with no pre-existing landing or mooring rights, City shall submit a written request to WETA, including a statement of the fee to be paid by such third party for the privilege of landing at the Main Street Ferry Terminal, and a proposed budget for all costs to be incurred by City in connection with such third party landing rights. City shall require that any such third party granted landing rights shall name WETA as an additional insured on any insurance policies that City requires such third party to provide to City as a condition to such landing rights, and that WETA be included as an indemnified party in any indemnity obligation that City requires of such third party. In the event that WETA consents to a third party landing at the Main Street Ferry Terminal other than by a WETA vessel, WETA shall be entitled to any payments made by such third-parties for the privilege of landing at the Main Street Ferry Terminal, less City's actual costs incurred in connection with such third party landing rights (including staff time, consultant and attorneys fees), which payments shall be used by WETA exclusively to support the Services.

(b) Main Street Channel and Main Street Land. Neither City nor Authority makes any representation or warranty as to the non-use, use, availability, or suitability of the Main Street Channel or the Main Street Land for WETA or Service purposes. WETA acknowledges and agrees that third parties and other governmental agencies may have or assert concurrent or superior use rights or interests in or jurisdiction over the Main Street Channel or the Main Street Land. Except as expressly provided in Section 11.5(b)(i) and Section 11.5(b)(ii), inclusive, third party use of the Main Street Land or the Main Street Channel, or City's or Authority's failure to monitor or control use thereof, shall constitute neither a breach nor a default by City or Authority under this Agreement. If WETA is prevented from using the Main Street Channel or Main Street Land due to a third party's concurrent or superior use right, such occurrence shall constitute a Force Majeure Event as to WETA, and WETA shall not be obligated to provide ferry service during the pendency of such Force Majeure Event.

(i) During the Main Street Mooring Period Generally. As of the Effective Date and continuing throughout the Main Street Mooring Period, any agreement entered into by City, or Authority, or any other entity created by City, with any third party for use of the Main Street Channel and/or the Main Street Land (including new agreements for use

of the Main Street Channel and/or the Main Street Land in connection with Bay Ship & Yacht's operations, or in connection with the operations of any successor user of the properties bordering the Main Street Land) shall: (A) prohibit such third party from interfering with WETA's operation of the Alameda/Oakland Ferry Service, the Alameda/San Francisco Service, or any Mooring/Emergency Ferry Uses (as applicable) out of the Main Street Ferry Terminal; (B) require that the third party indemnify, defend and hold WETA harmless against liability or losses for property damage, death, or bodily injury caused by such third party use; (C) name WETA as an additional insured on the insurance policies that such third party is required to provide to City, Authority, or the entity created by City as a condition of such agreement, the scope and coverage of which shall be subject to WETA's prior review and written approval not to be unreasonably withheld, conditioned, or delayed; (D) provide that WETA shall be a third party beneficiary for purposes of enforcing such third party's obligations with respect to noninterference with the Alameda/Oakland Ferry Service, the Alameda/San Francisco Service, or any Mooring/Emergency Ferry Uses (as applicable), insurance and indemnity, and any other provisions reasonably construed as to have an impact on WETA's operation of the Alameda/Oakland Ferry Service, Alameda/San Francisco Ferry Service or Mooring/Emergency Ferry Service (as applicable), and that WETA shall be entitled to recover from such third party costs incurred by WETA to enforce such rights; (E) provide that such third party shall waive and release WETA from and against any liability to such third party in connection with the third party's use of the Main Street Channel and/or Main Street Land, except to the extent the liability or loss results from WETA's gross negligence or willful misconduct; (F) provide that such third party pay a reasonable share of the costs associated with the Main Street Land and reducing the Main Street Fees payable by WETA accordingly, and (G) provide that, except as otherwise provided in this Agreement, WETA shall be entitled to all rights and remedies available at law or in equity for breach of such agreement, including specific performance.

(ii) <u>During WETA's Operation of the Alameda/Oakland Ferry Service or the Alameda/San Francisco Ferry Service out of the Main Street Ferry Terminal</u>. The provisions of this <u>Section 11.5(b)(ii)</u> are in addition to the provisions of <u>Section 11.5(b)(i)</u> and shall have effect as of the Effective Date and so long as WETA operates either the Alameda/Oakland Ferry Service or the Alameda/San Francisco Ferry Service out of the Main Street Ferry Terminal. Subject to existing Bay Ship & Yacht use rights (as the same may be extended), and to the extent that City or Authority has an interest in or control over the Main Street Channel or the Main Street Land, each agrees that it will not enter into agreements with third parties, or grant to third parties rights to use, the Main Street Channel or the Main Street Land without WETA's prior written consent (which WETA shall not unreasonably withhold, condition, or delay) and, at WETA's expense, each shall use good faith diligent efforts to prevent unauthorized use of the Main Street Channel and Main Street Land by third parties. It shall be reasonable for WETA to withhold consent if such use would more likely than not result in a Material Adverse Effect on WETA's operation of the Alameda/Oakland Ferry Service or the Alameda/San Francisco Ferry Service out of the Main Street Ferry Terminal. WETA shall reasonably and in good faith consider each request for use of the Main Street Channel or the Main Street Land and shall provide City and Authority with written notice of WETA's decision, including the basis of its reasoning, within thirty (30) calendar days after the date of the use request. If WETA denies the use request, City or Authority, as applicable, may request that WETA meet and confer with them and, upon request of City or Authority staff, as the case may be, make an informational presentation at a duly noticed meeting of the Authority Board or the

Alameda City Council, as the case may be. Thereafter, WETA shall provide City and Authority with new written notice of WETA's decision, including the basis of its reasoning. Upon receipt of notice from WETA that such third party use is negatively impacting the Alameda/Oakland Ferry Service or the Alameda/San Francisco Ferry Service out of the Main Street Ferry Terminal in violation of such contract terms, City and Authority shall promptly notify such third party user to cease such interfering use and, upon WETA's request and at WETA's sole expense, shall take other reasonable steps necessary to prevent such interference.

(c) Harbor Bay Ferry Terminal.

(i) "**Harbor Bay Mooring Period**" means that period of time which starts as of Closing and ends on the earlier of: (A) sixty-six (66) years after Closing; or (B) when the Alameda/Harbor Bay Ferry Service is No Longer Operated by WETA out of the Harbor Bay Ferry Terminal, and City has given WETA written notice of City's intent to terminate the Harbor Bay Mooring Period due to WETA's failure to use the Harbor Bay Ferry Terminal to operate the Alameda/Harbor Bay Ferry Service, and WETA has failed to recommence the Alameda/Harbor Bay Ferry Service out of the Harbor Bay Ferry Terminal within thirty (30) days of receipt of such notice, which notice may be given up to thirty (30) days prior to the end of the one hundred eighty day period triggering the "No Longer Operated" status of the Alameda/Harbor Bay Ferry Service.

(ii) During the Harbor Bay Mooring Period, WETA shall have the right to locate and maintain the Waterside Assets associated with the Harbor Bay Ferry at the locations shown on the map attached as Exhibit K. WETA shall have those landing and mooring rights permitted pursuant to Exhibit E to the Assignment and Assumption Agreement Regarding Certain Licenses, Permits and Obligations under Planning Approvals for the Marine Portions of the Harbor Bay Ferry Terminal dated May 5, 2004, by and between Harbor Bay Isle Associates, Harbor Bay Maritime, Inc. and City, including scheduled and unscheduled moorage by WETA from time to time of one WETA vessel alongside the float at the Harbor Bay Ferry Terminal ("**Harbor Bay Rights**"). The Harbor Bay Rights are intended by the Parties to be, and shall be construed as, a personal license from City to WETA, and not a property interest.

(iii) During the Harbor Bay Mooring Period, City shall have no right without WETA's prior written consent to allow third party vessels to make scheduled or unscheduled landings at the Harbor Bay Ferry Terminal. If City desires to permit a third party landing at the Harbor Bay Ferry Terminal, City shall submit a written request to WETA, including a statement of the fee to be paid by such third party for the privilege of landing at the Harbor Bay Ferry Terminal, and a proposed budget for all costs to be incurred by City in connection with such third party landing rights. City shall require that any such third party granted landing rights shall name WETA as an additional insured on any insurance policies that City requires such third party to provide to City as a condition to such landing rights, and that WETA be included as an indemnified party in any indemnity obligation that City requires of such third party. In the event that WETA consents to a third party landing at the Harbor Bay Ferry Terminal other than by a WETA vessel, WETA shall thereafter be entitled to any payments made by such third-parties for the privilege of landing at the Harbor Bay Ferry Terminal, less City's actual costs incurred in connection with such third party landing rights (including staff time, consultant and attorneys fees), which payments shall be used by WETA exclusively to

support the Services. WETA's ongoing payment of Triple Net Costs incurred by City for maintenance, repair, and replacement of the Landside Assets at the Harbor Bay Ferry Terminal as provided in Section 11.7(c) ("**Harbor Bay Fees**") shall constitute the consideration for the landing and mooring rights at Harbor Bay provided herein.

Section 11.6Parking.

(a) Main Street Ferry Terminal.

(i) City, Authority and WETA acknowledge that, as of the Effective Date, parking is provided for ferry patrons at the Main Street Ferry Terminal in two adjacent lots, one on land owned by City ("**City Lot**") and one on land owned by United States Navy, leased to Authority, and subleased to City ("**Authority Lot**"). Subject to their respective rights in and to the City Lot and Authority Lot, City and Authority (as applicable) shall make the City Lot and the Authority Lot available for parking by ferry patrons at all times that regular Alameda/Oakland Ferry Service or Alameda/San Francisco Ferry Service is operating out of the Main Street Ferry Terminal, reasonable closures for Force Majeure Events, maintenance, repairs and construction of improvements excepted, and as reasonably practicable when Mooring/Emergency Use is activated by WETA, all on reasonable terms and conditions as established by City from time to time. City shall provide WETA with reasonable advance notice of any intended closures and shall cooperate with WETA in minimizing the impact of such closures on the Alameda/Oakland Ferry Service or Alameda/San Francisco Ferry Service.

(ii) City shall maintain, repair, resurface and reconstruct from time to time, as necessary, all facilities associated with the Landside Assets, subject to WETA pre-approval of such project(s) and payment of the costs thereof.

(iii) Except as otherwise agreed by the Parties, if both the City Lot and the Authority Lot are unavailable for use by WETA ferry service patrons for more than thirty (30) consecutive calendar days and if reasonably convenient substitute parking is not available, then, after taking into account the Change Considerations, meeting and conferring with City, and if requested by City, making an informational presentation at a duly noticed meeting of the Alameda City Council, WETA may, notwithstanding other provisions of this Agreement, temporarily discontinue, relocate, reduce, or eliminate the Alameda/Oakland Ferry Service or Alameda/San Francisco Ferry Service operating out of the Main Street Ferry Terminal without being in breach or default of WETA's obligations to provide the Services under this Agreement until such time as the City Lot, Authority Lot, or substitute parking that is substantially equivalent in convenience and terms and conditions of use is available.

(b) Harbor Bay Ferry Terminal.

(i) City and WETA acknowledge that, as of the Effective Date, parking is provided for ferry patrons at the Harbor Bay Ferry Terminal in the Parking and Staging Area shown on the map of the Harbor Bay Ferry Terminal attached as Exhibit K ("**Harbor Bay Parking Lot**"). City has an easement to use the Harbor Bay Parking Lot for ferry patron parking pursuant to that certain Grant of Easement and Assignment of Permits and Enabling Agreements for Public Marine Transportation Facility dated as of December 28, 1998,

between Harbor Bay Isle Associates, a partnership, and City ("**Harbor Bay Grant of Easement**"). City covenants and agrees that, subject to the Harbor Bay Grant of Easement or other terms governing City's Harbor Bay Parking Lot interests, City shall use good faith efforts to ensure that the Harbor Bay Parking Lot remains available for parking by ferry patrons at all times that WETA is operating the Alameda/Harbor Bay Ferry Service out of the Harbor Bay Ferry Terminal, reasonable closures for Force Majeure Events, maintenance, repairs and construction of improvements excepted, all on reasonable terms and conditions as established by City from time to time. City shall provide WETA with reasonable advance notice of any intended closures and shall cooperate with WETA in minimizing the impact of such closures on the Alameda/Harbor Bay Ferry Service.

(ii) Operation, maintenance, and management of the Harbor Bay Parking Lot and Harbor Bay Ferry Terminal facilities is provided by the HBBPA pursuant to that certain First Amended and Restated Agreement for Operation, Maintenance and Management of Public Marine Transportation Terminal Facility between City and HBBPA dated as of May 5, 2004 ("**HBBPA Agreement**"). The HBBPA Agreement requires HBBPA to continue to provide the services required thereunder so long as regularly scheduled commuter ferry service is operated from the Harbor Bay Ferry Terminal to the San Francisco Ferry Building at the Port of San Francisco. City agrees to use good faith efforts to ensure that HBBPA continues to provide the services required under the HBBPA Agreement (including payment of costs of insurance and utilities for lighting and water service to the Harbor Bay Ferry Terminal) and to maintain, repair, resurface and reconstruct from time to time, as necessary, all facilities associated with the Landside Assets at the Harbor Bay Ferry Terminal (including the Harbor Bay Parking Lot and the shoreline embankment) in accordance with the Desired Maintenance Schedule.

(iii) WETA hereby acknowledges, represents and warrants to City that WETA is familiar with the terms of the HBBPA Agreement and the Easement Agreement, and for so long as WETA operates the Alameda/Harbor Bay Ferry Service out of the Harbor Bay Ferry Terminal or the Harbor Bay Rights are in effect: (A) WETA will not knowingly take any action that would affect the exclusion from gross income of for federal income tax purposes of interest on the Bonds, (B) WETA will not knowingly take any action that would invalidate or negatively affect City's or HBBPA's rights or obligations under the HBBPA Agreement or the Easement Agreement, (C) WETA shall comply with all ferry service obligations under the HBBPA Agreement and the Easement Agreement pertaining to the Waterside Assets and operation of the Harbor Bay Ferry Service, and (E) WETA shall make good faith efforts not to cause City's rights under the HBBPA Agreement or the Easement Agreement to terminate.

(iv) Except as otherwise agreed by City and WETA, if the Harbor Bay Parking Lot is unavailable for use by WETA ferry service patrons for more than thirty (30) consecutive calendar days and if substitute parking that is substantially equivalent in convenience and terms and conditions of use is not available, then, after taking into account the Change Considerations, meeting and conferring with City, and if requested by City, making an informational presentation at a duly noticed meeting of the Alameda City Council, WETA may temporarily discontinue, relocate, reduce, or eliminate the ferry service to the Harbor Bay Ferry Terminal until such time as the Harbor Bay Parking Lot or substitute parking that is substantially equivalent with respect to convenience, terms and conditions of use is available.

(v) WETA agrees that as payment of the Harbor Bay Fees, it shall reimburse City for all Triple Net Costs (defined in Section 11.7(c)(i)) in accordance with the process described in Section 11.7.

Section 11.7 Maintenance and Capital Projects.

(a) Scheduled Maintenance and Capital Projects. No later than February 1st of each fiscal year, WETA shall submit to City a Schedule of Desired Maintenance and Repair Activities and Proposed Allowance for the next fiscal year ("**Desired Maintenance Schedule**"). The Desired Maintenance Schedule shall identify by Ferry Terminal any desired maintenance and repair tasks for that Ferry Terminal, including ongoing activities performed by City in accordance with the then current Desired Maintenance Schedule tasks, any special maintenance activities desired and all capital projects for the terminal that WETA would agree to fund in the next fiscal year, subject to any specific grant approvals. Within forty-five (45) calendar days after City's receipt of the Desired Maintenance Schedule, City shall prepare and submit to WETA for its review and approval, a proposed annual budget based on WETA's annual submission of the Desired Maintenance Schedule, including any additional activities or maintenance items recommended by City. WETA and City shall work together to agree upon a final Desired Maintenance Schedule and budget for each fiscal year on or before May 1st of the prior fiscal year. Project implementation will be subject to City Council approval of associated City budgets and WETA receipt of necessary grant approvals. In the event that City is unable to implement any task/project, City shall specify the reasons why it is unable to do so. A Desired Maintenance Schedule for fiscal years 2010/11 and 2011/12 is attached as Exhibit J.

(b) Unscheduled Maintenance and Capital Projects.

(i) City and WETA mutually acknowledge that from time to time, repair, maintenance or capital projects in addition to those identified in the Desired Maintenance Schedule, may be identified by WETA or City. If identified by WETA, WETA shall advise City if WETA desires additional maintenance, repair, or other services above and beyond those identified in the agreed upon Desired Maintenance Schedule for a given fiscal year. If identified by City, City shall notify WETA in writing of the work required. Within twenty (20) calendar days after receipt by WETA of City notice, WETA shall notify City of WETA's agreement to pay the cost of the work or shall provide an explanation of WETA's decision not to agree to pay for the work. If the work is necessary to address an imminent public health or safety hazard emergency, then City shall secure the facility as is necessary to prevent access by the public and protect the public safety, and may commence such actions as are immediately required to minimize risk of further damage or injury at WETA's expense without WETA's prior written approval, provided that City shall notify WETA of the situation as soon as reasonably practicable. Once the immediate threat to public health or safety resulting from the emergency has been stabilized, WETA's prior written consent shall be required for any further work to repair damage resulting from the public health or safety emergency at WETA's cost.

(ii) City shall perform, or procure contracts to perform, scheduled and unscheduled maintenance and repairs for the Landside Assets that will be done at WETA's expense in accordance with City's normal bidding procedures, and in accordance with any other

state and/or federal procurement procedures and terms that may apply as a result of the source of WETA's funding for such maintenance and repair expenses.

(c) Costs and Payments.

(i) Triple Net Costs. "**Triple Net Costs**" means any and all actual expenses (including staff time, consultant and attorneys fees) associated with any and all maintenance, repair, replacement, operation, and insurance of the Landside Assets (including the provision of utilities, but excluding such costs associated with or attributable to the rip-rap, except to the extent the same result from damage to the rip-rap caused by the negligent act or omission of WETA, normal wear and tear excluded), whether incurred pursuant to the tasks/projects set forth in the Desired Maintenance Schedule, identified by City or WETA, the HBBPA Agreement, or otherwise permitted under this ARTICLE 11 and not reimbursed to City by third parties. If the Desired Maintenance Schedule for any year includes maintenance, repair or replacement by City of any Waterside Assets, the City's actual expenses (including staff time, consultant and attorneys fees) incurred to provide such services with respect to the Waterside Assets shall also be included in the computation of Triple Net Costs for such year. Services provided directly by City (including City oversight and administrative expenses), including all services identified in Section 11.4(d) and Section 11.7(a) and (b) above, shall be reimbursed by WETA at City's fully loaded actual costs computed on the same basis as costs allocated generally within City. Services provided by third party contracts that are not paid directly by WETA shall be reimbursed based on actual out-of-pocket costs. Costs associated with remediation of any Environmental Condition are expressly excluded from the definition of Triple Net Costs, except to the extent City and/or Authority demonstrate by a preponderance of the evidence (as determined by a written agreement among the Parties or a court of competent jurisdiction) that a Release was caused by WETA or any WETA Parties, in which case WETA shall be solely responsible for the costs associated with such remediation of such Release. City and WETA shall agree upon a formula for allocating to the Services the cost of any items provided by City in connection with the Landside Assets on a case by case basis with respect to each such cost. If the cost of any item is allocable to the Landside Assets as well as to other City-owned or managed non-ferry related properties or activities, WETA shall pay for the proportionate share of the cost of such item, as reasonably determined by City.

(ii) Payments.

(A) Desired Maintenance and Repair Activities for Scheduled Maintenance and Capital Projects. WETA shall deposit with City funds to cover the approved budget for each fiscal year; each deposit shall cover the upcoming quarter and shall be made in advance on a quarterly basis. City shall reimburse itself from such funds on the basis of invoices for actual costs incurred by City. City shall provide WETA with a statement and related invoices for expenses incurred in each of the first three calendar quarters of each fiscal year within thirty (30) calendar days after the close of the quarter. On or before June 30 of each year, WETA shall provide written notice to the City's Finance Department of WETA's estimate of the Desired Maintenance Schedule expenses for June of such year, which estimate shall be in an amount equal to one twelfth of the approved Desired Maintenance Schedule budget for such year. City shall submit to WETA the City's final accounting, including all invoices for the immediately preceding fiscal year, on or before July 20 of each year. City shall confirm that

such invoice is consistent with the estimate in WETA's June notice, or identify any discrepancies. On or before September 1 of each fiscal year, City shall submit to WETA any invoices received after the close of the fiscal year relating to expenses incurred during the prior fiscal year despite City having exercised reasonable efforts to identify all such expenses in its July accounting to WETA. WETA shall reimburse City within 30 days of receipt of invoices for such expenses that were not identified prior to the final invoice for the relevant fiscal year from Measure B or other available sources of funds consistent with the relevant funding source guidelines. Any amounts advanced by WETA and not required to pay approved actual costs shall be returned to WETA within thirty (30) calendar days after the end of each fiscal year, or, at WETA's direction, credited to the next deposit due from WETA to City. WETA shall reimburse City the cost of approved capital projects within thirty (30) calendar days after City's presentment of each progress payment invoice for such approved capital project. WETA shall also reimburse City for City's actual costs and expenses (including staff time, consultant and attorneys fees) associated with the planning, design, construction and final close out for such projects including contract administration, materials testing, permitting and environmental review. Subject to mutual agreement of City and WETA, City's contracts with vendors for performance of Landside Asset maintenance and repair services may provide for direct WETA payments to the service providers, in which case WETA shall not be required to deposit funds in advance with the City with respect to costs to be incurred with respect to such contracts. WETA shall cooperate with City to accommodate such direct payment approach, including (to the extent required by applicable vendors) becoming a party to such vendor contracts for the limited purpose of such direct payments. City shall provide WETA with access to its Books and Records in accordance with Section 11.8, for inspection and audit as set forth therein.

(B) Unscheduled Maintenance and Capital Projects. Sums incurred by City and approved by WETA pursuant to Section 11.7(b) shall be paid by WETA to City within thirty (30) calendar days after City's presentation of an invoice itemizing such costs. WETA shall also reimburse City for City's actual costs and expenses, including overhead, associated with the planning, design, construction and final close out for such projects including contract administration, materials testing, permitting and environmental review. Subject to mutual agreement of City and WETA, City's contracts with vendors for performance of Landside Asset maintenance and repair services may provide for direct WETA payments to the service providers.

Section 11.8Audit.

(a) WETA hereby acknowledges that City will incur Service audit expenses in fiscal year 2010/11 (for fiscal year 2009/10 audit) and fiscal year 2011/12 (for fiscal year 2010/11 audit) in an aggregate amount of up to Fourteen Thousand Dollars ($14,000), or approximately $7,000 per year, and agrees that this expense should be covered by ferry system operating revenues. WETA agrees to pay the actual cost of such audits up to $7,000 for each of the fiscal year 2009/10 audit and the fiscal year 2010/11 audit within 30 days of receipt of an invoice from City.

(b) City shall keep and maintain Books and Records with respect to the amounts charged to WETA hereunder or pertaining to the Assumed Liabilities in accordance with generally accepted accounting principles and practices consistently applied. City shall

maintain and make such Books and Records available to WETA for audit and for such other purposes as may be required by WETA in connection with any of the Assumed Liabilities or as may be necessary in connection with WETA's compliance with obligations related to, or ability to secure, grants or other funding for the Services. Such Books and Records shall be made available at City's offices at all reasonable times during the Term and for four (4) years from the expiration or termination of this Agreement. City shall permit WETA's auditor, or any duly authorized representative of WETA, to have access to such Books and Records as required to verify the charges and expenses allocated to WETA pursuant to this Agreement. WETA shall bear the costs of any such audit. WETA shall not conduct an audit of City's Books and Records with respect to this Agreement more frequently than once per calendar year, or more frequently if required for WETA to comply with the requirements of a governmental agency in the exercise of its jurisdiction or contract obligations with respect to funding for the Services. If the audit discloses errors in the City's Books and Records, then (i) if WETA has overpaid amounts chargeable to WETA, City shall remit such overpayment to WETA within thirty (30) days of WETA's notice to City of the overpayment, or (ii) if WETA has underpaid amounts chargeable to WETA, City shall invoice WETA for such amounts and WETA shall pay such invoice within thirty (30) days of receipt of the invoice.

Section 11.9Seaplane Lagoon; Alameda/Oakland Ferry Service Bifurcation.

(a) City, Authority, and WETA acknowledge that in the future a new ferry terminal may be constructed at Seaplane Lagoon ("**Seaplane Lagoon Ferry Terminal**"); the general location thereof is identified on Exhibit L.

(b) City, Authority, and WETA shall in good faith work with each other and the Seaplane Lagoon master developer or other developer(s) (as applicable) to explore the viability of Bifurcated Services including: (A) relocating the Main Street Ferry Terminal operations to Seaplane Lagoon; (B) discontinuing passenger operations to/from the existing Main Street Ferry Terminal; (C) constructing the Seaplane Lagoon Ferry Terminal; and (D) establishing core service levels for the Alameda/San Francisco Ferry operating out of Seaplane Lagoon. As part of those discussions, it is anticipated that the Parties and developer(s) (as applicable) would:

(i) Take into consideration the impact of the foregoing changes on the viability of the former Oakland/San Francisco leg of the Alameda/Oakland Ferry Service.

(ii) Use diligent good faith efforts to ensure that WETA shall have landing and mooring rights at the Seaplane Lagoon Ferry Terminal substantially similar to the Main Street Rights.

(iii) Work towards establishing a transportation demand management fund for public transit generally, including a portion thereof (as determined based on City and developer negotiations) intended to partially support ferry service and allocating the ferry service portion of that fund to offset ferry terminal maintenance costs as well as operating costs for the Alameda/San Francisco Ferry Service (provided that such funds shall be in addition to and not in lieu of the Equitable Funding Level of RM-1, RM-2, and Measure B funds, and other applicable funding, for the Alameda/San Francisco Ferry Service).

(iv) Develop a budget for the Alameda/San Francisco Ferry Service. Potential revenue sources to be considered shall include projected fare box revenues, transportation demand fund monies, Measure B funds, and an equitable allocation of RM-1 5% and RM-2 funding, and other non-local subsidy funding sources as may be available to WETA ("**Equitable Funding Level**"). The determination of an Equitable Funding Level shall take into consideration:

(A) The number of Alameda ferry riders as measured by the number of tickets redeemed on the Service by customers using the Main Street Ferry Terminal;

(B) The per passenger public subsidy level in the then-current Alameda/Oakland Ferry Service annual budget;

(C) MTC-established grant eligibility requirements for RM-1, RM-2, and other non-local subsidy funding, as applicable; and

(D) New core Service Levels established for the Alameda/San Francisco Ferry Service operating out of Seaplane Lagoon.

(c) WETA shall commit all Measure B funds allocated to WETA by ACTC, which WETA has historically used to support the Alameda/Oakland Ferry Service to the Alameda/San Francisco Ferry Service operating out of Seaplane Lagoon.

(d) If WETA determines to pursue Bifurcation, then WETA shall recommend that MTC approve the Equitable Funding Level for the Alameda/San Francisco Ferry Service operating out of Seaplane Lagoon.

Section 11.10 MARSEC Security. Notwithstanding anything in this Agreement to the contrary, WETA shall be solely responsible for providing MARSEC required facility security plans for the Waterside Assets and bearing all costs, obligations, and liabilities associated therewith.

Section 11.11 Retained Authorizations. Subject to WETA's obligations hereunder with respect to those provisions of the Retained Authorizations that pertain to the Waterside Assets as specifically set forth in Schedule 7, from and after the Closing City shall continue to comply with, perform its obligations pursuant to, and retain in full force and effect and in good standing each Retained Authorization for such period of time as such Retained Authorization is required by law for operation of a Service. Costs of compliance with the Retained Authorizations that are allocable to the Services and are not otherwise allocated to City pursuant to this Agreement shall be included in the Triple Net Costs to be paid by WETA.

ARTICLE 12

ADDITIONAL PROVISIONS

Section 12.1 Alternative Fuel Pilot Program. City and WETA acknowledge that City is exploring the feasibility of a liquidated natural gas fueling station project that would include the conversion and testing of a liquidated natural gas fueled ferry vessel. If City secures funding for

this project, WETA shall work cooperatively with City and its alternative fuels consultant on conversion of a WETA ferry vessel to liquidated natural gas and the testing of the vessel. The cost of WETA staff time, provision of a suitable ferry boat, modification of vessel, testing and other related project costs shall be paid by City from pilot project grant funds. City and WETA shall also work cooperatively to address opportunities to deploy in the Services sustainable technologies that may become available from time to time.

Section 12.2Bus/Ferry Terminal Connection. WETA shall cooperate with City and AC Transit in efforts to provide the ongoing availability of bus transit and intermodal transfers to the Ferry Terminals and to coordinate bus scheduling with Service arrivals and departures.

Section 12.3Ferry Service Manager. WETA shall provide employment to City's current Services manager consistent with the requirements of the Act. No other City or Authority employees will be offered employment by WETA.

Section 12.4Fuel Consortium. WETA shall work with regional transit operating and planning agencies to explore the feasibility of establishing a fuel-purchasing consortium.

Section 12.5Other Transit Service Agreements. WETA shall work in good faith to develop agreements with operators of connecting transit services to develop a system for providing transfers between the Services and such other connecting transit services.

Section 12.6Periodic Report to City. WETA will make available to City information reasonably requested by City regarding the Services from time to time, including information regarding ridership, funding and revenues, and proposed changes to schedule, destinations, and/or fares (if any).

Section 12.7Rider Satisfaction and Service Quality Monitoring. WETA will implement reasonable practices designed to measure and assure customer satisfaction. Such practices may include establishing a ferry rider advisory committee to periodically review ridership, marketing, on-time performance, rider related service issues, and any proposed fare or Schedule changes, conducting periodic rider satisfaction surveys and periodically analyzing the on-time performance of the ferries. WETA shall make the results of such reviews and analyses available to City upon request.

Section 12.8Fare Box Recovery Ratio Reporting. WETA shall in good faith work with MTC to analyze and implement appropriate fare box recovery requirements for the Services, which may include consolidation of the fare box revenues for the Alameda/San Francisco Ferry Service and Alameda/Harbor Bay Ferry Service into a unified system.

Section 12.9Parity.

(a) Vallejo Transit Agreement. WETA represents to City that WETA intends to negotiate and enter into an agreement with the City of Vallejo for the transition to WETA of the existing BayLink ferry services currently operated by the City of Vallejo ("**Vallejo Transition Agreement**"), as contemplated by the Act, on terms and conditions substantially consistent with the terms of this Agreement.

(i) Landing and Mooring Fees. Consistent with the Act, it is WETA's intent to structure the Vallejo Transition Agreement to minimize increases in operating costs for the Vallejo ferry services, including the costs associated with landing and mooring at the Vallejo ferry terminal, in order to help ensure that services can be sustained by WETA, consistent with City of Vallejo and WETA desires, into the future. As such, WETA intends to cover actual costs incurred for WETA's access to the Vallejo ferry terminal to provide such continued Vallejo ferry services. If WETA pays any sums exceeding reimbursement of such actual costs ("**Excess Payment**"), then WETA shall notify City thereof in writing (together with provision of applicable agreements and a financial analysis of the basis for any Excess Payment) and, if requested by City, take into account the Change Considerations and meet and confer with City in good faith. To the extent the Excess Fees represent payment of rent or are not reasonably allocable to a difference in costs or obligations to be borne by the City of Vallejo (as opposed to those obligations of City under this Agreement), and consistent with and subject to WETA's obligations under the Act, City shall be entitled to increase the Main Street Fees provided for in Section 11.6 and the Harbor Bay Fees provided for in Section 11.6(a)(iii) by comparable amounts.

(ii) Consideration for Acquired Assets. It is WETA's intent to structure the Vallejo Transition Agreement to provide for the City of Vallejo's transfer of ferry system assets to WETA without the payment of monetary consideration by WETA for such transfer. If WETA agrees to pay monetary consideration to the City of Vallejo for the transfer of ferry system assets from the City of Vallejo to WETA, then WETA shall notify City thereof in writing (together with provision of any applicable agreements and a financial analysis of the basis for any such payment) and, if requested by City, meet and confer with City in good faith, and upon request of City staff make an informational presentation at a duly noticed meeting of the Authority Board or the Alameda City Council, as the case may be. To the extent that any such payment represents reimbursement to the City of Vallejo of any costs funded by sources other than the City of Vallejo's general fund, and consistent with and subject to WETA's obligations under the Act, City shall be entitled to payment for the Acquired Assets calculated in a manner comparable to the basis for the payment to the City of Vallejo.

ARTICLE 13

MISCELLANEOUS

Section 13.1Notices. All notices, demands and requests which may be given or which are required to be given by either Party to the other, and any exercise of a right of termination provided by this Agreement, shall be in writing and shall be deemed effective either: (a) on the date personally delivered to the applicable address below, as evidenced by written receipt therefor, whether or not actually received by the person to whom addressed; (b) on the third (3rd) business day after being sent, by certified or registered mail, postage prepaid, return receipt requested, addressed to the intended recipient at the applicable address specified below; or (c) on the first (1st) business day after being deposited into the custody of a nationally recognized overnight delivery service such as Federal Express or United Parcel Service, addressed to such Party at the applicable address specified below. For purposes of this Section 13.1, the addresses of the Parties for all notices are as follows (unless changed by similar notice in writing given by the particular person whose address is to be changed):

If to City or Authority:

Alameda City Hall
2263 Santa Clara Avenue
Alameda CA 94501
Attn: City Manager
Telephone: (510) 747-4700

with copies to:

City of Alameda Public Works Department
950 West Mall Square, Room 110
Alameda, CA 94501
Attn: Public Works Director
Telephone: (510) 749-5840

and:

Gerald J. Ramiza, Esq.
Burke, Williams & Sorensen, LLP
1901 Harrison Street, Suite 900
Oakland, CA 94612
Telephone: (510) 273-8780

If to WETA:

Water Emergency Transportation Authority
Pier 9, The Embarcadero, Suite 111
San Francisco, CA 94111
Attn: Nina Rannells, Executive Director
Telephone: (415) 364-3186

with a copy to:

Stanley S. Taylor, Esq.
Nossaman LLP
50 California Street, 34th Floor
San Francisco, CA 94111
Telephone: (415) 398-3600

If to HBBPA, solely for purposes of the notice required in Section 9.1(d):

Harbor Bay Business Park Association
c/o GS Management Company
5674 Sonoma Drive
Pleasanton, CA 94566
Telephone: (925) 734-0280

Section 13.2Entire Agreement. This Agreement (including the schedules and exhibits attached hereto, all of which are hereby incorporated by reference, and stand-alone versions thereof) and the Reimbursement Agreement embody the entire agreement between the Parties concerning the subject matter hereof, and there are no oral or written agreements between the Parties, nor any representations made by either Party relative to the subject matter hereof, which are not expressly set forth or incorporated herein.

Section 13.3Amendment. This Agreement may be amended only by a written instrument executed by each of the Parties hereto.

Section 13.4Headings. The captions and headings used in this Agreement are for convenience only and do not in any way limit, amplify, or otherwise modify the provisions of this Agreement.

Section 13.5Time of Essence. Time is of the essence of this Agreement; however, if the final date of any period which is set out in any provision of this Agreement falls on a Saturday, Sunday or legal holiday under the laws of the United States or the State in which the Property is located, then, in such event, the time of such period shall be extended to the next business day which is not a Saturday, Sunday or legal holiday.

Section 13.6Governing Law. This Agreement shall be governed by and construed in accordance with the Laws of the State of California and the Laws of the United States pertaining to transactions in such State, without reference to choice of law principles.

Section 13.7Successors and Assigns; Assignment. This Agreement shall bind and inure to the benefit of City, Authority, and WETA and their respective heirs, executors, administrators, personal and legal representatives, successors and permitted assigns.

Section 13.8Invalid Provision. If any provision of this Agreement is held to be illegal, invalid or unenforceable under present or future laws, such provision shall be fully severable; this Agreement shall be construed and enforced as if such illegal, invalid or unenforceable provision had never comprised a part of this Agreement; and the remaining provisions of this Agreement shall remain in full force and effect and shall not be affected by such illegal, invalid, or unenforceable provision or by its severance from this Agreement.

Section 13.9Enforcement. In the event a dispute arises concerning the performance, meaning or interpretation of any provision of this Agreement or any document executed in connection with this Agreement, the prevailing party in such dispute shall be awarded any and all costs and expenses incurred by such Party in enforcing, defending or establishing its rights hereunder or thereunder, including court costs and reasonable attorneys' fees. In addition to the foregoing, the prevailing party shall also be entitled to recover its reasonable attorneys' fees incurred in any appeals or any post judgment proceedings to collect or enforce any such judgment.

Section 13.10 Multiple Counterparts. This Agreement may be executed in a number of identical counterparts which, taken together, shall constitute collectively one agreement.

Section 13.11 Construction. City, Authority and WETA acknowledge that each Party and its counsel have reviewed and revised this Agreement and that the normal rule of construction to the effect that any ambiguities are to be resolved against the drafting Party shall not be employed in the interpretation of this Agreement or any amendments, schedules or exhibits hereto. The words "include" and "including" shall be construed as if followed by the words "without limitation."

Section 13.12 No Recordation. City, Authority and WETA hereby acknowledge that neither this Agreement nor any memorandum or affidavit thereof shall be recorded of public record in any county.

Section 13.13 Further Assurances. In addition to the acts and deeds recited herein and contemplated to be performed, executed or delivered by City, Authority and WETA, each Party hereby agrees to perform, execute and deliver, or cause to be performed, executed and delivered, as of Closing or thereafter any and all such further acts, deeds and assurances as City, Authority or WETA, as the case may be, may reasonably require in order to consummate fully the transactions contemplated hereunder. WETA shall promptly reimburse City for any actual costs incurred by City in connection therewith to the extent not specifically addressed in this Agreement or the Reimbursement Agreement.

Section 13.14 No Waiver. No consent or waiver by either Party to or of any breach or nonperformance of any representation, condition, covenant or warranty shall be enforceable unless in writing signed by the Party entitled to enforce performance, and such signed consent or waiver shall not be construed as a consent to or waiver of any other breach or non-performance of the same or any other representation, condition, covenant, or warranty.

Section 13.15 Survival. All of the provisions of this ARTICLE 13 shall survive Closing or any earlier termination of this Agreement.

Section 13.16 No Third Party Beneficiaries. There are not third party beneficiaries of the Contract Documents.

Section 13.17 City Police Powers. City shall retain full rights to exercise its police powers. Any uses or activities requiring a conditional use permit, variance, or other discretionary permit or approval shall require a permit or approval pursuant to relevant City codes, policies, and applicable Law. Notwithstanding any other provision set forth herein, this Agreement is not intended to vest in WETA any right to the issuance of any such permit or approval nor to restrict City's good faith exercise of its discretion with respect thereto.

Signatures Follow On Next Page

IN WITNESS WHEREOF, the Parties have executed this Agreement as of the Effective Date.

WETA:
SAN FRANCISCO BAY AREA WATER EMERGENCY TRANSPORTATION AUTHORITY

By: _____
Name: Nina Rannells
Title: Executive Director

CITY:
CITY OF ALAMEDA

By: _____
Name: Lisa Goldman
Title: Acting City Manager

APPROVED AS TO FORM:

_____
Stanley S. Taylor
Nossaman LLP
Legal Counsel to Authority

RECOMMENDED FOR APPROVAL:

_____
Name: Matthew T. Naclerio
Title: Public Works Director

APPROVED AS TO FORM:

_____
Name: Donna Mooney,
Title: Acting City Attorney

AUTHORITY:
ALAMEDA REUSE AND REDEVELOPMENT AUTHORITY

By: _____
Name: Lisa Goldman
Title: Acting Executive Director

_____
~~ASSISTANT~~ GENERAL COUNSEL
Acting

Escrow Holder Acknowledgement

The undersigned acknowledges receipt of this Agreement and agrees to act as escrow holder escrow agent in this transaction strictly in accordance with this Agreement.

ESCROW HOLDER

By:_____
Company: CHICAGO TITLE
Name: DEBBI FARBER
Title: ESCROW OFFICER

Dated: 3/31, 2011

CHICAGO TITLE ESCROW
917 Glenneyre
Laguna Beach, CA 92651
949-494-7531

SCHEDULE 1

ASSIGNED CONTRACTS

HARBOR BAY

1. Sixth Amended and Restated Operating Agreement for the Alameda/Harbor Bay Ferry Service dated August 1, 2004 by and between City and Harbor Bay Maritime, Inc., as amended.

2. City shall assign to WETA the following covenants, certifications and agreements of Harbor Bay Isle Associates ("HBIA") and Harbor Bay Maritime, Inc. ("HBM") set forth in the HBIA/HBM 2004 Assignment to the extent that such covenants, certifications and agreements pertain to the Waterside Assets: Sections 2.A, 2.B(2), 3.A, 4.A, 4.B.2, 5A, 6 and 7 (provided that City shall retain rights to any compensation related to termination of 1991 Grant of Easement; personal property items do not pertain to Waterside Assets and shall not transfer to WETA.

3. Private Aids to Navigation; Department of Transportation U.S. Coast Guard for Harbor Bay Ferry Lights.

MAIN STREET/GENERAL

1. Agreement for Alameda/San Francisco Ferry Service dated August 1, 2004 by and between City and Blue & Gold Fleet, L.P., as amended.

2. Amended and Restated Ferry Service Agreement between City and Port of Oakland dated July 1, 2005, as amended.

3. Addendum to Purchase Order Number 1000707, undated, by and between City and Call-Em-All, LLC.

4. Consultant Agreement dated August __, 2009 by and between City and JKaplan & Associates.

5. Consultant Agreement dated July 1, 2010 by and between City and Professional Staffing Resources, Inc.

6. Port of San Francisco Landing Rights Licenses 12914 for Harbor Bay and 12912 for Alameda/Oakland if City extends licenses and WETA does not enter into direct licenses with Port prior to Closing.

7. City and County of San Francisco/City of Alameda Inter-System Passenger Transfer Agreement dated February 1, 2000 by and between City and City and County of San Francisco, as amended.

8. Advertising Contracts dated May 14, 2010 by and between City, AT&T and Yellow Pages.

9. Contractor Agreement dated March 5, 2009 by and between City and Marine Express, Inc., as amended.

10. Contractor Agreement dated August 20, 2010 by and between City and Marine Express, Inc.

11. Caltrans Grant Agreements No. 04A1048 dated November 2, 1999; No. DMT0 4A28 dated September 8, 1993; No. 64T 342 dated April 10, 1992 and 64T342-A1; No. PVEA 04-97 (003), dated July 17, 1998, all by and between California Department of Transportation and City; 04-5014-M005 ISTEA (federal grant turned into state (STIP)) grant.

12. Carl Moyer Program Grant Agreements No. 10MOY162, 11MOY19, 08MOY179, 01MOY29 and Amendment 1, 08MOY180, all by and between Bay Area Air Quality Management District and City.

ASSUMED SETTLEMENT AGREEMENT OBLIGATIONS

1. Settlement Agreement and Release of Claims: Erick Mikiten, Elisa Mikiten and Eli Mikiten v. City of Alameda, the Port of Oakland, the Blue & Gold Fleet, L.P., Case No. 06-266836 ("Mikiten Settlement Agreement"). Mikiten Settlement Agreement is not assigned to WETA; however, WETA agrees to assume responsibility and cost for compliance with the following provisions of the Mikiten Settlement Agreement: (i) First two bullet points following heading "B. Supplemental Report Recommendations"), i.e., Items 1.1, 1.3-1.4, 1.6-1.7 and 1.5 of Supplemental Report), (ii) the matters listed in bullet points following the heading "3. Port of Oakland and City of Alameda; A. Encinal-Preliminary Report" beginning on page 6 of the Mikiten Settlement Agreement, (iii) the bullet points on pages 8-10 under the heading "B. Peralta Supplemental Report"): (iv) beginning on page 10, Item 4, "Blue and Gold Fleet" (WETA to require operator to comply with obligations under Mikiten Settlement Agreement); (v) page 11, Item 2, "Thresholds" (WETA to require operator to comply with obligations under Mikiten Settlement Agreement), (vi) page 11, Item III; (vii) ongoing obligations under "IV Interim Relief" beginning on page 11 (WETA to require operator to comply with obligations for training and operation), (viii) page 14, inspection in event of noncompliance, and (ix) page 14, Item 6, Dispute Resolution Process (WETA to comply with and require operator to comply with dispute resolution obligations).

SCHEDULE 2

WARRANTIES

Warranty

Peralta:	Serial #	Manufacturer	Website
Main engines:	33170825	Cummins	www.cummins.com
	33170793	Cummins	www.cummins.com
S Aux	4452-27053	Northern Lights	www.northern-lights.com
P Aux	4452-27650	Northern Lights	www.northern-lights.com
Encinal:			
P Aux	0642-40546	Northern Lights	www.northern-lights.com
Bay Breeze:			
S Aux	PE4045T743681	John Deere	www.northern-lights.com
P Aux	PE4045T743682	John Deere	www.northern-lights.com
S Main	5361109492	MTU	www.mtudetroitdiesel.com
P Main	536109491	MTU	www.mtudetroitdiesel.com

Assigned warranties also include all warranties set forth in any Assigned Contract.

SCHEDULE 3

AUTHORIZATIONS

1. Both services: Port of San Francisco with respect to Landing Rights Agreement by extension of License 121921 and License 121924 from the Port of San Francisco to City, or separate license between the Port of San Francisco and WETA.

2. Harbor Bay: Private Aids to Navigation; Department of Transportation U.S. Coast Guard for Harbor Bay Ferry Lights.

3. Harbor Bay: BCDC Permit No. 9-90 (issued on December 21, 1990, as amended through October 12, 2010). See Schedule 7, Retained Authorizations, for description of obligations assumed by WETA.

4. Harbor Bay: Department of Army Permit 18481E48 to install a floating dock and gangway connected to existing pier and reestablish portion of shoreline levee. See Schedule 7, Retained Authorizations, for description of obligations assumed by WETA.

5. Harbor Bay: City of Alameda Resolution No. 12014 and Related Use Permit Approvals. See Schedule 7, Retained Authorizations, for description of obligations assumed by WETA.

6. Department of Army, Army Corps of Engineers Dredging Permit Number 2009-00203S for dredging 50,000 cubic yards of sediment over a 10 year period (until Oct. 1, 2019) within Harbor Bay Ferry Terminal Access Channel, as modified by Letter of Modification from the Department of the Army to the City of Alameda, dated October 20, 2010, enclosing a Conditional Water Quality Certification letter from the San Francisco Bay Regional Water Quality Control Board dated August 25, 2010.

7. Main Street: Port of Oakland consent to transfer of City's interest in jointly owned Vessels to WETA.

8. Main Street: California Department of Parks and Recreation with respect to Blue & Gold contract access rights to Angel Island.

9. ACTC Measure B Operating Funds Commitment.

10. Instruction from MTC regarding MTC Regional Operating Funds Allocation Instructions for (i) 10392006 $356,000 2% Toll Revenue for purchase and modification of Harbor Bay Barge; (ii) 10392007 $107,993 Southern Capital for Bay Breeze Engine Upgrade.

11. Consent of BAAQMD to assignment as required by Carl Moyer Program Grant Agreement 08MOY179.

12. Consent of BAAQMD to assignment of Peralta as required by Carl Moyer Program Grant Agreement 10MOY162 between City and BAAQMD for Peralta repower project.

13. Consent of BAAQMD to assignment of Baybreeze as required by of Carl Moyer Program Grant Agreement 11MOY19 between City and BAAQMD for Baybreeze repower project.

14. Consent of BAAQMD to assignment as required by Carl Moyer Program Grant Agreement 01MOY29.

15. Consent of BAAQMD to assignment of Carl Moyer Program Grant Agreement 08MOY180, as amended, between City and BAAQMD.

16. Caltrans consent to Assignment and Assumption Agreement between City and WETA in form attached as Exhibit Q to Agreement, with respect to (i) Contract No. 64T342 $2,500,000 Fund Transfer Agreement between Caltrans and City Re: State Proposition 116 Bond Funds for Acquisition of Express II, as amended; (ii) Contract No. 04A1048 $4,750,000 Fund Transfer Agreement between Caltrans and City re: State Proposition 116 Bond Funds for acquisition of Peralta; (iii) Contract No. DMT04A28 $1,100,000 Fund Transfer Agreement between Caltrans and City re: State Proposition 116 Bond Funds for acquisition of Express II; (iv) Agreement No. PVEA 04-97(003) for $4,660,000 for ferry with increased passenger capacity; (v) 04-5014-M005 ISTEA.

17. Approval of U.S. Department of Homeland Security U.S. Coast Guard of Application for Initial Issue, Exchange or Replacement of Certificate of Documentation; Redocumentation for Vessels.

18. Sublease Agreement for overflow parking at the Main Street Ferry Terminal between City and Authority dated February 1, 1998.

SCHEDULE 4

LEGAL PROCEEDINGS

None.

SCHEDULE 5

WATERSIDE ASSETS

Main Street Ferry Terminal

YC Float
Gangway/Awning and supporting pier that partially supports gangway (expressly *excluding* concrete pier head)
Security Gate
Pilings

Harbor Bay Ferry Terminal

Float
Gangway/Awning and Supporting Pier
Security Gate
Pilings
Channel Markers, Harbor Bay Ferry Lights, 1, 2, 3, 4 and 6

SCHEDULE 6

PROPRIETARY RIGHTS

Domain names and Registration Expiration Dates:
Alamedaharborbayferry.com (exp 10/24/11) Alamedaoaklandferry.com (exp 7/14/11) Ahbferry.com (exp 10/24/11) Alamedaferry.com (exp 7/24/11) Eastbayferry.com (exp 7/14/11) Oaklandferry.com (exp 7/14/11)

Alameda/Oakland Ferry Service Logo:

SCHEDULE 7

RETAINED AUTHORIZATIONS

1. Harbor Bay: BCDC Permit No. 9-90 (issued on December 21, 1990, as amended through October 12, 2010). BCDC permit governs installation, use and maintenance of Waterside Assets (to be performed by WETA), placement and maintenance of rip-rap (to be performed by City), and installation and maintenance of bicycle lockers adjacent to Ferry Terminal waiting area (to be performed by City). Per Agreement, City shall maintain the permit in force and effect and the parties shall notify BCDC that operation of service is being transitioned to WETA. WETA shall assume responsibility and pay the cost to comply with BCDC permit obligations for maintenance of Waterside Assets. If obligation to remove the Waterside Assets pursuant to Section II.E of permit are triggered, WETA will be responsible for complying with such obligation, unless such removal is Harbor Bay Isle Associates responsibility pursuant to the HBIA/HBM 2004 Assignment. Maintenance cost for bicycle lockers shall be included in the annual DMS.

2. Harbor Bay: Department of Army Permit 18481E48 to install a floating dock and gangway connected to existing pier and reestablish portion of shoreline levee. Army Corps permit governs use and maintenance of Waterside Assets (to be performed by WETA) and reestablishment of shoreline levy (to be performed by City). Work covered by permit has been completed. Permit requires ongoing maintenance of structures and improvements. WETA will be responsible for and pay the cost for compliance with permit in using and maintaining Waterside Assets, and for removal of Waterside Assets pursuant to General Condition 5(c), unless such removal is Harbor Bay Isle Associates responsibility pursuant to the HBIA/HBM 2004 Assignment.

3. Harbor Bay: City of Alameda Resolution No. 12014 WETA shall assume responsibility and pay the cost for compliance with the following mitigation measures set forth in Resolution No 12014: 7 (minimum of 60% of painted surfaces to be painted with water based or latex paints and finishes to reduce hydrocarbon emissions – cost to be included in Triple Net Costs *if* WETA requests this to be performed by City as part of Desired Maintenance Schedule for any fiscal year); 9 (duty to maintain markers of northerly limit of offshore eelgrass bed, shoals or shallow points); 10 (removal and installation of piles for float and maintenance dredging); 12 (compliance with City Noise Ordinance as to WETA activities); 13 (minimize glare from WETA lights); 18 (reduce ferry speed within 1000 feet of shoreline); 19 (route ferry to minimize impacts on eelgrass and disturbance of sediments); 20 (minimum propeller thrust within 900 feet of shore); 21 (ferry home porting, fueling and maintenance off of Bay Farm Island); 22 (contract with biologist if mitigation period extended); 23 (ferry mufflers and noise reduction); 24 (bilge waste); 26 and 28 (work with AC Transit for intermodal transfers); 34 (safety features, high wind contingency plan); 35 (implement the following obligations set forth in the mitigation monitoring program if required: Item 21 [off-site fueling and repairs]; Filing of Self-

Monitoring Report as to Item 21); 36 (initiate changes in operations to mitigate unanticipated significant adverse environmental impacts).

4. ACTC Measure B Operating Funds Commitment.

5. Sublease Agreement for overflow parking between City and Authority dated February 1, 1998.

6. Those aspects of the Mikiten Settlement Agreement not assumed by WETA.

7. Harbor Bay: Department of Army, Army Corps of Engineers Dredging Permit Number 2009-00203S for dredging 50,000 cubic yards of sediment over a 10 year period (until Oct. 1, 2019) within Harbor Bay Ferry Terminal Access Channel, as modified by Letter of Modification from the Department of the Army to the City of Alameda, dated October 20, 2010, enclosing a Conditional Water Quality Certification letter from the San Francisco Bay Regional Water Quality Control Board dated August 25, 2010. Per Agreement, City shall maintain the permit in force and effect and the parties shall notify the Army Corps of Engineers that operation of service is being transitioned to WETA. WETA shall assume responsibility and pay the cost to perform maintenance dredging in compliance with all conditions set forth in the Permit.

SCHEDULE 8

VESSELS

1. MV Harbor Bay Express II; Official Number 998632, Gross Tonnage 52, Year Built 1993

2. MV Bay Breeze; Official Number 1020550, Gross Tonnage 99, Year Built 1994

3. MV Encinal; Official Number 682580, Gross Tonnage 96, Year Built 1985

4. MV Peralta; Official Number 1118810, Gross Tonnage 91, Year Built 2001

SCHEDULE 9

REQUIRED LICENSES, PAYMENTS AND CONSENTS

Licenses:

None

Payments:

None.

Consents:

1. See Schedule 3, "Authorizations," above

SCHEDULE 10

VESSEL PERMITTED ENCUMBRANCES

1. Carl Moyer Program Grant Agreement 10MOY162 between City and BAAQMD for Peralta repower project.

2. Carl Moyer Program Grant Agreement 11MOY19 between City and BAAQMD for Baybreeze repower project.

3. Carl Moyer Program Grant Agreement 01MOY29, as amended.

4. Carl Moyer Program Grant Agreement 08MOY180 between City and BAAQMD.

5. Assignment and Assumption Agreement between City and WETA in form attached as Exhibit V to Agreement, with respect to (i) Contract No. 64T342 $2,500,000 Fund Transfer Agreement between Caltrans and City Re: State Proposition 116 Bond Funds for Acquisition of Express II; (ii) Contract No. 041048 $4,750,000 Fund Transfer Agreement between Caltrans and City re: State Proposition 116 Bond Funds for acquisition of Peralta; (iii) Contract No. DMT04A28 $1,100,000 Fund Transfer Agreement between Caltrans and City re: State Proposition 116 Bond Funds for acquisition of Express II; (iv) Agreement No. PVEA 04-97(03) for $4,5660,000 for ferry with increased passenger capacity; (v) Program Supplement 04-5014-M005 ISTEA between Caltrans and City for STIP money for Express II.

SCHEDULE 11

NOTICES OF VIOLATION FOR TERMINALS

None

SCHEDULE 12

AUTHORIZATIONS NOT OBTAINED

1. If WETA enters into separate landing rights Agreement with Port of San Francisco, extension of Port of San Francisco Landing Rights License 12912 for Harbor Bay.

2. If WETA enters into separate landing rights Agreement with Port of San Francisco, extension of Port of San Francisco Landing Rights License 12914 for Alameda/Oakland Service.

3. State of California Department of Parks and Recreation Concession Contract for Ferry Service to Angel Island State Park.

SCHEDULE 13

NOTICES OF VIOLATION FOR SERVICES

None

SCHEDULE 14

PENDING AND THREATENED LEGAL PROCEEDINGS

None

SCHEDULE 15

DEFAULTS UNDER ASSIGNED CONTRACTS

None

EXHIBIT A

FORM OF COAST GUARD BILL OF SALE
(CG-1258)

OMB APPROVED 1625-0027

EXPIRATION DATE:

U.S. DEPARTMENT OF HOMELAND SECURITY
U.S. COAST GUARD
CG-1258 (REV. 06/04)

APPLICATION FOR INITIAL ISSUE, EXCHANGE, OR REPLACEMENT OF CERTIFICATE OF DOCUMENTATION; REDOCUMENTATION

THIS SECTION FOR COAST GUARD USE ONLY

CASE NUMBER:

CHECK #:

FEE: $

APPROVED:

DATE:

NOTE: FILING THIS APPLICATION DOES NOT ENTITLE A VESSEL TO DOCUMENTATION OR TO ANY CHANGES SOUGHT ON A CERTIFICATE OF DOCUMENTATION. OFFICIAL NUMBERS DESIGNATED ON THE BASIS OF THIS APPLICATION ARE NOT TRANSFERABLE. ONLY A CURRENT CERTIFICATE OF DOCUMENTATION IS VALID FOR VESSEL OPERATION.

I. COMPLETE FOR ALL APPLICATIONS

A. VESSEL NAME

B. OFFICIAL NUMBER (IF AWARDED) AND HULL IDENTIFICATION NUMBER IF ANY

C. NAME OF MANAGING OWNER

TELEPHONE NUMBER (OPTIONAL):

SOCIAL SECURITY OR TAX ID NUMBER

D. ADDRESS OF MANAGING OWNER

SHOW PHYSICAL ADDRESS IF DIFFERENT FROM MAILING ADDRESS

E. NAMES AND SOCIAL SECURITY OR TAX ID NUMBERS OF ALL OTHER OWNERS

ATTACH SHEET LISTING ADDITIONAL OWNERS IF NECESSARY

F. HAILING PORT INCLUDING STATE (TO BE MARKED ON VESSEL)

G. CITIZENSHIP **VESSEL OWNED:**

☐ BY ONE OR MORE INDIVIDUALS

I (WE) CERTIFY THAT ALL OWNERS OF THIS VESSEL ARE CITIZENS OF THE UNITED STATES

☐ BY JOINT VENTURE OR ASSOCIATION

I (WE) CERTIFY THAT ALL MEMBERS OF THIS (JOINT VENTURE) (ASSOCIATION) ARE CITIZENS OF THE UNITED STATES, ELIGIBLE TO DOCUMENT THE VESSELS COVERED BY THIS APPLICATION WITH THE ENDORSEMENT(S) SOUGHT IN THEIR OWN RIGHT.

☐ IN A TRUST ARRANGEMENT

I (WE) CERTIFY THAT ALL TRUSTEES AND ALL BENEFICIARIES WITH AN ENFORCEABLE INTEREST IN THIS TRUST ARRANGEMENT ARE CITIZENS OF THE UNITED STATES, ELIGIBLE TO DOCUMENT VESSEL WITH THE ENDORSEMENT(S) SOUGHT IN THEIR OWN RIGHT.

☐ BY A PARTNERSHIP OR LIMITED LIABILITY COMPANY

A. GENERAL PARTNERSHIP OR LIMITED LIABILITY COMPANY (LLC)

I (WE) CERTIFY THAT ALL PARTNERS IN THIS PARTNERSHIP (MEMBERS OF THIS LLC) ARE CITIZENS OF THE UNITED STATES ELIGIBLE TO DOCUMENT VESSELS IN THEIR OWN RIGHT, AND THAT THE PARTNERSHIP LLC MEETS THE FOLLOWING EQUITY REQUIREMENTS: EQUITY OWNED BY U.S. CITIZENS.
☐ AT LEAST 50% ☐ MORE THAN 50%, LESS THAN 75% ☐ 75% OR MORE

B. LIMITED PARTNERSHIP

I (WE) CERTIFY THAT ALL GENERAL PARTNERS IN THIS PARTNERSHIP ARE CITIZENS OF THE UNITED STATES, ELIGIBLE TO DOCUMENT VESSELS IN THEIR OWN RIGHT AND THAT THE PARTNERSHIP MEETS THE FOLLOWING EQUITY REQUIREMENTS, EQUITY INTEREST OWNED BY CITIZENS OF THE U.S. ELIGIBLE TO DOCUMENT VESSELS IN THEIR OWN RIGHT WITH THE ENDORSEMENT SOUGHT.
☐ AT LEAST 50% ☐ MORE THAN 50%, LESS THAN 75% ☐ 75% OR MORE

☐ VESSEL OWNED BY A CORPORATION

A. STATE OF INCORPORATION _____

B. CITIZENSHIP OF PRESIDENT (AND OTHER CHIEF EXECUTIVE OFFICER, IF ANY) _____

C. CITIZENSHIP OF CHAIRMAN OF THE BOARD _____

D. NUMBER OF DIRECTORS NECESSARY TO CONSTITUTE A QUORUM _____

E. NUMBER OF ALIEN DIRECTORS _____

F. PERCENTAGE OF STOCK OWNED BY U.S. CITIZENS ELIGIBLE TO DOCUMENT VESSELS IN THEIR OWN RIGHT, WITH THE ENDORSEMENT(S) SOUGHT ON THIS APPLICATION (APPLIES TO ALL TIERS OF OWNERSHIP.)
☐ LESS THAN 50% ☐ AT LEAST 50% ☐ MORE THAN 50%, LESS THAN 75% ☐ 75% OR MORE

☐ VESSEL OWNED BY A CORPORATION QUALIFIED AND APPLYING UNDER 46 CFR 68.01 (BOWATER)

CURRENT CERTIFICATE OF COMPLIANCE ATTACHED. I (WE) CERTIFY THAT THE CORPORATE STRUCTURE HAS NOT CHANGED SINCE ISSUANCE OF THAT CERTIFICATE, AND THAT THE VESSEL, IF SELF-PROPELLED, IS LESS THAN 500 GROSS TONS.

☐ VESSEL OWNED OR OPERATED BY NOT-FOR-PROFIT OIL RECOVERY COOPERATIVE

COPY OF CURRENT LETTER OF QUALIFICATION ATTACHED. I (WE) CERTIFY THAT THE INFORMATION ON FILE WITH REGARD TO COOPERATIVE AND ISSUANCE OF THAT LETTER REMAINS UNCHANGED.

H. ENDORSEMENTS FOR WHICH APPLICATION IS MADE. (IF MORE THAN ONE, INDICATE ESTIMATED PERCENTAGE FOR EACH).

☐ RECREATIONAL ☐ COASTWISE ☐ FISHERY ☐ COASTWISE (BOWATER ONLY)

☐ REGISTRY ☐ OIL SPILL RESPONSE

☐ COASTWISE UNDER CHARTER TO AN ENTITY QUALIFIED TO ENGAGE IN COASTWISE 46 APP USC 802. COPY OF CHARTER ON FILE WITH U.S.C.G.

PREVIOUS EDITION OBSOLETE SN 7530-00-F01-0800

REVERSE OF CG-1258 (REV. 06/04)

I. PRIMARY SERVICE

☐ COMMERCIAL FISHING BOAT
☐ FISH PROCESSING VESSEL
☐ FREIGHT SHIP
☐ FREIGHT BARGE
☐ INDUSTRIAL VESSEL
☐ MOBILE OFFSHORE DRILLING UNIT
☐ OIL RECOVERY
☐ OFFSHORE SUPPLY VESSEL
☐ PASSENGER (6 OR FEWER)
☐ PASSENGER (MORE THAN 6)
☐ PASSENGER BARGE (6 OR FEWER)
☐ PASSENGER BARGE (MORE THAN 6)
☐ PUBLIC FREIGHT
☐ PUBLIC TANKSHIP/BARGE
☐ PUBLIC VESSEL, UNC
☐ RESEARCH VESSEL
☐ SCHOOL SHIP
☐ TANK BARGE
☐ TANK SHIP
☐ TOWING VESSEL
☐ UNCLASSIFIED VESSEL
☐ RECREATIONAL

J. PURPOSE OF APPLICATION

☐ 1. EXCHANGE OF CERTIFICATE OF DOCUMENTATION.

☐ 2. REPLACEMENT OF LOST, WRONGFULLY WITHHELD OR MUTILATED CERTIFICATE OF DOCUMENTATION.

☐ 3. RETURN TO DOCUMENTATION FOLLOWING DELETION, NAME OF VESSEL WHEN LAST DOCUMENTED:

☐ 4. APPLICATION FOR OFFICIAL NUMBER AND FIRST CERTIFICATE OF DOCUMENTATION. VESSEL

☐ WAS BUILT AT _____ IN _____

OR MONTH/YEAR

☐ IS UNDER CONSTRUCTION AT _____ AND IS SCHEDULED FOR COMPLETION IN____

HULL MATERIAL: ☐ WOOD ☐ STEEL ☐ FIBROUS REINFORCED PLASTIC ☐ ALUMINUM ☐ CONCRETE.

☐ OTHER (DESCRIBE) _____

APPROXIMATE LENGTH OF VESSEL _____

PREVIOUS NAMES, NUMBERS, OR FOREIGN REGISTRATIONS OF VESSEL _____

K. CERTIFICATION: I (WE) CERTIFY THAT:

(A) I AM (WE ARE) A CITIZEN(S) OF THE UNITED STATES AND LEGALLY AUTHORIZED TO EXECUTE THIS APPLICATION IN THE CAPACITY SHOWN;

(B) THAT THE VESSEL(S) TO WHICH THIS APPLICATION APPLIES;

(i) ☐ HAS (HAVE) BEEN MARKED OR ☐ WILL BE MARKED

IN ACCORDANCE WITH THE DIRECTIONS IN THE INSTRUCTION SHEET (CG-1258-A) FOR THIS APPLICATION;

(ii) WILL AT ALL TIMES REMAIN UNDER THE COMMAND OF A U.S. CITIZEN, UNLESS DOCUMENTED SOLELY WITH A RECREATIONAL ENDORSEMENT.

(iii) WILL NOT BE OPERATED IN A TRADE NOT AUTHORIZED BY THE ENDORSEMENT(S) ON THE CERTIFICATE(S) OF DOCUMENTATION;

(iv) HAS NOT BEEN REBUILT SINCE LAST DOCUMENTATION

(v) THE VESSEL IS

☐ NOT TITLED UNDER A STATE OR ☐ IS TITLED UNDER THE LAWS OF _____

(C) THE NAME(S) OF THE VESSEL(S) WILL NOT BE CHANGED WITHOUT APPROVAL FROM NATIONAL VESSEL DOCUMENTATION CENTER; AND

(D) (WE) WILL PROMPTLY NOTIFY THE NATIONAL VESSEL DOCUMENTATION CENTER UPON A CHANGE IN ANY OF THE INFORMATION OR REPRESENTATIONS IN THIS APPLICATION.

PRINTED OR TYPED NAME	SIGNATURE	CAPACITY (E.G., OWNER, AGENT, TRUSTEE, GENERAL PARTNER, CORPORATE OFFICER)

_____

_____

DATE:_____

PRIVACY ACT STATEMENT

IN ACCORDANCE WITH 5 U.S.C. 553a, THE FOLLOWING INFORMATION IS PROVIDED TO YOU WHEN SUPPLYING PERSONAL INFORMATION TO THE U.S. COAST GUARD.

1. AUTHORITY. SOLICITATION OF THIS INFORMATION IS AUTHORIZED BY 46 U.S.C., CHAPTERS 121 AND 125; 46 U.S.C. APP. 802 AND 883.

2. THE PRINCIPAL PURPOSES FOR WHICH THIS INFORMATION IS TO BE USED ARE:

(1) TO DETERMINE CITIZENSHIP OF THE OWNER OF THE VESSEL FOR WHICH APPLICATION FOR DOCUMENTATION IS MADE; AND

(2) TO DETERMINE ELIGIBILITY OF THE VESSEL TO BE DOCUMENTED WITH THE TRADE ENDORSEMENT SOUGHT.

3. THE ROUTINE USES WHICH MAY BE MADE OF THIS INFORMATION INCLUDE RELEASE TO LAW ENFORCEMENT OFFICIALS, TO THE GENERAL PUBLIC UNDER FREEDOM OF INFORMATION ACT, AND TO PUBLISH INFORMATION ABOUT U.S. DOCUMENTED VESSELS.

4. DISCLOSURE OF THE INFORMATION REQUESTED ON THIS FORM IS VOLUNTARY, HOWEVER, FAILURE TO PROVIDE THE INFORMATION REQUESTED WILL RESULT IN DENIAL OF THE APPLICATION FOR DOCUMENTATION, WHICH MAY PREVENT THE OWNER FROM OPERATING THE VESSEL(S) IN A SPECIFIED TRADE.

AN AGENCY MAY NOT CONDUCT OR SPONSOR, AND A PERSON IS NOT REQUIRED TO A COLLECTION OF INFORMATION UNLESS IT DISPLAYS A VALID OMB CONTROL NUMBER.

THE COAST GUARD ESTIMATES THAT THE AVERAGE BURDEN FOR THIS FORM IS 30 MINUTES. YOU MAY SUBMIT ANY COMMENTS CONCERNING THE ACCURACY OF THIS BURDEN ESTIMATE OR MAKE SUGGESTIONS FOR REDUCING THE BURDEN TO: U.S. COAST GUARD, NATIONAL VESSEL DOCUMENTATION CENTER, 792 T J JACKSON DRIVE, FALLING WATERS, WEST VIRGINIA 25419, OR OFFICE OF MANAGEMENT AND BUDGET, PAPERWORK REDUCTION PROJECT (1625-0027), WASHINGTON, DC 20503.

INSTRUCTIONS FOR COMPLETING FORM CG-1258 (CG-1258A Revised MAR/2006)

A. VESSEL NAME: Insert name by which you wish the vessel to be known. If applying to change the vessel's name, insert the old vessel name in parenthesis.

B. OFFICIAL NUMBER AND HIN: Insert the official number awarded by the Coast Guard for all but Initial Issue cases. If the vessel has an assigned Hull Identification Number (HIN) it should also be shown.

C. MANAGING OWNER:
Name the owner to whom the Coast Guard should send correspondence and their Social Security number. A Social Security or TAX I.D. number IS REQUIRED. A telephone number is not required but is helpful. Only an owner or part owner can be the managing owner. For vessels owned by a corporation the corporation is the managing owner: for a trust arrangement, the trustee is the managing owner: for a Partnership or a LLC, the name of the Partnership or the LLC should be shown.

D. ADDRESS OF MANAGING OWNER:
Show your mailing address. If your physical (street) address is different from your mailing address, show BOTH addresses.

E. NAME(S) AND SOCIAL SECURITY NUMBER(S) OR TAX I.D. NUMBER(S) of all persons (other than managing owner) who own an interest in the vessel. If no owners other than the managing owner, leave blank.

F. HAILING PORT: Insert name of place and state exactly as it is or will be marked on the vessel. The hailing port must be a place in the United States. Commonly known abbreviations are acceptable. (e.g., NY, NY)

G. CITIZENSHIP: Check the appropriate box (es) to show the type of entity which own(s) the vessel and to certify that the owner(s) meet the appropriate citizenship requirements.

INDIVIDUAL: Includes native born and naturalized U.S. citizens.

JOINT VENTURE/ASSOCIATION: Attach a list naming all joint venturers/members. The percentage held by each need not be shown.

TRUST: All trustees and each beneficiary with an enforceable interest must be citizens. Attach a list naming all trustees, other than managing owner and any beneficiary only if they have an enforceable interest.

PARTNERSHIP or LIMITED LIABILITY COMPANY (LLC): Check if general or limited and other applicable block AND attach a list of all general partners or members if an LLC. All partners or members of an LLC must be U.S. Citizens.

CORPORATION: ALL blocks (A through F) must be completed.

CORPORATIONS QUALIFIED UNDER 46 CFR 68.01 OR OWNED BY A NOT-FOR-PROFIT OIL RECOVERY COOPERATIVE:
Attach a copy of the Certificate of Compliance or Letter of Qualification issued by the Director, NVDC.

H. ENDORSEMENTS: Check the appropriate block(s) to indicate the endorsement(s) for which application is made.

I. PRIMARY SERVICE: Check only ONE primary service the vessel will be used for.

J. PURPOSE OF APPLICATION: Check applicable blocks to show purposes of application. If vessel has never been documented, check Block #4 and provide ALL requested information which is known about the vessel's place and year of build, hull material, approximate length and previous names and numbers. If this information is unknown, please indicate.

K. CERTIFICATION: Complete as appropriate. The law provides severe penalties for false statements against both the person (including agents) making the statement and against the vessel for which it is made.

VESSEL MARKING INSTRUCTIONS

Every documented vessel must be marked with its official number, name and hailing port. A Certificate of Documentation is not valid for operation of the vessel until the vessel is marked in accordance with the prescribed regulations contained in 46 CFR 67.120.

OFFICIAL NUMBERS: The official number shown on the Certificate of Documentation, preceded by the abbreviation "NO" must be marked in block-type Arabic numerals of at least 3 inches in height on some clearly visible interior structural part of the hull. The number must be permanently affixed so that alteration, removal or replacement would be obvious and cause some scarring or damage to the surrounding hull area.

NAME AND HAILING PORT: For Recreational vessels the name and hailing port must marked together on some clearly visible exterior part of the hull. For Commercial vessels the name must be marked pm each bow and the vessel name and hailing port must also be marked on the stern. The markings may be made by the use of any means and materials that result in durable markings. All must be at least 4 inches in height, made in clearly legible letters o the Latin alphabet or Arabic or Roman numerals. A vessel's Hailing Port marking must include BOTH a place (city) and the state, territory or possession where the place (city) is located. Only the state, territory or possession maybe abbreviated unless the city is a commonly known abbreviation, such as N.Y., N.Y.
NOTE: REQUIREMENT FOR SOCIAL SECURITY NUMBER OR TAX IDENTIFICATION NUMBER: The requirement to supply this information is codified in Chapter 125, Title 46, U.S. Code.

EXHIBIT B

FORM OF GENERAL BILL OF SALE

BILL OF SALE

Subject to the terms and conditions of the Agreement, and for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the CITY OF ALAMEDA ("**Transferor**") conveys to the SAN FRANCISCO BAY AREA WATER EMERGENCY TRANSPORTATION AUTHORITY ("**Transferee**"), and to Transferee's successors and assigns, all of Transferor's right, title and interest, legal and equitable, in and to the personalty listed in Schedule 1 attached hereto. All terms used herein as defined terms shall have the meanings set forth for such terms in the Agreement.

Transferor hereby covenants and agrees that Transferor will from time to time, if requested by Transferee or her successors and assigns, to do, execute, acknowledge and deliver, or will cause to be done, executed, and delivered to Transferee, or its successors or assigns, such and all further acts, transfers, assignments, deeds, powers and assurances of title, and additional papers and instruments, and to do or cause to be done all acts or things as often as may be proper or necessary for better assuring, conveying, transferring and assigning all of the property hereby conveyed, transferred or assigned and to vest in the Transferee the entire right, title and interest of the Transferor in and to all of the said property and effectively to carry out the intent hereof.

Dated this 29th ~~25th~~ day of ~~FEB~~ April, 2011.

Transferor::
CITY OF ALAMEDA

By: _____
Name: Lisa Goldman
Title: Acting City Manager

RECOMMENDED FOR APPROVAL:

By: _____
Name: Matthew T. Naclerio
Title: Public Works Director

APPROVED AS TO FORM:

By: _____
Name: Donna Mooney
Title: Acting City Attorney

[*Signatures Continued on Next Page*]

Transferee::
SAN FRANCISCO BAY AREA WATER
EMERGENCY TRANSPORTATION
AUTHORITY

By: _____
Name: Nina Rannells
Title: Executive Director

APPROVED AS TO FORM:

_____
Stanley S. Taylor
Nossaman LLP
Legal Counsel to Authority

ATTACHMENT 1 TO FORM OF BILL OF SALE

PERSONALTY

Main Street Ferry Terminal

YC Float
Gangway/Awning and supporting Pier that partially supports gangway (expressly *excluding* concrete pier head)
Security Gate
Pilings

Harbor Bay Ferry Terminal

Float
Gangway/Awning and Supporting Pier
Security Gate
Pilings
Channel Markers, Harbor Bay Ferry Lights, 1, 2, 3, 4 and 6

Miscellaneous Spare Parts :

AOFS Parts Inventory

Date: 11-23-09

		ENCINAL				
Description	**Qty.**	**Price Each**	**Total**	**Comments**	**Used**	**Replenished**
Propellor	1			BS&Y	x	

		PERALTA				
Carpet Rolls	2					
Sewage Pump w/Motor	1					
Picture Frame	1					
6" Globe Light Fixtures	5					
Sconce Lights	3					
Diffuser	1					
Interior Sample	1					
3" Cove Base	1					
Seat Track Rubber/Roll	1					
Rudder Log Cover Plate	1					
Pint Interior Door Paint	1					
Prop	2					
Rudder	1					
Exhaust Heat Shields	3					
Diaper station	1				x	
Fuel Pump Used	1				x	
Ops & Maint Manual	1				x	
Customized Parts Manual	1				x	

EXHIBIT C

YC FLOAT BILL OF SALE

YC FLOAT BILL OF SALE

Subject to the terms and conditions of the Agreement, and specifically Section 2.3, Section 2.5 thereof, in exchange for the YC Float Price, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the City of Alameda and Alameda Reuse and Redevelopment Authority ("**Transferor**") conveys to the SAN FRANCISCO BAY AREA WATER EMERGENCY TRANSPORTATION AUTHORITY ("**Transferee**"), and to Transferee's successors and assigns, all of Transferor's right, title and interest, legal and equitable, in and to the YC Float. All terms used herein as defined terms shall have the meanings set forth for such terms in the Agreement.

Transferor hereby covenants and agrees that Transferor will from time to time, if requested by Transferee or her successors and assigns, to do, execute, acknowledge and deliver, or will cause to be done, executed, and delivered to Transferee, or its successors or assigns, such and all further acts, transfers, assignments, deeds, powers and assurances of title, and additional papers and instruments, and to do or cause to be done all acts or things as often as may be proper or necessary for better assuring, conveying, transferring and assigning all of the property hereby conveyed, transferred or assigned and to vest in the Transferee the entire right, title and interest of the Transferor in and to all of the said property and effectively to carry out the intent hereof.

Dated this 29th day of April, 2011.

Transferor:

ALAMEDA REUSE AND REDEVELOPMENT AUTHORITY

By: _____
Name: Lisa Goldman
Title: Acting Executive Director

APPROVED AS TO FORM

By: _____
Name: Donna Mooney
Title: Acting ~~City Attorney~~ General Counsel

[*Signatures Continued On Next Page*]

Transferee:
SAN FRANCISCO BAY AREA WATER
EMERGENCY TRANSPORTATION
AUTHORITY

By: _____
Name: Nina Rannells
Title: Executive Director

APPROVED AS TO FORM:

_____
Stanley S. Taylor
Nossaman LLP
Legal Counsel to Authority

EXHIBIT D

FORM OF ASSIGNMENT AND ASSUMPTION AGREEMENT

ASSIGNMENT AND ASSUMPTION AGREEMENT

This Assignment and Assumption Agreement ("**Assignment**") is made and entered into as of April 29, 2011, by and between the City of Alameda and the Alameda Reuse and Redevelopment Authority (collectively "**Assignor**"), and San Francisco Bay Area Water Emergency Transportation Authority ("**WETA**"), pursuant to the terms of that certain Ferry Service Operations Transfer Agreement dated as of February 25, 2011("**Agreement**"). Capitalized terms not otherwise defined herein shall have the meanings ascribed to them in the Agreement.

1. Assignor, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, has granted, sold, assigned, transferred, conveyed, and delivered and does hereby grant, sell, assign, transfer, convey and deliver unto WETA, all of Assignor's right, title, and interest in and to the following described items arising or used in connection with the ferry services commonly known as the Alameda/Oakland Ferry Service and the Alameda/Harbor Bay Ferry Service (each a "**Service**" and, collectively, the "**Services**"):

(a) All of Assignor's right, title and interest in and to the written contracts and agreements pertaining to the Services set forth on Schedule 1 attached hereto (collectively, the "**Assigned Contracts**");

(b) All of Assignor's rights, title and interest in and to the warranties specified in Schedule 2 attached hereto; and

(c) To the extent assignable, all intangible property, including but not limited to all Proprietary Rights , if any, owned by Assignor as of the date hereof and pertaining to or used in connection with the operation, maintenance or management of the Services or the Assigned Contracts including all additional unexpired warranties upon the vessels and equipment owned by Assignor and used in connection with the Services (other than those specified in Schedule 2), all copyrights, logos, designs, trademarks, trade names (other than the trade names of Assignor or its affiliates), service marks and goodwill associated with the Services, including in particular the names "**Alameda/Oakland Ferry Service**" and "**Alameda/Harbor Bay Ferry Service**."

2. Assignor and WETA hereby covenant and agree as follows:

(a) WETA accepts the aforesaid assignment and WETA assumes and agrees to he bound by and timely perform, observe, discharge, and otherwise comply with each and every one of the agreements, duties, obligations, covenants and undertakings of Assignor under the Assigned Contracts arising from and after the Closing Date.

(b) WETA hereby defends, indemnifies and agrees to hold harmless Assignor from and against Claims which Assignor may incur, sustain, or suffer, or which may be asserted or assessed against Assignor on or after the date hereof, arising out of, pertaining to or in any way connected with the obligations, duties, and liabilities under the Assigned Contracts, or any of them, to be kept and performed by Assignor or WETA whether accruing prior to or from and after the date hereof; provided, however, that WETA shall have no obligation to so indemnify,

hold harmless and defend Assignor against any such Claims if and to the extent that such Claims arise out of Assignor's gross negligence or willful misconduct prior to Closing.

(c) The burden of the indemnity made in paragraph 2(b) hereof shall not be assigned. Except as aforesaid, this Agreement shall bind and inure to the benefit of the Parties and their respective successors, legal representatives and assigns.

(d) Section 11.3(d) of the Agreement provides that, in the event that WETA determines either or both Services shall be eliminated or suspended for a period of more than one hundred eighty (180) calendar days, then subject to City being lawfully able to operate ferry service in the San Francisco Bay, WETA and City shall negotiate in good faith to provide City with the opportunity to reacquire the Acquired Assets and applicable federal, state, regional and local funding sources and Service reserves as necessary for City's operation of the relevant Service(s). As such, WETA shall reassign such Authorizations and Contract Rights (a) to City in the event that City reacquires the Alameda/Oakland Ferry Service, and/or (b) to Harbor Bay Isle Associates/Harbor Bay Maritime, Inc. (as applicable) consistent with Section 7 of that certain Agreement Regarding Certain Licenses, Permits and Obligations Under Planning Approvals for the Marine Portions of the Harbor Bay Ferry Terminal dated May 5, 2004, by and between Harbor Bay Isle Associates, Harbor Bay Maritime Inc. and City.

3. No Implied Warranties.

WETA SPECIFICALLY ACKNOWLEDGES AND AGREES THAT EXCEPT TO THE EXTENT SPECIFICALLY AND EXPRESSLY SET FORTH HEREIN OR IN THE AGREEMENT, ASSIGNOR HAS NOT MADE, DOES NOT MAKE AND SPECIFICALLY NEGATES AND DISCLAIMS ANY REPRESENTATIONS, WARRANTIES, PROMISES, COVENANTS, AGREEMENTS OR GUARANTIES OF ANY KIND OR CHARACTER WHATSOEVER, WHETHER EXPRESS OR IMPLIED, ORAL OR WRITTEN, PAST, PRESENT OR FUTURE, OF, AS TO, CONCERNING OR WITH RESPECT TO THE PERSONALTY, INTANGIBLE PROPERTY, LEASES, ASSIGNED CONTRACTS OR WARRANTIES. THE PROVISIONS OF ARTICLE 2 AND ARTICLE 5 OF THE AGREEMENT ARE HEREBY INCORPORATED BY THIS REFERENCE AS IF FULLY SET FORTH IN THIS ASSIGNMENT.

IN WITNESS WHEREOF, Assignor and WETA have executed this Assignment effective as of the ~~25th~~ 29th day of ~~Feb~~ April, 2011.

Assignor:
CITY OF ALAMEDA

By: _____
Name: Lisa Goldman
Title: Acting City Manager

RECOMMENDED FOR APPROVAL:

By: _____
Name: Matthew T. Naclerio
Title: Public Works Director

APPROVED AS TO FORM:

By: _____
Name: Donna Mooney
Title: Acting City Attorney

ALAMEDA REUSE AND REDEVELOPMENT AUTHORITY

By: _____
Name: Lisa Goldman
Title: Acting Executive Director

APPROVED AS TO FORM:

By: _____
Name: Donna Mooney
Title: Acting ~~City Attorney~~ General Counsel

[*Signatures Continued on Next Page*]

WETA:
SAN FRANCISCO BAY AREA WATER
EMERGENCY TRANSPORTATION AUTHORITY

By: _____
Name: Nina Rannells
Title: Executive Director

APPROVED AS TO FORM:

_____
Stanley S. Taylor
Nossaman LLP
Legal Counsel to Authority

SCHEDULE 1

ASSIGNED CONTRACTS

HARBOR BAY

1. Sixth Amended and Restated Operating Agreement for the Alameda/Harbor Bay Ferry Service dated August 1, 2004 by and between City and Harbor Bay Maritime, Inc., as amended.

2. City assignment to WETA of the following covenants, certifications and agreements of Harbor Bay Isle Associates ("HBIA") and Harbor Bay Maritime, Inc. ("HBM") set forth in the HBIA/HBM 2004 Assignment to the extent that such covenants, certifications and agreements pertain to the Waterside Assets: Sections 2.A, 2.B(2), 3.A, 4.A, 4.B.2, 5A (including with respect to ferry vessel operations), 6 and 7 (provided that City shall retain rights to any compensation related to termination of 1991 Grant of Easement); personal property items do not pertain to Waterside Assets and shall not transfer to WETA.

3. Private Aids to Navigation; Department of Transportation U.S. Coast Guard for Harbor Bay Ferry Lights.

MAIN STREET/GENERAL

1. Agreement for Alameda/San Francisco Ferry Service dated August 1, 2004 by and between City and Blue & Gold Fleet, L.P., as amended.

2. Amended and Restated Ferry Service Agreement between City and Port of Oakland dated July 1, 2005, as amended.

3. Addendum to Purchase Order Number 1000707, undated, by and between City and Call-Em-All, LLC.

4. Consultant Agreement dated August __, 2009 by and between City and JKaplan & Associates.

5. Consultant Agreement dated July 1, 2010 by and between City and Professional Staffing Resources, Inc.

6. City and County of San Francisco/City of Alameda Inter-System Passenger Transfer Agreement dated February 1, 2000 by and between City and City and County of San Francisco, as amended.

7. Advertising Contracts dated May 14, 2010 by and between City, AT&T and Yellow Pages.

8. Contractor Agreement dated March 5, 2009 by and between City and Marine Express, Inc., as amended.

9. Caltrans Grant Agreements No. 04A1048 dated November 2, 1999; No. DMT0 4A28 dated September 8, 1993; No. 64T 342 dated April 10, 1992 and 64T342-A1; No. PVEA 04-97 (003), dated July 17, 1998, all by and between California Department of Transportation and City; 04-5014-M005 ISTEA (federal grant turned into state (STIP)) grant.

10. Carl Moyer Program Grant Agreements No. 10MOY162, 11MOY19, 08MOY179, 01MOY29 and Amendment 1, 08MOY180, all by and between Bay Area Air Quality Management District and City.

ASSUMED SETTLEMENT AGREEMENT OBLIGATIONS

1. Settlement Agreement and Release of Claims: Erick Mikiten, Elisa Mikiten and Eli Mikiten v. City of Alameda, the Port of Oakland, the Blue & Gold Fleet, L.P., Case No. 06-266836 ("Mikiten Settlement Agreement"). Mikiten Settlement Agreement is not assigned to WETA; however, WETA agrees to assume responsibility and cost for compliance with the following provisions of the Mikiten Settlement Agreement: (i) First two bullet points following heading "B. Supplemental Report Recommendations"), i.e., Items 1.1, 1.3-1.4, 1.6-1.7 and 1.5 of Supplemental Report), (ii) the matters listed in bullet points following the heading "3. Port of Oakland and City of Alameda; A. Encinal-Preliminary Report" beginning on page 6 of the Mikiten Settlement Agreement, (iii) the bullet points on pages 8-10 under the heading "B. Peralta Supplemental Report"): (iv) beginning on page 10, Item 4, "Blue and Gold Fleet" (WETA to require operator to comply with obligations under Mikiten Settlement Agreement); (v) page 11, Item 2, "Thresholds" (WETA to require operator to comply with obligations under Mikiten Settlement Agreement), (vi) page 11, Item 1lI; (vii) ongoing obligations under "IV Interim Relief" beginning on page 11 (WETA to require operator to comply with obligations for training and operation), (viii) page 14, inspection in event of noncompliance, and (ix) page 14, Item 6, Dispute Resolution Process (WETA to comply with and require operator to comply with dispute resolution obligations).

SCHEDULE 2

WARRANTIES

Warranty

Peralta:	Serial #	Manufacturer	Website
Main engines:	33170825	Cummins	www.cummins.com
	33170793	Cummins	www.cummins.com
S Aux	4452-27053	Northern Lights	www.northern-lights.com
P Aux	4452-27650	Northern Lights	www.northern-lights.com
Encinal:			
P Aux	0642-40546	Northern Lights	www.northern-lights.com
Bay Breeze:			
S Aux	PE4045T743681	John Deere	www.northern-lights.com
P Aux	PE4045T743682	John Deere	www.northern-lights.com
S Main	5361109492	MTU	www.mtudetroitdiesel.com
P Main	536109491	MTU	www.mtudetroitdiesel.com

Assigned warranties also include all warranties set forth in any Assigned Contract.

EXHIBIT E

FY 2010/11 BUDGET FOR THE SERVICES

Table 1 – AOFS Budgeted Expenses

EXPENSES	Budget FY10-11	Budget FY09-10	Actual 2009
Vessel Expenses:			
Wages	$1,600,000	$1,554,000	$1,487,968
Maintenance:			
Pier 9	$135,000	$145,000	$184,310
Outside contractors	$269,000	$145,000	$423,164
City Vessel Drydock	$190,000		
WETA vessel drydock	$95,000		
WIFI Service	$12,100		
Fuel (1)	$885,000	$840,000	$602,796
Urea	$11,000	$11,000	
Insurance:		$150,000	$49,845
City owned boats	$60,000	$55,000	
WETA owned boats	$146,000		
Deductible payment	$50,000	$50,000	
Rental of Carrier boats	$3,000	$15,000	$27,520
Misc.	$0	$5,000	$8,068
Total Vessel Expenses	**$3,456,100**	**$2,865,000**	**$2,783,671**
Non-Vessel Expenses :			
Contract services (2)	$7,000	$5,250	$20,042
Professional fees/legal (2)	$7,000	$7,350	$1,765
Customer Service (2)	$15,000	$15,000	$44,789
Advertising	$0	$0	$11,182
Layberth for WETA vessels	$14,400	n.a.	n.a.
Taxes/Permits/licenses (2)	$14,000	$14,175	$17,719
Insurance	0	0	$0
Port SF/ Pier 39 fees (2)	$91,481	$89,250	$81,149
Subtotal Non Vessel Expenses	**$148,881**	**$131,025**	**$176,646**
Operator Fees:			
Admin/Overhead fees (2)	$50,319	$50,319	$50,319
Management (2)	$167,476	$167,476	$167,476
Performance Based Fee: (2)			
On Time Performance	$43,619	$42,349	$42,349
Customer Satisfaction	$43,619	$42,349	$42,349
Subtotal Operator Fees	**$305,033**	**$302,493**	**$302,493**
Subtotal/Operator Expenses	**$3,910,014**	**$3,298,518**	**$3,262,810**
City Contractual Expenses (Table 2)	**$756,366**	**$733,239**	**$521,885**
Total Expenses (City + Operator)	**$4,666,380**	**$4,031,757**	**$3,784,695**
PROJECTED REVENUE	**$4,666,380**	**$4,031,757**	**$3,784,695**

(1) For FY 2010-11, assumes 300,000 gals at $2.95/gal. Includes lube oil.
(2) The City's cost for these line items cannot exceed budgeted amount.

Table 2 – AOFS City Contractual Expenses

Item	Budget FY10-11	Budget FY09-10	Actual 2009
Operations:			
Docking fees:			
Ferry Building	$40,189	$34,947	$34,947
AT&T Park landing fee (Giants)	$3,250	$3,000	$800
AT&T Park Passenger fee	$15,000	$0	$0
ARRA Barge lease	$15,375	$54,000	$15,375
MUNI	$25,744	$19,000	$16,799
Marketing	$101,000	$90,000	$75,000
Bus Bridge	$4,000	$0	$1,860
Administration:			
City Admin (1)	$190,000	$210,442	$186,369
Risk Management charge	$18,000		$9,000
Cost Allocation	$21,876	$0	$10,938
Interest Allocation	$0	$0	$2,069
Audit	$5,200	$4,800	$5,106
PVA Membership	$1,455	$1,400	$1,455
Office supplies	$4,000	$3,650	$3,837
Surveys	$11,000	$11,000	$8,200
Subtotal Operations	**$456,089**	**$432,239**	**$371,756**
Reserves:			
Long Term Capital Reserve:			
Encinal	$0	$20,000	$20,000
Peralta	$0	$20,000	$20,000
Dock (Main Street)	$0	$10,000	$10,000
Operations Contingency	$175,000	$159,000	$0
Subtotal Reserves	**$175,000**	**$209,000**	**$50,000**
Main Street Terminal:			
Utilities/security audit	$11,741	$7,000	$15,992
Maintenance	$40,563	$25,000	$22,421
Patrol Guard	$67,473	$60,000	$61,715
Insurance	$ 5,500		
Subtotal Terminal	**$125,277**	**$92,000**	**$100,128**
Total	**$733,893**	**$733,239**	**$521,885**

(1) The $190,000 is 3/4 of a full time staff position. The remaining ¼ is an expense item in the Alameda Harbor Bay Ferry budget. Salary includes benefits and City overhead per Cost Allocation Study.

Table 3 – AOFS FY10-11 Revenue

REVENUE	TOTAL
Farebox [1]	$2,150,400
WETA Vessels/RM2	$256,600
WETA Operating subsidy	$439,410
MTC RM1-5%	$1,353,807
Measure B	$405,514
Port of Oakland	$60,649
Total	**$4,666,380**

(1) AOFS: Approximately 420,000 tickets @ $5.12 each.

Table 4 – AOFS Farebox Recovery Ratio (FRR)

Total expenses	$4,666,380
Farebox revenue	$2,150,400
Farebox Recovery Ratio	**46.08%**

Table 5 – City Ferry Services FY10-11 Revenue

REVENUE/operating	Total	Alameda Harbor Bay Ferry	AOFS
Farebox	$2,890,400	$740,000	$2,150,400
MTC RM1-5%	$1,518,157	$164,350	$1,353,807
WETA RM2:			
WETA boat operation	$702,800	$446,200	$256,600
Operating Subsidy	$439,410		$439,410
Measure B:			
'10/11 revenue	$673,262	$267,748	$405,514
Reserves	$126,203	$126,203	$0
Subtotal/MB	**$799,465**	**$393,951**	**$405,514**
Port of Oakland	$60,649	$0	$60,649
Transportation Improvement Fund:			
Ferry operations	$492,000	$492,000	
HB terminal insurance	$8,000	$8,000	
Subtotal/TIF	**$500,000**	**$500,000**	
LLAD 84-2/terminal	$78,194	$78,194	
Harbor Bay Business Park Associates	$130,000	$130,000	
Concessions	$30,000	$30,000	
Charter	$6,000	$6,000	
Subtotal	**$7,155,075**	**$2,488,695**	**$4,666,380**
Capital Projects Funding (1):			
RM 2	$ 19,800		
RM 1-2% FY '10/11	$500,000		
Measure B Reserves	$33,000		
Subtotal/capital projects	$552,800		
Total	**$7,707,875**		

Table 1 – AHBF Operating Expenses

ITEM	FY10-11 BUDGET	FY09-10 BUDGET	2009 ACTUAL
I. Commute Service			
Vessel Expenses			
Fuel [1]	n.a.	n.a.	n.a.
Urea/Pisces Tank	$0	$21,000	$2,590
Labor:			
Wages, P/R taxes, Health, Pension	$607,000	$600,000	$589,718
Maintenance Engineer/BB & Express II	$40,000	$40,000	$41,450
Maintenance Engineer/WETA Boats	$80,000	$60,000	$39,414
Insurance (Vessels) :			
BB and Express II	$85,000	$90,000	$77,876
WETA Boats	$202,000	$154,400	89,066
Vessel Maintenance :			
Reg. AHBF maintenance	$80,000	$80,000	$100,000
WETA boats	$24,000		$68,309
Pisces Drydock	30,000		
Scorpio drydock	$20,000		
WIFI service	$6,650		
Total Vessel Expenses	**$1,174,650**	**$1,045,400**	**$1,008,423**
Non Vessel Expenses			
SF Pier 48 rent:			
HBM	$17,000	$24,000	$11,340
WETA	$17,000		
Weststar Pier 48 lashbarge	$48,000	$0	$8,912
East Bay Berth:			
HBM	$12,000		
WETA	$12,000		
WETA Pier 48 barge (Marine Express)	$60,000	$107,000	$107,000
Utilities, auto, legal, payroll processing	$62,000	$54,000	$87,595
Admin Salaries	$52,000	$52,000	$43,718
Ticket printing, web site, advertising	$12,000	$12,000	$9,485
Insurance Deductible	$0		
Total Non Vessel Expenses	**$292,000**	**$249,000**	**$268,050**
Operator Fees:			
Overhead /Accounting	$0	$0	$0
Operator Contingency	$10,000	$10,000	n.a
Total Operator fees	$10,000	$10,000	**$0**
Total Commute Service Cost	**$1,476,650**	**$1,304,400**	**$1,276,473**
II. Charter/ Concessions			
Vessel Expenses			
Fuel	$1,000	$1,000	$933
Labor	$2,000	$1,000	$2,180
Insurance	$0	$0	$0
Vessel Maintenance:	$1,400	$600	$1,305
Total Vessel Expenses	**$4,400**	**$2,600**	**$4,418**
Non Vessel Expenses			

Docking fees (Sacramento, SF)	$400	$400	$0
Utilities, auto, legal, payroll processing	$1,200	$1,200	$1,200
Admin Salaries	$0	$0	$0
Marketing	$0	$00	$0
Misc. (concessions, catering, ground transportation)	$30,000	$30,000	$25,012
Total Non Vessel Expenses	**$31,600**	**$31,600**	**$26,212**
Operator Fees:			
Overhead /Accounting	$120,000	$120,000	$120,000
Operator contingency/profit	$10,000	$2,800	$20,012
Total Charter/Concessions	**$166,000**	**$157,000**	**$170,642**
Total operator commute + Charter	$1,642,650	$1,461,400	$1,447,115
III. City Contractual Expenses (Table 2)	**$846,045**	**$704,302**	**$607,659**
Total (Operator commute + charter + City)	**$2,488,695**	**$2,165,702**	**$2,054,774**
Total (Operator commute + City)	**$2,322,695**	**$2,008,702**	**$1,884,132**
Revenue (public funding + farebox)	**$2,322,695**	**$2,098,702**	**$1,884,132**
Farebox revenue	**$740,000**	**$740,000**	**$685,286**
"Operator commute + City" less WETA vessel expenses	**$1,876,495**	**n.a.**	**n.a.**

(1) Since 7/1/06, City reimburses HBM for actual fuel cost on a pass-through basis.

Table 2 – City Contractual Expenses

ITEM	FY10-11 BUDGET	FY09-10 BUDGET	2009 ACTUAL
Operations:			
S.F Ferry Building Docking fee	$22,851	$19,870	$19,870
Harbor Bay Terminal:			
Insurance	$8,000	$6,000	$7,872
Maintenance	$78,194	$71,000	$71,000
Dredging (Phase II)	$125,900		
Fuel (120,000 gals @ $3.20 ea.)	$384,000	$390,000	$324,597
MUNI	$45,000	$31,000	$26,441
Marketing (excl charter)	$15,000	$15,000	$2,736
Bus Bridge	$8,000	$0	$1,488
City Admin	$50,000	$81,000	$48,060
Risk Management	$18,000	$17,926	$9,080
Cost Allocation	$22,000	$0	10,944
Office supplies/misc. admin/utilities	$2,100	$1,036	$1,926
Back Up boat	$0	$0	$0
Audit (Maze)	$1,500	$1,470	$1,404
Misc.	$0	$0	$0
Long Term Capital Reserve Accounts:			
Vessels:			
Express II	$0	$5,000	$10.000
Bay Breeze	$0	$5,000	$61,298
HB Terminal	$0	$0	$0
Subtotal reserves	$0	$10,000	$71,298
Contingency:			
Vessel Maintenance	$65,500	$60,000	$0
Fuel contingency	$0	$0	N/A
Subtotal contingency	$65,500	$60,000	$0
Total/operations	$846,045	$704,302	$607,659

Table 3 – AHBF Revenues FY10-11 (Public and Private)

Source	Amount	Total Less Capital Projects	Total Less Charter & Concessions	Less WETA Vessel Expenses
MTC RM1-5%	$164,350	$164,350	$164,350	$164,350
WETA RM2:				
WETA owned Vessels	$446,200	$446,200	$446,200	$0
Operations	$0	$0	$0	$0
Measure B (1)	$393,951	$393,951	$393,951	$393,951
Transportation Improvement Fund:				
Operations	$492,000	$492,000	$492,000	$492,000
HB terminal insurance	$8,000	8,000	$8,000	$8,000
LTRA	$0	$0	$0	
Capital and Maintenance projects	$			
LLAD 84-2	$78,194	$78,194	$78,194	$78,194
Harbor Bay Business Park Association	$130,000	$130,000	$0	
Concessions	$30,000	$30,000		
Charter	$6,000	$6,000		
Subtotal	**$1,748,695**	**$1,748,695**	**$1,582,695**	**$1,136,495**
Farebox	$740,000	$740,000	$740,000	$740,000
Total	**$2,488,695**	**$2,488,695**	**$2,322,695**	**$1,876,495**
Farebox Recovery Ratio (FRR)	**n.a.**	**n.a.**	**n.a.**	**40%**

(1) $267,748 in FY 2010-11 revenue and $126,203 in MB reserves

Table 4 – AHBF Operator Subsidy

ITEM	FY10-11	FY09-10	FY08-09
Operator expenses (1):			
Budgeted	$1,476,650	$1,287,400	$902,000
Less WETA Operator Spare Vessel costs	$446,200	$325,400	N/A
Net operator expenses	$1,030,450	$962,000	$902,000
Farebox revenue (1):			
Budgeted	$740,000	$675,000	$710,000
Public subsidy/yearly	$290,450	$287,000	$192,000
Bi-Monthly subsidy payment	$12,102	$11,958	$11,801

(1) Commute Service Only

Table 5 – City Ferry Services FY10-11 Capital Projects

Project	Total	Funding RM1-2% FY 10-11	Funding RM2 (WETA)	Funding Measure B Reserves	Funding Total
Peralta: New Port Radar	$15,000	$15,000			$15,000
HB Barge Replacement	$87,800	$68,000	$19,800		$87,800
Ferry Terminal Parking lot Rehab: Main Street/HB.	$450,000	$417,000		$33,000	$450,000
TOTAL	**$552,800**	**$500,000**	**$19,800**	**$33,000**	**$552,800**

Table 6 – City Ferry Services FY10-11 Revenue

REVENUE/operating	Total	Alameda Harbor Bay Ferry	AOFS
Farebox	$2,890,400	$740,000	$2,150,400
MTC RM1-5%	$1,518,157	$164,350	$1,353,807
WETA RM2:			
WETA boat operation	$702,800	$446,200	$256,600
Operations	$439,410		$439,410
Measure B:			
'10/11 revenue	$673,262	$267,748	$405,514
Reserves	$126,203	$126,203	$0
Subtotal/MB	**$799,465**	**$393,951**	**$405,514**
Port of Oakland	$60,649	$0	$60,649
Transportation Improvement Fund:			
Ferry operations	$492,000	$492,000	
HB terminal Insurance	$8,000	$8,000	
Capital/LTRA	$0	$0	
Subtotal/TIF	**$500,000**	**$500,000**	
LLAD 84-2/terminal	$78,194	$78,194	
Harbor Bay Business Park Associates	$130,000	$130,000	
Concessions	$30,000	$30,000	
Charter	$6,000	$6,000	
Subtotal	**$7,155,075**	**$2,488,695**	**$4,666,380**
Capital Projects Funding:			
RM 2	$ 19,800		
RM 1-2% FY '10/11	$500,000		
Measure B Reserves	$ 33,000		
Subtotal/capital projects	$418,700		
Total	**$7,707,875**		

EXHIBIT F

CERTIFICATE REGARDING TRUTH OF REPRESENTATIONS (WETA)

CERTIFICATE REGARDING TRUTH OF REPRESENTATIONS AND WARRANTIES

This Certificate Regarding Truth of Representations and Warranties ("**Certificate**") is executed and delivered by San Francisco Bay Area Water Emergency Transportation Authority ("**WETA**"), as of April 29, 2011 to City of Alameda ("**City**").

Reference is made to that certain Ferry Service Operations Transfer Agreement dated as of February 25, 2011 ("**Agreement**"). Capitalized terms used herein but not otherwise defined shall have the meaning given such term in the Agreement.

This Certificate is being delivered pursuant to Section 7.1(e) of the Agreement.

WETA hereby certifies to City that the representations and warranties of WETA set forth in Section 5.3 of the Agreement are true and correct as of the Closing Date in all material respects.

This Certificate is subject to any qualifications set forth in each such specific representation and warranty and the limitations set forth in Section 5.2 of the Agreement.

WETA:
SAN FRANCISCO BAY AREA WATER EMERGENCY TRANSPORTATION AUTHORITY

By: _____
Name: Nina Rannells
Title: Executive Director

APPROVED AS TO FORM:

_____
Stanley S. Taylor
Nossaman LLP
Legal Counsel to Authority

EXHIBIT G

CERTIFICATE REGARDING TRUTH OF REPRESENTATIONS (CITY/AUTHORITY)

EXHIBIT G-1

CERTIFICATE REGARDING TRUTH OF REPRESENTATIONS AND WARRANTIES

April 29, 2011

This Certificate Regarding Truth of Representations and Warranties ("**Certificate**") is executed and delivered by City of Alameda ("**City**") as of ~~Feb 25~~, 2011 to San Francisco Bay Area Water Emergency Transportation Authority ("**WETA**").

~~April 29~~ February 25

Reference is made to that certain Ferry Service Operations Transfer Agreement dated as of ~~February 25~~, 2011 ("**Agreement**"). Capitalized terms used herein but not otherwise defined shall have the meaning given such term in the Agreement.

This Certificate is being delivered pursuant to Section 7.1(e) of the Agreement.

City hereby certifies to WETA that the representations and warranties of City set forth in Section 5.1 of the Agreement are true and correct as of the Closing Date in all material respects.

This Certificate is subject to any qualifications set forth in each such specific representation and warranty and the limitations set forth in Section 2.3 and Section 5.1 of the Agreement.

CITY:

CITY OF ALAMEDA

By: _____

Name: Lisa Goldman

Title: Acting City Manager

RECOMMENDED FOR APPROVAL:

By: _____

Name: Matthew T. Naclerio

Title: Public Works Director

APPROVED AS TO FORM:

By: _____

Name: Donna Mooney

Title: Acting City Attorney

EXHIBIT G-2

CERTIFICATE REGARDING TRUTH OF REPRESENTATIONS AND WARRANTIES

This Certificate Regarding Truth of Representations and Warranties ("**Certificate**") is executed and delivered by Alameda Reuse and Redevelopment Authority ("**Authority**") as of April 29, 2011 to San Francisco Bay Area Water Emergency Transportation Authority ("WETA").

Reference is made to that certain Ferry Service Operations Transfer Agreement dated as of ~~February 29~~ February 25, 2011 ("**Agreement**"). Capitalized terms used herein but not otherwise defined shall have the meaning given such term in the Agreement.

This Certificate is being delivered pursuant to Section 7.1(e) of the Agreement.

Authority hereby certifies to WETA that the representations and warranties of set forth in Section 5.2 are true and correct as of the Closing Date in all material respects.

This Certificate is subject to any qualifications set forth in each such specific representation and warranty and the limitations set forth in Section 2.3 and Section 5.2

AUTHORITY:
ALAMEDA REUSE AND REDEVELOPMENT AUTHORITY

By: _____
Name: Lisa Goldman
Title: Acting Executive Director

APPROVED AS TO FORM:

By: _____
Name: Donna Mooney
Title: Acting ~~City Attorney~~ General Counsel

EXHIBIT H

CERTIFICATE OF FERRY SERVICE ACCOUNT BALANCES

CERTIFICATE OF FERRY SERVICE ACCOUNT BALANCES

This Certificate of Ferry Service Account Balances ("**Certificate**") is executed and delivered by City of Alameda ("**City**"), as of FEB 25, 20 11 to San Francisco Bay Area Water Emergency Transportation Authority ("**WETA**").

Reference is made to that certain Ferry Service Operations Transfer Agreement dated as of February 25, 2011 ("**Agreement**"). Capitalized terms used herein but not otherwise defined shall have the meanings given such terms in the Agreement.

This Certificate is being delivered pursuant to Section 7.2(f)of the Agreement.

Seller hereby certifies that, as of the date of this Certificate, Seller has the following account balances in each of its ferry operations financial accounts, which constitute all of the accounts in which funds for the Services are held by City:

OPERATING, MAIN STREET:

OPERATING, HARBOR BAY:

RESERVES, MAIN STREET:

RESERVES, HARBOR BAY:

The above-listed accounts represent the amount of Transaction Cash that would be available for transfer to WETA if the Closing were to occur on the date of this Certificate.

As provided in Agreement Section 9.2(b) of the Agreement, the premium for the Supplemental Insurance shall be deducted from the ferry service operating grant fund balances included in the Transaction Cash to be transferred to WETA. WETA acknowledges and agrees that City may continue to use the above-listed accounts to pay expenses of the Services in the ordinary course of business between the date hereof and the Closing. Any such payments shall be accounted for by City and shall reduce the amount of the Transaction Cash to be transferred to WETA at the Closing..

CITY:
CITY OF ALAMEDA

By: Lisa Goldman
Name: Lisa Goldman
Title: Acting City Manager

By: Fred Marsh
Name: Fred Marsh
Title: Controller

RECOMMENDED FOR APPROVAL:

By: _____

Name: Matthew T. Naclerio

Title: Public Works Director

APPROVED AS TO FORM:

By: _____

Name: Donna Mooney

Title: Acting City Attorney

CERTIFICATE OF FERRY SERVICE ACCOUNT BALANCES

This Certificate of Ferry Service Account Balances ("**Certificate**") is executed and delivered by City of Alameda ("**City**"), as of FEB 27, 20 11 to San Francisco Bay Area Water Emergency Transportation Authority ("**WETA**").

Reference is made to that certain Ferry Service Operations Transfer Agreement dated as of February 25, 2011 ("**Agreement**"). Capitalized terms used herein but not otherwise defined shall have the meanings given such terms in the Agreement.

This Certificate is being delivered pursuant to Section 7.2(f)of the Agreement.

Seller hereby certifies that, as of the date of this Certificate, Seller has the following account balances in each of its ferry operations financial accounts, which constitute all of the accounts in which funds for the Services are held by City:

OPERATING, MAIN STREET: 487,385 *

Meas. B $1,107,457 *

OPERATING, HARBOR BAY: <9,392> *

RESERVES, MAIN STREET: — 0 —

RESERVES, HARBOR BAY: TIF 325,860 *

The above-listed accounts represent the amount of Transaction Cash that would be available for transfer to WETA if the Closing were to occur on the date of this Certificate.

As provided in Agreement Section 9.2(b) of the Agreement, the premium for the Supplemental Insurance shall be deducted from the ferry service operating grant fund balances included in the Transaction Cash to be transferred to WETA. WETA acknowledges and agrees that City may continue to use the above-listed accounts to pay expenses of the Services in the ordinary course of business between the date hereof and the Closing. Any such payments shall be accounted for by City and shall reduce the amount of the Transaction Cash to be transferred to WETA at the Closing..

CITY:
CITY OF ALAMEDA

By: Lisa Goldman
Name: Lisa Goldman
Title: Acting City Manager

By: Fred Marsh
Name: Fred Marsh
Title: Controller

*NOTE: These are estimated ending balances for these categories based on information available to the Controller of the City of Alameda's Finance Division as of February 28, 2011.

A final reconciliation will be prepared for each of these categories by the Controller based upon the final transition date of the ferry services from the City to WETA.

EXHIBIT I

FORM OF ASSIGNED CONTRACT ESTOPPEL CERTIFICATE

ASSIGNED CONTRACT ESTOPPEL CERTIFICATE

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

RE: **[Contract Name]**

The undersigned, _____ ("**Contract Party**"), understands that the San Francisco Bay Area Water Emergency Transportation Authority ("**WETA**") has contracted to acquire the ferry services commonly known as the Alameda/Oakland Ferry Service and the Alameda/Harbor Bay Ferry Service ("**Services**"), from the City of Alameda ("**City**"). City has entered into _____ ("**Contract**") with respect to its operation of the Services, which Contract is to be assigned to WETA pursuant to the transfer of the Services. The Contract Party hereby certifies the following with respect to the Contract and agrees that you and your assigns may rely upon the same in acquiring said Services:

1. The Contract is in full force and effect, constitutes a binding obligation of the Parties, and has not been modified or amended either orally or in writing.

2. All payments required to be made by City, and all payments required to be made by Contract Party, pursuant to the Contract prior to the date hereof have been paid, except _____.

3. All Parties to the Contract have performed all obligations required thereunder.

4. The Contract Party asserts no claim of default under the Contract, and to the best of the Contract Party's knowledge and belief, there is no default by City under the Contract.

Dated: _____, 20__

Very truly yours,

_____

By: _____
Name: _____
Its: _____

EXHIBIT J

DESIRED MAINTENANCE SCHEDULE
FISCAL YEAR 2010/11

I. Introduction

The Desired Maintenance Schedule (DMS) specifies by ferry terminal the a) ongoing maintenance activities, b) special maintenance activities, and c) capital projects desired by WETA to maintain the terminal facilities. The DMS also provides the pro forma budget for these activities. WETA shall reimburse the City for the actual cost (with no markup) incurred by the City to provide the activities as specified in the DMS.

II. Ongoing Utilities, Maintenance Activities, and Capital Projects
II.a Alameda Main Street Ferry Terminal

	TABLE 1 - Main Street DMS Tasks		
Task	**Task**	**Frequency**	**Comment**
1	**Utilities:**		
1.a	Gateway Water	Daily	
1.b	AT&T	Daily	
1.c	Alameda Municipal Power/ Electricity	Daily	
2	**Maintenance:**		
2.a	Janitorial Service / Restrooms	Daily/M-> F	Performed under City Contractor agreement. Scope of work specified in Attachment A here attached.
2.b	Steam Cleaning of Customer Waiting Area Near Restrooms.	14 Times per Year	Performed under City Contractor agreement. Scope of work specified in Attachment B here attached.
2.c	Landscape Maintenance	Weekly Maintenance	Performed under City Contractor agreement. Scope of work specified in Attachment C here attached.
2.d	Pest Control	Once every two months	Performed under City Contractor agreement. Scope of work specified in Attachment D here attached.
2.e	Parking Lot Patrol Guard:	Daily when ferry is in operation	Performed under City Contractor agreement. Scope of work specified in Attachment E here attached.
2.f	Mechnical Bicycle Locker	On-going	Performed by City or under City Contractor agreement and by City staff. Scope of work specified in Attachment F here attached.
2.g	Trash Pick Up/ Trash Cans		Scattered trash pick up...
2.h	Graffiti: Inspection and Removal	As needed	Based on citizen or customer notice to City.
2.i	Tree Skirting/Mulch	Every three years	Done Oct. 2010.
3	**Capital Projects:**		As agreed to by Parties
3.a	Parking Lot Pavement Rehab	Summer/Fall 2011	

TABLE 2 - Main Street Pro Forma DMS Budget

Task	Task	Adopted Budget FY 2010/11	Estimated Expenditures through 1/31/2011	Projected Costs for 2/01/2011 through 6/30/2011	Proposed Budget FY 2011/12 (A)
1	**Utilities:**				
1.a	Gateway Water	$1,041	$607	$434	$1,077
1.b	AT&T	$5,200	$3,033	$2,167	$5,382
1.c	Alameda Municipal Power/ Electricity	$500	$292	$208	$518
	Subtotal - Utilities	$6,741	$3,932	$2,809	$6,977
2	**Maintenance:**				
2.a	Janitorial Service / Restrooms	$4,000	$2,333	$1,667	$4,140
2.b	Steam Cleaning of Customer Waiting Area Near Restrooms.	$5,500	$3,600	$1,900	$5,693
2.c	Landscape Maintenance	$3,863	$2,253	$1,610	$3,998
2.d	Pest Control	$500	$292	$208	$518
2.e	Parking Lot Patrol Guard	$67,473	$39,359	$28,114	$69,835
2.f	Mechnical Bicycle Lockers (B)	$0	$5,533	$2,167	$5,199
2.g	Trash Pick Up/ Trash Cans				
2.h	Graffiti:Inspection and Removal(C)				
2.i	Tree Skirting/Mulch				
	Subtotal - Maintenance	$81,336	$53,371	$35,665	$89,382
3	**Capital Projects:**				
3.a	Parking Lot Pavement Rehab(D)	$275,000	$0	$0	$275,000
	Subtotal - Capital Projects	$275,000	$0	$0	$275,000
	Subtotal - Utilities, Maintenance and Capital	$363,077	$57,303	$38,474	$371,359
	City Admin (10%) (E)			$3,847	$37,136
	Security Audit / Insurance:				
	Facility Security External Audit	$2,500	$2,500	$0	$2,500
	General liability	$5,000	$5,000	$0	$5,250
	Property Replacement	$500	$500	$0	$525
	Protection and indemnity	$0	$0	$0	$0
	Subtotal - Security Audit/Insurance	$8,000	$8,000	$0	$8,275
	Subtotal	$371,077	$65,303	$42,321	$416,770
	Contingency (15%)			$6,348	$62,515
	Total DMS	**$371,077**	**$65,303**	**$48,669**	**$479,285**

(A) Proposed FY2011/12 Budget assumes a 3.5% increase. WETA will pay actual cost with no City mark up.

(B) Not included in the Adopted FY2010/11 Budget.

(C) Billed at hourly rates in Attachment G, Table 1.

(D) Total project budget is $450,000 which includes both Main Street and Harbor Bay parking lots. Project is supported by RM1 and Measure B funds.

(E) Applies to routine administration and oversight tasks. Non-routine tasks will be charged at hourly rates in Attachment F, Table 1.

II.b Harbor Bay Ferry Terminal

	TABLE 3 - Harbor Bay Ferry Terminal DMS Tasks (A)		
Task	**Task**	**Schedule**	**Comment**
1	**Utilities**		
1.a	Water	Daily	
1.b	Alameda Municipal Power/Electricity	Daily	
2	**Maintenance:**		
2.a	Janitorial/Restroom:		Consists of $5,760 for labor/admin and $2,100 for janitorial supplies.
	Pick Up/deliver supplies	1 per Month	
	Supplies	1 per Month	
	Clean Graffiti	1 per Week	Or as needed.
	Clean	5 per Week	
2.b	Parking Lot cleaning/sweeping	2 per Month	
2.c	Landscape:		
	Maintenance	2 per Week	
	Overscope	As Needed	Tree work and upgrades to landscaping.
2.d	Waterside:		
	Power Wash Docks	1 per week	
	Paint Gangway w/Non-Skid	1 per year	
2.e	Misc:		
	Clean Terminal Waiting Area	1 per week	
	Change Flags	As Needed	Averages quarterly. New flag supplies ordered every 1 to 1 1/2 years.
	Repair/Replace Lighting	As Needed	
	Repair/Replace Signage	As Needed	
	Remove Dumped Items	As Needed	
	Clean Graffiti from Waiting Area	As Needed	
3	**Electronic Bicycle Lockers:**		Performed by City or under City Contractor agreement and by City staff. Scope of work specified in Attachment F here attached.
4	**Capital Projects:**		As agreed to by Parties
4.a	Parking Lot Pavement Rehab	Summer/Fall 2011	
(A)	*Scope of work specified in Attachment H.*		

TABLE 4 - Harbor Bay Pro Forma DMS Budget

Task	Task	Adopted Budget FY 2010/11	Estimated Expenditures through 1/31/2011	Projected Costs for 2/01/2011 through 6/30/2011	Proposed Budget FY 2011/12 (A)
1	**Utilities:**				
1.a	Gateway Water	Included in Task 2			
1.b	Alameda Municipal Power/ Electricity	Included in Task 2			
2	**Maintenance: (B)**	$78,194	$45,613	$32,581	$78,194
3	**Electronic Bicycle Lockers (C)**	$0	$1,546	$1,104	$2,743
4	**Capital Projects:**				
4.a	Parking Lot Pavement Rehab(D)	$175,000	$0	$0	$175,000
	Subtotal/Utilities, Maintenance and Capital	$253,194	$47,159	$33,685	$255,937
	City Admin (10%)			$3,369	$25,594
	Misc:				
	Facility Security External Audit	$2,500	$2,500	$0	$2,500
	County Tax	Included in Task 2	Included in Task 2	Included in Task 2	Included in Task 2
	Insurance(E)	$8,000	$8,000	$0	$8,000
	Subtotal	$263,694	$57,659	$37,054	$292,030
	Contingency (15%)			$5,558	$43,805
	Total	$263,694	$57,659	$42,612	$335,835

(A) Proposed FY2011/12 Budget assumes a 3.5% increase. WETA will pay actual cost with no City mark up.

(B) Funded by LLAD

(C) Not included in the Adopted FY2010/11 Budget.

(D) Total project budget is $450,000 which includes both Main Street and Harbor Bay parking lots. Project is supported by RM1 and Measure B funds..

(E) For barge and gangway insurance paid from TIFF. Included in package policy including 4 boats, gangway, liquor liability, float, etc.

III Alameda Ferry Terminals DMS Budget Summary

Table 5 - Terminal Landside Expense Summary

	Projected Costs for 2/01/2011 through 6/30/2011	Proposed Budget FY 2011/12
Main Street:		
Utilities	$2,809	$6,977
Regular Maintenance	$35,665	$89,382
Capital Project - Parking Lot Pavement Rehab	$0	$275,000
Subtotal - Utilities, Maint, Capital Projects	$38,474	$371,359
City Admin	$3,847	$37,136
Facility Security Audit / Insurance	$0	$8,275
Contingency	$6,348	$62,515
Total Main Street	**$48,669**	**$479,285**
Harbor Bay:		
Utilities	Included in Regular Maintenance	
Regular Maintenance	$32,581	$78,194
Electronic Bicycle Lockers	$1,104	$2,743
Capital Project - Parking Lot Pavement Rehab	$0	$175,000
Subtotal - Utilities, Maint, Capital Projects	$33,685	$255,937
City Admin	$3,369	$25,594
Facility Security Audit	$0	$2,500
County Tax	Included in Regular Maintenance	
Insurance	$0	$8,000
Contingency	$5,558	$43,805
Total Harbor Bay	**$42,612**	**$335,835**
Summary:		
Main Street	$48,669	$479,285
Harbor Bay	$42,612	$335,835
TOTAL	**$91,281**	**$815,120**

Attachment A - Janitorial Services

Location:	The Main Street Ferry Terminal Restrooms, 2990 Main Street.
Approximate Sq. ft.:	440 sq. ft.
Frequency:	5 days per week (M->F) except holidays

I. OPERATIONAL DETAILS

City or City's Contractor shall provide janitorial service for the restrooms in accord with the following:

1. The service shall be performed five days per week—Monday through Friday (except holidays)—during working hours.

A. EXTENT OF CONTRACT

The following maintenance shall be performed each scheduled work day:

(a) Clean and dust tables, credenzas, cabinets, chairs, window sills, baseboards, door jambs, and other office furniture, and dust desks.

(b) Empty all trash containers and wastebaskets which are not marked for recycling, and dispose of in designated area. Install fresh liners. Restock paper and soap dispensers. All recycling shall be emptied into designated recycling containers.

(c) Spot clean walls, partitions, doors, and kick plates.

(d) Sweep/dust tile floors. Spot clean if required.

(e) Clean entrance mats. See G, 5, Page 28.

(f) Spot clean glass partitions and doors.

(g) Hose down front steps and porch areas at designated locations.

(h) Clean and sanitize toilets and sinks.

(i) Wet mop tile floors using a germicidal solution.

(j) Clean all mirrors.

(k) Check all restroom supplies, i.e., toilet paper, paper hand towels, soap, etc.

2. Every six months, the following maintenance shall be performed:

(a) Wash all interior windows and first floor exterior windows.

(b) Clean window blinds.

4. Supplies. The City will supply toilet paper, paper hand towels, wastebasket liners, and soap materials for dispensers. Paper products will be stored at the Maintenance Service Center and shall be picked up from the Maintenance Service Center. Contractor shall supply all other materials and janitorial supplies, as required, to complete the contract.

5. Holiday Schedule. City scheduled holidays are as follows:

New Year's Day
Martin Luther King, Jr., Day
President's Day
Memorial Day
Independence Day
Labor Day
Veteran's Day
Thanksgiving Day
Day After Thanksgiving Day
Christmas Day

If service is scheduled on a City holiday, service will be provided the next work day before or after the scheduled holiday.

B. STANDARDS

The following standards are provided as both a basis for all in-house work the City of Alameda conducts as well as for inclusion in any contract janitorial service the City may undertake.

1. Trash Removal. Trash receptacles will be emptied, cleaned and left dry, free of sludge, deposits, dirt, streaks and odors both inside and out. The term "trash receptacles" refers to receptacles used for collection of waste paper and debris, including swing top containers, wastebaskets and similar containers. All trash receptacles will have a new plastic trash can liner installed after the trash is removed and the receptacle cleaned. Besides removing and disposing of trash from trash containers, the Contractor will remove and dispose of trash in boxes, bags or other items marked "trash" and placed next to trash containers or in hallways. The Contractor will dispose of all trash and other waste collected in appropriate refuse containers for pick up and disposal by Contractor.

2. Floor Maintenance. Floors will be cleaned in accordance with the following standards to maintain safe, sanitary conditions, present a pleasing appearance, and to protect them from damage.

(a) Dust Mopping/Sweeping. A properly swept floor, elevator and stairway is free of all dust, streaks, dirt, cobwebs, grit, lint, and debris to include, but not limited to, corners, behind doors, under desks, tables, benches, other furniture (except permanently located equipment such as copiers and filing cabinets that have full floor bearing). Removal of chewing gum and other foreign matter is considered a portion of sweeping.

(b) Damp Mopping. A satisfactorily damp mopped floor has an evenly cleaned surface that is free of dirt, dust, mop marks, smears, film, residue, streaks, debris, or other standing water. All mop marks on baseboards or furniture will be removed. When floors cannot be cleaned satisfactorily by damp mopping, they must be scrubbed.

Attachment B - Main Street Steam Cleaning Work Scope

Location: The Main Street Ferry Terminal Customer Waiting Area
Frequency: 14 Times per Year

City or the City's Contractor shall steam clean the Alameda Main Street Terminal once each week as specified in Table 1 herein. Each cleaning shall consist of the detailed cleaning of the sideways and walkways under and immediately adjacent to the canopy at the Main Street Ferry terminal located at 2990 Main Street and the area in front of the restrooms.

Table 1

Task	Week of Stream Cleaning
1	July 5, 2010
2	July 26
3	August 30
4	September 21
5	October 12
6	November 9
7	December 7, 2010
8	January 4, 2011
9	February 1
10	March 1
11	April 5
12	May 3
13	May 31
14	June 21, 2011

Attachment C - Main Street Ferry Terminal Landscape Maintenance

Location: The Main Street Ferry Terminal, 2990 Main Street.
Approximate Sq. Ft.: 12,500 sq. ft.
Frequency: Weekly

Description of Work:
City or City's Contractor shall maintain the landscape in an attractive condition throughout the year as specified below.

A. Irrigation System:

1. Minor damage to the irrigation system attributable to minor vandalism, storms, irrigation failure, etc., should be repaired or replaced within seventy-two (72) hours.
2. All irrigation equipment including but not limited to valves, controllers, pipelines, low voltage electrical lines, etc., should be repaired and maintained in a timely manner.
3. The intent is to provide for minor repairs primarily to the irrigation system due to wear or malfunctioning parts, i.e., sprinkler heads, replacing washers, springs, small sections of pipe, etc. WETA will pay for parts and equipment replacement due to vandalism or for major repairs of systems and plant replacement that are not related to the City's or the City's Contractor's negligence.

B. Should WETA desire to have repairs or plant replacement due to vandalism, WETA shall pay for parts and plants.

C. Turf Care: All turf areas shall be maintained as follows:

1. Mowing. All turf areas shall be mowed weekly except for the period of November through February 15, during which time mowing will be done every two weeks depending on weather conditions. **Mowers shall be kept in proper adjustment.** Bruising or rough cutting of grass will not be permitted. Mowers will also be adjusted to and operated such that the grass is cut at uniform height. Scalping of mound areas will not be permitted. Paper, rubbish and debris shall be removed by the Contractor prior to mowing. Turf shall be cut at a height of one and one-half inches (1-1/2") from November through February, and to a height of two inches (2") from March through October. Clippings may be left on lawn – cut without catcher. However, any clippings noticeably remaining on the lawn surface after twenty-four (24) hours shall be raked up and removed.

2. Trimming

(a) All edges shall be trimmed after every other cutting. This trimming shall include all areas along walls, fences, foundations,

shrubs, curb, sidewalks, pathways, header boards, planters, tree trunks, poles, guy wires, or any other object within or immediately adjacent to the lawn areas.

(b) Care shall be taken to avoid damage to tree trunks, shrubs, sprinklers, buildings and other structures.

3. Fertilization

(a) Lawn: In early April and again in late September of each year, apply sixteen (16) pounds of 21-8-8 controlled Release Fertilizer per 1000 square feet of lawn. Apply ammonium sulfate or nitrate as required to keep the lawns healthy and green between scheduled fertilization periods.

(b) Ground Cover: In early April and again in late September, apply eight (8) pounds of 16-6-8 Turf Supreme per 1000 square feet of ground cover.

(c) Shrubs: All actively growing shrubs not yet at maturity shall be fertilized once per year in early March with 16-7-12 + Iron controlled release fertilizer at such a rate to supply two and one-half (2-1/2) pounds of actual nitrogen per 1000 square feet beneath the drip line of the plant.

(d) Aeration of Turf: All turf grass areas shall be aerified once each year in the last week of March prior to the April fertilization.

D. Irrigation

1. The Contractor's routine maintenance responsibility for all irrigation systems shall begin at the discharge site of all electric remote control valves.

2. All irrigation systems and equipment which are the Contractor's responsibility for routine maintenance shall be kept in proper operating condition at all times in order to ensure proper watering in all planted areas. All sprinkler heads shall be kept clean, adjusted, and in good working order to ensure coverage.

3. All irrigation breaks or malfunctions shall be reported as soon as possible to the Engineer or his designated representative. All systems shall be checked twice per week and any broken pipe, fittings, risers, heads, etc., shall be repaired or replaced, in kind, as soon as possible, so that the irrigation schedule may continue uninterrupted.

4. The Contractor shall repair all main lines, valves, electrical wiring or appurtenances damaged as a result of his work.

5. Primary watering will be done at night by automatic systems. Where automatic or manual irrigating systems exist, they shall be maintained and operated by the Contractor in a manner, which promotes healthy growth while taking care not to waste water. Some hand watering may be necessary due to poor water coverage or malfunctioning sprinkler heads. Minor overseeding may also be necessary to maintain good turf (not to exceed one hundred (100) square feet.

6. Where there is no irrigation system, Contractor will be required to use hoses and portable means of irrigating to promote healthy growth in landscaped areas.

E. Ground Cover

Ground cover, shrub areas, streetscape planters and streetscape planter bulbouts shall be kept in a weed-free condition by weed removal and cultivation and/or the use of proper herbicides. Any plants lost or damaged during weed control operations shall be replaced with the same varieties and spacing as originally planted.

F. Pruning (Shrubs)

The general objectives of pruning of the shrubs are to maintain a natural appearance; to eliminate disease or damaged growth; and to select and develop permanent branches.

1. Pinching or light shearing of terminal buds shall be allowed on selected shrub species to promote foliage. To prevent leginess (sparse lower branches), shrubs should be maintained with lower foliage wider than the upper foliage. This practice shall allow more light to reach lower foliage, preventing the loss of leaves to shading.

2. Shrubs shall be pruned when necessary to conform with the general objectives. Late winter/early spring shall be the time of year that general pruning shall be done. Minor pruning may be done at any time.

G. General Maintenance and Clean Up

1. All clippings, trimmings, and cuttings shall be promptly removed from the site and disposed.

2. Grass cuttings shall be removed from all walkways and paved areas by vacuuming or blowing onto turf or other method of Contractor's choice on the same day as the cutting.

H. Irrigation Repairs

1. <u>Irrigation Heads</u>

(a) Head repairs to include all work necessary up to and including two inch (2") PVC tee, nipple/riser, sprinkler body, and nozzles.

(b) Replacement heads shall be Toro heads, 300 and 570 series, or hunter stream spray. Replacements shall match existing system and precipitation rates.

2. Repair of Irrigation Supply Lines

(a) Irrigation supply lines vary in size from ½" to 3", Sch. 40, on all mains.

(b) Repairs shall be made within seventy-two (72) hours, in a professional manner, according to manufacturer's specifications.

(c) All landscape disturbed during excavation shall be replaced to its original state.

3. Repair of Irrigation Valves

(a) All valves shall be checked twice per week. Any malfunction shall be repaired or replaced as soon as possible.

(b) Replacements shall be: Plastic – Hydro Rain/Hardy; or Brass – Rainbird.

Attachment D – Scope of Work Pest Control

Location: The Main Street Ferry Terminal
Frequency: Once every Two Months

Once every two months, the City or the City's Pest management contractor shall conduct monitoring and maintenance visits at the Main Street ferry terminal. The City shall use or approve for use whatever measures the City determines at its sole discretion to be appropriate.

Pests to be monitored and controlled included:

- Insects and other Arthropods: These include ants, cockroaches, fleas, flies, midges, silverfish, spider, yellow jackets and other wasps and bees, and any other arthropod pest not specifically excluded from the contract.
- Mice, Rats, Birds and Other Vertebrates: The contractor shall also adequately suppress rats, mice and birds found inside and outside buildings. Individual vertebrates including feral cats, ground squirrels, raccoons, skunks, etc., located outdoors or indoors that are determined to be causing unacceptable property damage, nuisance or hazard, will also be the responsibility of the contractor. Pick-up and proper disposal of dead vertebrates is also included in this scope of work.

Pests excluded

- Termites and other wood destroying organisms.
- Mosquitoes (mosquito abatement)
- Pests that primarily feed on outdoor vegetation unless they are invading a structure.
- Bats, snakes and all other vertebrates not listed above.
- Pests restricted to potted plants. The contractor shall notify the City of Alameda when the source of a pest problem originates in a potted plant.

Attachment E - Main Street Patrol Guard Scope of Work

Location:	The Main Street Ferry Terminal Parking lot and Customer Waiting Area
Frequency:	Seven Days per Week except January and February weekends and Non-Ferry Service Days

City shall contract with a vendor ("Contractor") for the provision or a patrol guard for the Main Street Ferry Terminal. The patrol guard shall perform all reasonably necessary services to assure the safety and protection of the Alameda Ferry Terminal and real and personal; property against injury, molestation, loss or damage from any preventable cause including, but not limited to fire, theft, vandalism and trespass. The patrol guard will be unarmed and will patrol the ferry terminal building including the interior of the rest room facilities, the concrete area surrounding the restroom facility building and both the paved and unpaved parking areas. When patrolling the parking lot, the patrol guard will walk in the traffic lanes, not between vehicles. The patrol guards will maintain a visible presence throughout their shift and shall not leave the terminal patrol area during lunch breaks. Except during their breaks, security personnel are not permitted to read books, magazines, newspapers, etc.

Service hours: WETA may, from time to time and at its sole discretion, submit a written request to the City for a change in patrol guard service hours. WETA's written request shall be submitted to the City at least fourteen (15) business days prior to the date the requested schedule change is to take effect. City shall make its best efforts to work with its Contractor to implement the WETA requested service hour change.

Patrol guard services are required for all holidays except Thanksgiving Day, Christmas Day, New Year's Day, and Presidents' Day. Subject to future City specified changes, the service schedule is as follows.

Weekdays:
Effective Monday through Friday Year Round (Except Holidays):
Hours: 9:00 AM to 7:00 PM

Holidays: New Year's Day, Presidents' Day, Thanksgiving Day, and Christmas Day.
Hours: None.

Weekends:

July 1, 2010 through October 31, 2010	10:00 AM to 9:00 PM
November 6, 2010 through December 26, 2010	10:00 AM to 6:00 PM
January 1, 2011 through February 28, 2011	No Guard
March 5, 2011 through May 8, 2011	10:00 AM to 6:00 PM
May 14, 2011 through June 26, 2011	10:00 AM to 9:00 PM

Communication: Contractor and assigned Ferry Terminal patrol guards shall establish and maintain a working relationship with the Alameda Police Department, Alameda Maintenance Department, WETA, ferry operator's dispatch, and ferry crews.

Contractor's patrol guards shall have a cell phone at all times they are on duty at the ferry terminal. Cell phones will be used only for the following purposes:

1. To notify Alameda Police Department, Alameda Public Works Department, and WETA of emergency situations and to request assistance.
2. To notify Alameda Maintenance Department if ferry terminal maintenance needs on a daily basis as the guard observes them. Such needs include but are not limited to: a) the need to clean rest room facilities and/or provide paper products, b) the occurrence of vandalism or other damage to rest room or other facilities, c) presence of graffiti, d) trash can over flow, e) broken glass, pot holes or other parking lot problems, and f) burned out lights.
3. To notify WETA of the need to replenish ferry brochures or other collateral materials in the ferry terminal brochure rack as the need arises.
4. To respond to calls from the ferry operator and from WETA. At the request of the ferry operator or WETA, patrol guards will notify waiting ferry passengers of ferry service delays or convey other information as requested by the ferry operator or by WETA.

Contractor shall ensure that the patrol guard has the following emergency phone numbers whenever they are on duty at the terminal:

WETA:

Office:	415 - 291-3377
Cell:	510 - 289-2530 (Ernest Sanchez)

Alameda Maintenance Department:	510 – 747-7900
Alameda Public Works Office:	510 - 749-5840
Alameda Police Department:	510 - 337-8340
Ferry Operator Dispatch/ (Blue and Gold Fleet):	415 - 705-8205

Patrol Schedule:

(1) Upon arriving at the Ferry terminal for work, the guard will swipe the wand at the ferry terminal locked passenger gate. This will establish the guard's work starting time.
(2) Guard's will immediately check the restrooms and make one tour of the parking lot, starting at the terminal building.
(3) Each patrol will begin and end with the guard's swiping the patrol wand station at the ferry terminal building.
(4) The guard will make a complete transit of the public access area twice every hour. A complete transit of the patrol area should take about 20 to 25 minutes.

The sequence by which the patrol guard visits each patrol area should be varied throughout the shift, with the scanning path differing with every rotation with the exception of beginning and ending patrol wand stations described above.

Restroom facilities (as appropriate): Patrol guard personnel will inspect the facilities only when the facilities are not occupied. Prior to entering the rest room facilities, patrol personnel will clearly announce that he/she is going to enter for inspection purposes.

Emergency Notification: The security personnel shall contact the Alameda Police Department (APD) and WETA in the case of any suspicious packages, objects or persons being observed in the restricted area of the terminal. Security personnel shall wait for the arrival of the APD to check out the situation. Emergency conditions including, not limited to, theft, vandalism, passenger/pedestrian injury and/or other crimes shall be reported to the APD, Alameda Public Works Department, and WETA. In addition, security personnel shall contact the Alameda Public Works Department and WETA for maintenance emergencies. This includes, but is not limited to potholes, dangerous floor surfaces, plumbing or electrical failure.

Parking enforcement: Security personnel shall notify the Alameda Police Department of parking problems that obstruct or hinder access to or from the parking areas. **Security personnel are not parking enforcement officers.**

Suspicious individuals: Contractor patrol guards shall notify Alameda Police Department of any suspicious individuals, transients, panhandlers or vagrants encountered in the public access areas, who may constitute a danger to the ferry riding public or to ferry terminal facilities.

Response Time: If either WETA or City staff find no guard on duty, City shall require that its Contractor have a replacement guard on station at the ferry terminal no longer than 2 hours after receipt by Contractor of notice from City that a replacement guard is needed.

Attachment F – Terminal Bicycle Locker Work Scope

Harbor Bay Ferry Terminal eLockers: City or city's contractor shall:

1. Perform pest control services at least twice a year.
2. Clean equipment components as pertains to function, as well as basic clean out of locker interiors at least four times a year.
3. Provide maintenance of BikeLine technology.
4. Provide next day on-site user support
5. Provide limited parts replacement coverage.
6. Provide online usage reporting with data updated quarterly.

Alameda Main Street Terminal: City or City contractor shall:

1. Perform pest control services at least twice a year.
2. Clean equipment components as pertains to function, as well as basic clean out of locker interior at least four times a year.
3. City staff to provide on-going coordination with users.
4. City staff to provide on-going quality control.
5. Maintain locking mechanism lubricant at least twice a year.
6. Provide limited parts replacement and painting of lockers as needed

Attachment G - City Staff Hourly Rates

TABLE 1 - City Staff Hourly Rates	
Category	**Hourly Rate(1)**
Attorney	$185.00
Controller	$132.00
Public Works Supervisor	$118.00
Assistant Engineer	$89.00
Public Works Team Leader	$74.00
Accountant II	$74.00
Administrative Assistant	$71.00
Maintenance Worker II	$66.00
Maintenance Worker I	$56.00

(1) Hourly rate will apply to City staff non-routine administrative and/or other maintenance work directly related to the ferry terminals.

Attachment H – Harbor Bay Terminal Maintenance Work Scope

The City or the City's contractor shall maintain the Harbor Bay ferry terminal assets in accord with the standards herein. The City shall provide:

1. Maintenance and repair of terminal shelter building, bike racks and lockers, and trashy containers as needed: Daily clean-up of litter: cleaning-up and repair of damage from vandalism as needed; painting as needed, using water-based or latex paints on a minimum of 60% of all painted surfaces at the Terminal Shelter.
2. Maintenance and repair of parking lot and parking lot equipment as needed, including, but not limited to: monthly sweeping, or more often if warranted by build-up of sand or litter or as required by City.
3. Maintenance and repair of all lighting facilities associated with the Harbor Bay Ferry Terminal as needed.
4. Maintenance and repair of all signage associated the Harbor Bay Ferry Terminal as needed.
5. Monitoring pollutant spills in the parking lot: remedial responses as needed, including filing reports on any incident and the response with City.
6. Security patrols: patrol through parking lot past shelter as needed, but not less than one per eight hour shift.

EXHIBIT K

MAP OF HARBOR BAY FERRY TERMINAL

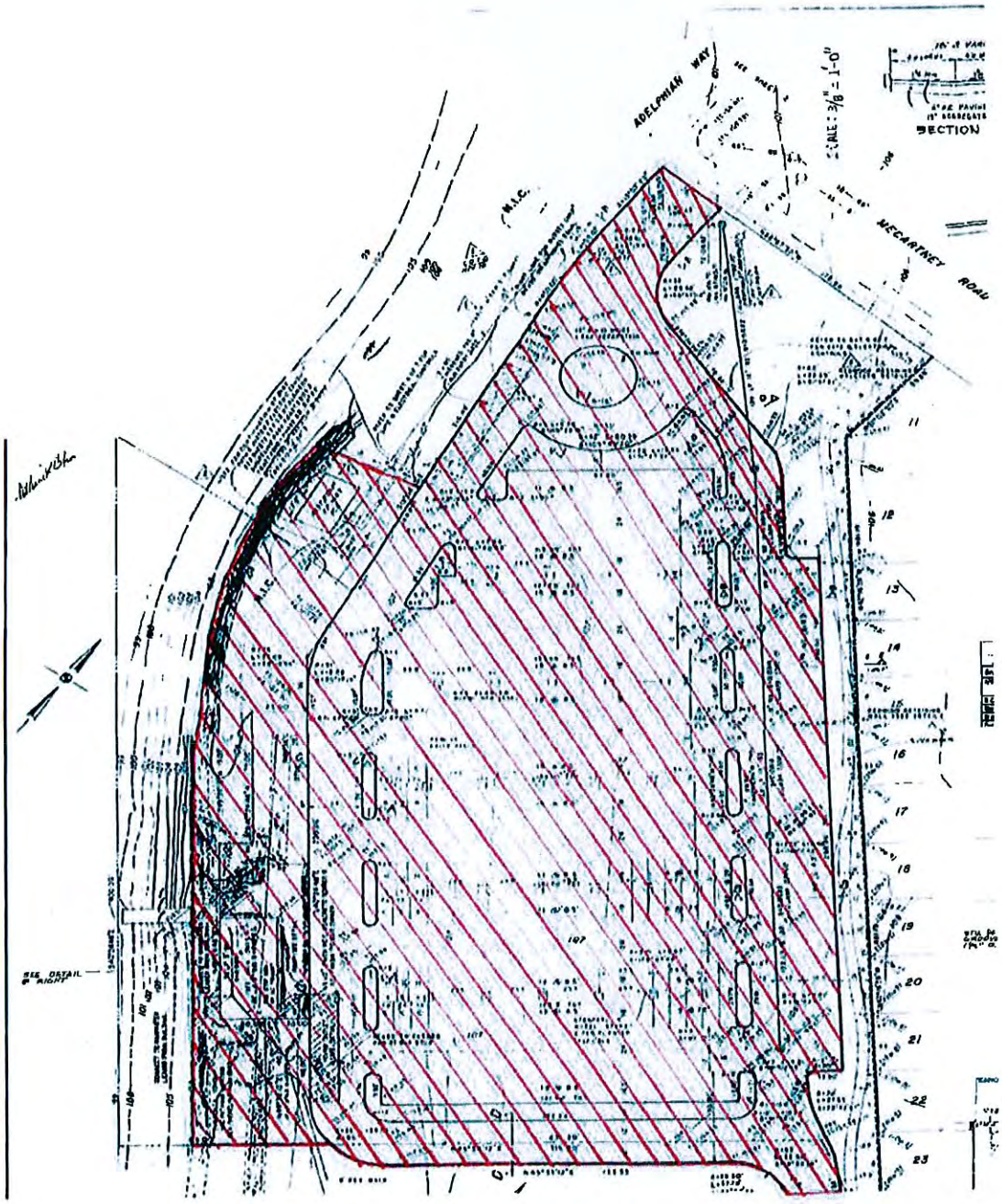


EXHIBIT L

SEAPLANE LAGOON AREA

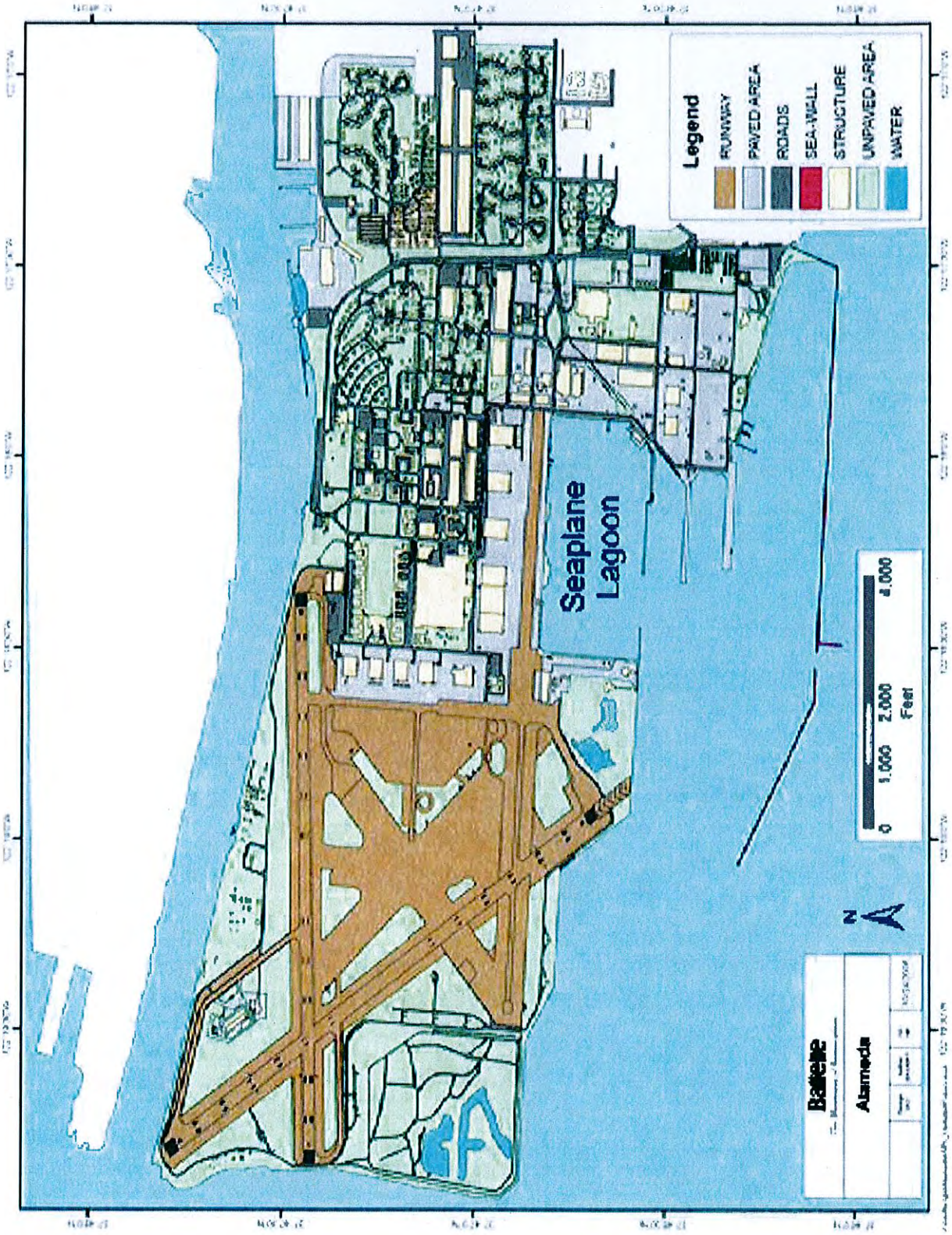


EXHIBIT M

FISCAL YEAR 2010/11 SERVICE LEVELS

Alameda Harbor Bay Ferry
Weekday Schedule(A)
FY 2010/2011

TO SF Ferry Building

Depart Harbor Bay	Arrive SF Ferry Building Gate E
6:30 AM	6:55 AM
7:30 AM	7:55 AM
8:30 AM	8:55 AM
5:05 PM	**5:30 PM**
6:05 PM	**6:30 PM**
7:05 PM	**7:30 PM**

TO Harbor Bay

Depart SF Ferry Building Gate E	Arrive Harbor Bay
7:00 AM	7:25 AM
8:00 AM	8:25 AM
4:35 PM	**5:00 PM**
5:35 PM	**6:00 PM**
6:35 PM	**7:00 PM**
7:35 PM	**8:00 PM**

(A) No weekend service.

AHBF HOLIDAY SCHEDULE
Effective July 1, 2010 through June 30, 2011

FY '10/11

HOLIDAY	SCHEDULE
Martin Luther King Day	No Service
Presidents' Day	No Service
Memorial Day, Monday	No Service
Labor Day, Monday	No Service
Thanksgiving	No Service
Day after Thanksgiving	No Service
Christmas Day	No Service
New Year's Day	No Service.

AOFS - Weekdays
Effective July 1, 2010 through June 30, 2011

To San Francisco

Leave Oakland	Leave Alameda	Arrive Ferry Bldg.	Arrive SF Pier 41
6:00	6:10	6:30	--
7:05	7:15	7:35	--
8:10	8:20	8:40	--
9:15	9:25	9:45	10:00
11:00	10:50	11:30	11:45
12:45	**12:35**	**1:15**	**1:30**
2:30	**2:20**	**3:00**	**3:10**
4:40	**4:30**	**5:10**	--
5:50	**5:40**	**6:15**	--
6:20^	**6:10^**	--	**7:00**
6:55	**6:45**	**7:20**	--
7:55	**7:45**	**8:20**	--
8:55	**8:45**	--	**9:25**

Summer weekend schedule in effect on Memorial Day, July 4th, and Labor Day.
^On Giants game days, departure goes directly to AT&T park from east bay.

AOFS - Weekdays
Effective July 1, 2010 through June 30, 2011

From San Francisco

Leave SF Pier 41	Leave Ferry Bldg.	Arrive Alameda	Arrive Oakland
--	6:30	7:15	7:05
--	7:35	8:20	8:10
--	8:40	9:25	9:15
10:15	10:30	10:50	11:00
12:00	**12:15**	**12:35**	**12:45**
1:45	**2:00**	**2:20**	**2:30**
3:45	**4:10**	**4:30**	**4:40**
--	**5:20**	**5:40**	**5:50**
5:20	**5:45**	**6:10**	**6:20**
--	**6:25**	**6:45**	**6:55**
---	**7:25**	**7:45**	**7:55**
--	**8:25**	**8:45**	**8:55**

There is no service on Thanksgiving, Christmas, President's Day or New Year's Day.
Summer weekend schedule in effect on Memorial Day, July 4th, and Labor Day.

AOFS Weekend Holiday Schedule

Summer
Effective July 3, 2010 through October 31, 2010
and
May 14, 2011 through June 26, 2011

To San Francisco

Leave Oakland	Leave Alameda	Arrive Ferry Bldg.	Arrive SF Pier 41
9:00	9:10	--	9:35+
10:40	10:25	11:10	11:25
12:20	**12:10**	**12:50**	**1:05**
1:55	**1:45**	**2:25**	**2:40**
4:00	**3:45**	**4:30**	**4:45**
5:45	**5:30**	--	**6:20**
7:20	**7:05**	**7:50**	**8:05**
8:55*	**8:45***	**9:20***	**9:30***
10:30*	**10:20***	---	**11:00***

*On July 4th, this run canceled due to fireworks display.
Summer weekend schedule in effect on Memorial Day, July 4t^{h}, and Labor Day.
+Connects with Service to Angel Island.

AOFS
Weekend & Holiday Schedule

Summer
Effective July 3, 2010 through October 31, 2010
and
May 14, 2011 through June 26, 2011

From San Francisco

Leave SF Pier 41	Leave Ferry Bldg.	Arrive Alameda	Arrive Oakland
8:30	--	9:10	9:00
9:45	10:00	10:20	10:35
11:35	11:50	12:10	12:20
1:10	1:25	1:45	1:55
2:50#	--	3:45	3:55
4:55	5:10	5:30	5:40
6:30	6:45	7:05	7:15
8:10*	8:25*	8:45*	8:55*
9:40*	9:55*	10:15	10:25

*On July 4th, this run canceled due to fireworks display.
Summer weekend schedule in effect on Memorial Day, July 4th,and Labor Day.
#To east bay via Angel Island.

AOFS WEEKEND & HOLIDAY SCHEDULE

Spring
Effective: March 5, 2011 through May 8, 2011

To San Francisco

Leave Oakland	Leave Alameda	Arrive Ferry Bldg.	Arrive SF Pier 41
10:00	10:10	10:30	10:45
11:30	11:20	**12:00**	**12:15**
1:45	**1:30**	**2:20**	**2:35**
4:15	**4:05**	**4:45**	**4:55**
5:45	**5:35**	--	**6:25**
7:10	**7:00**	--	**7:50**

From San Francisco

Leave SF Pier 41	Leave Ferry Bldg.	Arrive Alameda	Arrive Oakland
9:15	9:25	10:10	9:55
10:50	--	11:20	11:30
1:00	**1:10**	**1:30**	**1:45**
3:30	**3:45**	**4:05**	**4:15**
5:00	**5:15**	**5:35**	**5:45**
6:30	**6:40**	**7:00**	**7:10**

AOFS WEEKEND & HOLIDAY SCHEDULE

Fall
Effective: November 6, 2010 through December 26, 2010

To San Francisco

Leave Oakland	Leave Alameda	Arrive Ferry Bldg.	Arrive SF Pier 41
10:00	10:10	10:30	10:45
11:30	11:20	**12:00**	**12:15**
1:45	**1:30**	**2:20**	**2:35**
4:15	**4:05**	**4:45**	**4:55**
5:45	**5:35**	**--**	**6:25**
7:10	**7:00**	**--**	**7:50**

From San Francisco

Leave SF Pier 41	Leave Ferry Bldg.	Arrive Alameda	Arrive Oakland
9:15	9:25	10:10	9:55
10:50	--	11:20	11:30
1:00	**1:10**	**1:30**	**1:45**
3:30	**3:45**	**4:05**	**4:15**
5:00	**5:15**	**5:35**	**5:45**
6:30	**6:40**	**7:00**	**7:10**

AOFS
ANGEL ISLAND
WEEKENDS and Holidays

July 3, 2010 through October 31, 2010
and
May 14, 2011 through June 26, 2011

To Angel Island

Leave Oakland	Leave Alameda	Arrive Pier 41	Transfer To Angel Is. boat	Arrive Angel Island
9:00 a.m.	9:10 a.m.	9:35	9:45	10 a.m.

From Angel Island

Leave Angel Island	Arrive Alameda	Arrive Oakland
3:10 p.m.	3:45 p.m.	3:55 p.m.

AOFS
AT&T Park/ Giants Games

WEEKEND DAY GAMES
July 2010 through October 2010
and
April 2011 through June 2011

To AT&T Park

Depart Oakland	Depart Alameda	Arrive AT&T Park
11:30 p.m.	11:50 p.m.	12:20 p.m.

Return ferry departs AT&T Park 20 minutes after game ends but in no case later that 11:30 p.m.

WEEKDAY NIGHT GAMES

July 2010 through October 2010
and
April 2011 through June 2011

To AT&T Park

Depart Oakland	Depart Alameda	Arrive AT&T Park
6:15 p.m.	6:20 p.m.	7:00 p.m.

Return ferry departs AT&T Park 20 minutes after game ends but in no case later that 11:30 p.m.

AOFS HOLIDAY FERRY SCHEDULE

FY '10/11

HOLIDAY	SCHEDULE
Martin Luther King Day	Regular weekday schedule
Presidents' Day	No Service
Easter Sunday	Spring Weekend
Memorial Day, Monday	Summer Weekend
July 4	Summer Weekend
July 5	Summer Weekend
Labor Day, Monday	Summer Weekend
Thanksgiving	No Service
Christmas Day	No Service
Day after Christmas	Regular Weekday
New Year's Day	No Service.

EXHIBIT N

CRANE AND PIER HEAD

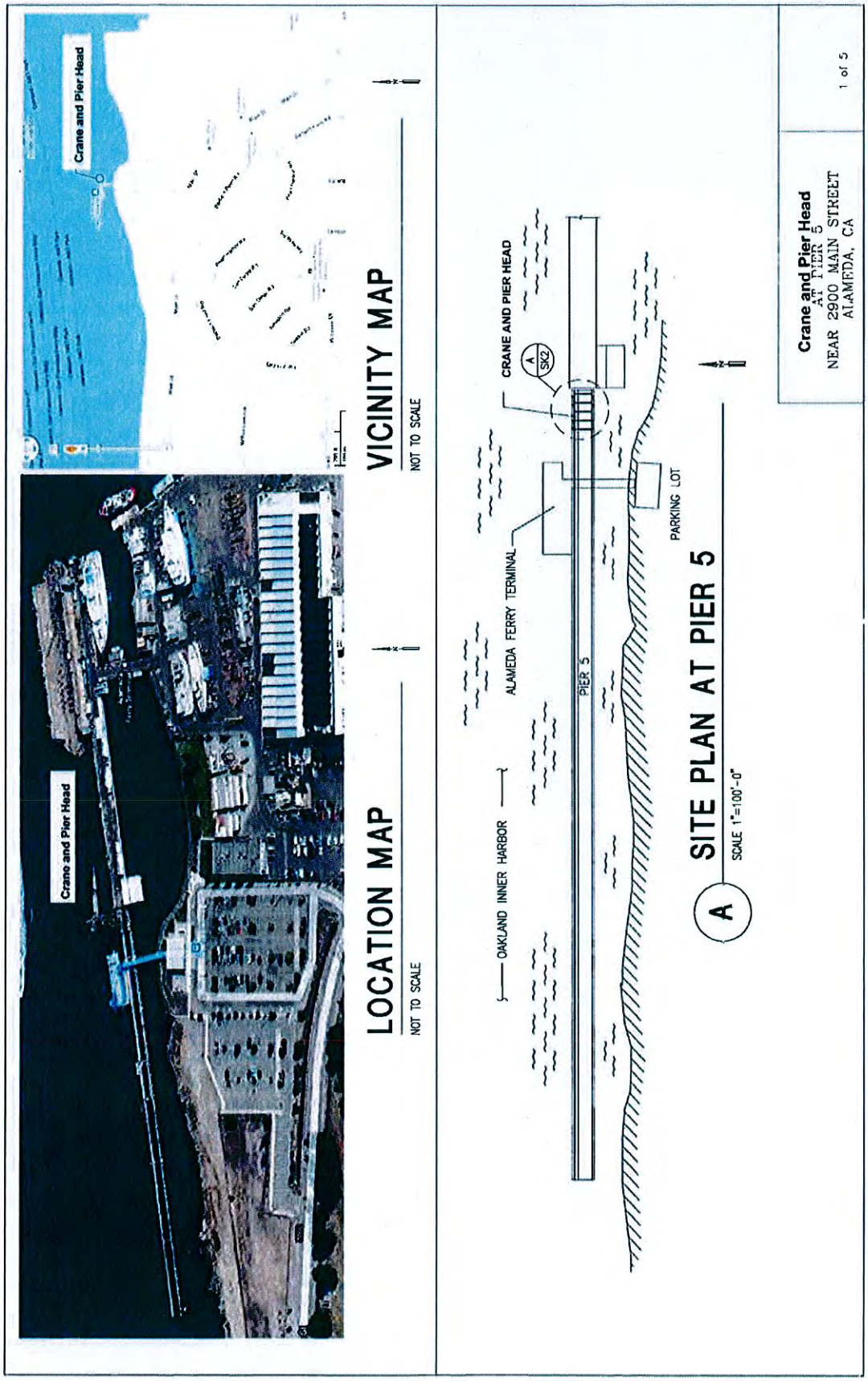


EXHIBIT O

DIAGRAM OF MAIN STREET CHANNEL/
MAIN STREET RIGHTS AREA

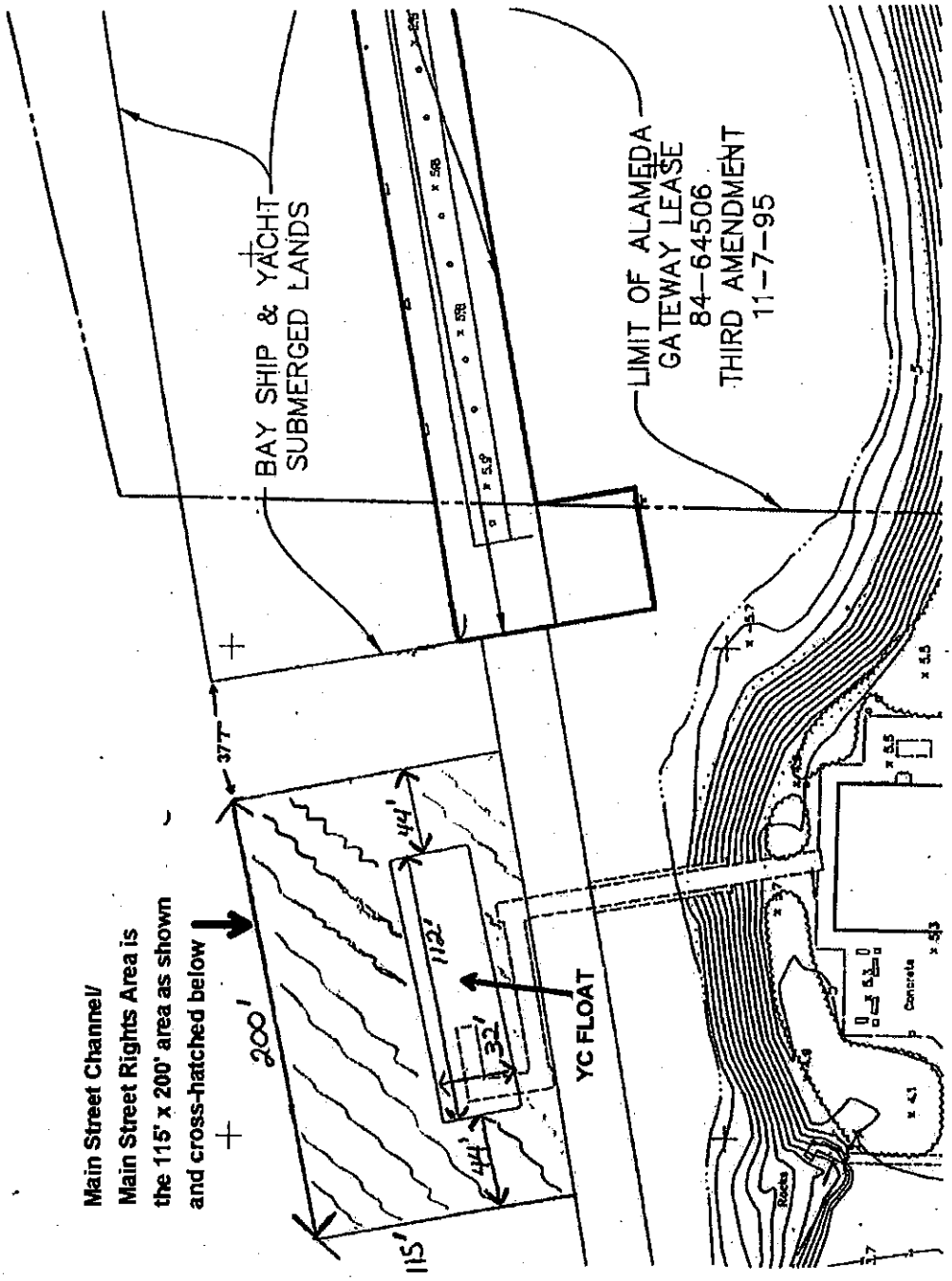
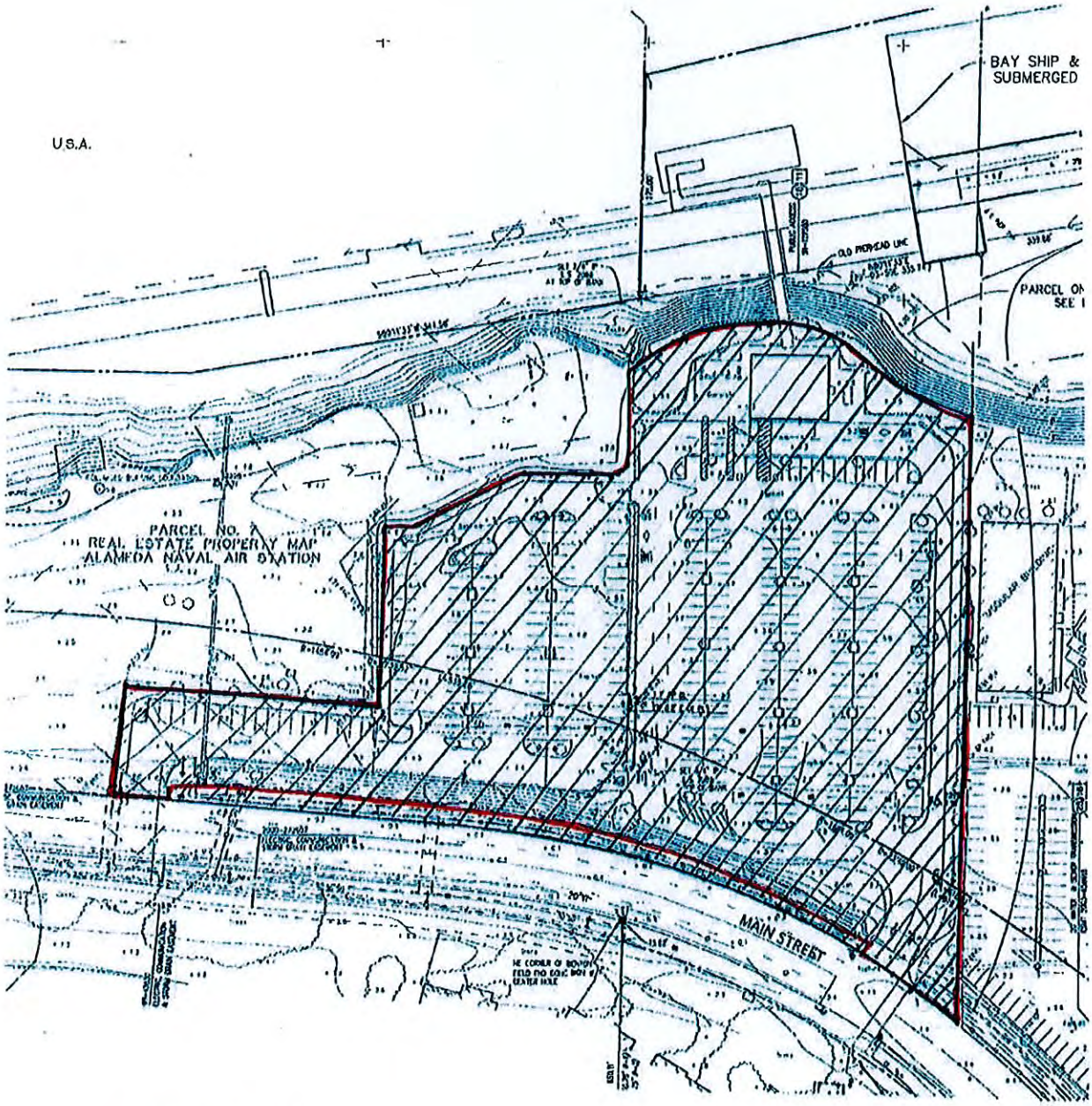


EXHIBIT P

DIAGRAM OF MAIN STREET LAND



OAK #4834-5097-9335 v14

EXHIBIT Q

CALTRANS GRANT ASSIGNMENT AGREEMENT

ASSIGNMENT AND ASSUMPTION AGREEMENT

FOR VALUE RECEIVED, The CITY OF ALAMEDA, a political subdivision of the State of California ("Assignor"), acting by and through its duly authorized officers, has, effective April 29, 2011, ASSIGNED AND TRANSFERRED, and by these presents does (except as otherwise provided) ASSIGN AND TRANSFER unto SAN FRANCISCO BAY AREA WATER EMERGENCY TRANSPORTATION AUTHORITY, a public agency created under California law ("Assignee"), all of Assignor's right, title and interest in and to the Leases, Licenses and Other Agreements ("Assigned Agreements") and all amendments thereto, that are described on **Exhibit 1,** attached hereto, together with all security deposits and other deposits held by Assignor under the terms of said Assigned Agreements.

TO HAVE AND TO HOLD the Assigned Agreements unto Assignee, its successors and assigns. This Assignment is made and accepted without recourse against Assignor as to the performance by any party under such Assigned Agreements.

Assignee agrees to (a) perform all of the obligations and duties of Assignor pursuant to these Assigned Agreements, including those accruing prior to, on, or after the date hereof; and (b) indemnify and hold Assignor harmless from and against any and all claims, causes of actions and expenses (including reasonable attorneys' fees) incurred by Assignor and arising out of (1) Assignee's failure to comply with terms of the Assigned Agreements on or after the date hereof, and (2) claims under the Assigned Agreements by the grantor of funds, the tenant, or any other party named in the Assigned Agreements accruing on or after the date hereof.

Exhibit 1 attached to this Agreement is incorporated herein for all purposes.

Assignee agrees to manage the Assigned Agreements the appropriate signatory and to enter into any new amendments to these Assigned Agreements as may be agreed to with third parties, if any.

This Assignment and Assumption Agreement shall inure to and be binding upon the parties, their successors and assigns.

Dated the 29th day of April, 2011.

ASSIGNOR:

CITY OF ALAMEDA,
a political subdivision of the State of California

By: _____
Name: Lisa Goldman
Title: Acting City ~~Manger~~ MANAGER

ASSIGNEE:

SAN FRANCISCO BAY AREA WATER EMERGENCY TRANSPORTATION AUTHORITY,
a public agency created under California law

By: _____
Name: Nina Rannells
Title: Executive Director

APPROVED AS TO FORM

By: _____
Name: Donna Mooney
Title: Acting City Attorney

APPROVED AS TO FORM

By: _____
Stanley S. Taylor
Nossaman, LLP
Legal Counsel to Authority

The California Department of Transportation (DOT), a grantor and administrator of public funds to Assignor, hereby consents to the assignment of all of Assignor's duties, rights and obligations created and assumed under the following listed Assigned Agreements and related grants between DOT and Assignor to now be assumed and assigned to Assignee:

1. State of California Department of Transportation Fund Transfer Agreement, Agreement No. 04A1048.

2. State of California Department of Transportation Fund Transfer Agreement, Agreement No. DMT04A28.

3. State of California Department of Transportation Fund Transfer Agreement, Agreement No. 64T342, as amended.

4. State of California Department of Transportation Fund Transfer Agreement, Agreement No. PVEA 04-97(03).

CALIFORNIA DEPARTMENT OF TRANSPORTATION

By: _____
Name: Bijan Sartipi
Title: District Director

APPROVED AS TO FORM

_____
Attorney, California Department of Transportation

EXHIBIT 1

ASSIGNED AGREEMENTS

(attached hereto)

STATE AGREEMENTS WITH THE CITY OF ALAMEDA FUNDING FERRY BOATS

NAME OF BOAT	AGREEMENT NUMBER	PROJECT NAME	STATUTE OR CTC RESOLUTIONS	FUND TYPE	AMOUNT	AMOUNT PAID	TERM OF AGREEMENT	OTHER FUNDING	DETAILED DESCRIPTION
Bay Breeze	64T342	Waterborne Ferry Vessel Acquisition	PA-91-05 BFP-91-20	Prop 116	$2,500,000	$2,500,000	4/10/92-6/30/94	None	Prepare environmental docs, boat specs & design for M/V Bay Breeze a 250 pax catararan boat built in 1994 for Oakland - SF service. PA-91-05 requires City to operate & maintain ferry vessel. City agreed to do so by its Resolution 12187 on 1/8/92.
Bay Breeze	64T342-Am. 1	Waterborne Ferry Vessel Acquisition	PA-93-21 BFP-93-29	Prop 116	$1,125,000	$1,102,490	10/13/93-6/30/95	None	Provided additional funding to complete purchase of ferry boat. Bay Breeze transferred to operate on Harbor Bay route to SF.
Encinal	PVEA 04-97(03)	City of Alameda for a Ferry that will have increased capacity for ridership.	SB 368 Stat of 1997	PVEA	$215,000	$215,000	7/17/98-12/31/98 Local Assistance	Port of Oak: $93,249 RM-1: $116,570 Ala Meas B: $93,249	Purchase larger boat to increase ridership capacity to 388. M/V Encinal built 1985, rehabbed in 2003, for Alameda-Oakland-SF ferry service.
Harbor Bay Express II	DMT04A28	East End Ferry Vessel Acquisition	PA-93-21, BFP-93-21	Prop 116	$1,100,000	$1,098,820	9/8/93-6/30/95	HBTI Fund $250,000 Operations: RM 1, Boat Upgrade: TEA-21	Purchase of East End M/V Harbor Bay Express II boat for $1,300,000 including $50,000 for Design & Proj Mgmt. Built in 1993, extensive repairs prompted lawsuits.
Peralta	04A1048	Acquire Ferry Vessel	Budget Act of 1999	General Fund	$4,750,000	$4,750,000	11/2/99-6/30/02	Alameda $375,000 Port of Oak $375,000	Build 350 pax M/V Peralta ferry boat. Local funds paid for engineering & outfitting. Delivered in 2001, repairs made in 2002 to port engine and uncoated aluminum. Boat serves Alameda-Oakland-San Francisco route.

STATE OF CALIFORNIA
DEPARTMENT OF TRANSPORTATION
FUND TRANSFER AGREEMENT

PURSUANT TO THE CALIFORNIA BUDGET ACT OF 1999
CHAPTER 50, ITEM 2660-101-0001

EFFECTIVE DATE OF AGREEMENT: NOVEMBER 2, 1999

RECIPIENT: CITY OF ALAMEDA

TITLE OF COMPLETE PROJECT: ACQUIRE FERRY VESSEL

DETAIL OF STATE FUNDS SUBJECT TO THIS AGREEMENT:

FUND SOURCE	AMOUNT	FISCAL YEAR	LAST EXPENDITURE DATE
General Fund	$4,750,000	1999-2000	June 30, 2002

TERMINATION DATE OF AGREEMENT: JUNE 30, 2002

This Agreement, entered into as of the date set forth above, is between the public entity identified above, hereinafter referred to as **RECIPIENT**, and the STATE OF CALIFORNIA, acting by and through its Business, Transportation and Housing Agency, Department of Transportation, hereinafter referred to as **STATE**.

SECTION 1. **STATE** has prepared the "Provisions of Grant," attached and made a part of this Agreement, which, together with this document and all referenced attachments and addenda, sets forth the terms and conditions under which said funds are to be expended.

SECTION 2. Funding available to **RECIPIENT** under this Agreement will terminate on the Termination Date first specified above, unless either of the following occur: a) If **RECIPIENT** fails to encumber State funds in a third party acquisition or construction contract by June 30, 2000, this Agreement will terminate on June 30, 2000, and State funds will revert; or b) Funding may be terminated upon written notice from **STATE** to **RECIPIENT** pursuant to Article II, Section 6 of the Provisions of Grant or extended by an amendment to this agreement.

SECTION 3. **STATE** has conducted a competition as required by Budget Item 2660-101-0001, Chapter 50, Statutes of 1999, and has duly awarded funding to the Project described in the "Project Description" and "Scope of Work" attached to the Provisions of Grant as Attachment I and Attachment II, respectively. **STATE** and **RECIPIENT** agree that the "Project Description" and "Scope of Work" describe the entire Project to be constructed or acquired by **RECIPIENT** under this Agreement.

SECTION 4. **RECIPIENT** has submitted the Overall Project Funding Plan, attached as Attachment III to the Provisions of Grant, which indicates all sources of funding committed to the activities to be performed under this Agreement. **RECIPIENT** will provide or cause to be provided all local matching funding shown in the Overall Project Funding Plan.

SECTION 5. **RECIPIENT** has submitted the Project Expenditure Plan, attached as Attachment IV to the Provisions of Grant. **STATE** and **RECIPIENT** agree that the various funding sources will be expended in the proportion and sequence shown in the Project Expenditure Plan.

SECTION 7. **RECIPIENT** has submitted the Project Schedule, attached as Attachment V to the Provisions of Grant, and avers this is the best currently available estimate of time needed to complete the activities to be performed under this Agreement. All work to be reimbursed under this Agreement must be completed prior to the Termination Date of the Agreement.

SECTION 8. This Agreement may be modified, altered or revised only with the joint written consent of **RECIPIENT** and **STATE**.

SECTION 9. **RECIPIENT** will not award a construction contract over $10,000 or other contracts over $25,000 (excluding professional service contracts of the type which are required to be procured in accordance with Government Code Sections 4525(d), (e), and (f) through 4529.5) on the basis of a non-competitive negotiation for work to be performed under this Agreement without the prior written approval of **STATE.** If the **RECIPIENT** is required to provide a local match, contracts awarded prior to the effective date must meet the requirements set forth in this paragraph.

SECTION 10. **RECIPIENT** has executed this Fund Transfer Agreement pursuant to the authorizing resolution, attached as Attachment VII to the Provisions of Grant.

SECTION 11. The grant administrators for the parties will be for **STATE**, the District Division Chief for Planning for the District in which the Project is located, and for **RECIPIENT**, its General Manager, Executive Director, City Manager or a Designee named in writing.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement by their duly authorized officers.

STATE OF CALIFORNIA
DEPARTMENT OF TRANSPORTATION

BY _____
DARNALL W. REYNOLDS
District Division Chief - Planning

CITY OF ALAMEDA

BY _____
JAMES M. FLINT
City Manager

APPROVED AS TO FORM

BY _____
LUCILLE Y. BACA
Attorney

STATE OF CALIFORNIA
DEPARTMENT OF TRANSPORTATION
BY _____
PETER J. STEINERT, Chief
Office of State Transit Program Management
DATE 8/21/00

Approved as to Form:
CITY ATTORNEY
By: _____
Deputy City Attorney

PROVISIONS OF GRANT

STATE OF CALIFORNIA
DEPARTMENT OF TRANSPORTATION
FUND TRANSFER AGREEMENT

PURSUANT TO THE CALIFORNIA BUDGET ACT OF 1999
CHAPTER 50, ITEM 2660-101-0001

RECIPIENT has agreed to accept the applicable provisions contained herein, including all Attachments and Addenda (Provisions) as a condition of acceptance of a grant from these fund sources. The **STATE** will have the administrative rights, duties, and responsibilities described in these Provisions.

ARTICLE I. PROJECT DESCRIPTION AND SCOPE OF WORK

SECTION 1. **RECIPIENT** agrees to complete acquisition of the ferry vessel as described in the attached Project Description and Scope of Work. All work must be accomplished in accordance with the applicable provisions of the Public Utilities Code, the Streets and Highways Code, the Government Code and other applicable statues and regulations.

SECTION 2. **RECIPIENT** agrees that if State funds prove insufficient to complete acquisition of the Project ferry vessel and to place it in revenue operation, that payment of any additional amounts required are the sole responsibility of **RECIPIENT**. **RECIPIENT** further agrees that it will secure and provide, without further State assistance under this Fund Transfer Agreement process, such additional resources as are necessary to pay these additional amounts and expeditiously complete acquisition of the Project ferry vessel.

SECTION 3. **RECIPIENT** acknowledges and agrees that **RECIPIENT** is the sole control and manager of the Project ferry vessel acquisition, and is responsible for the subsequent use of said ferry vessel for the benefit of the public. **RECIPIENT** shall be solely responsible for complying with the funding and use restrictions established by the statutes from which the funds for this Agreement are derived, the State Treasurer, and the terms of this Agreement. **RECIPIENT** shall indemnify, defend and hold harmless the **STATE** and the State Treasurer relative to any misuse by **RECIPIENT** of State funds, the Project ferry vessel, Project generated income, or other fiscal acts or omissions of **RECIPIENT**.

SECTION 4. **RECIPIENT** agrees to hire a marine architect or other expert, skilled in the design, construction and operation of ferry vessels, to inspect and approve the Project ferry vessel. This expert must be a person or firm not presently in the employ of **RECIPIENT** or other funding agency other than on a consultant basis, and shall be chosen based on a proven track record in this activity. The expert must provide a detailed investigation report that **RECIPIENT** must consider, prior to the acceptance by the **RECIPIENT** of the Project ferry vessel.

SECTION 5. **RECIPIENT** agrees to establish a peer review team that will be consulted in the development of specifications and in the development of a process for acquiring the Project ferry vessel. This team must consist of at least three persons who are not currently

employees of **RECIPIENT** or other funding entity, who have experience in the acquisition of large passenger vessels.

ARTICLE II. PAYMENT

SECTION 1. **STATE** and **RECIPIENT** agree that **RECIPIENT** shall be responsible for assuring all local matching funds required for the Project ferry vessel acquisition are contributed in accordance with a schedule of payments as shown in the Project Expenditure Plan prepared by **RECIPIENT**.

SECTION 2. Project-related travel and subsistence expense of **RECIPIENT** and its subcontractors claimed for reimbursement or as local match credit shall not exceed rates authorized to be paid State employees under current State Department of Personnel Administration (DPA) rules. Reimbursement for travel costs related to the Project will not exceed rates established through Department of Personnel Administration requirements. If the rates invoiced by **RECIPIENT** are in excess of DPA rates then the **RECIPIENT** is responsible for the difference and any overpayments inadvertently paid by **STATE** shall be reimbursed to **STATE** on demand.

SECTION 3. Not more frequently than once a month, but at least quarterly, **RECIPIENT** will prepare and submit to **STATE** (directed to the attention of the appropriate State District Transportation Representative) Progress Payment Vouchers for actual costs incurred and paid for by **RECIPIENT** consistent with the Scope of Work document. Advance reimbursements or payments are not allowed. **RECIPIENT** must not only have incurred the expenditures, but must have also paid for them. Each such voucher will report the total expenditures from all sources and will specify the percent of State reimbursement requested and the fund source. The voucher should also be accompanied by a report describing the overall work status and progress on Project tasks. If applicable, the first voucher shall also be accompanied by a report describing any tasks specified in the Scope of Work document which were accomplished prior to the Effective Date of this Agreement, for which costs are to be credited toward the required local match. The method of payment for this Agreement will be based upon reimbursement for actual allowable costs incurred.

SECTION 4. Reimbursement will be made or allowed only for work performed after the Effective Date of this Agreement and prior to the Termination Date. The Termination Date refers to the last date for **RECIPIENT** to incur valid costs or credits for work performed under this Agreement, and is the date the Agreement expires. **RECIPIENT** shall submit the Project Close–Out Report and the final invoice within 180 days of Termination Date. It is the **RECIPIENT'S** responsibility to assure that work is completed and all goods and services related to the acquisition of the Project ferry vessel are received prior to the Termination Date.

SECTION 5. In the event grant funds are restricted, limited or otherwise conditioned by acts of the Legislature or other funding entity, **STATE** shall not be held liable for any resulting damage or penalty.

SECTION 6. **STATE** reserves the right to terminate funding for this Agreement upon written notice to **RECIPIENT** in the event that **RECIPIENT** fails to proceed with the Project work in accordance with the Scope of Work document, or otherwise violates the conditions of these Provisions or the funding authorization such that substantial performance is significantly endangered. If **RECIPIENT** fails to encumber State funds in a third party acquisition or construction contract by June 30, 2000, this Agreement will terminate on June 30, 2000.

No other termination shall become effective if, within 30 days after receipt of a Notice of Termination, **RECIPIENT** either cures the default involved or, if not reasonably susceptible of cure within said 30-day period, **RECIPIENT** proceeds thereafter to complete the cure in a manner and time line acceptable to **STATE**. In the event of such termination, **RECIPIENT** shall be reimbursed its authorized costs up to **STATE'S** share of allowable Project costs incurred prior to the date of termination, provided that all other terms and conditions of this Agreement have been met. Any such termination shall be accomplished by delivery to **RECIPIENT** of a Notice of Termination, which notice shall become effective not less than 30 days after receipt, specifying the reason for the termination, the extent to which funding of work under these provisions is terminated and the date upon which such termination becomes effective, if beyond 30 days after receipt. During the period before the effective termination date, **RECIPIENT** and **STATE** shall meet to attempt to resolve any dispute.

ARTICLE III. REPORTS AND RECORDS

SECTION 1. **RECIPIENT**, its contractors and subcontractors shall establish and maintain an accounting system and records that properly accumulate and segregate incurred costs by line item for the Project. **RECIPIENT'S**, contractor's and subcontractor's accounting systems shall conform to Generally Accepted Accounting Principles (GAAP), enable the determination of incurred costs at interim points of completion, and provide support for reimbursement payment vouchers or invoices. All accounting records and other supporting papers of **RECIPIENT**, its contractors and subcontractors connected with performance under this Agreement shall be maintained for a minimum of three years from the date of final payment to **RECIPIENT** under these provisions and shall be held open to inspection and audit by representatives of **STATE,** the California State Auditor and auditors of the Federal Government. Copies thereof must be furnished by **RECIPIENT, RECIPIENT'S** contractors and subcontractors upon request. In conducting an audit of the costs claimed under these provisions, **STATE** will rely to the maximum extent possible on any prior audit of **RECIPIENT** pursuant to the provisions of Federal and State laws. In the absence of such an audit, any acceptable audit work performed by **RECIPIENTS'** external and internal auditors and/or federal auditors will be relied upon and used by **STATE** when planning and conducting additional audits.

SECTION 2. **RECIPIENT** agrees to comply with Office of Management and Budget Circular A-87, Cost Principles for State and Local Governments, and 49 CFR, Part 18, Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments. **RECIPIENT'S** contractors and subcontractors will agree that contract cost principles at least as restrictive as 48 CFR, Federal Acquisition Regulations System, Chapter 1, Part 31 shall be used to determine the allowability of individual items of cost.

Any costs for which **RECIPIENT** has received payment that are determined by subsequent audit to be unallowable under Office of Management and Budget Circular A-87 or 49 CFR, Part 18 are subject to repayment by **RECIPIENT** to **STATE**. Should **RECIPIENT** fail to reimburse moneys due **STATE** within 30 days of demand, or within such other period as may be agreed between the parties hereto, **STATE** is authorized to withhold future payments due **RECIPIENT** from any source, including but not limited to, the State Treasurer, the State Controller and the CTC.

RECIPIENT agrees to include this Project in the schedule of projects to be examined in their annual audit and in the schedule of projects to be examined under its single audit that is prepared in accordance with Office of Management and Budget Circular A-133.

SECTION 3. For the purpose of determining compliance with Title 21, California Code of Regulations, Section 2500, et seq., when applicable, and other matters connected with the performance of **RECIPIENT'S** contracts with third parties pursuant to Government Code Section 8546.7, **RECIPIENT**, **RECIPIENT'S** contractors, subcontractors and **STATE** shall maintain all books, documents, papers, accounting records, and other evidence pertaining to the performance of such contracts, including but not limited to, the costs of administering the various contracts. All of the above referenced parties shall make such materials available at their respective offices at all reasonable times during the contract period and for three years from the date of final payment from **STATE** to **RECIPIENT** under these provisions. **STATE**, the California State Auditor, or any duly authorized representative of the Federal Government shall have access to any books, records, and documents that are pertinent to the Agreement or Project for audits, examinations, excerpts, and transactions and copies thereof shall be furnished by **RECIPIENT**, **RECIPIENT'S** contractors and subcontractors, if requested.

SECTION 4. **RECIPIENT** will insert clauses to the effect of Sections 1, 2 and 3 above of this Article III in all of its contracts funded by **STATE** under these Provisions.

SECTION 5. Subject to the discretion of the **STATE**, **RECIPIENT** and **STATE** agree to conduct, on a quarterly basis, on-site reviews of all aspects of the progress of work performed under this Agreement. The first quarterly review meeting shall take place within 90 days following execution of this Agreement. **RECIPIENT** agrees, during each quarterly progress review, to inform **STATE** regarding (1) whether the Project is proceeding on schedule and within budget, (2) major construction accomplishments during the quarter, (3) any actual or anticipated problems which could lead to delays in schedule, increased costs or other difficulties, (4) the status of the Project budget and, (5) the status of critical elements of the Project.

SECTION 6. Quarterly reviews of **RECIPIENT** progress will include consideration of whether activities are within the Scope of Work for this Agreement and in compliance with State laws, regulations, administrative requirements, implementation of the Project under this Agreement and other restrictions affecting this Agreement.

SECTION 7. If **RECIPIENT** and **STATE** determine, at any time during the performance of the work to be performed under this Agreement, that the Project budget may be exceeded, **RECIPIENT** shall take the following steps:

(1) Notify the designated **STATE** representative of the nature and projected extent of the overrun and, within a reasonable period thereafter, identify and quantify potential costs savings or other measures which will bring the budget into balance,

(2) Schedule the projected overrun for discussion at the next Quarterly Review meeting, and

(3) Identify the source of additional **RECIPIENT** funds which can be made available to complete the Project.

ARTICLE IV. GENERAL PROVISIONS

SECTION 1. In the performance of work under these provisions, **RECIPIENT,** its contractor(s) and all subcontractors shall not unlawfully discriminate, harass or allow harassment, against any employee or applicant for employment because of sex, race, color,

ancestry, religious creed, national origin, physical disability (including HIV and AIDS), mental disability, medical condition (cancer), age (over 40), marital status, or family care leave. **RECIPIENT,** its contractor(s) and all subcontractors shall ensure that the evaluation and treatment of their employees and applicants for employment are free from such discrimination and harassment. **RECIPIENT**, its contractor(s) and all subcontractors shall comply with the provisions of the Fair Employment and Housing Act (Government Code Section 12900 et seq.), and the applicable regulations promulgated thereunder (California Code of Regulations, Title 2, Section 7285.0 et seq.). The applicable regulations of the Fair Employment and Housing Commission implementing Government Code, Section 12990 (a-f), set forth in Chapter 5 of Division 4 of Title 2 of the California Code of Regulations are incorporated into this contract by reference and made a part hereof as if set forth in full. Each of the **RECIPIENT'S** contractors and its subcontractors shall give written notice of their obligations under this clause to labor organizations with which they have a collective bargaining or other agreements. **RECIPIENT** shall include the non-discrimination and compliance provisions of this clause in all contracts and subcontracts to perform work under this Agreement.

SECTION 2. **RECIPIENT,** its contractor(s) and subcontractors will permit access to all records of employment, employment advertisements, application forms, and other pertinent data and records by the State Fair Employment Practices and Housing Commission, or any other agency of the State of California designated by **STATE**, for the purpose of investigation to ascertain compliance with Section 1 of this Article IV.

SECTION 3. **RECIPIENT** agrees to insert, in appropriate contracts, clauses to the effect of Sections 1 and 2 of this Article IV and the California Labor Code requirements that all workers employed on public works projects (as defined in California Labor Code Section 1720-1815) will be paid not less than the general prevailing wage rates predetermined by the Department of Industrial Relations.

SECTION 4. Should Public Contract Code Sections 2000 or 10115 et seq. or Military and Veterans Code Sections 999 et seq., be applicable to **RECIPIENT**, **RECIPIENT** will meet, or make good faith efforts to meet, the following Disabled Veterans Business Enterprises goals or **RECIPIENT'S** applicable goals in the award of every contract for work to be performed under these Provisions:

Disabled Veterans Business Enterprises - 3%

RECIPIENT shall have the sole duty and authority under this Agreement to determine whether good faith efforts were sufficient as outlined in Public Contract Code Sections 2000 and 10115 et seq., and the Military and Veterans Code Section 999 et seq.

SECTION 5. Neither **STATE** nor any officer or employee thereof shall be responsible for any damage or liability occurring by reason of anything done or omitted to be done by **RECIPIENT**, its agents and contractors, under, or in connection with any work, authority, duty, or jurisdiction delegated to **RECIPIENT** under this Agreement or as respects environmental clean up obligations or duties of **RECIPIENT** relative to work performed under this Agreement. **RECIPIENT** shall fully indemnify and hold **STATE** harmless from any liability imposed for injury (as defined by Government Code Section 810.8) or environmental obligations or duties arising or created by reason of anything done or imposed by operation of law or assumed by, or omitted to be done by **RECIPIENT** under or in connection with any work, authority, duty, or jurisdiction delegated to **RECIPIENT** under this Agreement.

SECTION 6. Subject to the terms and provisions of the Fund Transfer Agreement, **RECIPIENT** shall be the owner of the Project ferry vessel. **RECIPIENT** is obligated to continue operation and maintenance of said ferry vessel dedicated to public transportation use unless the **RECIPIENT** ceases ownership of said ferry vessel or ceases to utilize said ferry vessel for the intended public transportation purposes, in which cases **STATE** must be provided a refund or credit as provided in Article IV, Section 7 below. The Project ferry vessel shall be dedicated to public transportation use for its full economic life cycle, which, for the purpose of this Agreement, is 30 years commencing from the date of the original commissioning of the vessel.

SECTION 7. In the event that **RECIPIENT** ceases to utilize the Project ferry vessel for public transportation purposes or sells or transfers title to or control over said ferry vessel, **STATE**, or any assignee public body acting on its behalf, shall be entitled to a refund or credit, at **STATE'S** sole option, equivalent to the proportion of the full economic life cycle remaining, multiplied by the State funds provided under this Agreement. **RECIPIENT** and **STATE** agree that if for any reason, said ferry vessel fails to be utilized for public transportation purposes for a period in excess of 180 days during any twelve month period, said ferry vessel shall be considered no longer in public service, and **RECIPIENT** must make a refund or credit to **STATE** in accordance with the provisions of this Section. **STATE** will not accept the ferry vessel in lieu of said refund or credit.

SECTION 8. After the date the **STATE** receives the refund or credit as provided in Section 7 above, neither **RECIPIENT** and/or any person to whom **RECIPIENT** has transferred title or control, shall any longer have any obligation under this Agreement to continue operation of said ferry vessel and/or dedicate said ferry vessel for public transportation purposes, but may then use the ferry vessel for any lawful purpose.

SECTION 9. Notwithstanding the provisions in Article IV, Sections 6 through 8 above, **RECIPIENT**, upon receiving permission from **STATE**, may transfer ownership of the ferry vessel to another public entity in the jurisdiction of the State of California for public transportation use without making repayment to **STATE**. Should such transfer occur, the provisions of Article IV, Sections 6 through 8 above, shall apply to the agency which then assumes ownership of the Project ferry vessel. The transferee public body subsequently will be responsible for repaying to **STATE** any funds required due to failure to operate the ferry vessel for public transportation use for its full economic lifetime.

SECTION 10. The Fund Transfer Agreement, these Provisions, the Project Description, the Scope of Work document, and all included Attachments to this Agreement approved by **STATE** constitute the entire terms for the work to be performed pursuant to this Agreement.

SECTION 11. **RECIPIENT** shall conform to all applicable Federal and State laws regarding access by handicapped individuals.

SECTION 12. **RECIPIENT** agrees to protect, defend and indemnify **STATE** against any liability, cost, claim or expense involving remediation of hazardous materials associated with the work performed under this agreement, and agrees to make no demand, claim or request upon **STATE** for additional State funding to address the remediation of hazardous materials associated with the work performed under this Agreement.

ATTACHMENTS

ATTACHMENT I	PROJECT DESCRIPTION
ATTACHMENT II	SCOPE OF WORK
ATTACHMENT III	OVERALL PROJECT FUNDING PLAN
ATTACHMENT IV	PROJECT EXPENDITURE PLAN
ATTACHMENT V	PROJECT SCHEDULE
ATTACHMENT VI	CERTIFICATION OF FUNDS
ATTACHMENT VII	RECIPIENT RESOLUTION

City of Alameda California

August 31, 1999

Application for Ferry Boat Acquisition Funds
1999 Budget Act - Item 2660-101-0001

PART 1 - PROJECT DESCRIPTION

This project consists of the purchase of an additional ferry vessel for the Alameda/Oakland Ferry Service (AOFS). The vessel would have an operational speed of at least 25 knots and a passenger capacity of approximately 350. In conjunction with the current vessel (the Encinal), this vessel would be used to sustain an expanded 15 departure weekday schedule and an expanded 10 departure Summer weekend schedule. Service to San Francisco's Pac Bell Park would also be provided.

A) Additional Ridership
The expanded schedule, increased reliability and reduced travel time resulting from the second vessel would contribute approximately 75,000 additional trips in the first year. This does not include additional ridership resulting from new service to San Francisco's Pac Bell Park. Ball park ridership is expected to generate an additional 20,000 passengers the first year.

B) Coordination with Other Transit
The Alameda/Oakland Ferry Service is already linked to public transportation at all its terminals. In Oakland and Alameda, terminal bus service is provided by AC Transit. In San Francisco, the ferry dock is served by MUNI and is two blocks from MUNI light rail and BART. AC Transit, MUNI and BART information is provided onboard the ferry as well as at both east bay ferry terminals. In addition, the AOFS has an inter-System Transfer arrangement with both AC Transit and MUNI. Ferry riders receive free both AC Transit and MUNI transfers when purchasing a ferry ticket.

C) Commute Travel Time Reduction
Morning ferry commute Transit time between Alameda and SF is 18 minutes compared to the 25 to 30 minutes required by single occupant automobile.

D) Impact on Bicycle Use
Bicycles are welcomes on the AOFS on any weekday or weekend run. There are bicycle racks on the ferry Encinal and similar racks will be required on the new vessel. Bicycle lockers are also provided at both east bay ferry terminals.

Public Works Department, Room 207
Engineering Division

City Hall
2263 Santa Clara Avenue · 94501-4455
Tel: 510.748-4510 Fax: 510.748-4697

E) Increased Efficiency and Reliability
The proposed second vessel would enable the ferry to continue to provide 15 weekday trip schedules and ensure service consistency, carrying capacity and reliability when the primary vessel is off-line due to scheduled maintenance or mechanical problems. Currently, the ferry service must depend upon its contractor to provide two contractor owned vessels to maintain the weekday schedule. These contractor supplied back up vessels are not able to maintain the published arrival times. The new boat would:

1) Reduce commute times on the 6:30/6:40 and 7:30/7:40 AM and 5:20 pm. weekday runs.
2) Increase efficiency by replacing the current three vessel weekday assignment with two vessels, thereby simplify scheduling.
3) Maintain both departure and arrival times (not currently possible), and,
4) Ensure that a reliable vessel is available to step in when the M.V. Encinal is off line.

F) Disabled Accessibility
The AOFS is fully handicapped accessible. The ferry service complies with current marine standards for ADA. The new vessel would be fully compliant with these standards.

PART 2 Scope of Work

TASK	Local Match	State Grant	Total
Vessel Purchase	0	$4,350,000	$4,350,000
Contract Admin.	$145,050	$ 0	145,050
Tech. Specs/ Consultant	$ 28,000	$ 0	$ 28,000
Const. Mgm/ Consultant	$ 73,950	$ 0	$ 73,950
Shipyard Selection/ Consultant	$ 25,000	$ 0	$ 25,000
Peer Review/ Consultant	$ 23,000	$ 0	$ 23,000
Contingency (10%)	$ 35,000	$ 400,000	$ 435,000
Local outfitting	$ 13,275	$ 0	$ 13,275
Sales Tax (8.5%)	$406,725	$ 0	$ 406,725
Total	$750,000	$4,750,000	$5,500,000

Boat builder is responsible for boat design, construction, vessel delivery and license.

9. OVERALL PROJECT FUNDING PLAN
(IN THOUSANDS)

Project Name: Alameda/Oakland Ferry
2ND Vessel
Agency Name: City of Alameda

Cost Escalation Factors:

Fund Source	Through: FY 98-99	FY 99-00	FY 00-01	FY 01-02	FY 02-03	FY____	TOTAL
State							
TCI/PTA							$0
AB 973							$0
Prop 116							$0
FCR							$0
State/Local Partnership Program							$0
TSM (CMAQ)							$0
ISTEA/TEA-21 (STP)							$0
State Highway Account							$0
Other (Specify Source)							$0
'99 Budget Act/State Grant		$0	$3,597	$1,153			$4,750
Local							
Match for TCI							$0
Match for AB 973							$0
Match for Prop 116							$0
Match for TSM (CMAQ)							$0
ISTEA/TEA-21 Regional STP							$0
Other (Specify Source)							$0
City of Alameda/Port of Oakland		$117	$173	$460			$750
Federal							
FTA Section _____							$0
FTA Section _____							$0
Demonstration							$0
Other (Specify Source)							$0
							$0
TOTALS	$0	$117	$3,770	$1,613	$0	$0	$5,500

AGREEMENT NO. 04A1048
ATTACHMENT III

PROJECT FINANCIAL PLAN
CASH FLOW EXPENDITURE AND REIMBURSEMENT PLAN

Project Title: Alameda/Oakland Ferry 2ND Vessel

	Prior Alloc	Current Request	FY 99/00		FY 00/01				FY 01/02				Future Requests	Project Total
			Quart. 3	Quart. 4	Quart. 1	Quart. 2	Quart. 3	Quart. 4	Quart. 1	Quart. 2	Quart. 3	Quart. 4		
COST CATEGORY														
Environ.Studies & Permits														
Federal:														$0
State:														$0
														$0
Local:														$0
Other:														$0
Sub-Total Env. & Permits	$0	$0	$0	$0	$0	$0	$0	$0	$0	$0	$0	$0	$0	$0
PS&E														
Federal:														$0
State:														$0
														$0
Local:														$0
Other:														$0
Sub-Total PS&E	$0	$0	$0	$0	$0	$0	$0	$0	$0	$0	$0	$0	$0	$0
Right of Way														
Federal:														$0
State:														$0
														$0
Local:														$0
Other:														$0
Sub-Total R-O-W	$0	$0	$0	$0	$0	$0	$0	$0	$0	$0	$0	$0	$0	$0
Construction,														
Federal:														$0
State:														$0
														$0
Local:														$0
Other:														$0
Sub-Total Construction	$0	$0	$0	$0	$0	$0	$0	$0	$0	$0	$0	$0	$0	$0
Vehicle Acquisition/Rehab														
Federal:														$0
State: '99 Budget Act/State Grant														$0
		$4,750,000	$0		$826,500	$900,250	$935,250	$935,250	$935,250	$217,500				$4,750,000
Local: City of Alameda, Port of Oakland		$750,000	$60,221	$57,221	$34,511	$69,511	$34,511	$34,511	$454,514	$5,000				$750,000
Other:														$0
Sub-Total Rehab/Acq	$0	$5,500,000	$60,221	$57,221	$861,011	$969,761	$969,761	$969,761	$1,389,764	$222,500	$0	$0	$0	$5,500,000
Project Summary														
Federal:	$0	$0	$0	$0	$0	$0	$0	$0	$0	$0	$0	$0	$0	$0
State:														$0
99 Budget Act/State Grant	$0	$4,750,000	$0	$0	$826,500	$900,250	$935,250	$935,250	$935,250	$217,500	$0	$0	$0	$4,750,000
Local: City of Alameda/Port of Oakland	$0	$750,000	$60,221	$57,221	$34,511	$69,511	$34,511	$34,511	$454,514	$5,000	$0	$0	$0	$750,000
Other:	$0	$0	$0	$0	$0	$0	$0	$0	$0	$0	$0	$0	$0	$0
Project Total	$0	$5,500,000	$60,221	$57,221	$861,011	$969,761	$969,761	$969,761	$1,389,764	$222,500	$0	$0	$0	$5,500,000

note: FY = July 1 through June 30

AGREEMENT NO. 04A1048
ATTACHMENT IV

PART 5 Schedule

State Grant Award	October 1999
Contract Administration	Oct. '99 -> Sept. '01
Contract Mgmt. (Vessel specifications)	Oct. '99 -> Feb. '00
Call For Bids	March/April '00
RFP Evaluation/Contract Award	May/June '00
Construction Management	June '00 -> Aug. '01
Vessel Construction/Modification Launch/Sea Trials	June '00 -> Aug. '01 July 2001
Vessel Delivery	August 2001

AGREEMENT NO. 04A1048
ATTACHMENT VI

CERTIFICATION OF FUNDS

Name of Recipient:	City of Alameda
Name of Project:	Acquire Ferry Vessel
Authorizing Document:	Budget Act of 1999, Chapter 50, Item 2660-101-0001
Funding Provided under This Agreement:	$4,750,000
Fund Source:	General Fund
Expiration Date of Funds:	June 30, 2002

The undersigned hereby certifies that the Project Description and Scope of Work documents incorporated into this Agreement have been submitted by the recipient named above, and that their description of tasks are in conformance with the authorizing document specified above.

Wade Greene
Chief, State Grants Branch
District 4, Office of Transportation Planning A

6/23/00
Date

GENERAL FUND MONEY

SOURCE		CHARGE		EXP AUTH		SPECIAL DESIGNATION		OBJECT	AMOUNT	DE CR	FISCAL YEAR	ENCUMBRANCE DOCUMENT NUMBER
DIST	UNIT	DIST	UNIT	GEN LED / WORK ORDER NO.	SUB ACCT	SUB JOB NO. / LOCATION	R/W PARCEL NO. / BRIDGE NO.					
04	821	04		T835GA				7049	4750,000 00		00	MTT835GA

I hereby certify upon my own personal knowledge that budgeted funds are available for the period and purpose of the expenditure stated above.

ITEM	CHAPTER	STATUTES	FISCAL YEAR
2660-101-001	50	1999	99/00

SIGNATURE OF ACCOUNTING OFFICER: Michele C Forks

DATE: 6/20/00

CITY OF ALAMEDA RESOLUTION NO. 13184

IDENTIFYING $375,000 IN LOCAL MATCH GUARANTEE
FOR THE $4.75 MILLION STATE GRANTS FOR THE
ALAMEDA/OAKLAND FERRY VESSEL PURCHASE

Approved as to Form
CITY ATTORNEY

WHEREAS, the State Budget Act of 1999 provides $6 million to assist local government operators with the acquisition of ferry vessels; and

WHEREAS, on October 5, 1999, the City Council approved the "Application for $4.75 million in State Grants for Alameda/Oakland Ferry Service (AOFS) Ferry Vessel Purchase"; and

WHEREAS, under the grant, staff proposes to purchase a new or used vessel for a total cost of $5.5 million; and

WHEREAS, the remaining $750,000 is the required local match to be split equally between the Port of Oakland and the City of Alameda; and

WHEREAS, on October 5, 1999, the Port of Oakland approved Resolution No. 99408, authorizing its portion of the local match, which is $375,000, or half of the total local match.

NOW, THEREFORE, BE IT RESOLVED that the City Council hereby approves $375,000 in local match guarantee from unexpended Measure B funds as required for the State grant of $4.75 million for Alameda/Oakland Ferry Service Ferry Vessel Purchase.

* * * * * *

I, the undersigned, hereby certify that the foregoing Resolution was duly and regularly adopted and passed by the Council of the City of Alameda in regular meeting assembled on the 15th day of February, 2000, by the following vote to wit:

AYES:	Councilmembers Daysog, DeWitt, Johnson, Kerr and Mayor Appezzato - 5.
NOES:	None.
ABSENT:	None.
ABSTENTIONS:	None.

IN WITNESS, WHEREOF, I have hereunto set my hand and affixed the official seal of said City this 16th day of February, 2000.

Diane B Felsch

Diane Felsch, City Clerk
City of Alameda

STATE OF CALIFORNIA
DEPARTMENT OF TRANSPORTATION
FUND TRANSFER AGREEMENT

INITIAL DOCUMENT
COVERING ALLOCATIONS OF
[ ] PASSENGER RAIL AND
CLEAN AIR BOND ACT OF 1990 (PROP. 108), OR
[X] CLEAN AIR AND TRANSPORTATION
IMPROVEMENT ACT OF 1990 (PROP. 116) BOND FUNDS, OR
[ ] TRANSIT CAPITAL IMPROVEMENT FUNDS

EFFECTIVE DATE OF AGREEMENT: SEPTEMBER 8, 1993

RECIPIENT: CITY OF ALAMEDA

TITLE OF COMPLETE PROJECT: EAST END FERRY VESSEL ACQUISITION

PHASE OF PROJECT [ ] OR COMPLETE PROJECT [X]

CTC RESOLUTIONS:
PROJECT APPROVAL: PA-93-21 EFFECTIVE DATE: MAY 6, 1993
ALLOCATION: BFP-93-21 FISCAL YEARS: 92/93

FUND AUTHORIZATIONS:

FUND SOURCE	AMOUNT	FISCAL YEAR	LAST EXPENDITURE DATE
Prop. 116	$1,100,000	1992/93	~~June 30, 1994~~ June 30, 1995

TERMINATION DATE OF AGREEMENT: June 30, 1995
(In No Event Later Than Twelve [12] Months After Scheduled Project Operations Date.)

This Agreement, entered into as of the date set forth above, is between the recipient public entity identified above, hereinafter referred to as **RECIPIENT**, and the STATE OF CALIFORNIA, acting by and through its Business, Transportation and Housing Agency, Department of Transportation, hereinafter referred to as **STATE**.

SECTION 1. **RECIPIENT** has applied to the California Transportation Commission ("CTC") for funds derived under the identified **STATE** Fund Source, to be allocated by CTC, for the purpose of the project named above and further described in the "Project Description" (the Project) attached as Attachment I to the Standard Provisions of Grant.

SECTION 2. THE CTC has allocated funds for the Project, or a phase of the Project ("Project Phase"), in the CTC Resolution (the "Resolution") identified above and attached as Attachment II to the Standard Provisions of Grant and made a part of this Agreement. **RECIPIENT** shall be bound to the terms and conditions of the Resolution and all restrictions, rights, duties and obligations established therein shall inure to the benefit of CTC and be subject to any necessary enforcement action by CTC.

SECTION 3. **STATE** has prepared the "Standard Provisions of Grant," attached and made a part of this Agreement, which, together with this document and all referenced attachments and addenda, sets forth the terms and conditions under which said funds are to be expended.

SECTION 4. **STATE** and **RECIPIENT** have negotiated the "Project Description," which describes the entire Project to be constructed or acquired by **RECIPIENT**. Separate Project Phase descriptions, if applicable, will describe the tasks to be performed for each separate phase of the Project. Subsequent Project Phase descriptions beyond the initial approved description, if any, will be added to this Agreement by Amendment.

SECTION 5. **STATE** and **RECIPIENT** have negotiated and **RECIPIENT** has submitted, at the time of **RECIPIENT**'s request for allocation of funds, the "Scope of Work," (attached as Attachment III to the Standard Provisions of Grant and made a part of this Agreement), which sets forth the tasks and the estimated State bond or TCI reimbursement including progress payments, if any, or the amounts of progress payments to be made from TCI funds if authorized as part of the Scope of Work. State funding limits and the drawdown schedule established in each original or amended "Scope of Work" for every phase, initial or subsequent, shall not be exceeded or modified without a subsequent amendment and encumbrance of **STATE** funds.

SECTION 6. The completed and signed **STATE** fund certification on the Scope of Work Approval document, Attachment IV to the Standard Provisions of

Grant, including any funding increases allocated to subsequent phases evidenced by an amendment to Attachment IV with additional fund certifications, evidences the limited commitment of **STATE** funding under this Agreement.

SECTION 7. Funding available to **RECIPIENT** under this Agreement will terminate on the Termination Date first specified above, unless earlier terminated upon written notice from **STATE** to **RECIPIENT** pursuant to Article III, Section 6 of the Standard Provisions of Grant or extended by amendment.

SECTION 8. This Agreement may be modified, altered or revised only with the joint written consent of **RECIPIENT** and **STATE**.

SECTION 9. **RECIPIENT** shall not award a construction contract over $10,000 or other contracts (excluding professional services contracts) over $25,000 on the basis of a noncompetitive negotiation for work to be performed under this Agreement without the prior written approval of **STATE**.

SECTION 10. **RECIPIENT** shall conform to any and all environmental obligations established in CTC Resolution G-91-2, attached as Attachment V to the Standard Provisions of Grant, at the expense of **RECIPIENT** or the responsible party and without further financial contribution or obligation of **STATE**.

SECTION 11. **RECIPIENT** has executed this Fund Transfer Agreement pursuant to the authorizing resolution, attached as Attachment VI to the Standard Provisions of Grant.

SECTION 12. The grant administrators for the parties shall be for **STATE**, the District Director of Transportation for the District in which the Project is located, and for **RECIPIENT**, its General Manager or Executive Director or Designee.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement by their duly authorized officers.

STATE OF CALIFORNIA
DEPARTMENT OF TRANSPORTATION

BY Rennie Adams
RENNIE ADAMS
Chief, Division of Mass Transportation

CITY OF ALAMEDA

BY William C. Norton
WILLIAM C. NORTON
City Manager

RECOMMENDED FOR APPROVAL:
Robert L. Warnick
PUBLIC WORKS DIRECTOR

Approved as to Form
by Asst City Attorney
Heather C. McLaughlin
CITY ATTORNEY

STANDARD PROVISIONS OF GRANT

STATE OF CALIFORNIA
DEPARTMENT OF TRANSPORTATION
FUND TRANSFER AGREEMENT

COVERING ALLOCATIONS OF STATE BOND FUNDS (PROPOSITION 108 OR 116) AND TRANSIT CAPITAL IMPROVEMENT FUNDS

RECIPIENT has agreed to accept the applicable provisions contained herein, including all Attachments and Addenda (these "Provisions"), as a condition of its acceptance of a grant from these sources. The State of California, acting through the Department of Transportation, referred to herein as **STATE**, shall have the administrative responsibilities described in these Provisions.

ARTICLE I. PROJECT DESCRIPTION

SECTION 1. **RECIPIENT** agrees to complete the Project, or the identified Project Phase thereof, as described in the attached Project Description and Scope of Work for the identified Project or Project Phase. Reference hereinafter to the Project shall also mean the Project Phase if appropriate.

SECTION 2. **RECIPIENT** agrees that if **STATE** funds prove insufficient to complete the described Project and open it to revenue operation, that payment of any additional amounts required shall be the sole responsibility of **RECIPIENT**. **RECIPIENT** further agrees that it will secure and provide, without further **STATE** assistance under this Fund Transfer Agreement process, such additional resources as are necessary to pay these additional amounts and expeditiously complete the Project.

ARTICLE II. SCOPE OF WORK

SECTION 1. **RECIPIENT** shall be responsible for complete performance of the work described in the approved Scope of Work document for the Project corresponding to that commitment of future State funds. All work shall be accomplished in accordance with the applicable provisions of the Public Utilities Code and the Streets and Highways Code.

SECTION 2. **RECIPIENT** acknowledges and agrees that **RECIPIENT** is the sole control and manager of the proposed Project and its subsequent employment for the benefit of the public. **RECIPIENT** shall be solely responsible for complying with

the funding and use restrictions established by the statutes from which the funds are derived, the CTC, the State Treasurer, the Internal Revenue Service, and the terms of this Agreement. **RECIPIENT** shall indemnify, defend and hold harmless the **STATE**, the CTC and the State Treasurer relative to any misuse by **RECIPIENT** of State funds, Project property or Project generated income or other fiscal acts or omissions of **RECIPIENT**.

SECTION 3. A Schedule of Tasks and a drawdown schedule of Estimated Progress Payments are included in the Scope of Work document. **STATE** need not pay **RECIPIENT** a cumulative amount greater than the cumulative amount identified in the Schedule for any time period, or any earlier, than the dates authorized in the drawdown schedule of payments or the Quarterly Cash Expenditure document, where applicable.

SECTION 4. The Scope of Work includes an estimated completion date or dates for each of the Project Phases or items of work identified therein and **RECIPIENT** shall conform to those completion dates.

ARTICLE III. PAYMENT

SECTION 1. **RECIPIENT** agrees to contribute at least the statutorily required local contribution (other than state or federal funds) toward the cost of the Project, or the amount specified in the SB2800 (Streets and Highways Code Section 164.53) commitment of future State funds, whichever is greater, from funds available to it. **RECIPIENT** shall contribute its required amount of the cost of the Project in accordance with a schedule of payments as shown in a Quarterly Cash Expenditure Plan prepared by **RECIPIENT** as part of the Scope of Work document. The method of payment for this contract will be based upon reimbursement at actual cost.

SECTION 2. Not more frequently than once a month, but at least quarterly, **RECIPIENT** will prepare and submit to **STATE** (directed to the attention of the appropriate **STATE** District accounting office responsible for administration of the Project for **STATE**) Progress Payment Vouchers for actual costs incurred consistent with the Scope of Work document. Each such voucher will report the total expenditures from all sources and will specify the percent of state reimbursement requested and the fund source. The voucher should also summarize **STATE** money requested by category (right of way, construction and rolling stock) and be accompanied by a report describing the overall work status and progress on tasks for the applicable Project. If applicable, the first voucher shall also be accompanied by a report describing any tasks specified in the Scope of Work document which were accomplished prior to the Effective date of this Agreement, for which costs are to be credited toward the required local contribution described in Article III, Section 1 of these Provisions pursuant to an executed Agreement for Local Match Fund Credit between **RECIPIENT** and **STATE**.

SECTION 3. Should **RECIPIENT** have a valid Memorandum of Understanding (MOU) for "Expedited Payment" on file with **STATE** Department of Transportation, Headquarters Accounting office, **RECIPIENT** will, not more frequently than as authorized by that MOU, prepare and submit to **STATE** a Rail Bond Expedited Payment Invoice for rail bond reimbursements consistent with that MOU and the Scope of Work document. The original invoice copy shall be mailed or faxed to: Department of Transportation, Division of Accounting, Attention: General Obligation Bond Unit, P.O. Box 942874, Sacramento, CA 94274-0001, (FAX #916-227-8787).

For expedited Transit Capital Improvement (TCI) fund reimbursements, **RECIPIENT** shall, not more frequently than as authorized by the MOU, prepare and submit to **STATE** an Expedited Payment Invoice consistent with the MOU and the Scope of Work Document. The original invoice copy for TCI fund reimbursements shall be mailed or faxed to: Department of Transportation, Division of Accounting, Attention: Special Program Management Section, P.O. Box 942874, Sacramento, CA 94274-0001, (FAX # (916) 227-8787).

As set forth in the MOU, all appropriate supporting documentation and remaining invoice copies are to be contemporaneously submitted to the appropriate Departmental Project Administrator. A warrant for each invoice will be issued by the State Controllers Office within 10 calendar days from receipt of an acceptable invoice. Invoices will be approved for this expedited payment, provided they are not one-time payments or final payments. One-time payments and final payments, eligible for expedited pay, will have 10% of the invoice amount withheld pending approval from the **STATE**'s Project Administrator of all required documents submitted by **RECIPIENT.**

SECTION 4. Final payment vouchers must be submitted not later than one month after the Last Expenditure Date noted on the face sheet of the Fund Transfer Agreement. Reimbursement will be made only for work performed after the Effective date of this agreement and prior to the Last Expenditure Date. As used in this agreement, "Last Expenditure Date" refers to the last date for **RECIPIENT** to expend any funds from any of the state funding sources referenced on the face sheet of the Fund Transfer Agreement.

SECTION 5. Delivery by **STATE** of any funds provided pursuant to this Agreement is contingent upon prior budget action by the legislature, fund allocation by CTC, submittal by **RECIPIENT** and approval by **STATE** of all documentation required by Government Code Section 14085 and, if bonds are the fund source, subject to the sale of bonds by the State Treasurer. In the event bond sales are delayed, canceled, or downsized or TCI grant funds are restricted, limited or otherwise conditioned by acts of Congress, the CTC, the Legislature, the Internal Revenue Service or the Federal Transit Authority, **STATE** shall not be held liable for any resulting damage or penalty. In the event of any such imposition of additional conditions, delay, cancellation or reduction in STATE funding, **RECIPIENT** shall be

excused from meeting the time and expenditure schedule to the extent of such delay, cancellation or reduction and this Agreement will be amended to reflect the necessary changes in scope or scheduling of the Project.

SECTION 6. **STATE** reserves the right to terminate its funding for any Project upon written notice to **RECIPIENT** in the event that **RECIPIENT** fails to proceed with the work in accordance with the Scope of Work document, the bonding requirements if applicable, or otherwise violates the conditions of these Provisions or the allocation such that substantial performance is significantly endangered. In the event of such termination, **RECIPIENT** shall be reimbursed its authorized costs up to the **STATE**'s share of allowable Project costs incurred prior to the date of termination, provided that all other terms and conditions of this Agreement have been met. Any such termination shall be accomplished by delivery to **RECIPIENT** of a Notice of Termination, which notice shall become effective not less than 30 days after receipt,, specifying the reason for the termination, the extent to which funding of work under these provisions is terminated and the date upon which such termination becomes effective, if beyond 30 days after receipt. During the period before the effective termination date, **RECIPIENT** and **STATE** shall meet to attempt to resolve any dispute.

ARTICLE IV. REPORTS AND RECORDS

SECTION 1. **RECIPIENT** and its contractors shall establish and maintain an accounting system and records that properly accumulate and segregate incurred costs by line item for the Project. **RECIPIENT** and contractor accounting systems shall conform to generally accepted accounting principles (GAAP), enable the determination of incurred costs at interim points of completion, and provide support for reimbursement payment vouchers or invoices. All accounting records and other supporting papers of **RECIPIENT** and its contractors connected with performance under this Agreement shall be maintained for a minimum of three years from the date of final payment to **RECIPIENT** under these provisions and shall be held open to inspection and audit by representatives of **STATE** and the Auditor General of the State and copies thereof will be furnished upon request. In conducting an audit of the costs claimed under these provisions, **STATE** will rely to the maximum extent possible on any prior audit of **RECIPIENT** pursuant to the provisions of federal and state laws. In the absence of such an audit, any acceptable audit work performed by **RECIPIENTS'** external and internal auditors and/or federal auditors will be relied upon and used by **STATE** when planning and conducting additional audits.

SECTION 2. **RECIPIENT** and its contractors agree that contract cost principles at least as restrictive as 48 CFR, Federal Acquisition Regulation System, Chapter 1 Part 31, shall be used to determine the allowability of individual items of costs. **RECIPIENT** and its contractors also agree to comply with Federal procedures as set forth in 49 CFR, Part 18, Uniform Administrative Requirements for Grants-in-Aid to State and Local Governments.

Any costs for which **RECIPIENT** has received payment that are determined by subsequent audit to be unallowable under CFR 48, Federal Acquisition Regulation System, Chapter 1, Part 31, are to be repaid to STATE by **RECIPIENT**. Should **RECIPIENT** fail to reimburse moneys due **STATE** within 30 days of demand, or within such other period as may be agreed between the parties hereto, **STATE** is authorized to withhold future payments due **RECIPIENT** from any source, including but not limited to, the State Treasurer, The State Controller and the CTC.

SECTION 3. For the purpose of determining compliance with Public Contract Code Section 10115, et seq., Military and Veterans Code Sections 999 et seq. and Title 2, California Code of Regulations, Section 1896.60 et seq., when applicable, and other matters connected with the performance of **RECIPIENT**'s contracts with third parties pursuant to Government Code Section 10532, **RECIPIENT**, **RECIPIENT**'s Contractor, subcontractors and **STATE** shall maintain all books, documents, papers, accounting records, and other evidence pertaining to the performance of such contracts, including but not limited to, the costs of administering the various contracts. All of the above-referenced parties shall make such materials available at their respective offices at all reasonable times during the contract period and for three years from the date of final payment under such contract. **STATE**, the State Auditor General, the Federal Highway Administration, or any duly authorized representative of the Federal Government shall have access to any books, records, and documents that are pertinent to the Agreement for audits, examinations, excerpts, and transactions and copies thereof shall be furnished if requested.

SECTION 4. **RECIPIENT** will insert clauses to the effect of Sections 1, 2 and 3 above of this Article IV in all of its contracts funded by **STATE** under these Provisions.

SECTION 5. **RECIPIENT** and **STATE** agree to conduct, on a quarterly basis, on-site reviews of all aspects of the progress of the Project. The first quarterly review meeting shall take place within 90 days following execution of this Agreement. **RECIPIENT** agrees, during each quarterly progress review, to inform **STATE** regarding (1) whether the Project is proceeding on schedule and within budget, (2) any requested changes to the Project Management Plan, (3) major construction accomplishments during the quarter, (4) any actual or anticipated problems which could lead to delays in schedule, increased costs or other difficulties, (5) the status of the Project Budget and, (6) the status of critical elements of the Project.

Section 6. It will be permissible for **RECIPIENT** to expend funds as needed and to move funds between expenditure categories and line items with maximum flexibility in accordance with revised budgets furnished prior to the actual expenditures. However, **RECIPIENT** shall notify and obtain approval from **STATE** of any proposed changes in excess of 10 percent in any expenditure category prior to actual expenditure. For proposed changes in excess of 20 percent in any expenditure category or for a

reduction in proposed work or service levels, **STATE** approval shall be obtained and **STATE** will determine whether the proposed change is significant enough to warrant CTC review. Should the proposed change require any increase in State funds, the CTC and **STATE** must approve that change in advance of funds being expended..

SECTION 7. The quarterly reviews will include consideration of whether activities are within the scope of the Project and in compliance with State laws, regulations, administrative requirements, and implementation of the Project under this Agreement.

SECTION 8. If **RECIPIENT** and **STATE** determine at any time during the performance of the Project, that the Project budget may be exceeded, **RECIPIENT** shall take the following steps:

(1) Notify the designated **STATE** representative of the nature and projected extent of the overrun and, within a reasonable period thereafter, identify and quantify potential costs savings or other measures which will bring the budget into balance,

(2) Schedule the projected overrun for discussion at the next subsequent Quarterly Review meeting, and

(3) Identify the source of additional **RECIPIENT** funds which can be made available to complete Project.

(4) If an increase in State funding is potentially necessary because the initial budget may be exceeded ,then, after obtaining **STATE** preapproval, **RECIPIENT** shall prepare a request to the CTC for an additional allocation of State funds.

ARTICLE V. GENERAL PROVISIONS

SECTION 1. In the performance of work under these provisions, **RECIPIENT,** its contractor(s) and all subcontractors will not discriminate against any employee or applicant for employment because of race, religious creed, medical condition, color, marital status, ancestry, sex, age, national origin, or physical handicap (Government Code Section 12940 et seq.). **RECIPIENT,** its contractor(s) and all subcontractors will take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, religious creed, medical condition, color, marital status, ancestry, sex, age, national origin, or physical handicap. Such action shall include, but not be limited to, the following: employment, upgrading, demotion or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. **RECIPIENT,** its contractor(s) and all subcontractors shall post in conspicuous places, available to

employees and applicants for employment, notice to be provided by **STATE** setting forth the provisions of this section.

SECTION 2. **RECIPIENT,** its contractor(s) and subcontractors will permit access to all records of employment, employment advertisements, application forms, and other pertinent data and records by the State Fair Employment Practices and Housing Commission, or any other agency of the State of California designated by **STATE**, for the purpose of investigation to ascertain compliance with Section 1 of this Article V.

SECTION 3. **RECIPIENT** agrees to insert, in appropriate contracts, clauses to the effect of Sections 1 and 2 of this Article V and the California Labor Code requirements that all workers employed on public works will be paid not less than the general prevailing wage rates predetermined by the Department of Industrial Relations.

SECTION 4. Should Public Contract Code Sections 2000 or 10115 et seq. or Military and Veterans Code Sections 999 et seq. be applicable to **RECIPIENT**, **RECIPIENT** will meet, or make good faith efforts to meet, the following Minority Business Enterprises/Women Business Enterprises/Disabled Veterans Business Enterprises goals or **RECIPIENT's** applicable goals in the award of every contract for work to be performed under these Provisions:

Minority Business Enterprises - 15%
Women Business Enterprises - 5%
Disabled Veterans Business Enterprises - 3%

RECIPIENT shall have the sole duty and authority under this Agreement to determine whether good faith efforts were sufficient as outlined in Public Contract Code Sections 2000 and 10115 et seq., and the Military and Veterans Code Sections 999 et seq.

SECTION 5. To the extent that **RECIPIENT** is subject to the provisions of Government Code Section 4450 et seq. , **RECIPIENT** shall submit plans and specifications for buildings, structures, sidewalks, curbs and related facilities to the State Department of General Services for approval prior to Construction.

SECTION 6. Neither **STATE** nor any officer or employee thereof shall be responsible for any damage or liability occurring by reason of anything done or omitted to be done by **RECIPIENT**, its agents and contractors, under, or in connection with any work, authority, or jurisdiction delegated to **RECIPIENT** under this Agreement or as respects environmental clean up obligations or duties of **RECIPIENT** relative to a Project. It is also understood and agreed that, pursuant to Government Code Section 895.4, **RECIPIENT** shall fully indemnify and hold **STATE** harmless from any liability imposed for injury (as defined by Government Code Section 810.8) or environmental obligations or duties arising or created by reason of anything done or imposed by

operation of law or assumed by, or omitted to be done by **RECIPIENT** under or in connection with any work, authority, or jurisdiction delegated to **RECIPIENT** under this Agreement.

SECTION 7. **RECIPIENT** is obligated, in perpetuity, to continue operation of the Project dedicated to the public transportation purposes for which the Project was initially approved. The Project right of way, the Project facilities constructed or reconstructed on the Project site and/or Project property purchased (excluding construction easements and excess property whose proportionate resale proceeds are distributed pursuant to this Agreement) shall remain dedicated to public transit use in the same proportion and scope and to the same extent as described in this Agreement and related Bond Fund Certification documents if applicable. Equipment acquired as part of the Project, including rail passenger equipment and ferry vessels shall be dedicated to that passenger use for their full economic life cycle, including any extensions of that life cycle achieved by reconstruction, rehabilitation or enhancements. Subsequent fund allocations for this Project, if any, will be identified by phase and will be described in detail in an Amendment to this document.

SECTION 8.. To the extent that **RECIPIENT** operates and maintains Intermodal Transfer Stations, **RECIPIENT** shall: maintain the station and its appurtenances, including, but not limited to, restroom facilities, in good condition and repair, and in accordance with high standards of cleanliness; upon request of the **STATE**, authorize state-funded bus service to use the station without any charge to the department in the placement of signs and informational material designed to alert the public to the availability of the state-funded bus service. (For the purpose of this section, "state-funded bus service" means any bus service funded pursuant to Public Utilities Code, Section 99316.)

SECTION 9. **RECIPIENT** shall, for the purposes of any State bond funded right of way acquisition which will become a permanent part of the Project (such acquisitions exclude construction easements, property allocated to matching funds, and excess property purchased with State funds whose resale proceeds are returned or credited to **STATE**), maintain ownership of such Project property for a minimum of twenty years or until the bonds have matured, whichever occurs first, before transferring or selling such property, subject to the credits due **STATE** as provided in Article V, Section 10 herein below.

SECTION 10. Except as otherwise set forth in this Section 10, **STATE**, or any assignee public body acting on behalf of the CTC, shall be entitled to a refund or credit, at **STATE's** sole option, equivalent to the proportionate funding participation by **STATE** and other NON-RECIPIENT generated public funds towards Project acquisition or construction in the event that **RECIPIENT** ceases to utilize the Project for the intended public transportation purposes or sells or transfers title to or control over the Project. Such refund or credit to STATE shall not be required, subject to STATE approval of that intended use, if RECIPIENT dedicates the proceeds of such

sale or transfer exclusively to STATE approved public transportation purposes which are also subject to this credit due **STATE** if subsequently sold or transferred or, in the case of proceeds attributable to NON-STATE, NON-RECIPIENT funding, such proceeds are returned to the funding entity or otherwise expended according to the funding agreement with such entity. **STATE** shall also be granted an acquisition credit for future purchases or condemnation of all or portions of the Project by **STATE**. The refund or credit due **STATE** will be measured by the ratio applied to the then fair market value of the Project property acquired.

SECTION 11. **RECIPIENT** should be on notice that the Federal Transit Administration ("FTA", previously "UMTA") does not share in any revenue stream from projects which it has participated in. However, FTA does require that it specifically approve private and incidental uses of its funded projects to assure that they do not adversely impact transit use. In FTA funded projects, revenues that are derived from these private and incidental uses must be documented, are subject to audit and are required to be applied to transit purposes. FTA circular 5010.1A provides program management guidelines.

SECTION 12. The Fund Transfer Agreement, these Provisions, the CTC Resolutions, the Project Description and the Scope of Work document approved by **STATE** constitute the entire terms of the grant Fund Transfer Agreement between the parties for the work to be performed pursuant to this grant and all subsequent grants awarded to this Project. The Project Description and/or the Scope of Work document may be modified, altered or revised only by a written Amendment between **RECIPIENT** and **STATE**.

SECTION 13. Additional funding for subsequent Project Phases may be granted through amendments to this Agreement. A new CTC allocation resolution will also be required following the submission by **RECIPIENT** of an acceptable supplementary Scope of Work document and, when necessary, a revised Project Description.

ARTICLE VI. BOND PROVISIONS

SECTION 1. If Project funding is being provided in whole or in part pursuant to the Clean Air and Transportation Improvement Act of 1990 (Prop. 116), the following additional provisions apply to **RECIPIENT**:

(a) Where **RECIPIENT**'s Project includes a commuter rail project within the meaning of Prop. 116, **RECIPIENT** shall coordinate and share with other public transit operators any rail rights-of-way, common maintenance services and station facilities used for intercity and commuter rail. Intercity and commuter rail services shall be coordinated with each other, with other providers and with freight traffic to provide integrated rail passenger and freight services with minimal conflict.

(b) **RECIPIENT** agrees that all passenger rail and water borne ferry equipment and all facilities acquired or constructed pursuant to this Agreement shall be accessible to persons with physical disabilities, including wheelchair users. All passenger vehicles and vessels acquired pursuant to this Agreement shall be accessible to wheelchair users at all stops, stations and terminals, whether or not staffed.

(c) **RECIPIENT** (other than the transit operator identified in Sections 99633 and 99634 of the Public Utilities Code) shall require that all intercity and commuter rail cars purchased conform to the California Rail car specifications developed by **STATE** as specified in the Clean Air and Transportation Improvement Act.

Section 2. **RECIPIENT** shall not loan any portion of bond proceeds represented by this grant to any private (including nonprofit) person or business. For this purpose a "loan" includes any arrangement which is the economic equivalent of a loan, regardless of how it is named.

Section 3. Except as provided in this Article VI, **STATE** and **RECIPIENT** agree that any costs of the Project acquired or constructed by **RECIPIENT** allocable to portions of the Project which are subject to any property interests held by a nongovernmental person(s) in connection with business activities, such as easements, leases, or fee interests not generally enjoyed by the public, (hereafter referred to as Nongovernmentally Used Property or "NUP") shall, for accounting and bookkeeping purposes, be allocated to funding sources other than the State bond funds. For purposes of making such allocations, the costs attributable to NUP involving a sale, easement, lease or similar arrangement shall be determined on the basis of a fair allocation of value, which may include determinations based upon square or cubic footage/acreage of the area encumbered by the lease or easement relative to the total area acquired or constructed if all such area is of approximately equal value.

NUP will include, but is not limited to, property which is sold (including sales of air and subsurface rights) and property subject to easements, leases or similar rights. A rail right of way will not be treated as NUP solely as a result of a Freight Use Easement retained by the seller of the right of way to **RECIPIENT**, provided that the sales agreement appropriately excludes the Freight Use Easement from the property or rights being acquired. Further, notwithstanding anything in this Article VI to the contrary, **RECIPIENT** may allocate grant funds to the cost of any NUP if (i) neither **RECIPIENT** nor any other governmental entity will receive, directly or indirectly, any payments from or on behalf of the nongovernmental user of the NUP, or (ii) the payment from such user does not exceed the operation and maintenance costs fairly attributable or allocable to the nongovernmental use of the NUP.

Section 4. **RECIPIENT** shall request, in writing, **STATE**'s advance approval if grant funds are to be allocated to any NUP, except "incidental use" property described below. If property, the costs of which have previously been allocated to

grant funds, is to become NUP before the State bond funds are fully paid or redeemed, then **RECIPIENT** may allocate the costs of such property to another funding source as provided in Section 3 of this Article VI, or obtain **STATE**'s approval that the allocation of the costs of such property to the grant funds may remain. It is anticipated that **STATE** approval will be granted if, taking into account the existing and expected uses of the proceeds of the State bonds, the **STATE** determines that the continued tax-exempt status of the State bonds will not be adversely affected and that the use of the property is consistent with the Project and its described purpose.

For purposes of these Articles VI Section 3 fund source allocations, **RECIPIENT** does not have to take into account as NUP those "incidental uses" of the Project (such as, for example, advertising billboards, vending machines, telephones, etc.) which meet requirements of federal tax regulations (IRS Notice 87-69 or any successor thereto). In general such Notice requires that the incidental use not be physically separated from the rest of the Project and not comprise in the aggregate more than 2-1/2% of the costs of the Project.

Section 5. If RECIPIENT enters into a management contract with a private party (including AMTRAK) for operation of rail, ferry or other transportation services in connection with the Project, it will either (a) obtain approval from Bond Counsel acceptable to **STATE** that the terms of the management contract meet the requirements of Internal Revenue Service Revenue Procedure 82-14 (as supplemented or amended) or any successor thereto (dealing generally with guidelines for when management contracts may be deemed not to create a "private use" of bond-financed property) or are otherwise acceptable; or (b) be prepared to certify upon request of **STATE** that the revenues which **RECIPIENT** (or its manager) will receive directly from the operation of transportation services in connection with the Project (but not including any subsidy of the transportation operation from taxes or other outside fund sources) are for any fiscal year less than the ordinary and necessary expenses directly attributable to the operation and maintenance of the transportation system (excluding any overhead or administrative costs of **RECIPIENT**). In any year for which option (b) will not be true, **RECIPIENT** shall consult Bond Counsel acceptable to the State Treasurer's Office to obtain approval of the management contract or an opinion that the circumstances present will not adversely affect the tax-exempt status of the bonds.

Section 6. If **RECIPIENT** receives any revenues or profits from any NUP allowed pursuant to this Article VI (whether approved at this time or hereafter approved by **STATE**), **RECIPIENT** agrees that such revenues or profits shall be used exclusively for the public transportation services for which the Project was initially approved, either for capital improvements or operating costs. If **RECIPIENT** does not so dedicate the revenues or profits, a proportionate share shall (unless disapproved by Bond Counsel) be paid to **STATE** equivalent to **STATE**'s percentage participation in the Project.

ATTACHMENTS

ATTACHMENT I	PROJECT DESCRIPTION
ATTACHMENT II	CTC RESOLUTIONS
ATTACHMENT III	SCOPE OF WORK
ATTACHMENT IIIa	OVERALL PROJECT FUNDING PLAN
ATTACHMENT IIIb	QUARTERLY CASH EXPENDITURE SCHEDULE
ATTACHMENT IIIc	PROJECT DEVELOPMENT SCHEDULE
ATTACHMENT IV	SCOPE OF WORK APPROVAL AND ENCUMBRANCE
ATTACHMENT V	CTC RESOLUTION G-91-2
ATTACHMENT VI	RECIPIENT RESOLUTION

AGREEMENT NO. ~~FTA04A28~~ DMT04A28
ATTACHMENT I

Project Description

The City of Alameda proposes to acquire a new ferry vessel for the existing ferry service between the East End of Alameda and downtown San Francisco service. This is a public-private cooperative venture. Harbor Bay Maritime will contract with the City of Alameda, becoming the contract operator, similar to the West End Alameda/Oakland public service sponsored by the City of Alameda and Port of Oakland, which contracts with Blue & Gold Fleet to be the service provider. Private sources have agreed upon extending their current level of subsidy to operate service for an additional 2½ years of service, for a total of 5½ years, ending September of 1997.

The East End ferry service route extends from the East End ferry terminal located at the western terminus of Mecartney Road on Bay Farm Island in Alameda (constructed with local Assessment District funds for public investment of $1.5 million) to the new Pier 1/2 docking facility in San Francisco, built by the Port of San Francisco with Proposition 116 funds. Operating deficits for this service are funded through private subsidy.

The new vessel will be fitted out for access and convenience of persons in wheelchairs, including appropriate widths of aisles and doorways, appropriate heights of counters for food and beverage purchasing, accessible bathrooms, and wheelchair tie-downs.

The new vessel will be provided with hanging bike racks on the aft deck. The terminal is also featured with bike racks available for passengers.

AGREEMENT NO. ~~FTA04A28~~ DMT04A28
ATTACHMENT IIa

PASSED BY

CALIFORNIA TRANSPORTATION COMMISSION

Commission Project Application Approval of the
Proposition 116 Waterborne Ferry Program Applications
for the FY 1992-93 Funding Cycle

Resolution #PA-93-21

1.1 WHEREAS, in June 1990 the voters approved Proposition 116, the Clean Air and Transportation Improvement Act, for $1.99 billion for rail and mass transportation purposes; and

1.2 WHEREAS, the California Transportation Commission is designated in Proposition 116 to oversee the five grant programs over the 20-year term of the Proposition; and

1.3 WHEREAS, Proposition 116 calls for the Commission to establish an application process and to develop and adopt guidelines to implement those programs; and

1.4 WHEREAS, Proposition 116 establishes as a purpose of the application process that it "facilitate implementation of improved cost-effective transit service to the maximum number of Californians and to prevent the funds provided for by this part from being spent on needlessly costly features"; and

1.5 WHEREAS, Proposition 116 requires applications to specify full and complete capital plans, financial plans, and operating plans, including schedules and funding sources; and

1.6 WHEREAS, in August 1992 the Commission adopted revised policy and application guidelines (#G-91-17) for the Proposition 116 waterborne ferry program; and

1.7 WHEREAS, the waterborne ferry program guidelines provide that eligible fund applicants are "local agencies," which means a county, city and county, county transportation commission, county transportation authority, transit development board, transit district, or any joint powers agency specified in PUC Section 99601; and

1.8 WHEREAS, Proposition 116 specifies that $20 million shall be allocated to fund a program of competitive grants to local agencies for the construction, improvement, acquisition and other capital expenditures associated with waterborne ferry operations for the transportation of passengers or vehicles or both (PUC Section 99651); and

1.9 WHEREAS, the Waterborne Ferry Program Guidelines (#G-91-5) provide for the allocation of $10 million a year for two years but may set the amount at a different level, if competition for funding shows that the amount is insufficient; and

1.10 WHEREAS, for FY 1991-92, the Commission approved 5 applications from eligible applicants for waterborne ferry projects totaling $10.975 million in Proposition 116 funds; and

1.11 WHEREAS, the amount available for the FY 1992-93 Proposition 116 Waterborne Ferry program is $9.025 million; and

1.12 WHEREAS, the Commission has received 14 ferry project applications from eight applicant agencies that requested a total of $18.289 million in Proposition 116 funds, and

1.13 WHEREAS, Commission staff evaluated the 14 ferry project applications on a competitive basis using the screening and evaluation criteria contained in the Commission's adopted Proposition 116 Waterborne Ferry Program Guidelines, and of the 14 applications, 10 have been recommended for funding totaling $9.025 million; and

1.14 WHEREAS, Commission staff has received clarification and supplemental information for the 10 ferry projects recommended for funding that indicates that appropriate planning has occurred in the development of these projects; and

2.1 NOW BE IT THEREFORE RESOLVED, that Commission approval of the 10 ferry project applications totaling $9.025 million is subject to:

- Commission approval of the requests from the Golden Gate Bridge, Highway and Transit District and the Port of San Francisco to waive the Commission's policy which limits pre-construction costs to 5 percent of the total Proposition 116 funds allocated.

2.2 BE IT FURTHER RESOLVED, that the Commission hereby approves the attached priority list of waterborne ferry projects and corresponding funding levels (Chart 1) recommended by Commission staff totaling $9.025 million in Propositions 116 funds, contingent upon the applicants implementing the conditions listed below to the satisfaction of the Commission Chairman, in consultation with the Executive Director, prior to approval of any allocation for each project.

The City of Alameda, for the Alameda/Oakland Ferry Service project, shall provide:

- A "Title and Certification" page which has been signed by the Alameda City Manager.

The City of Alameda, for the Main Street Barge Drydock project, shall provide:

- A certification indicating that the City of Alameda has completed, or will complete prior to beginning the project, the required environmental clearance documentation, pursuant to the California Environmental Quality Act (CEQA).

The City of Alameda, for the Vessel Acquisition for East End Service project, shall provide:

- A revised application which includes an updated "Title and Certification" page, a revised project description, a revised financial plan, and an updated cash flow expenditure plan.

- A certification indicating that the City of Alameda has completed, or will complete prior to beginning the project, the required environmental clearance documentation, pursuant to the California Environmental Quality Act (CEQA).

- A fully executed agreement which documents the terms and conditions between the City of Alameda and Harbor Bay Maritime, Inc. governing the acquisition, operation, and maintenance of the ferry vessel.

The Golden Gate Bridge, Highway, and Transportation District, for the Larkspur Ferry Terminal Improvements and Ferry Vessel Acquisition projects, shall provide the following certification for both projects:

- That no other capital funds previously programmed, planned or approved for waterborne ferry purposed will be used for other than waterborne ferry purposes.

- That new development fees, taxes or exaction's, or permit fees have not and will not be included in the operating budget(s) for this project.

- That no other state funding sources will be utilized to complete this project if costs exceed those identified in the approved application.

- That the applicant agency has the financial and institutional ability to accept the legal liabilities associated with this project.

The Golden Gate Bridge, Highway and Transportation District, for the Ferry Vessel Acquisition project, shall provide:

- A revised application which includes an updated "Title and Certification" page, a revised project description, a revised financial plan, and an updated cash flow expenditure plan.

The City of Los Angeles Harbor Department, for the Catalina Terminal Improvements project, shall provide:

- A signed "Title and Certification" page, with the signature of a representative that has been delegated authority to submit the application on behalf of the Board of Harbor Commissioners.

The Port of Oakland, for the Improvements to the Oakland Terminal Facility project, shall provide the following certifications:

- The applicant agency has completed, or will complete prior to beginning the project, the required environmental clearance documentation, pursuant to the California Environmental Quality Act (CEQA).

- No other capital funds previously programmed, planned or approved for waterborne ferry purposes will be used for other than waterborne ferry purposes.

- New development fees, taxes or exaction's, or permit fees have not and will not be included in the operating budget(s) for this project.

- No other state funding sources will be utilized to complete this project if costs exceed those identified in the approved application.

- The applicant agency has the financial and institutional ability to accept the legal liabilities associated with this project.

The Port of San Francisco, for the Ferry Terminal Upgrade project, shall provide the following certifications:

- That no other capital funds previously programmed, planned or approved for waterborne ferry purposes will be used for other than waterborne ferry purposes.

- That new development fees, taxes or exaction's, or permit fees have not and will not be included in the operating budget(s) for this project.

The Town of Tiburon, for the Tiburon Dock Realignment and Reconstruction project, shall provide:

- A signed copy of the Town Council's Resolution 2901, which approves the project and provides required certifications.

- Documentation which verifies that a deed for the permanent easement across Main Street Properties has been executed.

60:RV:cj

CHART 1

CALIFORNIA TRANSPORTATION COMMISSION

FY 1992-93 Waterborne Ferry Program

Project Priority List

Applicant Agency	Project Title	Total Score	Funding Requested	Funding Recommended
City of Alameda	Ferry Vessel Acquisition for Alameda/Oakland Ferry Service	91	$1,125,000	$1,125,000
City of Alameda	Alameda Main Street Barge and Dry-dock	87	204,000	204,000
Town of Tiburon	Tiburon Dock Realignment and Reconstruction	85	710,000	710,000
City of Sausalito	Sausalito Ferry Terminal Upgrade	85	600,000	600,000
City of Los Angeles	Catalina Terminal Rehabilitation and Parking Area Improvements	84	1,300,000	1,300,000
Golden Gate Bridge, Highway and Transit District	Larkspur Ferry Terminal Improvements	80	50,000	50,000
Port of San Francisco	Ferry Terminal Upgrade Project	71	2,723,184	2,723,184
Port of Oakland	Alameda/Oakland Ferry Service Improvements to Oakland Ferry Terminal Facility	69	406,127	406,127
City of Alameda	Ferry Vessel Acquisition for East End Service	65	3,000,000	1,100,000
Golden Gate Bridge, Highway and Transit District	Ferry Vessel Acquisition	65	4,500,000	806,689
City of Alameda	Alameda Gateway Ferry Terminal Extended Shoreline Protection	62	500,000	0
Port of San Francisco	Fisherman's Wharf Area Enhancements	60	1,345,000	0
City of Alameda	Alameda/Oakland Ferry Children's Day Care Center	53	326,650	0
Tahoe Transportation District	Ferry Vessel Acquisition	50	1,500,000	0
TOTALS			$18,289,961	$9,025,000

AGREEMENT NO ~~1-FA04A28~~ TO4A28
ATTACHMENT IIb

PASSED BY
SEP 0 8 1993
CALIFORNIA TRANSPORTATION COMMISSION

ALLOCATIONS FOR MASS TRANSPORTATION BOND AND TCI PROJECTS RESOLUTION NO. BFP-93-21

1.1 WHEREAS, the California Transportation Commission (Commission) has adopted an annual Transit Capital Improvement Program (TCI) plan for mass transportation capital purposes, and the electorate enacted both Proposition 108, the Passenger Rail and Clean Air Bond Act of 1990, and Proposition 116, the Clean Air and Transportation Improvement Bond Act of 1990 in the June, 1990, election authorizing the sale of general obligation rail bonds for rail transit purposes; and

1.2 WHEREAS, the ferry vessel acquisition for the East End Service (the Project), further detailed in Attachment A, as component phases or in its entirety, appears on the necessary State capital projects funding list(s) and is entitled to participate in these allocations; and

1.3 WHEREAS, the City of Alameda, (the Recipient) is committed to providing any required local matching funds and to fully fund implementation of the Project in compliance with grant or bond funding requirements or, if Recipient meets that criteria, in compliance with the conditions of Commission Resolution G-92-14, "Guidelines for the Deferral of the Commission's Proportional Expenditure of State Funds Policy"; and

1.4 WHEREAS, the Commission has established a "Hazardous Waste Identification and Clean-up Policy" (#G-91-2) which requires the Recipient(s) to have performed full due diligence in identifying and remediating any hazardous waste in the right-of-way, easements and properties.

2.1 NOW THEREFORE BE IT RESOLVED that a total of $1,100,000 in State Proposition 116 Bond funds be allocated to Recipient for the Project, as detailed in Attachment A; and

2.2 NOW THEREFORE BE IT FURTHER RESOLVED that the transfer of funds for the Project shall be governed by a fund transfer agreement, and subsequent amendments to the same if required, executed between Recipient and the Department of Transportation (Department); and

2.3 NOW THEREFORE BE IT FURTHER RESOLVED that Recipient shall provide the Department, for the balance of all funded Project allocations commencing with the first quarterly review, an updated quarterly expenditure plan by category including any proposed changes; and

2.4 NOW THEREFORE BE IT FURTHER RESOLVED THAT, in any instance of rail bond financing of the Project, the Commission, acting on behalf of the State, by this Resolution intends:

A. to cause and approve the issuance of taxable or tax-exempt State general obligation bonds under Propositions 108 or 116, as appropriate, to reimburse Recipient for the Project identified in Attachment A;

B. to reimburse to Recipient expenditures that shall not have been paid from the proceeds of any other tax-exempt indebtedness unless such prior indebtedness will be retired with the proceeds of such State monies;

C. that this Resolution be a declaration of official intent of the State within the meaning of U.S. Treasury Regulations Section 1.103-17(c) with respect to the Project;

D. that this Resolution will be continuously available to the public for inspection during normal business hours at its Commission Office, 1120 N Street, Sacramento, California, commencing not later than two weeks after the adoption of this Resolution; and

2.5 NOW THEREFORE BE IT FURTHER RESOLVED that, in any instance of rail bond financing, an allocation for the Project is subject to the following conditions and assurances:

A. completed bond sales authorized by the State Treasurer;

B. completed bond certification from the Department, preferably by the time of Commission allocation action but not later than prior to execution of a fund transfer agreement;

C. Recipient certification, delivered to this Commission, preferably by the time of Commission allocation action but not later than prior to execution of a fund transfer agreement, that it will not adopt new or increased development taxes, fees, exactions or permit fees for the purpose of providing local matching funds;

D. Recipient certification, in the form of a formal resolution of its Board delivered to this Commission, that when utilizing state funding for acquisition of property or for capital improvements on the Project, Recipient has exercised all due diligence in the discovery of hazardous wastes; that Recipient will enter into enforceable agreement(s) with any and all owners of to-be-acquired properties for clean-up of hazardous wastes pursuant to the requirements of Resolution G-91-2 regarding Hazardous Waste Identification and Clean-up for Rail Right-of-Way;

E. Recipient certification, in the form of a formal resolution of its Board delivered to this Commission, that when utilizing state-provided and other-than-state funding for acquisition of property or for capital improvements on the Project, Recipient shall agree to indemnify, defend and hold harmless the State, Department and the Commission from clean-up liability or damage, both present and future; and that no additional State funds will be requested for clean-up, damages, or liability associated with hazardous wastes on or below the acquired property;

F. that in any instance of rail bond financing with Proposition 116 funds, the Proposition 116 Project Application date will be that after which project eligible costs can be incurred, with reimbursement subject to an executed fund transfer agreement;

G. that Recipient shall provide the Commission with an "Evaluation of Property Report", preferably by the time of Commission allocation action but not later than prior to execution of a fund transfer agreement, in compliance with Commission Policy G-90-17, Rail Right-of-Way Review Policy, to be verified by the Department or its Agent;

H. that Recipient shall post on the Project construction site(s) at least one sign, visible to the public, stating that the Project is partially funded with State grant rail passenger bond funds;

I. that Recipient has provided the Commission, after consultation with its staff and prior to the execution of a fund transfer agreement which includes any Proposition 116 bond funding, a satisfactory work plan which includes milestones for specific activities related to completion of the transit integration plan prior to initiation of rail service; and

2.6 NOW THEREFORE BE IT FURTHER RESOLVED that this Commission shall be entitled to a then present value refund, or credit, at State's option, equivalent to the proportionate funding participation by the State towards property acquisition and project construction in the event that Recipient, or successor public entities, fail or cease to utilize the Project for the intended public passenger rail purposes or sells or transfers title to the Project. The credit for future purchases or condemnation of all or portions of the Project by the State, and the refund or credit due the Commission in each instance, will be measured by the ratio of State and other public funding to that provided from Recipient. That ratio will be applied to the then fair market value of the Project property; and

2.7 NOW THEREFORE BE IT FURTHER RESOLVED that if the Recipient receives any revenues or profits from any non-governmental use of property allowed pursuant to bond certification (whether approved at this time or hereafter approved by the State), the Recipient agrees that such revenues or profits shall be used exclusively for the public transportation services for which the project was initially approved, either for capital improvements or operating costs. If the Recipient does not so dedicate the revenues or profits, a proportionate share shall (unless disapproved by State's Bond Counsel) be paid to the State equivalent to the State's percentage participation in the Project.

Attachment

ATTACHMENT A
August 25, 1993
Agenda Item 2.6e 1

RESOLUTION BFP-93-21

* If applicable, as amended by Resolution

ALLOCATIONS FOR RAIL PROJECTS

FUNDING SUMMARY:		BOND 108 FUNDS TOTAL	$0	STATE FUNDS TOTAL**	$1,100,000	FED. FUNDS TOTAL	
TCI/FCR FUNDS TOTAL	$0	BOND 116 FUNDS TOTAL	$1,100,000	LOCAL FUNDS TOTAL	$250,000	FUNDING TOTAL	$1,350,000

RECIPIENT: City of Alameda

Project: Ferry Vessel Acquisition for East End Service

CURRENT ALLOCATION TCI/FCR	Bond 116	Bond 108	Str. & Hwy (Bond 108) PUC - (Bond 116)	STIP No. ALM Resol. /	Appropr. Yr. ALM Amount	Proj. Applic. No. Plan Year	Project Type	a) Budget Act & Chap b) Budget Item No.	c) Program Code d) Expend.Categ.
$0	$1,100,000	$0			Contin.		116.Ferry	a)	c) 20.20.010
No Local Match required			09661	/		1992-93		b)	d) Local Assistance

This allocation is a FULL allocation of the programmed/approved amount District(s): 04 County: Alameda Environ. Status:*** N/A

Timely Use of Funds: The implementing public agency should encumber the State funds by the end of the State fiscal year plus three months (Resolution No. G-88-6). The implementing public agency must expend at least 50 percent of allocated funds within two years including the fiscal year in which the funds were first appropriated (Resolution No. G-90-11). Dates reflect Governor's Budget Encumbrance & Liquidation time-frames. General Obligation Bond funds have encumbrance and liquidation time-frames more restrictive than provided in the Governor's Budget.

* If accompanying an amending resolution, original resolution amended by the second resolution shown. ** State funding total includes TCI, 108 Bond and 116 Bond

*** CE - Categorically Exempt SE - Statutorily Exempt NOD - Notice of Determination NOE - Notice of Exemption Neg. Decl. - Negative Declaration EIR - Enviro. Impact Review

8/26/93.2

AGREEMENT NO. ~~FTA04A28~~ DMT04A28
ATTACHMENT III

SCOPE OF WORK

Right-of-Way :

Right-of-Way Subtotal $ 0

Capital Improvements:

Capital Improvements Subtotal $ 0

Rolling Stock:

	June-July 92/93	93/94	TOTAL
PROJECT COST			
Engineering Design	$ 10,000	$ 5,000	$ 15,000
Project Management	19,000	15,000	34,000
Environmental	1,000	0	1,000
Vessel Acquisition/Rehabilitation New	200,000	1,100,000	1,300,000
	$ 230,000	$1,120,000	$1,350,000

Rolling Stock Subtotal $1,350,000

TOTAL PROJECT COST **$1,350,000**

AGREEMENT NO. ~~FTA04A28~~ DMTOWA28
ATTACHMENT IIIa

OVERALL PROJECT FUNDING PLAN

A. Please provide a project budget, including a breakdown of all project costs and revenues and any multi-year phases of the project:

	June-July 92/93	93/94	TOTAL
PROJECT COST			
Engineering Design	$ 10,000	$ 5,000	$ 15,000
Project Management	19,000	15,000	34,000
Environmental	1,000	0	1,000
Vessel Acquisition/Rehabilitation New	200,000	1,100,000	1,300,000
TOTAL PROJECT COST	$ 230,000	$1,120,000	$1,350,000
PROJECT REVENUES			
Local:			
Sales Tax (LFT)	0	0	0
Local Sales Tax	0	0	0
Local Bonds	0	0	0
Other [HBI Traffic Improvement Fund]/In-Kind Services	230,000	20,000	250,000
Private	0	0	0
State:			
TCI Program Funds	0	0	0
Proposition 116 Funds	0	1,100,000	1,100,000
Proposition 108 Funds	0	0	0
Flexible Congestion Relief	0	0	0
State-Local Partnership	0	0	0
1988 STIP	0	0	0
Other	0	0	0
Federal:			
ISTEA	0	0	0
Other	0	0	0
TOTAL PROJECT REVENUES	$ 230,000	$1,120,000	$1,350,000

B. Please briefly describe the assumption used to develop your cost and revenue estimates.

Existing lease purchase price and quote from U. S. Catamaran for new vessel.

C. Identify any funds included in the project budget which are subject to pending actions prior to becoming available for this project (e.g., voter approval, local, state or federal agency approval, etc.)

State Proposition 116 funds.

AGREEMENT NO. ~~PTA04A28~~ DMT04A28
ATTACHMENT III b,c

QUARTERLY CASH EXPENDITURE SCHEDULE

Enter Month and Yr.	8 Jul.'93	9 Aug.'93	10 Sep.'93	11 Oct.'93	12 Nov. 93	TOTAL
Planning and Environment	1,000					1,000
Engineering and Design	6,000	5,000	4,000			15,000
Construction and Materials						
Project Management	2,000	2,000	30,000			34,000
Vehicles	500,000	500,000	300,000			1,300,000
Right-of-Way						
PROJECT TOTAL	509,000	507,000	334,000			1,350,000

PROJECT DEVELOPMENT SCHEDULE

	Begin Work (Month/Year)	Completion (Month/Year)
Environmental Assessment		July 1993
Issue Bids	July 1993	August 1993
Award Bids	Sept. 1993	Sept. 1993
Construction/Delivery of Vessel	Dec. 1993	June 1994

AGREEMENT NO. ~~FTA04A28~~ DMT04A28
ATTACHMENT IV

Name of Recipient: City of Alameda
Name of Project: East End Ferry Vessel Acquistion
Resolution Number: BFP-93-21
Date of Resolution: September 8, 1993
Amount of Allocation: $1,100,000
Fund Source: Proposition 116
Expiration Date of Funds: ~~June 30, 1998~~ June 30, 1995

SCOPE OF WORK APPROVAL

The Department of Transportation hereby certifies that the attached "Scope of Work" document has been submitted by the recipient named above and that its description of tasks to be accomplished with the allocated funds is complete and in conformance with the allocating resolution specified above.

[signature] FOR
Deputy District Director for
Planning and Public Transportation

12.10.93
Date

116 Money

SOURCE		CHARGE		EXP AUTH		SPECIAL DESIGNATION		OBJECT	AMOUNT	DR CR	FISCAL YEAR	ENCUMBRANCE DOCUMENT NUMBER
				GEN LED	SUB ACCT	SUB JOB NO.	R/W PARCEL NO.					
DIST	UNIT	DIST	UNIT	WORK ORDER NO.		LOCATION	BRIDGE NO.					
64	564	96	004	9	0	0 1 3	6	3 A 0 0 3	7 0 4 1 9	1,100,000 00	91	C A T 3 A 0 0 3

I hereby certify upon my own personal knowledge that budgeted funds are available for the period and purpose of the expenditure stated above.

ITEM	CHAPTER	STATUTES	FISCAL YEAR
2600-629-703		1990	90/91

SIGNATURE OF ACCOUNTING OFFICER: Margarita Fernandez

DATE: 2/11/94

AGREEMENT NO ~~FTA04A28~~ DMTC .28
ATTACHMENT V

FEB 21 1991

CALIFORNIA TRANSPORTATION COMMISSION

ATTACHMENT V
Sheet 1 of 2

CALIFORNIA TRANSPORTATION COMMISSION
RESOLUTION G-91-2
Commission Policy Resolution for Hazardous Waste Identification and Cleanup for Rail Right-of-Way

WHEREAS, the Commission has programmed funding for rail right-of-way acquisition in the 1990 State Transportation Improvement Program and may allocate funds for rail right-of-way acquisition from the Clean Air and Transportation Improvement Act; and

WHEREAS, hazardous wastes, based upon federal and state statutes and regulations, include but are not limited to such categories as heavy metals, (e.g., lead), inorganic (e.g., excessive mineral levels) and organic compounds (e.g., petroleum products), and can occur on a property's surface and subsurface; and

WHEREAS, rail properties often have hazardous wastes exceeding State of California and federal hazardous waste standards; and

WHEREAS, such properties contaminated with hazardous wastes require mitigation prior to using them for rail purposes; and

WHEREAS, hazardous wastes discovered on rail property may significantly impact property value, project scheduling and future liability for the grant applicant; and

WHEREAS, the Commission must be assured that acquisition of rail properties have been fully reviewed by the grant applicant, and if warranted, the grant applicant has tested for hazardous wastes; and

WHEREAS, if hazardous wastes exist, the Commission must be assured that the hazardous wastes identified has either been cleaned up, or financial responsibility for the cleanup has been determined prior to title transfer to the grant applicant, or easement has been secured in lieu of purchasing the property, and the subsurface rights and liability for hazardous wastes remain with the property seller; and

WHEREAS, hazardous wastes identified subsequent to title transfer to the grant applicant will be cleaned up by the seller or a mechanism to recover cleanup costs is established and executed as a condition prior to title transfer; and

WHEREAS, full due diligence is necessary in discovering hazardous waste and is an essential element in acquiring rail right-of-way properties by the grant applicant; and

NOW THEREFORE BE IT RESOLVED, that acquisition of all rail right-of-way properties will be fully investigated by the grant applicant to determine the absence/presence of hazardous wastes. Investigations shall be conducted in accordance to the standards and practices of the local, state and/or federal regulatory agencies having jurisdiction and by personnel adequately trained in

ATTACHMENT U
Sheet 2 of 2

BE IT FURTHER RESOLVED, that all properties, discovered with hazardous wastes which exceed the federal/state standards, will be cleaned up to the satisfaction of the responsible local, state and/or federal regulatory agency. The appropriate regulatory agency shall certify to grant applicant that the cleanup has been completed; and

BE IT FURTHER RESOLVED, that the grant applicant will certify by formal resolution to the Commission that all reasonable steps have been completed to assure full due diligence in the discovery of hazardous waste has been achieved during the acquisition of rail right-of-way and the state is held harmless from cleanup liability or damages, both present and future; and

BE IT FURTHER RESOLVED, that the grant applicant will certify by formal resolution that it will not seek further state funding, for cleanup, damages, or liability cost associated with hazardous wastes on or below acquired property's surface; and

BE IT FURTHER RESOLVED, that the grant applicant will certify to the Commission:

- that all rail right-of-way acquisition properties have been investigated and have been found clean;
- or that the cleanup of discovered hazardous waste has been completed prior to acquisition of the property;
- or that the grant applicant has obtained permanent easement and the subsurface rights and liability and full responsibility to pay for and remove such hazardous waste remains with the seller in conformance with applicable State and Federal law;
- or if hazardous wastes are known to exist prior to acquisition and if the applicant determines that time is of the essence for acquisition, then and in that event, an enforceable agreement will be entered into requiring the responsible party(ies) to clean all hazardous wastes by a date certain, with the option of funds sufficient for the clean-up costs deposited in escrow by the seller.

In the event of failure to clean up by the date determined, the recipient of the grant will make full restitution to the State for its participation. This resolve does not preclude the recipient from requesting re-allocation not to exceed the refunded amount after the hazardous waste(s) have been fully removed from the subject site; and

BE IT FURTHER RESOLVED, that the grant applicant will certify to the Commission that the seller from whom properties have been acquired retain liability for any hazardous waste investigation and/or cleanup, and damages discovered subsequent to the transfer of title; and

BE IT FURTHER RESOLVED, the Commission declares all future liability resulting from hazardous wastes remain with the seller or the grant applicant, not the state, and the grant applicant has been indemnified by the seller for any costs resulting from failure to eliminate hazardous wastes; and

BE IT FURTHER RESOLVED, no state funds will be made available for any future costs associated with cleanup, damages, or liability costs associated with hazardous wastes on or below the acquired property's surface.

AGREEMENT NO. ~~FTA04A28~~ DMT04A28
ATTACHMENT VI

CITY OF ALAMEDA RESOLUTION NO. 12427

AUTHORIZING SOLE SOURCE PURCHASE OF AN
EAST END FERRY VESSEL

WHEREAS, the City has received a grant to purchase a ferry vessel for the east end service; and

WHEREAS, in order for needs of the service for which the grant has been approved, the vessel must meet the following specifications:

- Maximum draft of 4'.
- Seated Capacity: 140 passengers on a single deck.
- Minimum speed of 36 knots at 50% load.
- Maximum fuel consumption 90 gphr at 50% load at maximum speed.

WHEREAS, Yacht Basin, Incorporated is the only company that can guarantee complete compatibility with these specifications; and

WHEREAS, Yacht Basin, Incorporated has a Coast Guard certified design that meets these specifications; and

WHEREAS, Yacht Basin, Incorporated has an existing design; and

WHEREAS, Section 3-15 of the City Charter provides that the City Council, by four affirmative votes, can authorize an open market purchase if it determines that the materials or supplies can be purchased at a lower price in the open market; and

WHEREAS, the City Council has determined that the vessel can be purchased from Yacht Basin, Incorporated at a lower price in the open market.

NOW, THEREFORE, BE IT RESOLVED that the City Council approves the open market purchase of an east end ferry vessel from Yacht Basin, Incorporated, at a cost of $1,300,000.

* * * * * *

CITY ATTORNEY

I, the undersigned, hereby certify that the foregoing Resolution was duly and regularly adopted and passed by the Council of the City of Alameda in special meeting assembled on the 6th day of July, 1993, by the following vote to wit:

AYES: Councilmembers Appezzato, Arnerich, Lucas, Roth and President Withrow - 5.

NOES: None.

ABSENT: None.

ABSTENTIONS: None.

IN WITNESS, WHEREOF, I have hereunto set my hand and affixed the official seal of said City this 7th day of July, 1993.

Diane B. Felsch

Diane B. Felsch, City Clerk
City of Alameda

AMENDMENT TO
STATE OF CALIFORNIA
DEPARTMENT OF TRANSPORTATION
FUND TRANSFER AGREEMENT

SUPPLEMENTARY DOCUMENT
COVERING ALLOCATIONS OF
[ ] PASSENGER RAIL AND
CLEAN AIR BOND ACT OF 1990 (PROP. 108), OR
[X] CLEAN AIR AND TRANSPORTATION
IMPROVEMENT ACT OF 1990 (PROP. 116) BOND FUNDS, OR
[ ] TRANSIT CAPITAL IMPROVEMENT FUNDS

EFFECTIVE DATE OF AMENDMENT: OCTOBER 13, 1993

RECIPIENT: CITY OF ALAMEDA

TITLE OF COMPLETE PROJECT: WATERBORNE FERRY VESSEL ACQUISITION

PHASE OF PROJECT [ ] OR COMPLETE PROJECT [X]

CTC RESOLUTIONS:

PROJECT APPROVAL:	PA-93-05	EFFECTIVE DATE:	DECEMBER 11, 1991
ALLOCATION:	BFP-91-20	FISCAL YEARS:	90/91

SUBSEQUENT CTC RESOLUTIONS:

PROJECT APPROVAL:	PA-93-21	EFFECTIVE DATE:	MAY 6, 1993
ALLOCATION:	BFP-93-29	FISCAL YEARS:	92/93

INITIAL FUND AUTHORIZATIONS:

FUND SOURCE	AMOUNT	FISCAL YEAR	LAST EXPENDITURE DATE
Prop. 116	$2,500,000	1990/91	June 30, 1994

SUBSEQUENT FUND AUTHORIZATIONS:

FUND SOURCE	AMOUNT	FISCAL YEAR	LAST EXPENDITURE DATE
Prop. 116	$1,125,000	1992/93	June 30 ,1994

TERMINATION DATE OF AGREEMENT: June 30, 1995
(In No Event Later Than Twelve [12] Months After Scheduled Project Operations Date.)

REC'D MASS TRANSP.
FEB 28 1994

AMENDING ATTACHMENTS:

Attachment Ia Scope of Work is added.
Attachment IIa Project Description is added.
Attachment IIIa Scope of Work Approval is added.
Attachment IVb CTC Project Approval Resolution No. PA-91-05 is added.
Attachment IVc CTC Project Approval Resolution No. PA-93-21 is added.
Attachment IVd CTC Resolution No. BFP-93-29 is added.

ALL OTHER TERMS AND CONDITIONS REMAIN IN FULL FORCE AND EFFECT.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement by their duly authorized officers.

STATE OF CALIFORNIA
DEPARTMENT OF TRANSPORTATION

BY Rennie Adams
RENNIE ADAMS
Chief, Division of Mass Transportation

CITY OF ALAMEDA

BY William C. Norton
WILLIAM C. NORTON
City Manager

RECOMMENDED FOR APPROVAL:
Robert L. Warnick
PUBLIC WORKS DIRECTOR

Approved as to Form
by Asst. City Atty.
Heather C. McLaughlin
CITY ATTORNEY

Name of Recipient: City of Alameda
Name of Project: Waterborne Ferry Vessel Acquisition
Resolution Number: BFP-91-20; BFP-93-29
Date of Resolution: April 10, 1992; October 13, 1993
Amount of Allocation: $2,500,000, $1,125,000
Fund Source: Prop. 116 Rail Bonds
Expiration Date of Funds: June 30, 1996

SCOPE OF WORK
SCHEDULE OF TASKS AND ESTIMATED PROGRESS PAYMENTS

QUARTER	TASKS**	ESTIMATED FUNDS NEEDED EACH QUARTER			
		Current State Allocation	Previous State Allocation	Federal	Local
First fiscal year*: 1991-92					
July-Sept.					
Oct.-Dec.	Environmental Documentation/Project Management				
Jan.-Mar.	Develop Bid Documents/Project Management		$ 25,000		
April-June	Finalize Bid Documents/Project Management		20,000		
Second fiscal year: 1992-93					
July-Sept.	Advertise Bid		15,000		
Oct.-Dec.	Bid Evaluation (Bid Award Nov.)/Final Design		610,000		
Jan.-Mar.	Construction/Project Management		660,000		
April-June	Construction/Project Management		740,000		
Third fiscal year: 1993-94					
July-Sept.	Construction/Project Management	220,000	430,000		
Oct.-Dec.	Construction/Project Management	555,000			
Jan.-Mar.	Sea Trials/Project Management	230,000			
April-June	Deliver Vessel/Final Acceptance/Project Mgmt.	120,000			
	TOTAL	$1,125,000	$2,500,000		

*Commencing with the fiscal year during which the current state allocation was made
**Indicate by an asterisk tasks completed in the quarter

Agreement No. 64T342
Amendment No. 1
Attachment Ia

AGREEMENT NO. 64T342
AMENDMENT NO. 1
ATTACHMENT IIa

PROJECT DESCRIPTION

ALAMEDA/OAKLAND FERRY VESSEL ACQUISITION PROJECT

This project includes environmental documentation, development of vessel specifications, conducting the bid process, final design and construction of a 26 knot 250-passenger, water-jet driven catamaran ferry vessel with enhanced ADA facilities. The City will do project management, contract administration, and project oversight and construction management for this work. The City will hire a Consultant to develop specifications, help evaluate bids, and conduct on site construction inspection. Construction of the vessel will be done by the lowest and best private bidder.

AGREEMENT NO. 64T342
ATTACHMENT No. 1
ATTACHMENT IIIa

Name of Recipient: City of Alameda
Name of Project: Waterborne Ferry Vessel Acquisition
Resolution Number: BFP-91-20; BFP-93-29
Date of Resolution: April 10, 1992; October 13, 1993
Amount of Allocation: $2,500,000; $1,125,000
Fund Source: Proposition 116
Expiration Date of Funds: June 30, 1996

SCOPE OF WORK APPROVAL

The Department of Transportation hereby certifies that the attached "Scope of Work" document has been submitted by the recipient named above and that its description of tasks to be accomplished with the allocated funds is complete and in conformance with the allocating resolution specified above.

[signature] FOR
Deputy District Director for
Planning and Public Transportation

2.23.94
Date

116 Bond Money

SOURCE		CHARGE		EXP AUTH		SPECIAL DESIGNATION		OBJECT	AMOUNT	DR CR	FISCAL YEAR	ENCUMBRANCE DOCUMENT NUMBER
				GEN LED	SUB ACCT	SUB JOB NO.	R/W PARCEL NO.					
DIST	UNIT	DIST	UNIT	WORK ORDER NO.		LOCATION	BRIDGE NO.					
64	564	96	004	9001	316	3A001		7049	1,125,000.00		91	CAT3A001

I hereby certify upon my own personal knowledge that budgeted funds are available for the period and purpose of the expenditure stated above.

ITEM	CHAPTER	STATUTES	FISCAL YEAR	SIGNATURE OF ACCOUNTING OFFICER	DATE
2600-629-703		1990	90/91	Nancy Kataoka	4-13-94

ATTACHMENT 1

PASSED BY CTC DEC 11 1991 CALIFORNIA TRANSPORTATION COMMISSION

AGREEMENT NO. 164T342
AmendmentNo.1
Attachment IVb

CALIFORNIA TRANSPORTATION COMMISSION

Commission Project Application Approval of the
Proposition 116 Waterborne Ferry Program Applications
for the FY 1991-92 Funding Cycle

Resolution #PA-91-05

WHEREAS, in June 1990 the voters approved Proposition 116, the Clean Air and Transportation Improvement Act, for $1.99 billion for rail and mass transportation purposes; and

WHEREAS, the California Transportation Commission is designated in Proposition 116 to oversee the five grant programs over the 20-year term of the Proposition; and

WHEREAS, Proposition 116 calls for the Commission to establish an application process and to develop and adopt guidelines to implement those programs; and

WHEREAS, Proposition 116 establishes as a purpose of the application process that it "facilitate implementation of improved cost-effective transit service to the maximum number of Californians and to prevent the funds provided for by this part from being spent on needlessly costly features"; and

WHEREAS, Proposition 116 requires applications to specify full and complete capital plans, financial plans, and operating plans, including schedules and funding sources; and

WHEREAS, in April 1991 the Commission adopted policy and application guidelines (#G-91-5) for the Proposition 116 waterborne ferry program; and

WHEREAS, the waterborne ferry program guidelines provide that eligible fund applicants are "local agencies," which means a county, city and county, county transportation commission, county transportation authority, transit development board, transit district, or any joint powers agency specified in PUC Section 99601; and

WHEREAS, Proposition 116 specifies that $20 million shall be allocated to fund a program of competitive grants to local agencies for the construction, improvement, acquisition and other capital expenditures associated with waterborne ferry operations for the transportation of passengers or vehicles or both (PUC Section 99651); and

WHEREAS, the Waterborne Ferry Program Guidelines (#G-91-5) provide for the allocation of $10 million a year over a two-year period for waterborne ferry projects; and

WHEREAS, for FY 1991-92 the Commission has received the following five applications from eligible applicants for waterborne ferry projects totalling $10.975 million in Proposition 116 funds:

- Two applications from the City of Alameda including:
  - A request of $2.5 million in Proposition 116 funds for the acquisition of a waterborne ferry vessel.
  - A request of $464,000 in Proposition 116 funds for sacked concrete rip rap to prevent further erosion of the Alameda Gateway Ferry Terminal shoreline and the installation of tempered glass panels to provide a windbreak for the existing terminal.
- An application from the City of Avalon requesting $1.5 million in Proposition 116 funds for repair and reconstruction of the Cabrillo Mole Ferry Terminal and Docks; and
- An application from the Port of San Francisco requesting $5.809 million in Proposition 116 funds for various capital improvements including, the seismic retrofit of Pier 1/2, construction of a passenger terminal and disabled person access improvements.
- An application from the Golden Gate Bridge, Highway and Transportation District requesting $702,000 in Proposition 116 funds for construction of a fourth berth at the Larkspur Ferry Terminal.

WHEREAS, the five waterborne ferry project applications have been reviewed by the Commission's consultant, Ernst and Young, and Commission staff, and clarification and supplemental information from the applicants have been received that indicate that appropriate planning has occurred in the development of these projects; and

BE IT THEREFORE RESOLVED, that since the aggregate request for Proposition 116 funds for all five projects is less than $1 million in excess of the $10 million set aside for the first of two annual application cycles, and since the Commission finds it essential to fund all five projects, the Commission hereby approves an increase in the FY 1991-92 allocation available for waterborne ferry program applicants of up to $10.975 million, and a corresponding reduction to the amount available for the FY 1992-93 waterborne ferry program allocation; and

BE IT FURTHER RESOLVED, that Commission approval of the five waterborne ferry project applications totalling $10.975 million is subject to:

- Commission approval of the requests from the City of Alameda and the Port of San Francisco to waive the Commission's ferry program policy which limits preconstruction costs to five percent of the Proposition 116 grant allocation.

- Commission approval of the Port of San Francisco request to waive the Commission's policy which limits the allocation for a single ferry project to no more than 50 percent of the total amount of Proposition 116 ferry program funds available for a given year.

BE IT FURTHER RESOLVED, that the Commission hereby approves the five waterborne ferry program project applications contingent upon adoption of resolutions by the applicant agencies implementing the conditions listed below for each project to the satisfaction of the Commission Chairman, in consultation with the Executive Director, prior to approval of any allocation request:

- The City of Alameda, for the Alameda Gateway Ferry Terminal project, shall provide:

  - A resolution from the City of Alameda indicating that it has the financial and institutional ability to accept all legal liabilities associated with this project;

  - A resolution from the City of Alameda which states that local, federal or private funds will be used to complete the projects if costs exceed those stated in its August 26, 1991 Proposition 116 project application.

- The City of Alameda, for the Alameda-Oakland Ferry Vessel Acquisition project, shall provide:

  - A resolution from the City of Alameda and the Port of Oakland indicating that their joint powers agreement provides the financial and institutional ability to accept all legal liabilities associated with this project;

  - A resolution from the City of Alameda and the Port of Oakland which states that local, federal or private funds will be used to complete the projects if costs exceed those stated in the August 26, 1991 Proposition 116 project application.

  - A resolution from the City of Alameda indicating that the City will operate and maintain the ferry vessel once it is procured.

- The City of Avalon shall provide:

  - A resolution from the Avalon City Council indicating that the City has the financial and institutional ability to accept the legal liabilities associated with this project.

  - A resolution from the Avalon City Council which states that local, federal or private funds will be used to complete this project if projects costs exceed those stated in its August 26, 1991 Proposition 116 project application.

- The San Francisco Port Authority shall provide:
  - A resolution indicating that it has the financial and institutional ability to accept the legal liabilities associated with this project.
  - A resolution indicating that it will operate and maintain the project facilities once they are completed.
  - A resolution stating that local, federal or private funds will be used to complete this project if costs exceed those stated in its August 26, 1991 Proposition 116 project application.
  - A description of its plans for accommodating bicycles at the ferry terminal, including access to ferry vessels and bicycle parking.
- The Golden Gate Bridge, Highway and Transportation District Shall provide:
  - A resolution indicating that the District has the financial and institutional ability to accept the legal liabilities associated with this project.
  - A resolution stating that local, federal or private funds will be used to complete this project if costs exceed those stated in its August 26, 1991 Proposition 116 project application.

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Agreement No. 64T342
Amendment No.1
Attachment IVc

PASSED BY

CALIFORNIA TRANSPORTATION COMMISSION

Commission Project Application Approval of the Proposition 116 Waterborne Ferry Program Applications for the FY 1992-93 Funding Cycle

Resolution #PA-93-21

1.1 WHEREAS, in June 1990 the voters approved Proposition 116, the Clean Air and Transportation Improvement Act, for $1.99 billion for rail and mass transportation purposes; and

1.2 WHEREAS, the California Transportation Commission is designated in Proposition 116 to oversee the five grant programs over the 20-year term of the Proposition; and

1.3 WHEREAS, Proposition 116 calls for the Commission to establish an application process and to develop and adopt guidelines to implement those programs; and

1.4 WHEREAS, Proposition 116 establishes as a purpose of the application process that it "facilitate implementation of improved cost-effective transit service to the maximum number of Californians and to prevent the funds provided for by this part from being spent on needlessly costly features"; and

1.5 WHEREAS, Proposition 116 requires applications to specify full and complete capital plans, financial plans, and operating plans, including schedules and funding sources; and

1.6 WHEREAS, in August 1992 the Commission adopted revised policy and application guidelines (#G-91-17) for the Proposition 116 waterborne ferry program; and

1.7 WHEREAS, the waterborne ferry program guidelines provide that eligible fund applicants are "local agencies," which means a county, city and county, county transportation commission, county transportation authority, transit development board, transit district, or any joint powers agency specified in PUC Section 99601; and

1.8 WHEREAS, Proposition 116 specifies that $20 million shall be allocated to fund a program of competitive grants to local agencies for the construction, improvement, acquisition and other capital expenditures associated with waterborne ferry operations for the transportation of passengers or vehicles or both (PUC Section 99651); and

1.9 WHEREAS, the Waterborne Ferry Program Guidelines (#G-91-5) provide for the allocation of $10 million a year for two years but may set the amount at a different level, if competition for funding shows that the amount is insufficient; and

1.10 WHEREAS, for FY 1991-92, the Commission approved 5 applications from eligible applicants for waterborne ferry projects totaling $10.975 million in Proposition 116 funds; and

1.11 WHEREAS, the amount available for the FY 1992-93 Proposition 116 Waterborne Ferry program is $9.025 million; and

1.12 WHEREAS, the Commission has received 14 ferry project applications from eight applicant agencies that requested a total of $18.289 million in Proposition 116 funds, and

1.13 WHEREAS, Commission staff evaluated the 14 ferry project applications on a competitive basis using the screening and evaluation criteria contained in the Commission's adopted Proposition 116 Waterborne Ferry Program Guidelines, and of the 14 applications, 10 have been recommended for funding totaling $9.025 million; and

1.14 WHEREAS, Commission staff has received clarification and supplemental information for the 10 ferry projects recommended for funding that indicates that appropriate planning has occurred in the development of these projects; and

2.1 NOW BE IT THEREFORE RESOLVED, that Commission approval of the 10 ferry project applications totaling $9.025 million is subject to:

- Commission approval of the requests from the Golden Gate Bridge, Highway and Transit District and the Port of San Francisco to waive the Commission's policy which limits pre-construction costs to 5 percent of the total Proposition 116 funds allocated.

2.2 BE IT FURTHER RESOLVED, that the Commission hereby approves the attached priority list of waterborne ferry projects and corresponding funding levels (Chart 1) recommended by Commission staff totaling $9.025 million in Propositions 116 funds, contingent upon the applicants implementing the conditions listed below to the satisfaction of the Commission Chairman, in consultation with the Executive Director, prior to approval of any allocation for each project.

The City of Alameda, for the Alameda/Oakland Ferry Service project, shall provide:

- A "Title and Certification" page which has been signed by the Alameda City Manager.

The City of Alameda, for the Main Street Barge Drydock project, shall provide:

- A certification indicating that the City of Alameda has completed, or will complete prior to beginning the project, the required environmental clearance documentation, pursuant to the California Environmental Quality Act (CEQA).

The City of Alameda, for the Vessel Acquisition for East End Service project, shall provide:

- A revised application which includes an updated "Title and Certification" page, a revised project description, a revised financial plan, and an updated cash flow expenditure plan.

- A certification indicating that the City of Alameda has completed, or will complete prior to beginning the project, the required environmental clearance documentation, pursuant to the California Environmental Quality Act (CEQA).

- A fully executed agreement which documents the terms and conditions between the City of Alameda and Harbor Bay Maritime, Inc. governing the acquisition, operation, and maintenance of the ferry vessel.

The Golden Gate Bridge, Highway, and Transportation District, for the Larkspur Ferry Terminal Improvements and Ferry Vessel Acquisition projects, shall provide the following certification for both projects:

- That no other capital funds previously programmed, planned or approved for waterborne ferry purposed will be used for other than waterborne ferry purposes.

- That new development fees, taxes or exaction's, or permit fees have not and will not be included in the operating budget(s) for this project.

- That no other state funding sources will be utilized to complete this project if costs exceed those identified in the approved application.

- That the applicant agency has the financial and institutional ability to accept the legal liabilities associated with this project.

The Golden Gate Bridge, Highway and Transportation District, for the Ferry Vessel Acquisition project, shall provide:

- A revised application which includes an updated "Title and Certification" page, a revised project description, a revised financial plan, and an updated cash flow expenditure plan.

The City of Los Angeles Harbor Department, for the Catalina Terminal Improvements project, shall provide:

- A signed "Title and Certification" page, with the signature of a representative that has been delegated authority to submit the application on behalf of the Board of Harbor Commissioners.

The Port of Oakland, for the Improvements to the Oakland Terminal Facility project, shall provide the following certifications:

- The applicant agency has completed, or will complete prior to beginning the project, the required environmental clearance documentation, pursuant to the California Environmental Quality Act (CEQA).

- No other capital funds previously programmed, planned or approved for waterborne ferry purposes will be used for other than waterborne ferry purposes.

- New development fees, taxes or exaction's, or permit fees have not and will not be included in the operating budget(s) for this project.

- No other state funding sources will be utilized to complete this project if costs exceed those identified in the approved application.

- The applicant agency has the financial and institutional ability to accept the legal liabilities associated with this project.

The Port of San Francisco, for the Ferry Terminal Upgrade project, shall provide the following certifications:

- That no other capital funds previously programmed, planned or approved for waterborne ferry purposes will be used for other than waterborne ferry purposes.

- That new development fees, taxes or exaction's, or permit fees have not and will not be included in the operating budget(s) for this project.

The Town of Tiburon, for the Tiburon Dock Realignment and Reconstruction project, shall provide:

- A signed copy of the Town Council's Resolution 2901, which approves the project and provides required certifications.

- Documentation which verifies that a deed for the permanent easement across Main Street Properties has been executed.

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CHART 1
CALIFORNIA TRANSPORTATION COMMISSION
FY 1992-93 Waterborne Ferry Program
Project Priority List

Applicant Agency	Project Title	Total Score	Funding Requested	Funding Recommended
City of Alameda	Ferry Vessel Acquisition for Alameda/Oakland Ferry Service	91	$1,125,000	$1,125,000
City of Alameda	Alameda Main Street Barge and Dry-dock	87	204,000	204,000
Town of Tiburon	Tiburon Dock Realignment and Reconstruction	85	710,000	710,000
City of Sausalito	Sausalito Ferry Terminal Upgrade	85	600,000	600,000
City of Los Angeles	Catalina Terminal Rehabilitation and Parking Area Improvements	84	1,300,000	1,300,000
Golden Gate Bridge, Highway and Transit District	Larkspur Ferry Terminal Improvements	80	50,000	50,000
Port of San Francisco	Ferry Terminal Upgrade Project	71	2,723,184	2,723,184
Port of Oakland	Alameda/Oakland Ferry Service Improvements to Oakland Ferry Terminal Facility	69	406,127	406,127
City of Alameda	Ferry Vessel Acquisition for East End Service	65	3,000,000	1,100,000
Golden Gate Bridge, Highway and Transit District	Ferry Vessel Acquisition	65	4,500,000	806,689
City of Alameda	Alameda Gateway Ferry Terminal Extended Shoreline Protection	62	500,000	0
Port of San Francisco	Fisherman's Wharf Area Enhancements	60	1,345,000	0
City of Alameda	Alameda/Oakland Ferry Children's Day Care Center	53	326,650	0
Tahoe Transportation District	Ferry Vessel Acquisition	50	1,500,000	0
TOTALS			$18,289,961	$9,025,000

OCT 1 3 1993

CALIFORNIA TRANSPORTATION COMMISSION

Agreement No. 64T3
Amendment No.
Attachment IVd

ALLOCATIONS FOR MASS TRANSPORTATION BOND AND TCI PROJECTS RESOLUTION NO. BFP-93-29

1.1 WHEREAS, the California Transportation Commission (Commission) has adopted an annual Transit Capital Improvement Program (TCI) plan for mass transportation capital purposes, and the electorate enacted both Proposition 108, the Passenger Rail and Clean Air Bond Act of 1990, and Proposition 116, the Clean Air and Transportation Improvement Bond Act of 1990 in the June, 1990, election authorizing the sale of general obligation rail bonds for rail transit purposes; and

1.2 WHEREAS, the ferry vessel (the Project), further detailed in Attachment A, as component phases or in its entirety, appears on the necessary State capital projects funding list(s) and is entitled to participate in these allocations; and

1.3 WHEREAS, the City of Alameda, (the Recipient) is committed to providing any required local matching funds and to fully fund implementation of the Project in compliance with grant or bond funding requirements or, if Recipient meets that criteria, in compliance with the conditions of Commission Resolution G-92-14, "Guidelines for the Deferral of the Commission's Proportional Expenditure of State Funds Policy"; and

1.4 WHEREAS, the Commission has established a "Hazardous Waste Identification and Clean-up Policy" (#G-91-2) which requires the Recipient(s) to have performed full due diligence in identifying and remediating any hazardous waste in the right-of-way, easements and properties.

2.1 NOW THEREFORE BE IT RESOLVED that a total of $1,125,000 in State Proposition 116 Bond funds be allocated to Recipient for the Project, as detailed in Attachment A; and

2.2 NOW THEREFORE BE IT FURTHER RESOLVED that the transfer of funds for the Project shall be governed by a fund transfer agreement, and subsequent amendments to the same if required, executed between Recipient and the Department of Transportation (Department); and

2.3 NOW THEREFORE BE IT FURTHER RESOLVED that Recipient shall provide the Department, for the balance of all funded Project allocations commencing with the first quarterly review, an updated quarterly expenditure plan by category including any proposed changes; and

2.4 NOW THEREFORE BE IT FURTHER RESOLVED THAT, in any instance of rail bond financing of the Project, the Commission, acting on behalf of the State, by this Resolution intends:

A. to cause and approve the issuance of taxable or tax-exempt State general obligation bonds under Propositions 108 or 116, as appropriate, to reimburse Recipient for the Project identified in Attachment A;

B. to reimburse to Recipient expenditures that shall not have been paid from the proceeds of any other tax-exempt indebtedness unless such prior indebtedness will be retired with the proceeds of such State monies;

C. that this Resolution be a declaration of official intent of the State within the meaning of U.S. Treasury Regulations Section 1.103-17(c) with respect to the Project;

D. that this Resolution will be continuously available to the public for inspection during normal business hours at its Commission Office, 1120 N Street, Sacramento, California, commencing not later than two weeks after the adoption of this Resolution; and

2.5 NOW THEREFORE BE IT FURTHER RESOLVED that, in any instance of rail bond financing, an allocation for the Project is subject to the following conditions and assurances:

A. completed bond sales authorized by the State Treasurer;

B. completed bond certification from the Department, preferably by the time of Commission allocation action but not later than prior to execution of a fund transfer agreement;

C. Recipient certification, delivered to this Commission, preferably by the time of Commission allocation action but not later than prior to execution of a fund transfer agreement, that it will not adopt new or increased development taxes, fees, exactions or permit fees for the purpose of providing local matching funds;

D. Recipient certification, in the form of a formal resolution of its Board delivered to this Commission, that when utilizing state funding for acquisition of property or for capital improvements on the Project, Recipient has exercised all due diligence in the discovery of hazardous wastes; that Recipient will enter into enforceable agreement(s) with any and all owners of to-be-acquired properties for clean-up of hazardous wastes pursuant to the requirements of Resolution G-91-2 regarding Hazardous Waste Identification and Clean-up for Rail Right-of-Way;

E. Recipient certification, in the form of a formal resolution of its Board delivered to this Commission, that when utilizing state-provided and other-than-state funding for acquisition of property or for capital improvements on the Project, Recipient shall agree to indemnify, defend and hold harmless the State, Department and the Commission from clean-up liability or damage, both present and future; and that no additional State funds will be requested for clean-up, damages, or liability associated with hazardous wastes on or below the acquired property;

F. that in any instance of rail bond financing with Proposition 116 funds, the Proposition 116 Project Application date will be that after which project eligible costs can be incurred, with reimbursement subject to an executed fund transfer agreement;

G. that Recipient shall provide the Commission with an "Evaluation of Property Report", preferably by the time of Commission allocation action but not later than prior to execution of a fund transfer agreement, in compliance with Commission Policy G-90-17, Rail Right-of-Way Review Policy, to be verified by the Department or its Agent;

H. that Recipient shall post on the Project construction site(s) at least one sign, visible to the public, stating that the Project is partially funded with State grant rail passenger bond funds;

I. that Recipient has provided the Commission, after consultation with its staff and prior to the execution of a fund transfer agreement which includes any Proposition 116 bond funding, a satisfactory work plan which includes milestones for specific activities related to completion of the transit integration plan prior to initiation of rail service; and

2.6 NOW THEREFORE BE IT FURTHER RESOLVED that this Commission shall be entitled to a then present value refund, or credit, at State's option, equivalent to the proportionate funding participation by the State towards property acquisition and project construction in the event that Recipient, or successor public entities, fail or cease to utilize the Project for the intended public passenger rail purposes or sells or transfers title to the Project. The credit for future purchases or condemnation of all or portions of the Project by the State, and the refund or credit due the Commission in each instance, will be measured by the ratio of State and other public funding to that provided from Recipient. That ratio will be applied to the then fair market value of the Project property; and

2.7 NOW THEREFORE BE IT FURTHER RESOLVED that if the Recipient receives any revenues or profits from any non-governmental use of property allowed pursuant to bond certification (whether approved at this time or hereafter approved by the State), the Recipient agrees that such revenues or profits shall be used exclusively for the public transportation services for which the project was initially approved, either for capital improvements or operating costs. If the Recipient does not so dedicate the revenues or profits, a proportionate share shall (unless disapproved by State's Bond Counsel) be paid to the State equivalent to the State's percentage participation in the Project.

Attachment

ATTACHMENT A
October 1, 1993
Agenda Item 2.6d(1)

RESOLUTION BFP-93-29

* If applicable, as amended by Resolution

ALLOCATIONS FOR RAIL PROJECTS

FUNDING SUMMARY:		BOND 108 FUNDS TOTAL	$0	STATE FUNDS TOTAL**	$1,125,000	FED. FUNDS TOTAL	
TCI/FCR FUNDS TOTAL	$0	BOND 116 FUNDS TOTAL	$1,125,000	LOCAL FUNDS TOTAL		FUNDING TOTAL	$1,125,000

RECIPIENT: City of Alameda

Project: Ferry Vessel Acquisition for Alameda/Oakland Ferry Service

CURRENT ALLOCATION TCI/FCR	Bond 116	Bond 108	Str. & Hwy (Bond 108) PUC - (Bond 116)	STIP No. ALM Resol. /	Appropr. Yr. ALM Amount	Proj. Applic. No. Plan Year	Project Type	a) Budget Act & Chap b) Budget Item No.	c) Program Code d) Expend.Categ.
$0	$1,125,000	$0			Contin.	pa-93-21	116 Ferry	a)	c) 30.20.010
No Local Match required			99651			1992-93		b)	d) Local Assistance

This allocation is a FULL allocation of the programmed/approved amount District(s): 04 County: Alameda Environ. Status: *** SE

Timely Use of Funds: The implementing public agency should encumber the State funds by the end of the State fiscal year plus three months (Resolution No. G-88-6). The implementing public agency must expend at least 50 percent of allocated funds within two years including the fiscal year in which the funds were first appropriated (Resolution No. G-90-11). Dates reflect Governor's Budget Encumbrance & Liquidation time-frames. General Obligation Bond funds have encumbrance and liquidation time-frames more restrictive than provided in the Governor's Budget.

* If accompanying an amending resolution, original resolution amended by the second resolution shown. ** State funding total includes TCI, 108 Bond and 116 Bond

*** CE - Categorically Exempt SE - Statutorily Exempt NOD - Notice of Determination NOE - Notice of Exemption Neg. Decl.- Negative Declaration EIR - Enviro. Impact Review

9/27/93.1

STATE OF CALIFORNIA
DEPARTMENT OF TRANSPORTATION
STATE BOND (PROPOSITION 108 OR 116)
FUND TRANSFER AGREEMENT

COVERING ALLOCATIONS OF PASSENGER RAIL AND CLEAN AIR BOND ACT OF 1990 (PROP. 108) AND CLEAN AIR AND TRANSPORTATION IMPROVEMENT ACT OF 1990 (PROP. 116) BOND FUNDS

DATE OF AGREEMENT: April 10, 1992

RECIPIENT: City of Alameda

NAME OF PROJECT: Waterborne Ferry Vessel Acquisition

CTC ALLOCATION RESOLUTION NO.: BFP-91-20

STATE BOND AUTHORIZATION: PROP 108 ☐ OR, PROP 116 ☒

AMOUNT OF ALLOCATION: $2,500,000

TERMINATION DATE: June 30, 1994

LAST EXPENDITURE DATE: June 30, 1994

This Agreement, entered into as of the date set forth above, is between the recipient public entity identified above, hereinafter referred to as **RECIPIENT**, and the STATE OF CALIFORNIA, acting by and through its Business, Transportation and Housing Agency, Department of Transportation, hereinafter referred to as **STATE**.

SECTION 1. **RECIPIENT** has applied to the California Transportation Commission ("CTC") for funds derived under the **STATE** Bond Authorization identified above to be allocated by CTC for the purpose of the project named above and further described in the "Project Description" attached as Attachment II to the Standard Provisions of Grant (the "Project"), which Project is a waterborne ferry project which will be dedicated by **RECIPIENT** or its successors to that described public use for the economic life cycle of that vessel, including all extensions of that life cycle as are achieved by rehabilitation or reconstruction.

SECTION 2. THE CTC has allocated funds for the Project or one or more phases of the Project ("Project Phase") in the CTC Resolution identified above and attached as Attachment IV to the Standard Provisions of Grant (the "Resolution") and made a part of this Agreement. **RECIPIENT** shall be bound to the terms and conditions of the Resolution and all restrictions, rights, duties and obligations established therein shall inure to the benefit of CTC and be subject to any necessary enforcement action by CTC.

SECTION 3. **STATE** has prepared the "Standard Provisions of Grant," attached and made a part of this Agreement, which, together with this document and all referenced attachments and addenda, sets forth the terms and conditions under which said funds are to be expended.

SECTION 4. **STATE** and **RECIPIENT** have negotiated the "Project Description," which describes the entire Project to be constructed or acquired by **RECIPIENT**.

SECTION 5. **STATE** and **RECIPIENT** have negotiated and **RECIPIENT** has submitted the "Scope of Work," attached as Attachment I to the Standard Provisions of Grant and made a part of this Agreement, which sets forth the tasks and the estimated reimbursement amount, including progress payments, if any, payable by **STATE** under this Agreement. State funding limits and the drawdown schedule established in each original or amended "Scope of Work" shall not be exceeded or modified without a subsequent amendment and encumbrance of **STATE** funds.

SECTION 6. The completed and signed **STATE** fund certification on the Scope of Work Approval document, Attachment III to the Standard Provisions of Grant, evidences the limited commitment of **STATE** funding under this Agreement.

SECTION 7. Funding available to **RECIPIENT** under this Agreement will terminate on the Termination Date specified above, unless earlier terminated upon written notice from **STATE** to **RECIPIENT** pursuant to Article IV, Section 7 of the Standard Provisions of Grant. Funds will be expended by **RECIPIENT** for the described PROJECT no later than the Last Expenditure Date specified above. The failure of **RECIPIENT** to expend these funds within the time established herein shall obligate **RECIPIENT** for all applicable penalties relating to arbitrage rebate on such unexpended amounts of State Bond proceeds and any consequential costs, penalties or liabilities incurred or assessed against **STATE**, CTC or the State Treasurer relating thereto.

SECTION 8. This Agreement may be modified, altered or revised only with the written consent of **RECIPIENT** and **STATE**.

SECTION 9. **RECIPIENT** shall not award a construction contract over $10,000 or other contracts (excluding professional services contracts) over $25,000 on the basis of a noncompetitive negotiation for work to be performed under this Agreement without the prior written approval of **STATE**.

SECTION 10. **RECIPIENT** shall conform to any and all environmental obligations established in the CTC Resolution G-91-2 attached as Attachment V to the Standard Provisions of Grant at the cost of **RECIPIENT** or the responsible party and without further financial contribution or obligation of **STATE**.

SECTION 11. **RECIPIENT** has executed this Fund Transfer Agreement pursuant to the authorizing resolution attached as Attachment VI to the Standard Provisions of Grant.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement by their duly authorized officers.

STATE OF CALIFORNIA
DEPARTMENT OF TRANSPORTATION

BY _____
ROBERT R. DENNIS
Departmental Contract Officer

CITY OF ALAMEDA

BY _____
WILLIAM C. NORTON
City Manager

Approved as to Form
by _____
Asst CITY ATTORNEY

RECOMMENDED FOR APPROVAL.
_____
Robert L. Warnick
Public Works Director

STANDARD PROVISIONS OF GRANT

STATE OF CALIFORNIA
DEPARTMENT OF TRANSPORTATION
FUND TRANSFER AGREEMENT

COVERING ALLOCATIONS OF STATE BOND FUNDS
(PROPOSITION 108 OR 116)

The recipient of State Bond Funds, referred to herein as **RECIPIENT**, has agreed to accept the provisions contained herein, including all Attachments and Addenda (these "Provisions"), as a condition of its acceptance of a grant from these sources. The State of California, acting through the Department of Transportation, referred to herein as **STATE**, shall have the administrative responsibilities described in these Provisions.

ARTICLE I. RECITALS

SECTION 1. **RECIPIENT** proposes to implement a project (hereinafter, the "Project") described in the attached Project Description, Attachment II. The Project Description has been agreed to by **RECIPIENT** and approved by **STATE**. The Project property acquired or constructed with these funds will be dedicated in perpetuity to the public purpose identified in that Project Description.

SECTION 2. **RECIPIENT** has received a commitment of State bond funds to complete all or a portion of the Project, as set forth in the attached CTC allocation resolution, Attachment IV, and in accordance with applicable provisions of the Public Utilities Code or the Streets and Highways Code.

SECTION 3. **RECIPIENT** has submitted a Scope of Work document, Attachment I, to **STATE**, describing tasks to be accomplished under the terms of this agreement, and that document has been approved by **STATE**.

SECTION 4. The grant administrators for the parties shall be: for **STATE**, the District Director of Transportation for the District in which the Project is located, and for **RECIPIENT**, its City Manager, General Manager or Executive Director or designee.

ARTICLE II. PROJECT DESCRIPTION

SECTION 1. **RECIPIENT** agrees to complete the Project, or identified Project Phase thereof, as described in the attached Project Description.

SECTION 2. **RECIPIENT** agrees that if **STATE** funds prove insufficient to complete the described Project or Project Phase and open it to revenue operation, that payment of any additional amounts required shall be the sole responsibility of **RECIPIENT**. **RECIPIENT** further agrees that it will secure and provide, without further **STATE** assistance under this Fund Transfer Agreement, such additional resources as are necessary to pay these additional amounts and expeditiously complete the Project or Project Phase.

ARTICLE III. SCOPE OF WORK

SECTION 1. **RECIPIENT** shall be responsible for complete performance of the work described in the approved Scope of Work document for the Project or particular Project Phase corresponding to its commitment of future State bond funds. The work description contained in that document shall be separated, where deemed necessary by the **RECIPIENT**, into distinct Project Phases.

SECTION 2. **RECIPIENT** acknowledges and agrees that **RECIPIENT** is the sole control and manager of the proposed Project and its subsequent employment for the benefit of the public. **RECIPIENT** shall be solely responsible for complying with the funding and use restrictions established by the State Bond Act from which the funds are derived, CTC, the State Treasurer, the Internal Revenue Service, and the terms of this Agreement. **RECIPIENT** shall indemnify, defend and hold harmless the **STATE**, CTC and the State Treasurer relative to any misuse by **RECIPIENT** of State Bond funds, Project property or Project generated income or other fiscal acts or omissions of **RECIPIENT**.

SECTION 3. A Schedule of Tasks and Estimated Progress Payments shall be included in the Scope of Work document. **STATE** need not pay **RECIPIENT** a cumulative amount greater than the cumulative amount identified in the Schedule for any time period or any earlier than the dates authorized in the drawdown schedule of payments.

SECTION 4. The Scope of Work includes an estimated completion date or dates for each of the separate Project Phases or items of work identified therein.

ARTICLE IV. PAYMENT

SECTION 1. **RECIPIENT** agrees to contribute at least the statutorily required amount of the cost of the Project, or the Project Phase, or the amount specified in the SB2800 commitment of future State funds, whichever is greater, from funds available to it. **RECIPIENT** shall contribute its required amount of the cost of the Project or the Project Phase in accordance with a schedule of payments prepared by **RECIPIENT** and attached to the Scope of Work document.

SECTION 2. Not more frequently than once a month, but at least quarterly, **RECIPIENT** will prepare and submit to **STATE**, Progress Payment Vouchers consistent with the Scope of Work document, in the format that is attached to these Provisions. Each such voucher will be accompanied by a report describing the overall work status and progress on tasks for the applicable Project or Project Phase. If applicable, the first voucher shall also be accompanied by a report describing any tasks specified in the Scope of Work document which were accomplished prior to the date of this Agreement and for which costs are to be either reimbursed by **STATE** or credited toward the required local contribution described in Article IV, Section 1 of these Provisions.

SECTION 3. Should **RECIPIENT** have a valid Memorandum of Understanding (MOU) for "Expedited Payment" on file with the **STATE**, Department of Transportation, Headquarters Accounting office, **RECIPIENT** will, not more frequently than as authorized by that MOU, prepare and submit to **STATE** a Rail Bond Expedited Payment Invoice consistent with that MOU and the Scope of Work document. The original invoice copy shall be mailed or faxed to: Department of Transportation, Division of Accounting, Attention: Rail Bond Unit, P.O. Box 942874, Sacramento, CA 94274-0001, (FAX #916-327-4525). As set forth in the MOU, all appropriate supporting documentation and remaining invoice copies are to be submitted to the appropriate Departmental Project Administrator. A warrant for each invoice will be issued by the State Controllers Office within 10 calendar days from receipt of an acceptable invoice. Invoices will be approved for this expedited payment, provided they are not one-time payments or final payments. One-time payments and final payments, eligible for expedited pay, will have 10% of the invoice amount withheld pending approval from the Departmental Project Administrator.

SECTION 4. Final payment vouchers shall be submitted not later than one month after the Last Expenditure Date. Reimbursement will be made only for work performed after the date of project application approval by the California Transportation Commission and prior to the submittal date of the final voucher.

SECTION 5. Delivery by **STATE** of these bond funds is contingent upon budget action by the legislature, fund allocation by CTC, submittal by **RECIPIENT** and approval by **STATE** of all documentation required by Government Code Section 14085 and subject to the sale of bonds by the State Treasurer. In the event bond sales

are delayed, canceled, or downsized, **STATE** shall not be held liable for any resulting damage or penalty. In the event of any such delay, cancellation or reduction, **RECIPIENT** shall be excused from meeting the time and expenditure schedule to the extent of such delay, cancellation or reduction and this Agreement will be amended to reflect the necessary changes in scope or scheduling of the Project.

SECTION 6. **STATE** reserves the right to terminate its funding for any Project or Project Phase upon written notice to **RECIPIENT** in the event that **RECIPIENT** fails to proceed with the work in accordance with the Scope of Work document or bonding requirements, or otherwise violates the conditions of these Provisions or the allocation such that substantial performance of such Project or Project Phase is significantly endangered. In the event of such termination, **RECIPIENT** shall be reimbursed its costs up to the **STATE**'s share of allowable Project costs incurred prior to the date of termination provided that all other terms and conditions of this Agreement have been met. Any such termination shall be accomplished by delivery to **RECIPIENT** of a Notice of Termination, which notice shall become effective not less than 30 days after receipt, specifying the reason for the termination, the extent to which funding of work under these provisions is terminated and the date upon which such termination becomes effective, if beyond 30 days after receipt. During the period before the effective termination date, **RECIPIENT** and **STATE** shall meet to attempt to resolve the dispute.

ARTICLE V. REPORTS AND RECORDS

SECTION 1. **RECIPIENT** and its contractors shall establish and maintain an accounting system and records that properly accumulate and segregate incurred costs by line item for the Project or Project Phase. **RECIPIENT** and contractor accounting systems shall conform to generally accepted accounting principles (GAAP), enable the determination of incurred costs at interim points of completion, and provide support for reimbursement payment requests. All accounting records and other supporting papers of **RECIPIENT** and its contractors connected with performance under this Agreement shall be maintained for a minimum of three years from the date of final payment to **RECIPIENT** under these provisions and shall be held open to inspection and audit by representatives of **STATE** and the Auditor General of the State. In conducting an audit of the costs claimed under these provisions, **STATE** will rely to the maximum extent possible on any audit arranged by **RECIPIENT** pursuant to the provisions of federal and state laws. In the absence of such an audit, any audit work performed by **RECIPIENT's** external and internal auditors and/or the federal auditors will be relied upon and used when planning and conducting additional audits.

SECTION 2. **RECIPIENT** and its contractors agree that contract cost principles at least as restrictive as 48 CFR, Federal Acquisition Regulation System, Chapter 1 Part 31, shall be used to determine the allowability of individual items of costs. **RECIPIENT** and its contractors also agree to comply with Federal procedures as set

forth in 49 CFR, Part 18, Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments.

Any costs for which payment has been made to **RECIPIENT** that are determined by subsequent audit to be unallowable under CFR 48, Federal Acquisition Regulation System, Chapter 1, Part 31, are subject to repayment by **RECIPIENT** to **STATE**.

SECTION 3. For the purpose of determining compliance with Public Contract Code Section 10115, et seq., Sections 999 et seq. of the Military and Veterans Code and Title 2, California Code of Regulations, Section 1896.60 et seq., when applicable, and other matters connected with the performance of **RECIPIENT's** contracts with third parties pursuant to Government Code Section 10532, **RECIPIENT**, **RECIPIENT's** Contractor, subcontractors and **STATE** shall maintain all books, documents, papers, accounting records, and other evidence pertaining to the performance of such contracts, including but not limited to, the costs of administering the various contracts. All of the above-referenced parties shall make such materials available at their respective offices at all reasonable times during the contract period and for three years from the date of final payment under such contract. **STATE**, the State Auditor General, the Federal Highway Administration, or any duly authorized representative of the Federal Government shall have access to any books, records, and documents that are pertinent to the Agreement for audits, examinations, excerpts, and transactions, and copies thereof shall be furnished if requested.

SECTION 4. **RECIPIENT** will insert clauses to the effect of Sections 1, 2 and 3 above of this Article V in all of its contracts funded by **STATE** under these Provisions.

SECTION 5. **RECIPIENT** and **STATE** agree to conduct, on a quarterly basis, either on-site or at a mutually agreeable location, reviews of all aspects of the progress of the Project or a Project Phase. The first quarterly review meeting shall take place within 90 days following execution of this Agreement. **RECIPIENT** agrees, during each quarterly progress review, to inform **STATE** regarding (1) whether the Project or Project Phase is proceeding on schedule and within budget, (2) any requested changes to the Project Management Plan, (3) major construction accomplishments during the quarter, (4) any problems or anticipated problems which could lead to delays in schedule, increased costs or other difficulties, (5) the status of the Project Budget and, (6) the status of critical elements of the Project or Project Phase.

SECTION 6. The quarterly reviews will include consideration of whether activities are within the scope of the Project and in compliance with **STATE** laws, regulations, administrative requirements, and implementation of the Project under this Agreement.

SECTION 7. If at any time during the performance of the Project **RECIPIENT** and **STATE** determine that the Project budget may be exceeded, **RECIPIENT** shall take the following steps:

(1) Notify the designated **STATE** representative of the nature and projected extent of the overrun, and within a reasonable period thereafter, identify and quantify potential costs savings or other measures which will bring the budget into balance, and

(2) Schedule the projected overrun for discussion at the next subsequent Quarterly Review meeting.

ARTICLE VI. GENERAL PROVISIONS

SECTION 1. In the performance of work under these provisions, **RECIPIENT** and its contractor(s) will not discriminate against any employee or applicant for employment because of race, color, religion, ancestry, sex, age, national origin, or physical handicap (Government Code Section 12940 et seq.). **RECIPIENT** and its contractor(s) will take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, color, religion, ancestry, sex, age, national origin, or physical handicap. Such action shall include, but not be limited to, the following: employment, upgrading, demotion or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. **RECIPIENT** and its contractor(s) shall post in conspicuous places, available to employees and applicants for employment, notice to be provided by **STATE** setting forth the provisions of this section.

SECTION 2. **RECIPIENT** and its contractor(s) will permit access to his/her records of employment, employment advertisements, application forms, and other pertinent data and records by the State Fair Employment Practices and Housing Commission, or any other agency of the State of California designated by the awarding authority, for the purpose of investigation to ascertain compliance with Section 1 of this Article VI.

SECTION 3. **RECIPIENT** agrees to insert, in appropriate contracts, the California Labor Code requirements that all workers employed on public works will be paid not less than the predetermined general prevailing wage rates determined by the Department of Industrial Relations.

SECTION 4. Should Public Contract Code Sections 2000 or 10115 et seq. or Military and Veterans Code Sections 999 et seq. be applicable to **RECIPIENT**, **RECIPIENT** will meet, or make good faith efforts to meet, the following Minority Business Enterprises/Women Business Enterprises/Disabled Veterans Business

Enterprises goals in the award of every contract for work to be performed under these Provisions:

Minority Business Enterprises - 15%
Women Business Enterprises - 5%
Disabled Veterans Business Enterprises - 3%

RECIPIENT shall have the sole duty and authority in determining whether good faith efforts were sufficient as outlined in Public Contract Code Sections 10115 et seq., and the Military and Veterans Code Sections 999 et seq.

SECTION 5. To the extent that **RECIPIENT** is subject to the provisions of Government Code Section 4450 et seq., **RECIPIENT** shall submit plans and specifications for buildings, structures, sidewalks, curbs and related facilities to the State Department of General Services for approval prior to Construction.

SECTION 6. Neither **STATE** nor any officer or employee thereof shall be responsible for any damage or liability occurring by reason of anything done or omitted to be done by **RECIPIENT**, its agents and contractors, under, or in connection with any work, authority, or jurisdiction delegated to **RECIPIENT** under this Agreement or as respects environmental clean up obligations or duties of **RECIPIENT** relative to a Project. It is also understood and agreed that, pursuant to Government Code Section 895.4, **RECIPIENT** shall fully indemnify and hold **STATE** harmless from any liability imposed for injury (as defined by Government Code Section 810.8) or environmental obligations or duties occurring by reason of anything done or imposed by operation of law or assumed by, or omitted to be done by **RECIPIENT** under or in connection with any work, authority, or jurisdiction delegated to **RECIPIENT** under this Agreement.

SECTION 7. **RECIPIENT** is obligated, for the expected economic life cycle of the Project, including such extensions of life cycle as are achieved by rehabilitation, to dedicate the Project public passenger waterborne ferry transportation purposes for which the Project was initially approved. In the event that public passenger waterborne ferry transportation operations cease to exist prior to the life span of the Project, the **RECIPIENT** will make restitution to the **STATE** as called on in Article VI, Section 9. The Project right of way, the Project facilities constructed or reconstructed on the Project site and/or Project property purchased (excluding construction easements and excess property whose proportionate resale proceeds are distributed pursuant to this Agreement) shall remain dedicated to public passenger waterborne ferry transit use in the same proportion and scope and to the same extent as described in this Agreement and related Bond Fund Certification documents.

SECTION 8. **RECIPIENT** shall, for the purposes of State bond funded right of way acquisition which will become a permanent part of the Project (such acquisitions exclude construction easements, property allocated to matching funds, and excess property purchased with State funds whose resale proceeds are returned

or credited to **STATE**), maintain ownership of such Project property for a minimum of twenty years or until the bonds have matured, whichever occurs first, before transferring or selling such property, subject to the credits due **STATE** as provided in Article VI, Section 9 herein below.

SECTION 9. Except as otherwise set forth in this Section 8, **STATE**, or any assignee public body acting on behalf of the CTC, shall be entitled to a refund or credit at **STATE** option, equivalent to the proportionate funding participation by **STATE** and other NON-RECIPIENT generated public funds towards the Project acquisition or construction in the event that **RECIPIENT** ceases to utilize the Project for the intended public passenger waterborne ferry purposes or sells or transfers title to or control over the Project. Such refund or credit to **STATE** shall not be required, subject to **STATE** approval of that intended use, if **RECIPIENT** dedicates the proceeds of such sale or transfer exclusively to public passenger waterborne ferry purposes or, in the case of proceeds attributable to NON-STATE, NON-RECIPIENT funding, such proceeds are returned to the funding entity or otherwise expended according to the agreement with such entity. **STATE** shall also be granted an acquisition credit for future purchases or condemnation of all or portions of the Project by **STATE**. The refund or credit due **STATE** will be measured by the ratio of **STATE** and, if applicable, other Non-Recipient public funding to total Project costs and that ratio applied to the then fair market value of the Project property.

SECTION 10. **RECIPIENT** should be on notice that the Federal Transportation Administration ("FTA", previously "UMTA") does not share in any revenue stream from projects which it has participated in. However, FTA does require that it specifically approve private and incidental uses of its funded projects to assure that they do not adversely impact transit use. In FTA funded projects, revenues that are derived from these private and incidental uses must be documented, are subject to audit and are required to be applied to transit purposes. FTA circular 5010.1A provides program management guidelines.

SECTION 11. If funding is being provided pursuant to the Clean Air and Transportation Improvement Act of 1990 (Prop. 116), the following additional provisions apply to **RECIPIENT**:

(a) Where **RECIPIENT**'s Project includes a commuter rail project within the meaning of Prop. 116, **RECIPIENT** shall coordinate and share with other public transit operators any rail rights-of-way, common maintenance services and station facilities used for intercity and commuter rail. Intercity and commuter rail services shall be coordinated with each other, with other providers and with freight traffic to provide integrated rail passenger and freight services with minimal conflict.

(b) **RECIPIENT** agrees that all passenger rail and water borne ferry equipment and facilities acquired or constructed pursuant to this Agreement shall be accessible to persons with physical disabilities, including wheelchair users. All passenger vehicles and vessels acquired pursuant to this Agreement shall be

accessible to wheelchair users at all stops, stations and terminals whether or not staffed.

(c) **RECIPIENT** (other than the transit operator identified in Sections 99633 and 99634 of Proposition 116 (Public Utilities Code §99633 and 99634)) shall require all intercity and commuter rail cars purchased to conform with the California Rail car specifications developed by **STATE** as specified in the Clean Air and Transportation Improvement Act.

SECTION 12. The Fund Transfer Agreement, these Provisions, the CTC Resolutions, the Project Description and the Scope of Work document approved by **STATE** constitute the entire terms of the grant Fund Transfer Agreement between the parties for the work to be performed pursuant to this grant. The Project Description and/or the Scope of Work document may be modified, altered or revised only with the written consent of **RECIPIENT** and **STATE**.

SECTION 13. Additional funding for subsequent Projects or Project Phases may be granted through amendments to this Agreement, attachment of a new CTC allocation resolution, and submission by **RECIPIENT** of an acceptable revised Scope of Work document. When necessary, the Project Description shall also be revised by amendment.

ARTICLE VII. BOND PROVISIONS

SECTION 1. **RECIPIENT** shall not loan any portion of the bond proceeds represented by this grant to any private (including nonprofit) person or business. For this purpose a "loan" includes any arrangement which is the economic equivalent of a loan, regardless of how it is named.

SECTION 2. Except as provided in this Article VII, **STATE** and **RECIPIENT** agree that any costs of the Project acquired or constructed by **RECIPIENT** allocable to portions of the Project which are subject to any property interests held by a nongovernmental person(s) in connection with business activities, such as easements, leases, or fee interests not generally enjoyed by the public, (hereafter referred to as Nongovernmentally Used Property or "**NUP**") shall, for accounting and bookkeeping purposes, be allocated to funding sources other than the **STATE** Bond funds. For purposes of making such allocations, the costs attributable to **NUP** involving a sale, easement, lease or similar arrangement shall be determined on the basis of a fair allocation of value, which may include determinations based upon square or cubic footage/acreage of the area encumbered by the lease or easement relative to the total area acquired or constructed if all such area is of approximately equal value.

NUP will include, but is not limited to, property which is sold (including sales of air and subsurface rights) and property subject to easements, leases or similar

rights. Further, notwithstanding anything in this Article VII to the contrary, **RECIPIENT** may allocate grant funds to the cost of any **NUP** if (i) neither **RECIPIENT** nor any other governmental entity will receive, directly or indirectly, any payments from or on behalf of the nongovernmental user of the **NUP**, or (ii) the payment from such user does not exceed the operation and maintenance costs fairly attributable or allocable to the nongovernmental use of the **NUP**.

SECTION 3. **RECIPIENT** shall request in writing **STATE**'s advance approval if grant funds are to be allocated to any **NUP**, except "incidental use" property described below. If property, the costs of which have previously been allocated to grant funds, is to become **NUP** before the **STATE** bond funds are fully paid or redeemed, then **RECIPIENT** may allocate the costs of such property to another funding source as provided in Section 2. above, or obtain **STATE**'s approval that the allocation of the costs of such property to the grant funds may remain. It is anticipated that **STATE** approval will be granted if, following consultation between Caltrans, CTC, the State Treasurer, and Bond Counsel, and taking into account the existing and expected uses of the proceeds of the **STATE** bonds, the **STATE** determines that the continued tax-exempt status of the **STATE** bonds will not be adversely affected.

For purposes of this Section 3., **RECIPIENT** does not have to take into account as **NUP** "incidental uses" of the Project (such as, for example, advertising billboards, vending machines, telephones, etc.) which meet requirements of federal tax regulations (IRS Notice 87-69 or any successor thereto). In general, such Notice requires that the incidental use not be physically separated from the rest of the Project and not comprise in the aggregate more than 2-1/2% of the costs of the Project.

SECTION 4. If **RECIPIENT** enters into a management contract with a private party for operation of ferry services over the Project, it will either (a) obtain approval from Bond Counsel that the terms of the management contract meet the requirements of Internal Revenue Service Revenue Procedure 82-14 (as supplemented or amended) or any successor thereto (dealing generally with guidelines for when management contracts may be deemed not to create a "private use" of bond-financed property); or (b) be prepared to certify upon request of **STATE** that the revenues which **RECIPIENT** (or its manager) will receive directly from the operation of ferry services in connection with the Project (but not including any subsidy of the ferry operation from taxes or other outside fund sources) are for any fiscal year less than the ordinary and necessary expenses directly attributable to the operation and maintenance of the ferry system (excluding any overhead or administrative costs of **RECIPIENT**). In any year for which option (b) will not be true, **RECIPIENT** shall consult Bond Counsel to obtain approval of the management contract or an opinion that the circumstances present will not adversely affect the tax exemption of the **STATE**'s bonds.

SECTION 5. If **RECIPIENT** receives any revenues or profits from any **NUP** allowed pursuant to this Article VII (whether approved at this time or hereafter approved by **STATE**), **RECIPIENT** agrees that such revenues or profits shall be used exclusively for ferry services, either for capital improvements or operating costs. If **RECIPIENT** does not so dedicate the revenues or profits, a proportionate share shall (unless disapproved by Bond Counsel) be paid to **STATE** equivalent to **STATE**'s percentage participation in the Project.

SECTION 6. No part of the grant represented by this Agreement will be used by **RECIPIENT** to repay or refund any indebtedness (tax-exempt or taxable) issued by or on behalf of **RECIPIENT** to initially fund all or part of the Project.

ATTACHMENTS

ATTACHMENT I	SCOPE OF WORK
ATTACHMENT II	PROJECT DESCRIPTION
ATTACHMENT III	SCOPE OF WORK APPROVAL
ATTACHMENT IV	CTC ALLOCATION RESOLUTION
ATTACHMENT IVa	AMENDED CTC ALLOCATION RESOLUTION
ATTACHMENT V	RECIPIENT RESOLUTION
ATTACHMENT VI	INTERNAL REVENUE SERVICE TAX REGULATIONS RESOLUTION

AGREEMENT NO. 64T 342
ATTACHMENT I

Name of Recipient: City of Alameda
Name of Project: Waterborne Ferry Vessel Acquisition
Resolution Number: BFP-120 BFP-91-20
Date of Resolution: April 10, 1992
Amount of Allocation: 2,500,000
Fund Source: Prop. 116 Rail Bonds
Expiration Date of Funds: June 30, 1994

SCOPE OF WORK
SCHEDULE OF TASKS AND ESTIMATED PROGRESS PAYMENTS

QUARTER	TASKS**	ESTIMATED FUNDS NEEDED EACH QUARTER			
first fiscal year*: 91/92		Current State Allocation	Other State[1] Allocation	Federal	Local
July-Sept.					
Oct.-Dec.	Environmental Documentation/Project Management				
Jan.-Mar.	Develop Bid Documents/Project Management	$ 25,000			
April-June	Finalize Bid Documents/Project Management	20,000			
second fiscal year: 92/93					
July-Sept.	Advertise Bid	15,000			
Oct.-Dec.	Bid Evaluation (Bid Award Nov.)/Final Design	430,000			
Jan.-Mar.	Construction/Project Management	460,000			
April-June	Construction/Project Management	520,000			
third fiscal year: 93/94					
July-Sept.	Sea Trials/Project Management	550,000			
Oct.-Dec.	Deliver Vessel/Final Acceptance/Project Mgmt.	480,000			

*Commencing with the fiscal year during which the current state allocation was made
**Indicate by an asterisk tasks completed in the quarter

AGREEMENT NO. 64T 342
ATTACHMENT II

PROJECT DESCRIPTION

ALAMEDA/OAKLAND FERRY VESSEL ACQUISITION PROJECT

250 - 275

This project includes environmental documentation, development of vessel specifications, conducting the bid process, final design and construction of a 22-26 knot 150-220 passenger catamaran ferry vessel. The City will do project management, contract administration, and project oversight and construction management for this work. The City will hire a Consultant to develop specifications, help evaluate bids, and conduct on site construction inspection. Construction of the vessel will be done by the lowest and best private bidder.

The City has submitted an application to upgrade the vessel to be a 250 passenger, water jet driven vessel with enhanced ADA facilities. That application is pending CTC action and, if approved, would be incorporated into this project.

AGREEMENT NO. 64T 342
ATTACHMENT III

Name of Recipient: City of Alameda
Name of Project: Waterborne Ferry Vessel Acquisition
Resolution Number: BFP-91-20
Date of Resolution: April 10, 1992
Amount of Allocation: $2,500,000
Fund Source: Prop. 116 Rail Bonds
Expiration Date of Funds: June 30, 1994

SCOPE OF WORK APPROVAL:

The Department of Transportation hereby certifies that the attached "Scope of Work" document has been submitted by the recipient named above and that its description of tasks to be accomplished with the allocated funds is complete and in conformance with the allocating resolution specified above.

[signature] FOR 11·16·92

Deputy District Director for Planning and Public Transportation — Date

SOURCE		CHARGE		EXP AUTH		SPECIAL DESIGNATION		OBJECT	AMOUNT	DR/CR	FISCAL YEAR	ENCUMBRANCE DOCUMENT NUMBER
				GEN LED	SUB ACCT	SUB JOB NO.	R/W PARCEL NO.					
DIST	UNIT	DIST	UNIT	WORK ORDER NO.		LOCATION	BRIDGE NO.					
64	564	96	004	9001136		3A001		7049	2,500,000.00		91	CAT3A001

I hereby certify upon my own personal knowledge that budgeted funds are available for the period and purpose of the expenditure stated above.

ITEM	CHAPTER	STATUTES	FISCAL YEAR
2600-629-703		1990	90/91

SIGNATURE OF ACCOUNTING OFFICER: Nancy Katarska

DATE: 12-16-92

Attachment IV

State of California Agency

Business, Transportation and Housing

Memorandum

Item No. 2.5(c)

To: CHAIR AND MEMBERS
California Transportation Commiss

PASSED BY

Date: March 27, 1992

e: BFP-91-20
ACTION REQUIRED

From: DEPARTMENT OF TRANSPORT ON
Director's Office

APR 1 0 1992

CALIFORNIA
TRANSPORTATION COMMISSION

Subject: Financial Resolution

RECOMMENDATION:

It is recommended that the following Resolution be approved:

ALLOCATIONS FOR
MASS TRANSPORTATION BOND PROJECTS
RESOLUTION NO. BFP-91-20

1.1 WHEREAS, the electorate enacted Proposition 116, the Clean Air and Transportation Improvement Bond Act of 1990, in the June, 1990 election authorizing the sale of General Obligation Rail Bonds for water-borne ferry operation purposes; and

1.2 WHEREAS, Public Utilities Code (PUC) Section 99651, as added by Proposition 116, provided that $20,000,000 shall be allocated to fund a program of competitive grants to local agencies for the construction, improvement, acquisition, and other capital expenditures associated with water-borne ferry operations for the transportation of passengers or vehicles, or both; and

1.3 WHEREAS, the City of Alameda has submitted a Proposition 116 Project Application for $2,964,000 for the two projects identified in Attachment A; and

1.4 WHEREAS, the California Transportation Commission (CTC) has adopted Resolution PA-91-05, the Proposition 116 Project Application submitted by the City of Alameda.

2.1 NOW THEREFORE BE IT RESOLVED that $2,964,000 in 1990 Clean Air and Transportation Improvement Bond funds be allocated to the City of Alameda for the two projects as described in Attachment A, at such time as bond funds are made available by the State Treasurer's Office; and

2.2 NOW THEREFORE BE IT FURTHER RESOLVED that the transfer of funds for the projects specified in Attachment A shall be governed by a fund transfer agreement, or agreements, executed between the City of Alameda and the Department of Transportation (Department); and

2.3 NOW THEREFORE BE IT FURTHER RESOLVED that the City of Alameda shall provide a guarantee in the form of a resolution, delivered to the CTC prior to the execution of a fund transfer agreement, said guarantee to be incorporated within said fund transfer agreement, to adhere to the applicable Internal Revenue Service tax regulations, to conform to guidelines which may be issued in the future by the State Treasurer regarding the use of funds derived from bond sales, and to hold harmless and indemnify the CTC, the Department, and the State Treasurer against any penalties or costs related to the failure of the City of Alameda to meet these commitments; and

2.4 NOW THEREFORE BE IT FURTHER RESOLVED THAT:

a. The CTC, acting on behalf of the State, declares its official intent to cause and approve the issuance of up to $2,964,000 of taxable or tax-exempt State General Obligation Rail Bond funds under Proposition 116, to reimburse the City of Alameda for the projects described in Attachment A; and

b. This Resolution is intended by the CTC to be a declaration of official intent of the State within the meaning of U.S. Treasury Regulations Section 1.103-17(c) with respect to the project; and

c. The CTC intends that this Resolution will be continuously available to the public for inspection during normal business hours at the 1120 N Street Office, Sacramento, California, commencing not later than two weeks after the adoption of this Resolution; and

2.5 NOW THEREFORE BE IT FURTHER RESOLVED that the City of Alameda shall provide the Department, commencing with the first quarterly review, with an updated monthly expenditure plan by category for the balance of all funded project allocations; and

2.6 NOW THEREFORE BE IT FURTHER RESOLVED that this allocation is subject to completed bond sales authorized by the State Treasurer.

DEPARTMENT SUMMARY AND CONCLUSIONS:

This resolution proposes allocating $2,964,000 from 1990 Clean Air and Transportation Improvement Bond funds to the City of Alameda for the two projects shown below. Details of the transactions are included on Attachment A.

Project	Recipient	Fund	Amount
(1) Acquisition of the waterborne ferry vessel. This project is exempt under CEQA.	City of Alameda	116 Bond	$2,500,000
(2) Alameda gateway ferry terminal shoreline protection and windbreak. This project is exempt under CEQA.	City of Alameda	116 Bond	$464,000

ALLOCATION OF FUNDS STATUS

This is the first allocation to the City of Alameda.

MARTIN KIFF
Deputy Director
Transportation Financing

Attachment

ATTACHMENT A
April 9, 1992
Agenda Item 2.5(c)

RESOLUTION BFP-91-20

ALLOCATIONS FOR NEW BOND FUNDED RAIL TRANSIT PROJECTS

Project Description	Recipient Expend Cat. Program Code	District County	STIP Number STIP Amount STIP Year STIP Program	RESOLUTION ALLOCATION State Funds Federal Funds Local Amount	Budget Item No.	Budget Act & Chapter Financing Ends:* Encumbrances End/ Liquidations End	RPA Advanced Project Approvals	ALM Advanced Local Match	CEQA**
-1- Acquisition of the waterborne ferry vessel.	City of Alameda Local Assistance 30.20.020	04 Alameda	TBA	STATE FUNDS: 90 BOND $ 0 SHA $ 0 TP&D $ 0 PVEA $ 0 PROP 116 $ 2,500,000 STATE TOTAL $ 0 Federal $ 0 Local $ 0 Project Total $ 2,500,000	N/A	Prop. 116 1991	PA-91-05	($0)	E
-2- Alameda gateway ferry terminal shoreline protection and windbreak.	City of Alameda Local Assistance 30.20.020	04 Alameda	TBA	STATE FUNDS: 90 BOND $ 0 SHA $ 0 TP&D $ 0 PVEA $ 0 PROP 116 $ 464,000 STATE TOTAL $ 0 Federal $ 0 Local $ 0 Project Total $ 464,000	N/A	Prop. 116 1991	PA-91-05	($0)	E

*Timely Use of Funds: The implementing public agency should encumber the State funds by the end of the State fiscal year plus three months (Resolution No. G-88-6). The implementing public agency must expend at least 50 percent of allocated funds within two years including the fiscal year in which the funds were first appropriated (Resolution No. G-90-11).

** E - Exempt

State of California

siness, Transportation and Housing Agency
Agreement No. 64T 342
Attachment No. IV a.

Memorandum

Item No. 2.6(h)

To: CHAIR AND MEMBERS
California Transportation Commission

Date: July 30, 1992

File: BFA-92-01
ACTION REQUIRED

From: DEPARTMENT OF TRANSPORTATION
Director's Office

Subject: Financial Resolution

PASSED BY
AUG 1 3 1992
CALIFORNIA
TRANSPORTATION COMMISSION

RECOMMENDATION:

It is recommended that the following Resolution be approved.

ALLOCATIONS FOR
MASS TRANSPORTATION BOND PROJECTS
RESOLUTION NO. BFA-92-01
AMENDING RESOLUTIONS BFP-91-15, BFP-91-20,
BFP-91-24 AND BFP-91-21

1.1 WHEREAS, Resolution BFP-91-15 was adopted by the California Transportation Commission (Commission) on March 20, 1992, allocating $35,500,000 in Proposition 116 bond funds to the Bay Area Rapid Transit District (BARTD) for the Pittsburg/Antioch Extension project; and

1.2 WHEREAS, Resolution BFP-91-20 was adopted by the Commission on April 10, 1992, allocating $2,964,000 in Proposition 116 bond funds to the City of Alameda for two ferry projects; and

1.3 WHEREAS, Resolution BFP-91-24 was adopted by the Commission on May 7, 1992, allocating $5,706,000 in Proposition 116 bond funds to the Santa Clara County Transit District (SCCTD) for the extension of the Peninsula Commute Service; and

1.4 WHEREAS, a local agency must receive bond certification from the Department of Transportation (Department) for each project receiving Proposition 116 bond proceeds before a fund transfer agreement for that project may be executed; and

1.5 WHEREAS, the BARTD, the City of Alameda, and the SCCTD had not yet received bond certification for the projects listed above at the time the Commission allocated funds to the projects; and

1.6 WHEREAS, subsequent to said allocation the Department has bond certified the BARTD, City of Alameda and SCCTD projects listed above; and

1.7 WHEREAS, the allocation resolutions for the BARTD, City of Alameda and SCCTD projects need to reflect that the projects have received bond certification; and

1.8 WHEREAS, Resolution BFP-91-21, adopted by the Commission on May 7, 1992 allocated $1,250,000 in Proposition 108 funds and $8,814,940 in Proposition 116 funds to the San Diego Metropolitan Transit Development Board for the expansion of its rail yard and maintenance facilities at 13th and Imperial and for the expansion of the rail yard at San Ysidro; and

1.9 WHEREAS, Resolution BFP-91-21 did not accurately reflect the acquisition of right-of-way for the expansion of the rail yard and maintenance facility at 13th and Imperial.

2.1 NOW THEREFORE BE IT RESOLVED that Resolutions BFP-91-15, BFP-91-20 and BFP-91-24 are hereby amended to reflect that the projects have received bond certification from the Department; and

2.2 NOW THEREFORE BE IT FURTHER RESOLVED that the project description contained in Attachment A of Resolution BFP-91-21 be amended to reflect the acquisition of right-of-way consistent with the revised Attachment A attached to this resolution.

MARTIN KIFF
Deputy Director
Transportation Financing

RESOLUTION DFP-91-21
AS AMENDED BY RESOLUTION DFA-92-01

ATTACHMENT A
July 30, 1992
Agenda Item 2.5h

ALLOCATIONS FOR NEW RAIL BOND AND TRANSIT CAPITAL IMPROVEMENT PROJECTS

Project Name / Description / Comment	Recipient / District(s) / County(ies)	State Funds / Federal Funds / Local Amount*		Adv.Proj.Aprvl. (TIG) / Code Section / Adv. Loc. Match $	a) TCI No. / b) STIP No. / c) Prgm Yr / d) Category	a) Budget Act & Chap. / b) Budget Item No. / c) Program Code / d) Expend Type	Financing Ends:** a) Encumbrances / b) (Liquidations)	Environmental Status***
Project/Component 1 (a)		STATE FUNDS:						
Rail Yard Expansion	San Diego Metropolitan Transit Development Board (SDMTDB)	TP&D	$0		a)	a) 1991 Chapter 110	a) 6/30/94	Mitigated Neg. Decl.
		SHA	$0		b) 8010		b) 6/30/96	
		PVEA	$0		c) 1992-93	b) 101-756		
ROW acquisition for expansion of existing rail yard and maintenance facility at 13th & Imperial.		Bond 116	$0	PUC Sec.	d) Urban Rail	c) 30.20.030		
	II	Bond 108	$1,250,000	S&HC 2701.07 (c)(10)		d) Local Assistance		
	San Diego	State Total	$1,250,000					
		Federal						
		Local	$1,250,000					
Mitigated negative declaration.								
Project/Component 1 (b)		STATE FUNDS:						
Rail Yard Expansion	San Diego Metropolitan Transit Development Board (SDMTDB)	TP&D	$0		a)	a)	a) 6/30/94	Mitigated Neg. Decl.
		SHA	$0		b)		b) 6/30/96	
		PVEA	$0		c) Contin.	b)		
Rail Yard Expansion at 13th & Imperial. Expansion of existing rail yard and maintenance facility at 13th & Imperial.		Bond 116	$8,368,940	PUC Sec. 99642	d) Urban Rail	c) 30.20.030		
	II	Bond 108	$0	S&HC 2701.07		d) Local Assistance		
ROW acquisition ($1,342,000) Final engineering, design and construction ($7,026,940)	San Diego	State Total	$8,368,940					
		Federal						
		Local	$8,368,940					
Mitigated negative declaration.								
Project/Component 1 (c)		STATE FUNDS:						
Rail Yard Expansion	San Diego Metropolitan Transit Development Board (SDMTDB)	TP&D	$0		a)	a)	a) 6/30/94	Mitigated Neg. Decl.
		SHA	$0		b)		b) 6/30/96	
		PVEA	$0		c) Contin.	b)		
Rail Yard Expansion at San Ysidro. Track adjacent to ROW at San Ysidro - ROW acquisition ($37,471). Preliminary engineering and construction ($408,529).		Bond 116	$446,000	PUC Sec. 99642	d) Urban Rail	c) 30.20.030		
	II	Bond 108	$0	S&HC 2701.07		d) Local Assistance		
	San Diego	State Total	$446,000					
		Federal						
		Local	$446,000					
Mitigated negative declaration.								

* Local Funds: All projects include a local match of at least fifty percent. Additional local match may be expended on some projects. Intercity Rail does not require Local Match.

** Timely Use of Funds: The implementing public agency should encumber the State funds by the end of the State fiscal year plus three months (Resolution No. G-88-6). The implementing public agency must expend at least 50 percent of allocated funds within two years including the fiscal year in which the funds were first appropriated (Resolution No. G-90-11). Dates reflect Governor's Budget Encumbrance & Liquidation time-frames. General Obligation Bond funds have encumbrance and liquidation time-frames more restrictive than provided in the Governor's Budget.

*** CE - Categorically Exempt BE - Statutorily Exempt NOD - Notice of Determination filed Neg. Decl.- Negative declaration on file

RESOLUTION BFP-91-21
AS AMENDED BY RESOLUTION BFA-92-01

ATTACHMENT A
July 30, 1992
Agenda Item 2.5h

ALLOCATIONS FOR NEW RAIL BOND AND TRANSIT CAPITAL IMPROVEMENT PROJECTS

Project Name / Description / Comment	Recipient / District(s) / County(ies)	State Funds / Federal Funds / Local Amount*	Adv.Proj.Aprvl. (116) / Code Section / Adv. Loc. Match $	a) TCI No. / b) STIP No. / c) Prgm Yr / d) Category	a) Budget Act & Chap. / b) Budget Item No. / c) Program Code / d) Expend Type	Financing Ends:** a) Encumbrances / b) (Liquidations)	Environmental Status***

SUMMARY OF PROJECT # 1 OF RESOLUTION BFP-91-21 As amended by Resolution BFA-92-01		
	TOTAL OF TCI FUNDS	$0
	BOND 116 TOTAL	$8,814,940
	BOND 108 TOTAL	$1,250,000
	FED. FUNDS TOTAL	
	LOCAL FUNDS TOTAL	$10,064,940
	PROJECT SUMMARY TOTAL	$20,129,000

PASSED BY
AUG 13 1992
CALIFORNIA TRANSPORTATION COMMISSION

* Local Funds. All projects include a local match of at least fifty percent. Additional local match may be expended on some projects. Intercity Rail does not require Local Match.

** Timely Use of Funds: The implementing public agency should encumber the State funds by the end of the State fiscal year plus three months (Resolution No. G-90-6). The implementing public agency must expend at least 50 percent of allocated funds within two years including the fiscal year in which the funds were first appropriated (Resolution No. G-90-11). Dates reflect Governor's Budget Encumbrance & Liquidation time-frames. General Obligation Bond funds have encumbrance and liquidation time-frames more restrictive than provided in the Governor's Budget.

*** CE - Categorically Exempt SE - Statutorily Exempt NOD - Notice of Determination filed Neg. Decl.- Negative declaration on file

/Agreement No. 64T 342
Attachment V

CITY OF ALAMEDA RESOLUTION NO. 12187

ALLOCATING PROPOSITION 116 FERRY FUNDS FOR CITY OF ALAMEDA FERRY PROJECTS; ACCEPTING RESPONSIBILITY FOR OPERATING AND MAINTAINING FERRY VESSEL; ACCEPTING LEGAL LIABILITY AND AGREEING TO FUND OVERAGES FROM NON-STATE FUNDS

WHEREAS, by Resolution No. 12098, at the April 16, 1991 City Council meeting, City Council authorized staff to apply for Proposition 116 Funds for Alameda Gateway Ferry Terminal upgrades and Alameda Municipal Ferry Vessel purchase; and

WHEREAS, at the December 3, 1991 California Transportation Commission (CTC) meeting, CTC approved the City of Alameda's Gateway Ferry Terminal upgrade project and Alameda/Oakland Ferry Vessel Purchase subject to the City's obligation to:

- Operate and maintain the ferry vessel;
- Indicate that the City has the financial and institutional ability to accept legal liability for the Alameda Gateway Ferry Terminal enhancements and the ferry vessel purchase;
- Pay any cost overages from local, federal or private sources;

NOW, THEREFORE, BE IT RESOLVED that the City Council of the City of Alameda accepts the responsibility for operating and maintaining the ferry vessel; indicates that it has the financial and institutional ability to accept all legal liabilities associated with the terminal enhancements and vessel acquisition project, subject to the Port of Oakland Joint Powers Agreement and any contractor's agreements; and agrees to use local, federal, private or other Non-State funds to complete the project if the cost exceeds that stated in the Proposition 116 application.

BE IT FURTHER RESOLVED that it is the intent of the City to contract with a private operator for the maintenance and operation of the vessel once it is procured.

BE IT FURTHER RESOLVED that the City Manager of the City of Alameda, or his designee, is hereby authorized and empowered to execute in the name of the City of Alameda all necessary application, contracts, and agreements to implement and carry out the purposes specified in this resolution;

BE IT FURTHER RESOLVED that the City Clerk is authorized and directed to transmit a copy of this Resolution to the California Transportation Commission.

* * * * * *

Scotty M. Lang
Deputy CITY ATTORNEY

I, the undersigned, hereby certify that the foregoing Resolution was duly and regularly adopted and passed by the Council of the City of Alameda in regular meeting assembled on the seventh of January, 1992, by the following vote to wit:

AYES: Councilmembers Arnerich, Camicia, Lucas, Roth and President Withrow - 5.

NOES: None.

ABSENT: None.

ABSTENTIONS: None.

IN WITNESS, WHEREOF, I have hereunto set my hand and affixed the official seal of said City this eighth day of January, 1992.

Diane B. Felsch

Diane B. Felsch, City Clerk
City of Alameda

Agreement No. 64T 342
Attachment No. VI

CITY OF ALAMEDA RESOLUTION NO. 12279

GUARANTEEING ADHERENCE TO I.R.S. CODE REGULATIONS, CONFORMANCE WITH GUIDELINES ISSUED BY THE STATE TREASURER, AND TO HOLD HARMLESS AND INDEMNIFY THE CALIFORNIA TRANSPORTATION COMMISSION, CALIFORNIA DEPARTMENT OF TRANSPORTATION, AND STATE TREASURER, FOR PROPOSITION 116 FUNDS

WHEREAS, the electorate enacted Proposition 116, the Clean Air and Transportation Improvement Bond Act of 1990, in the June, 1990 election authorizing the sale of General Obligation Rail Bonds for water-borne ferry operation purposes; and

WHEREAS, Public Utilities Code (PUC) section 99651, as added by Proposition 116, provided that $20,000,000 shall be allocated to fund a program of competitive grants to local agencies for the construction, improvement, acquisition, and other capital expenditures associated with water-borne ferry operations for the transportation of passengers or vehicles, or both; and

WHEREAS, the City of Alameda has submitted a Proposition 116 project Application for $2,964,000 for the two projects identified as:

(1) Alameda Oakland Ferry Vessel Acquisition, and

(2) Ferry Terminal Upgrade

WHEREAS, the California Transportation Commission (CTC) has adopted Resolution PA-91-05, the Proposition 116 Project Application submitted by the City of Alameda; and

WHEREAS, the California Transportation Commission (CTC) has adopted Resolution BFP-91-20, Allocations for Mass Transportation Projects which resolves that:

a. The CTC, acting on behalf of the State, declares its official intent to cause and approve the issuance of up to $2,964,000 of taxable or tax-exempt State General Obligation Rail Bond funds under Proposition 116, to reimburse the City of Alameda for the projects described in Attachment A; and

b. This Resolution is intended by the CTC to be a declaration of official intent of the State within the meaning of U.S. Treasury Regulations Section 1.103-17(c) with respect to the project; and

Approved as to Form
Acting CITY ATTORNEY

c. The CTC intends that this Resolution will be continuously available to the public for inspection during normal business hours at 1120 N Street Office, Sacramento, California, commencing not later than two weeks after the adoption of this Resolution; and

d. That the City of Alameda shall provide a guarantee in the form of a resolution, delivered to the CTC prior to the execution of a fund transfer agreement, said guarantee to be incorporated within said fund transfer agreement;

NOW, THEREFORE, BE IT RESOLVED, that the City Council of the City of Alameda guarantees that it shall:

a. Adhere to the applicable Internal Revenue Service tax regulations;

b. Conform to guidelines which may be issued in the future by the State Treasurer regarding the use of funds derived from bond sales;

c. Hold harmless and indemnify the CTC, the California Department of Transportation, and the State Treasurer against any penalties or costs related to the failure of the City of Alameda to meet these commitments.

BE IT FURTHER RESOLVED that the City Clerk shall deliver to CTC and Caltrans a copy of this resolution.

* * * * * *

I, the undersigned, hereby certify that the foregoing Resolution was duly and regularly adopted and passed by the Council of the City of Alameda in regular meeting assembled on the 7th day of July, 1992, by the following vote to wit:

AYES: Councilmembers Arnerich, Camicia, Lucas, Roth and President Withrow - 5.

NOES: None.

ABSENT: None.

ABSTENTIONS: None.

IN WITNESS, WHEREOF, I have hereunto set my hand and affixed the official seal of said City this 8th day of July, 1992.

Diane B. Felsch

Diane B. Felsch, City Clerk
City of Alameda

14237

STATE OF CALIFORNIA
DEPARTMENT OF TRANSPORTATION

GRANT AGREEMENT NO. PVEA 04-97(03)
FOR
STRIPPER WELL FUNDS
PETROLEUM VIOLATION ESCROW ACCOUNT (PVEA)

TERMS AND CONDITIONS

I. Background

A. Senate Bill 368, Chapter 659, Statutes of 1997, appropriated $4,660,000 from the Petroleum Violation Escrow Account (PVEA) held in the Federal Trust Fund to the State Department of Transportation, hereafter called "Caltrans", for allocation to various local entity transportation projects.

B. This Agreement, entered into on JUL 17 1998, 1998, is between Caltrans and the City of Alameda, a political subdivision of the State of California, hereafter called the "Recipient".

II. Project Description and Scope of Work

A. The Recipient will be responsible for implementing the project as designated herein below.

B. The work to be performed under this agreement shall be in accordance with the Recipient's project proposal entitled, City of Alameda for a Ferry that will have increased capacity for ridership, which also includes the project budget and timeline, which are included as a part of this agreement as Attachment A. The project proposal was approved by the U.S. Department of Energy as being in compliance with the PVEA regulations on March 31, 1998.

C. Project implementation shall conform to the description contained in the Recipient's project budget and timeline.

SOURCE		CHARGE		EXP AUTH		SPECIAL DESIGNATION		OBJECT	AMOUNT	FISCAL YEAR	ENCUMBRANCE DOCUMENT NUMBER
				GEN LED	SUB ACCT	SUB JOB NO.	R/W PARCEL NO.				
DIST	UNIT	DIST	UNIT	WORK ORDER NO		LOCATION	BRIDGE NO.				
04	110	04	110	920502		38016		6049	$215,000.00	98	PV04970

I hereby certify upon my own personal knowledge that budgeted funds are available for the period and purpose of the expenditure stated above.

ITEM	CHAPTER	STATUTES	FISCAL YEAR	SIGNATURE OF ACCOUNTING OFFICER	DATE
2660-101-85302	659	1997	1997/98	[signature]	5/8/98

D. The Recipient shall submit a written request for approval to the Caltrans District PVEA Project Manager prior to any changes in project scope. All changes are subject to Federal approval and are to be submitted following the Federal format.

E. The Project Manager for the Recipient will be James Flint, City Manager, City of Alameda.

F. The Caltrans District PVEA Project Manager for the State will be Richard Monroe, Chief, Office of Local Assistance

III. Schedule of Reports

A. The Recipient shall prepare and submit to the Caltrans District PVEA Project Manager a six-month progress report. This report will allow Caltrans to determine if the project is being performed as expected, and will be due every July 15 and January 15 until the project is completed.

B. The Recipient shall also submit an Annual Report by July 5th of each year. This annual report will cover activities that began from July 1 and ending June 30 of each fiscal year until the project is completed, and is to be submitted in the format requested by the Caltrans District PVEA Project Manager.

C. The Recipient shall meet with the Caltrans District PVEA Project Manager as needed to discuss progress on the project, any problems, or anticipated problems which could lead to delays in the schedule.

D. The Recipient shall submit for Caltrans to review all pertinent documents relating to this project to assure compliance with state and Federal laws and regulations.

E. The Recipient and Caltrans agree to conduct on-site reviews of all aspects of the progress of this project to allow Caltrans to review whether the activities are within the scope of the project.

F. Upon completion of the project, the Recipient shall submit to Caltrans a final summary report.

IV. Period of Performance

A. This agreement shall terminate on December 31, 1998, unless extended by supplemental agreement.

B. The strategies and dates for implementation of the project are specified in the Recipient's project budget and timeline. Recipient shall notify the Caltrans District PVEA Project Manager in writing in advance of any proposed changes in scheduled completion dates.

V. Payment Provisions

A. Funds disbursed shall be used to supplement and not supplant funds otherwise available for the project.

B. The Recipient is allowed no more than 5 percent of the funds allocated by Chapter 659, Statutes of 1997 (SB 368) for this project for administrative expenses. "Administrative expenses" are those expenses which are considered necessary for the management, supervision, administrative control of a suitably equipped, staffed and operational local entity. If the Recipient decides to use that 5 percent of the funds for administrative expenses, the Recipient will submit a full auditable report on the use of the funds for administrative purposes, thereby assuring compliance with Federal regulations.

C. The Recipient shall not commence performance of PVEA-funded project work or services until this agreement has been executed and approved by Caltrans. No payment of PVEA

funds will be made for any PVEA-funded work performed prior to execution or following termination of this agreement.

D. Total reimbursement under this agreement to be provided by the funding legislation shall not exceed $215,000. The method of payment under this contract will be based upon reimbursement at actual cost.

E. Caltrans will make progress payments monthly in arrears based on work performed and actual costs incurred. Caltrans will withhold 10 percent of each progress payment. The retention amount will be paid to the Recipient upon satisfactory completion of the project and agreement. Monthly payments will be made as promptly as fiscal procedures permit upon receipt by the Caltrans District PVEA Project Manager of an itemized invoice in triplicate. Invoices shall be mailed to the Caltrans District PVEA Project Manager at the following address:

California Dept. of Transportation
District 4, Office of Local Assistance
P.O. Box 23660
Oakland, California 94623-0660
ATTENTION: Richard Monroe

F. Recipient will provide vouchers of actual expenditures incurred and a narrative description of work completed.

VI. Subcontracting

A. Any work not described as subcontracted under the Recipient's approved project proposal which is pertinent to this agreement, and which is intended to be subcontracted must first be reviewed and approved by Caltrans to assure compliance with project scope before that work commences.

B. Any work subcontracted in excess of $25,000 by the Recipient shall be held to the same provisions as found in this agreement.

VII. Nondiscrimination

A. During the performance of this agreement, Recipient and its Contractors shall not unlawfully discriminate against any employee or applicant for employment because of race, religion, color, national origin, ancestry, physical handicap, medical condition, marital status, age (over 40), or sex. Recipient and its Contractors shall comply with the provisions of the Fair Employment and Housing Act (Government Code, Section 12900 et seq.) and applicable regulations promulgated thereunder (California Administrative Code,

Title 2, Section 7285.0 et seq.). The applicable regulations of the Fair Employment and Housing Commission implementing Government Code, Section 12990, set forth in Chapter 5 of Division 4 of Title 2 of the California Administrative Code are incorporated into this agreement by reference and made a part hereof as if set forth in full. Recipient and its Contractors shall give written notice of their obligations under this clause to labor organizations with which they have a collective bargaining or other agreement.

B. Recipient shall include the nondiscrimination and compliance provisions of this clause in all subcontracts to perform work under this agreement.

VIII. Drug-Free Workplace Certification

A. By signing this agreement, the Recipient certifies under penalty of perjury under the laws of the State of California that the Recipient will comply with the requirements of the Drug-Free Workplace Act of 1990 (Government Code Section 8350, et seq.), and will provide a drug-free workplace by doing the following:

1. Publish a statement notifying employees that unlawful manufacture, distribution, dispensation, possession, or use of a controlled substance is prohibited and specifying actions to be taken against employees for violations , as required by Government Code Section 8355(a).

2. Establish a Drug-Free Awareness Program as required by Government Code Section 8355(b), to inform employees about all of the following:

   a. The dangers of drug abuse in the workplace;
   b. The person's or organization's policy of maintaining a drug-free workplace;
   c. Any available counseling, rehabilitation and employee assistance programs; and
   d. Penalties that may be imposed upon employees for drug abuse violations.

3. Provide as required by Government Code Section 8355(c) that every employee who works on the proposed contract or grant:

   a. Will receive a copy of the Recipient's drug-free policy statement; and
   b. Will agree to abide by the terms of the Recipient's statement as a condition of employment on the contract or grant.

B. Failure to comply with these requirements may result in suspension of payments under this agreement or termination of the agreement or both. The Recipient may be ineligible for award of any future PVEA funding if Caltrans determines that any of the following has occurred: (1) the Recipient has made a false certification, or (2) violates the certification by failing to carry out the requirements as noted above.

IX. Cost Principles

A. The Recipient agrees to comply with Federal procedures in accordance with Office of Management and Budget Circular A-87, Cost Principles for State and Local Governments and CFR 49, Part 18, Uniform Administrative

Requirements for Grants and Cooperative Agreements to State and Local Governments, also known as the Common Rule.

B. Any costs for which payment has been made to the Recipient and its Contractors that are determined by subsequent audit to be unallowable under OMB A-87, Cost Principles for State and Local Governments or CFR 49, Part 18, Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments, are subject to repayment by the Recipient to Caltrans.

C. Should Recipient be declared to be in breach of this Agreement or otherwise default on any material portion thereof by either Caltrans or DOE, any project

costs for which payment has been made to the Recipient are to be repaid by the Recipient to Caltrans.

D. Should Recipient breach this contract, which breach is either not disputed by Recipient or is supported by a finding made in the resolution of the dispute pursuant to Section X hereinbelow, and fail to pay monies due to Caltrans, or fail to repay funds provided hereunder, within 30 days of demand, or within such other period as may be agreed upon between the parties hereto, Caltrans, acting through the State Controller, the State Treasurer or any other public agency, may withhold or demand transfer of an amount equal to the amount owed to Caltrans from future apportionments, grants, or any other funds due Recipient from the Highway Users Tax Fund, or from any other funds and/or withhold approval of future PVEA or Federal-aid projects of the Recipient, as applicable.

X. Disputes

A. Any dispute concerning a question of fact arising under this agreement that is not disposed of by agreement shall be decided by Caltran's Headquarters Contract Officer who may consider any written or verbal evidence submitted by the Recipient. The decision of the Contract Officer, issued in writing, shall be conclusive and binding on both parties to the agreement on all questions of fact considered and determined by the Caltran's Contract Officer.

B. Any dispute concerning a question of fact arising under an interim or post audit of this contract that is not disposed of by agreement shall be reviewed by the Chairperson of the Audit Review Committee (ARC). The ARC will consist of the Assistant Director, Audits & Investigations (Chairperson); Deputy Director of Transportation Engineering or designated alternate; the Chief Counsel, Legal Division or designated alternate; and two representatives from private industry will be advisory in nature only and will not have voting rights. Additional members or their alternates may serve on the ARC. Not later than 30 days after issuance of the final audit report, the contractor may request a review by the ARC of unresolved audit issues. The request for review will be submitted in writing to the following:

Audits Review Committee Chairperson
Department of Transportation
Office of Audits and Investigations, MS-2
P.O. Box 942874
Sacramento, CA 94274-0001

The request must contain detailed information of the factors involved in the dispute as well as justifications for reversal. A meeting by the ARC will be scheduled if the Chairperson concurs that further review is warranted. After the meeting, the ARC will make recommendations to the Chief Deputy Director. The Chief Deputy Director will make the final decision for the Department. The final decision will be made within 3 months of receipt of the notification of dispute.

C. Neither pendency of a dispute nor its consideration by Caltrans will excuse the contractor from full and timely performance, in accordance with the terms of this contract.

XI. Retention of Record/Audits

The Recipient, its Contractors, Caltrans, and the State shall maintain all books, documents, paper, accounting records, and other evidence pertaining to the performance of the agreement, including but not limited to, the costs of administering the agreement. All parties shall make such materials available at their respective offices at all reasonable times during the agreement period and for three years from the date of final payment under the agreement. Caltrans, the State, the State Auditor General, FHWA, or any duly authorized representative of the Federal Government shall have access to any books, records, and documents of the Recipient that are pertinent to the agreement for audits, examinations, excerpts, and transactions, and copies thereof shall be furnished if requested.

XII. Funding Requirements

It is mutually understood between the parties that this agreement may have been executed before ascertaining the availability of congressional or legislative appropriation of funds for the mutual benefit of both parties in order to avoid program and fiscal delays that would occur if the agreement were executed after that determination was made.

This agreement is valid and enforceable only if sufficient funds are made available to Caltrans by the United States Government, or are appropriated by the California State Legislature for the purpose of this program, and if the previously mentioned Statement of Work was approved by the U.S. Department of Energy. In addition, this agreement is subject to any additional restrictions, limitations, conditions or any statute enacted by the Congress or the State Legislature that may affect the provisions, terms or funding of this agreement in any manner.

XIII. Change in Terms

It is mutually agreed that if Congress or the State Legislature does not appropriate sufficient funds for the program:

A. This agreement shall be amended to reflect any reduction in funds.

B. Caltrans has the option to void the agreement under the 30-day cancellation clause contained in Article XIV.A., below, or to amend the agreement to reflect any reduction of funds.

XIV. Termination

A. This agreement may be terminated for breach of any obligation, covenant or condition hereof, upon written notice to the breaching party. With respect to any breach which is reasonably capable of being cured, the breaching party shall have 30 days from the date of the notice to initiate steps to cure, such party shall be allowed a reasonable time to cure, not to exceed 60 days from the date of the initial notice, unless a further extension is granted.

B. In the event this agreement is terminated by Caltrans without cause, reimbursement shall be made to the Recipient for all project expenses incurred up to the time of termination, subject to the expenditure limits applicable to this agreement.

STATE OF CALIFORNIA
DEPARTMENT OF TRANSPORTATION (CALTRANS)
DISTRICT 4

Gary Cherrier, Chief, Program/Project Management — 7/17/98 Date

CITY OF ALAMEDA

James Flint, City Manager — 7-9-98 Date

CITY OF ALAMEDA
APPROVED AS TO FORM:
City Attorney

By Lilian R. Hofmann
Title Assist. City Attorney — 7-7-98 Date

CITY OF ALAMEDA
RECOMMENDED FOR APPROVAL:

Jim Sanderson — 7/9/98 Date
Jim Sanderson, Acting Public Works Director

STRIPPER WELL #56

ATTACHMENT A
PVEA 04-97(03)

STATE OF CALIFORNIA

City of Alameda For A Ferry to Increase Ridership Capacity
$ 215,000

A. PROGRAM OVERVIEW

This project will provide for the lease/purchase of a larger passenger ferry boat for the City of Alameda. The project will increase passenger carrying capacity and provide commuters with a transportation alternative to automobiles along the congested I-880 /Cypress and Bay Bridge Corridors. The new larger boat, in combination with one other high speed vessel, will replace the current three vessel arrangement while simultaneously increasing ridership capacity to capture current and projected demand. Although diesel fuel is considerably less costly than auto fuels, ferry vessels consume more than twice as much fuel for operation. However, the increased vessel carrying capacity provided by this project will provide for a 27 percent increase in ridership/vehicle displacement while increasing vessel fuel consumption by only 1.8 percent. A net fuel cost savings of $92,440 will be generated annually.

The project is a cooperative effort with the Port of Oakland, the City of Alameda, and the State of California.

B. ENERGY SAVINGS AND BENEFITS

This project will provide a more energy efficient operation of the City of Alameda's ferry boat services. The service currently has three boats providing approximately 533,000 riders per year. However, demand has outstripped capacity and the service is often unable to meet passenger load demand. Demand continues to increase for the service with estimates showing approximately 678,200 passengers within two years. The purchase of the new vessel will eliminate the need for one of the smaller boats while enhancing ridership capacity and rendering a more fuel efficient operation. The resulting $103,904 additional annual vehicle fuel savings will more than offset the $11,464 additional expenditures for vessel diesel fuels. This results in a net 41.1 percent decrease in fuel costs or $92,440 annual fuel cost savings.

	Current Operation	Proposed Operation	Difference
System Useage:			
Annual Riders: [1]	533,000	678,200	+145,200
Annual Vehicle Trips Displaced: [2]	428,400	542,580	+114,180
Annual Vehicle Trip Miles Displaced:	5,569,200	7,053,540	+1,484,340
Fuel Useage Savings: [3]			
Annual Vehicle Gallons Saved:	278,460	352,677	+74,217
Less Annual Vessel Fuel Gallons Used:	- 819,384	- 834,670	-15,286
Net Annual Gallons Fuel Saved (Vehicles/Vessels):	-540,924	-481,993	+58,931

(Energy savings and Benefits continued):

	Current Operation	Proposed Operation	Difference
Fuel Cost Savings:			
Annual Vehicle Fuel Cost Savings:[4]	$ 389,844	$ 493,748	+$ 103,904
Less Annual Vessel Fuel Expended:[5]	- $ 614,538	- $626,002	-$ 11,464
Net Fuel Cost Savings (Vehicles/Vessels) :	**- $ 224,694**	**- $ 132,254**	**+$ 92,440**

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[1] Vehicle displacement figures assume 80% of riders would otherwise drive alone.

[2] Vehicle displaced mileage is approximately 13.0 miles per vehicle trip.

[3] Assumes 20 miles per gallon.

[4] Assumes $ 1.40 per gallon.

[5] Assumes diesel fuel @ $ .75 per gallon.

C. PROGRAM FUND AND MILESTONES

Local:

- Port of Oakland $ 93,300
- City of Alameda $ 93,300
- Local Measure 1/3% $ 116,570

State (STIP): $ 2,072,673

Federal (STIP): $

Stipper Well PVE A $ 215,000 *

Total: $ 2,590,843

*Includes 5% administrative cost (PVEA funds not used for Admin. cost) JRS

Milestones:

1. Vessel Acquisition ~~April,~~ July 1998 JRS
2. Vessel in Operation ~~May, 1998~~ July JRS

D. RESTITUTION/TARGETED POPULATION

The project will benefit the target population of commuters traveling between San Francisco and the East Bay along the I-880/Cypress and Bay Bridge Corridors. This includes residents of many bay area communities including the Cities of Alameda, San Francisco and Oakland. The residents of both San Francisco and Alameda counties were severely impacted due to violations of the oil pricing regulation that was in effect from 1973 to 1981. Higher fuel prices cost bay area commuters hundreds of thousands of dollars in excessive gas charges.

E. PROGRAM AUTHORIZATION

This project was approved by the Legislature and Governor of the State of California in SB368, Chapter 659, Statutes of 1997, and is in compliance with the Stripper Well Settlement Agreement Case M.D.L. No. 378, Section II.B.3.f.

F. Cognizant Agency /Contact Person

The California Energy Commission is the state agency responsible for submitting California's Stripper Well expenditure plans. This program will be administered by the California Department of Transportation. The project will be administered by the City of Alameda. The Energy Commission contact is Susan Aronhalt, Administrative Services Division, (916) 654-4204. The Department of Transportation contact is Jerry Bailey, Budgets Program (916) 654-7177. The City of Alameda contact is Cheri Sheets, Supervising Civil Engineer, (510) 748-4515.

ATTACHMENT A
PVEA 04-97(03)

CITY OF ALAMEDA

FOR A FERRY FOR INCREASED RIDERSHIP CAPACITY

Salaries and Wages	$ -0-
Benefits	-0-
Travel	-0-
Consultant	-0-
Contractual	215,000
Other	-0-
Total	$ 215,000

EXHIBIT R

ESCROW AGREEMENT

ESCROW INSTRUCTIONS

TO: CHICAGO TITLE COMPANY, licensed by the Calif. Dept. of Insurance

917 GLENNEYRE, LAGUNA BEACH, CALIFORNIA 92651

Escrow No. FABER - S43 Escrow Officer Debbi Faber - CSEO Date

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GENERAL PROVISIONS

Escrow No. FABER - S43

Date

1. DEPOSIT OF FUNDS

The law dealing with the disbursement of funds requires that all funds be available for withdrawal as a matter of right by the title entity's escrow and/or sub escrow account prior to disbursement of any funds. Only cash or wire-transferred funds can be given immediate availability upon deposit. Cashier's checks, teller's checks and Certified checks may be available one business day after deposit. All other funds such as personal, corporate or partnership checks and drafts are subject to mandatory holding periods which may cause material delays in disbursement of funds in this escrow. In order to avoid delays, all fundings should be wire transferred. Outgoing wire transfers will not be authorized until confirmation of the respective incoming wire transfer or of availability of deposited checks.

Deposit of funds into general escrow trust account unless instructed otherwise. You may instruct Escrow Holder to deposit your funds into an interest bearing account by signing and returning the "Notice of Opportunity to Open Interest Bearing Account", which has been provided to you. If you do not so instruct us, then all funds received in this escrow shall be deposited with other escrow funds in one or more general escrow trust accounts, which include both non-interest bearing demand accounts and other depository accounts of Escrow Holder, in any state or national bank or savings and loan association insured by the Federal Deposit Insurance Corporation (the "depository institutions" and may be transferred to any other such escrow trust accounts of Escrow Holder or one of its affiliates, either within or outside the State of California. A general escrow trust account is restricted and protected against claims by third parties and creditors of Escrow Holder and its affiliates.

Receipt of benefits by Escrow Holder and affiliates. The parties to this escrow acknowledge that the maintenance of such general escrow trust accounts with some depository institutions may result in Escrow Holder or its affiliates being provided with an array of bank services, accommodations or other benefits by the depository institution. Some or all of these benefits may be considered interest due you under California Insurance Code Section 12413.5. Escrow Holder or its affiliates also may elect to enter into other business transactions with or obtain loans for investment or other purposes from the depository institution. All such services, accommodations, and other benefits shall accrue to Escrow Holder or its affiliates and Escrow Holder shall have no obligation to account to the parties to this escrow for the value of such services, accommodations, interest or other benefits.

Said funds will not earn interest unless the instructions otherwise specifically state that funds shall be deposited in an interest-bearing account. All disbursements shall be made by check of Chicago Title Company. The principals to this escrow are hereby notified that the funds deposited herein are insured only to the limit provided by the Federal Deposit Insurance Corporation. Any instruction for bank wire will provide reasonable time or notice for Escrow Holder's compliance with such instruction. Escrow Holder's sole duty and responsibility shall be to place said wire transfer instructions with its wiring bank upon confirmation of (1) satisfaction of conditions precedent or (2) document recordation at close of escrow. Escrow Holder will NOT be held responsible for lost interest due to wire delays caused by any bank or the Federal Reserve System, and recommends that all parties make themselves aware of banking regulations with regard to placement of wires.

In the event there is insufficient time to place a wire upon any such confirmation or the wires have closed for the day, the parties agree to provide written instructions for an alternative method of disbursement. WITHOUT AN ALTERNATIVE DISBURSEMENT INSTRUCTION, FUNDS WILL BE HELD IN TRUST IN A NON-INTEREST BEARING ACCOUNT UNTIL THE NEXT OPPORTUNITY FOR WIRE PLACEMENT.

2. PRORATIONS AND ADJUSTMENTS

All prorations and/or adjustments called for in this escrow are to be made on the basis of a thirty (30) day month unless otherwise instructed in writing. You are to use information contained on last available tax statement, rental statement as provided by the Seller, beneficiary's statement and fire insurance policy delivered into escrow for the prorations provided for herein.

3. SUPPLEMENTAL TAXES

The within described property may be subject to supplemental real property taxes due to the change of ownership taking place through this or a previous escrow transaction. Any supplemental real property taxes arising as a result of the transfer of the property to Buyer shall be the sole responsibility of Buyer and any supplemental real property taxes arising prior to the closing date shall be the sole responsibility of the Seller. TAX BILLS OR REFUNDS ISSUED AFTER CLOSE OF ESCROW SHALL BE HANDLED DIRECTLY BETWEEN BUYER AND SELLER.

4. UTILITIES/POSSESSION

Transfer of utilities and possession of the premises are to be settled by the parties directly and outside escrow.

5. PREPARATION AND RECORDATION OF INSTRUMENTS

Escrow Holder is authorized to prepare, obtain, record and deliver the necessary instruments to carry out the terms and conditions of this escrow and to order the policy of title insurance to be issued at close of escrow as called for in these instructions. Close of escrow shall mean the date instruments are recorded.

6. AUTHORIZATION TO FURNISH COPIES

You are authorized to furnish copies of these instructions, supplements, amendments, notices of cancellation and closing statements, to the Real Estate Broker(s) and Lender(s) named in this escrow.

7. RIGHT OF CANCELLATION

Any principal instructing you to cancel this escrow shall file notice of cancellation in your office in writing. You shall, within two (2) working days thereafter, deliver, one copy of such notice to each of the other principals at the addresses stated in this escrow. UNLESS WRITTEN OBJECTION TO CANCELLATION IS FILED IN YOUR OFFICE BY A PRINCIPAL WITHIN TEN (10) DAYS AFTER DATE OF SUCH MAILING, YOU ARE AUTHORIZED TO COMPLY WITH SUCH NOTICE AND DEMAND PAYMENT OF YOUR CANCELLATION CHARGES. If written objection is filed, you are authorized to hold all money and instruments in this escrow and take no further action until otherwise directed, either by the principals' mutual written instructions, or by final order of a court of competent jurisdiction.

8. PERSONAL PROPERTY

No examination or insurance as to the amount or payment of personal property taxes is required unless specifically requested.

By signing these General Provisions, the parties to the escrow hereby acknowledge that they are indemnifying the Escrow Holder against any and all matters relating to any "Bulk Sales" requirements, and instruct Escrow Agent to proceed with the closing of escrow without any consideration of matter of any nature whatsoever regarding "Bulk Sales" being handled through escrow.

9. RIGHT OF RESIGNATION

Escrow Holder has the right to resign upon ten (10) days written notice delivered to the principals herein. If such right is exercised, all funds and documents shall be returned to the party who deposited them and Escrow Holder shall have no liability hereunder.

10. AUTHORIZATION TO EXECUTE ASSIGNMENT OF HAZARD INSURANCE POLICIES

Either Buyer, Seller and/or Lender may hand you the insurance agent's name and insurance policy information, and you are to execute, on behalf of the principals hereto, form assignments of interest in any insurance policy (other than title insurance) called for in this escrow, forward assignment and policy to the insurance agent, requesting that the insurer consent to such transfer and/or attach a loss payable clause and/or such other endorsements as may be required, and forward such policy(s) to the principals entitled thereto. It is not your responsibility to verify the information handed you or the assignability of said insurance. Your sole duty is to forward said request to insurance agent at close of escrow.

Further, there shall be no responsibility upon the part of Escrow Holder to renew hazard insurance policy(s) upon expiration or otherwise keep it in force either during or subsequent to the close of escrow. Cancellation of any existing hazard insurance policies is to be handled directly by the principals, and outside of escrow.

11. ACTION IN INTERPLEADER

The principals hereto expressly agree that you, as Escrow Holder, have the absolute right at your election to file an action in interpleader requiring the principals to answer and litigate their several claims and rights among themselves and you are authorized to deposit with the clerk of the court all documents and funds held in this escrow. In the event such action is filed, the principals jointly and severally agree to pay your cancellation charges and costs, expenses and reasonable attorney's fees which you are required to expend or incur in such interpleader action, the amount thereof to be fixed and judgment therefore to be rendered by the court. Upon the filing of such action, you shall thereupon be fully released and discharged from all obligations imposed by the terms of this escrow or otherwise.

12. TERMINATION OF AGENCY OBLIGATION

If there is no action taken on this escrow within six (6) months after the "time limit date" as set forth in the escrow instructions or written extension thereof, your agency obligation shall terminate at your option and all documents, monies or other items held by you shall be returned to the parties depositing same. In the event of cancellation of this escrow, whether it be at the request of any of the principals or otherwise, the fees and charges due Chicago Title Company, including expenditures incurred and/or authorized shall be borne equally by the parties hereto (unless otherwise agreed to specifically).

13. CONFLICTING INSTRUCTIONS

Upon receipt of any conflicting instructions, you are to take no action in connection with this escrow until non-conflicting instructions are received from all of the principals to this escrow (subject to sections 7, 9, 11 and 12 above).

Continued on Following Page

GENERAL PROVISIONS CONTINUED

Escrow No. FABER - S43

Date

14. REIMBURSEMENT ATTORNEY FEES/ESCROW HOLDER

In the event that a suit is brought by any party or parties to these escrow instructions to which the Escrow Holder is named as a party which results in a judgment in favor of the Escrow Holder and against a principal or principals herein, the principals or principals' agent agree to pay said Escrow Holder all costs, expenses and reasonable attorney's fees which it may expend or incur in said suit, the amount thereof to be fixed and judgment therefore to be rendered by the court in said suit.

15. DELIVERY/RECEIPT

Delivery to principals as used in these instructions unless otherwise stated herein is to be by regular mail, and receipt is determined to be 72 hours after such mailing. All documents, balances and statements due to the undersigned are to be mailed to the address shown herein. All notices, change of instructions, communications and documents are to be delivered in writing to the office of Chicago Title Company as set forth herein.

16. STATE/FEDERAL CODE NOTIFICATIONS

According to Federal Law, the Seller, when applicable, will be required to complete a sales activity report that will be utilized to generate a 1099 statement to the Internal Revenue Service.

Pursuant to State Law, prior to the close of escrow, Buyer will provide Escrow Holder with a Preliminary Change of Ownership Report. In the event said report is not handed to Escrow Holder for submission to the County in which subject property is located, upon recording of the Grant Deed, Buyers acknowledge that the applicable fee will be assessed by said County and Escrow Holder shall debit the account of Buyer for same at close of escrow.

17. NON-RESIDENT ALIEN. The Foreign Investment in Real Property Tax Act (FIRPTA), Title 26 U.S.C., Section 1445, and the regulations there under, provide in part, that a transferee (buyer) of a U.S. real property interest from a foreign person (non-resident alien) must withhold a tax equal to ten percent (10%) of the amount realized on the disposition, report the transaction and remit the withholding to the Internal Revenue Service within twenty (20) days after the transfer. Chicago Title Company has not and will not participate in any determination of whether the FIRPTA tax provisions are applicable to the subject transaction, nor act as a Qualified Substitute nor furnish tax advice to any party to the transaction. Chicago Title Company is not responsible for determining whether the transaction will qualify for an exception or an exemption and is not responsible for the filing of any tax forms with the Internal Revenue Service as they relate to FIRPTA. Chicago Title Company is not the agent for the buyer for the purposes of receiving and analyzing any evidence or documentation that the Seller in the subject transaction is a U.S. citizen or resident alien. The buyer is advised they must independently make a determination of whether the contemplated transaction is taxable or non-taxable and the applicability of the withholding requirement to the subject transaction, and should seek the advice of their attorney or accountant. Chicago Title Company is not responsible for the payment of this tax and/or and penalty and/or interest incurred in connection therewith and such taxes are not a matter covered by the Owners Policy of Title Insurance to be issued to the Buyer. The Buyer is advised they bear full responsibility for compliance with the tax withholding requirement if applicable and/or for payment of any tax, interest, penalties and/or other expenses that may be due on the subject transaction.

18. ENCUMBRANCES

Escrow Holder is to act upon any statements furnished by a lienholder or his agent without liability or responsibility for the accuracy of such statements. Any adjustments necessary because of a discrepancy between the information furnished Escrow Holder and any amount later determined to be correct shall be settled between the parties direct and outside of escrow.

You are authorized, without the need for further approval, to debit my account for any fees and charges that I have agreed to pay in connection with this escrow, and for any amounts that I am obligated to pay to the holder of any lien or encumbrance to establish the title as insured by the policy of title insurance called for in these instructions. If for any reason my account is not debited for such amounts at the time of closing, I agree to pay them immediately upon demand, or to reimburse any other person or entity who has paid them.

19. ENVIRONMENTAL ISSUES

Chicago Title Company has made no investigation concerning said property as to environmental/toxic waste issues. Any due diligence required or needed to determine environmental impact as to forms of toxification, if applicable, will be done directly and by principals outside of escrow. Chicago Title Company is released of any responsibility and/or liability in connection therewith.

20. USURY

Escrow Holder is not to be concerned with any questions of usury in any loan or encumbrance involved in the processing of this escrow and is hereby released of any responsibility or liability therefore.

21. DISCLOSURE

Escrow Holder's knowledge of matters affecting the property, provided such facts do not prevent compliance with these instructions, does not create any liability or duty in addition to these instructions.

22. FACSIMILE SIGNATURE

Escrow Holder is hereby authorized and instructed that, in the event any party utilizes "facsimile" transmitted signed documents or instructions to Escrow Holder, you are to rely on the same for all escrow instruction purposes and the closing of escrow as if they bore original signatures. Each party shall make every effort to provide to the other party and to Escrow Holder, within 72 hours after transmission, duplicate original documents or instructions bearing the original signatures. Each party further acknowledges and agrees that documents with non-original signatures may not be accepted for recording by the County Recorder, therefore no closing or recording may take place without the submission of the original documents.

23. CLARIFICATION OF DUTIES

Chicago Title Company serves ONLY as an Escrow Holder in connection with these instructions and cannot give legal advice to any party hereto.

Escrow Holder is not to be held accountable or liable for the sufficiency or correctness as to form, manner of execution, or validity of any instrument deposited in this escrow, nor as to the identity, authority or rights of any person executing the same. Escrow Holder's duties hereunder shall be limited to the proper handling of such money and the proper safekeeping of such instruments, or other documents received by Escrow Holder, and for the disposition of same in accordance with the written instructions accepted by Escrow Holder.

The agency and duties of Escrow Holder commence only upon receipt of copies of these Escrow Instructions executed by all parties.

24. FUNDS HELD IN ESCROW

When the company has funds remaining in escrow over 90 days after close of escrow or estimated close of escrow, the Company shall impose a monthly holding fee of $25.00 that is to be charged against the funds held by the Company.

THIS AGREEMENT IN ALL PARTS APPLIES TO, INURES TO THE BENEFIT OF, AND BINDS ALL PARTIES HERETO, THEIR HEIRS, LEGATEES, DEVISEES, ADMINISTRATORS, EXECUTORS, SUCCESSORS AND ASSIGNS, AND WHENEVER THE CONTEXT SO REQUIRES THE MASCULINE GENDER INCLUDES THE FEMININE AND NEUTER, AND THE SINGULAR NUMBER INCLUDES THE PLURAL. THESE INSTRUCTIONS AND ANY OTHER AMENDMENTS MAY BE EXECUTED IN ANY NUMBER OF COUNTERPARTS, EACH OF WHICH SHALL BE CONSIDERED AS AN ORIGINAL AND BE EFFECTIVE AS SUCH.

MY SIGNATURE HERETO CONSTITUTES INSTRUCTION TO ESCROW HOLDER OF ALL TERMS AND CONDITIONS CONTAINED IN THIS AND ALL PRECEDING PAGES AND FURTHER SIGNIFIES THAT I HAVE READ AND UNDERSTAND THESE GENERAL PROVISIONS.

Chicago Title Company conducts escrow business under a Certificate of Authority No. 350 issued by the California Department of Insurance.