Office of the City Manager

CONSENT CALENDAR
March 12, 2019

To: Honorable Mayor and Members of the City Council

From: Dee Williams-Ridley, City Manager

Submitted by: Scott Ferris, Director, Parks Recreation & Waterfront

Subject: Memorandum of Understanding: Planning Phase for the viability of a potential WETA Ferry Service and Public Recreation Pier at the Berkeley Marina

RECOMMENDATION

Adopt a Resolution authorizing the City Manager to execute a Memorandum of Understanding (MOU) with the Water Emergency Transportation Authority (WETA) to accept up to $250,000 in WETA funding for the Planning Phase (technical feasibility study and public engagement process) for the viability of a potential WETA ferry service and public recreation pier at the Berkeley Marina.

FISCAL IMPACTS OF RECOMMENDATION

WETA will cover the costs of the technical feasibility study in an amount up to $250,000. The City will use $75,000 from the Measure T1 allocation for the Berkeley Pier Project to cover those costs associated with the non-ferry-related elements of the project. If the feasibility study indicates that ferry service and public recreation is viable, the City and WETA will execute subsequent MOU agreements for each additional phase (design, construction, and operations phases), each of which shall be subject to approval by the City Council and the WETA Board, contingent upon the availability of regional transportation funding and City funding. If approved, up to $250,000 from WETA will be appropriated in an amending ordinance in the Spring of 2019.

CURRENT SITUATION AND ITS EFFECTS

In February of 2016, the Water Emergency Transportation Authority (WETA) updated their Strategic Plan[1], which identified a network of sixteen potential locations for expanded ferry service throughout the Bay Area region, including the Berkeley Marina, to help provide alternative transportation for passengers and emergency response. The Plan projects that by year 2035, ferry service at the Berkeley Marina could see a daily ridership of up to 1,589 trips (795 unique individuals) for a total annual ridership of 203,000 trips.

[1] https://weta.sanfranciscobayferry.com/sites/default/files/weta/strategicplan/WETAStrategicPlanFinal.pdf

On June 5, 2018, Bay Area voters approved Regional Measure Three (RM3) toll bridge increase to finance $4.5 billion in highway and transit projects, and would provide $60 million each year to operate new bus and ferry services in congested bridge corridors. WETA is expected to receive up to $300 million for one-time capital construction projects and up to $35 million per year to operate an expanded regionwide ferry system. The new WETA ferry system will have ferry vessels utilizing the most environmentally-friendly technology feasible that can carry up to 400 passengers.

Based on these two developments, WETA staff contacted City staff to initiate a dialogue for a potential partnership to study the feasibility of ferry service at the Berkeley Marina. During initial meetings, WETA and City staff realized that it would be cost-effective to investigate a single pier that would provide two uses – ferry service and public recreation. In order to evaluate the viability of this concept, either at the current Berkeley Pier or a new pier, a planning phase is needed.

The Planning Phase for the potential WETA ferry service and public recreation pier would include engineering feasibility studies on the proposed improvements and impacts: the waterside improvements would look at fixing the existing or building a new pier, wave dynamics and breakwaters, and dredging, etc.; and the landside improvements would include renovations to existing parking lots, public access (e.g., paths), and public amenities (e.g., restrooms). If the project is found to be viable in terms of costs, public benefits, and minimized impacts at the Berkeley Waterfront, the project would move to subsequent phases (design, construction, and operations) in the form of additional MOU amendments, each of which would be subject to approvals by the City Council and WETA Board.

WETA has identified funding in an amount up to $250,000 for the Planning Phase. In order for the City to receive the WETA funds and conduct the study and the public engagement process, a Memorandum of Understanding (MOU) agreement has been developed for City Council and WETA Board approval (Attachment 1). The MOU has been drafted to facilitate a positive partnership between the Berkeley community and WETA, and it allows either entity to withdraw from the project for any reason without imposing any additional financial or other obligations.

In terms of full project financing, it is anticipated that WETA would provide the capital funds for the design, permitting, environmental review, and construction of the waterside and landside improvements associated with ferry service, as well as the annual operating costs associated with ferry service; the City would cover only those additional costs to build and maintain the public recreation portion of the pier, as well as the costs to operate the landside parking facilities. These costs are currently not known, and would be identified as part of the Planning Phase feasibility study. The Planning Phase will also include a robust public engagement process that will review the findings of the studies and help the City decide if there is a preferred project alternative that is viable enough to move forward to the Design Phase.

BACKGROUND

In July of 2015, the Berkeley Municipal Pier was closed to the public indefinitely due to structural safety issues. On June 21, 2017, the City contracted with GHD, Inc. to perform a structural engineering assessment to identify feasible options and costs for fixing the Pier (Contract No. 10632, Resolution No. 67,856). The draft study identified twelve options ranging in cost from $17 million to $55 million. A second component of the study looked at the feasibility of small-scale ferry service at the potentially renovated pier. (Small-scale ferry service is currently offered by two independent providers at K-dock at the main basin at the Marina).

WETA

In 1999, the California State Legislature established the Water Transit Authority (WTA) (which is WETA's predecessor agency) to expand water transit on the San Francisco Bay. In 2007, the agency name was changed to Water Emergency Transportation Authority (WETA) and its responsibilities expanded to include coordination of the water transit response to a regional emergency and consolidation of existing ferry services operated by the cities of Valley, Alameda and Oakland into a comprehensive water transit system.

WETA's overall mission is to plan for and operate passenger-only ferry services on the San Francisco Bay for commuter and disaster response purposes. The Berkeley location has been identified in WETA's System Expansion & Strategic Plan (2016) as one of the higher priority Near-Term projects, along with the Seaplane Lagoon in Alameda, Mission Bay in San Francisco, and Redwood City.

Approximately ten years ago, as part of their regionwide effort, WETA conducted a conceptual ferry terminal study and draft environmental impact report (DEIR)[2] at the Berkeley Marina at Seawall Drive (2008 through 2011). However, the project was suspended at that time due to the lack of funding.

In February of 2016, the Water Emergency Transportation Authority (WETA) updated its Strategic Plan, which identified a network of sixteen potential locations for expanded ferry service throughout the Bay Area region, including the Berkeley Marina, to help provide alternative transportation for passengers and emergency response.

ENVIRONMENTAL SUSTAINABILITY

The transportation system in the Bay Area has become severely impacted by the growing economy and population boom, causing severe traffic congestion on roads and overcrowding on public transit systems. Traffic congestion makes vehicles spend more time on roads, and overcrowding on public transit systems can push commuters back

[2] https://www.cityofberkeley.info/uploadedFiles/Public_Works/Level_3_-_Transportation/Berkeley%20Albany%20Ferry%20DEIR%20Oct%2008.pdf

into cars, both of which result in more greenhouse gas emissions.

The City's Climate Action Plan identifies public transit as a more sustainable form of transportation (Chapter 3), and sets a goal to expand under-used modes of transportation, such as ferry service at the Berkeley Marina that would connect to San Francisco and other locations.

With WETA's updated Strategic Plan for expansion of 2016, WETA could become a major customer to procure ferry vessels that have a more shallow hull (greater energy efficiency, less dredging required), and that use cleaner fuels (e.g., clean diesel, electric, hybrid, and wind) for a reduced carbon footprint.

As a water-based transportation service, WETA will be directly impacted by Sea-level Rise. As agencies throughout the Bay Area explore adaptation strategies and other mitigations, WETA will monitor forecasts and trends to ensure that its plans for expansion and operations provide an effective public transit option for the foreseeable future.

WETA also provides an attractive potential option for recreational travel, such as for ballgames and other weekend excursions. This can help reduce the use of private vehicles, which helps alleviates the congestion, parking, and vehicle miles traveled issues at variety of special events throughout the region (e.g., fireworks, parades, festivals, sports, Blue Angels, etc).

RATIONALE FOR RECOMMENDATION

With access to the voter-approved RM3 transportation funds (June 2018), the concept of a dual-purpose public pier at the Berkeley Marina is currently the most effective way to bring back the public recreation opportunities of the beloved Berkeley Pier, as well as provide alternative public transportation in the form of new ferry service to an already overburdened Bay Area transportation system. In addition, the potential ferry service could bring more visitors to Berkeley, which could help the financial viability of the Berkeley Waterfront.

To-date, ferries have already come to play a vital role in the Bay Area by providing high-volume service during peak congestion periods, efficiently moving people across the Bay. The vast majority of WETA ferry trips occur in the heavily traveled I-80 corridor; and in addition, there is a growing need for ferries to connect people and locations that do not currently have good public transit options, such as residents of West Berkeley.

Demand for ferry service is now at an all-time high; data from 2012 to 2016 shows that ferry ridership increased by 94%. Ridership is expected to increase significantly with the newly-opened Richmond Ferry Terminal as of January 10, 2019, and with the now partially-completed expansion of the downtown San Francisco Ferry Terminal.

Ferry transportation is a cost-effective and adaptable public transportation alternative for

the region because ferry trips across Bay waters are not affected by roadway congestion, and the capital costs for ferry vessels and landings are orders of magnitude lower than for BART and standard roadway transportation facilities (e.g., roads, bridges, tracks, and tunnels).

Finally, the City's Local Hazard Mitigation Plan of 2018 (LHMP) has identified developing a partnership with ferry service as a High Priority Action that would play an important role in the City's emergency response and recovery after a major disaster.

ALTERNATIVE ACTIONS CONSIDERED

The City can decide that a new ferry service at the Berkeley Marina is not in the City's best interest at this time, although the MOU allows the City to opt out of the project at any time. The estimated cost to restore or rebuild the existing municipal pier ranges from $17 million to $55 million, and funding would be difficult to obtain for solely public recreation uses.

CONTACT PERSON

Scott Ferris, Director, Parks Recreation & Waterfront, 981-6700
Christina Erickson, Deputy Director, PRW, 981-6712
Nelson Lam, Associate Civil Engineer, PRW, 981-6395

Attachment:
1: Resolution
Attachment 1: Project Memorandum of Understanding (MOU) with WETA for Berkeley Marina Ferry Facility Project
Exhibit A: WETA System Expansion Policy
Exhibit B: Funding Agreement
Exhibit C: Amendment to Consulting Services Agreement

RESOLUTION NO. ##,###-N.S.

A MEMORANDUM OF UNDERSTANDING (MOU) WITH THE WATER EMERGENCY TRANSPORTATION AUTHORITY (WETA) TO ACCEPT UP TO $250,000 IN WETA FUNDING FOR THE PLANNING PHASE FOR THE VIABILITY OF A NEW WETA FERRY SERVICE AND PUBLIC RECREATION PIER AT THE BERKELEY MARINA

WHEREAS, WETA's overall mission is to plan for and operate passenger-only ferry services on the San Francisco Bay for commuter and disaster response purposes. In February of 2016, the Water Emergency Transportation Authority (WETA) updated their Strategic Plan, which identified a network of sixteen ideal locations for expanded ferry service throughout the Bay Area region, including the Berkeley Marina, to help provide alternative transportation for passengers and emergency response; and

WHEREAS, in July of 2015, the Berkeley Municipal Pier was closed to the public indefinitely due to structural safety issues. On June 21, 2017, the City contracted with GHD, Inc. to perform a structural engineering assessment to identify feasible options and costs for fixing the Pier (Contract No. 10632, Resolution No. 67,856); and

WHEREAS, on June 5, 2018, Bay Area voters approved Regional Measure Three (RM3) toll bridge increase to finance $4.5 billion in highway and transit projects, and would provide $60 million each year to operate new bus and ferry services in congested bridge corridors. WETA is expected to receive up to $300 million for one-time capital construction projects and up to $35 million per year to operate an expanded regionwide ferry system; and

WHEREAS, WETA staff contacted City staff to initiate a dialogue for a potential partnership to study the feasibility of ferry service at the Berkeley Marina. During initial meetings, WETA and City staff realized that it would be cost-effective to investigate a single pier that would provide two uses – ferry service and public recreation; and

WHEREAS, the Planning Phase for the potential WETA ferry service and public recreation pier would include engineering feasibility studies on the proposed improvements and impacts: the waterside improvements would look at fixing the existing or building a new pier, wave dynamics and breakwaters, and dredging, etc.; and the landside improvements would include renovations to existing parking lots, public access (e.g., paths), and public amenities (e.g., restrooms). The Planning Phase will also include a robust public engagement process that will review the findings of the studies and help the City decide if there is a preferred project alternative that is viable enough to move forward to the Design Phase; and

WHEREAS, if the project is found to be viable in terms of costs, public benefits, and minimized impacts at the Berkeley Waterfront, the project would move to subsequent phases (design, construction, and operations) in the form of additional MOU amendments, each of which would be subject to approvals by the City Council and WETA Board; and

WHEREAS, WETA will cover the costs of the technical feasibility study in an amount up to $250,000. The City will use $75,000 from the Measure T1 allocation for the Berkeley Pier Project to cover those costs associated with the non-ferry-related elements of the project.

NOW THEREFORE, BE IT RESOLVED by the Council of the City of Berkeley That the Council authorizes the City Manager to execute a Memorandum of Understanding (MOU) (Attachment 1) with the Water Emergency Transportation Authority (WETA) to accept up to $250,000 in WETA funding for the Planning Phase (technical feasibility study and public engagement process) for the viability of a new WETA ferry service and public recreation pier at the Berkeley Marina. A record signature copy of the MOU and any amendments to be on file in the Office of the City Clerk.

Attachment 1: Project Memorandum of Understanding (MOU) with WETA for Berkeley Marina Ferry Facility Project
Exhibit A: WETA System Expansion Policy
Exhibit B: Funding Agreement
Exhibit C: Amendment to Consulting Services Agreement

PROJECT MEMORANDUM OF UNDERSTANDING

BERKELEY MARINA FERRY FACILITY PROJECT

March 12, 2019

Term, Parties

1. General	This Memorandum of Understanding ("**MOU**") establishes the framework for the funding, development and operation of the planned ferry service facility at the Berkeley Marina (the "Project", as further described in paragraph 5 below). The Project is anticipated to be carried out in the following four consecutive phases: (1) Planning; (2) Design; (3) Construction; and (4) Operation. This MOU covers the Planning Phase. City and WETA have secured a portion of the necessary funding needed for the Planning Phase. Although this MOU also provides general assumptions for the Design, Construction, and Operation Phases, the Parties are not obligated to embark on, and have not secured funding for the Design, Construction, or Operation phases. In addition, the Parties anticipate executing either amendments to this MOU, or separate agreements to govern the precise terms of the subsequent phases, each of which shall be subject to the approvals of the City Council and WETA Board.
2. Term	The term ("**Term**") of this MOU shall commence on _____, 2019 ("**Effective Date**") and shall remain in effect until the first to occur of: (i) _____, 202__ or (ii) the date which is one (1) year following completion of the Planning Phase work, or such later date as the Parties may mutually agree.
3. Parties	This MOU is entered into between the San Francisco Bay Area Water Emergency Transportation Authority ("**WETA**") and the City of Berkeley ("**City**"). City and WETA may be individually referred to herein as a "**Party**," and collectively as the "**Parties**." WETA was established in 2008 as the successor agency to the Water Transit Authority with a mission to consolidate and operate certain existing publicly operated ferry services on the San Francisco Bay, expand new routes, and coordinate ferry services in the event of an emergency. City is a charter city and municipal corporation located in Alameda County. City has jurisdiction over the property in and around the Berkeley Marina where the proposed Project may be located.
4. WETA System Expansion Policy	On June 4, 2015 the WETA Board of Directors adopted a System Expansion Policy attached hereto as Exhibit A and incorporated herein ("**System Expansion Policy**") to serve as a framework for evaluating the feasibility of new ferry projects. This Policy is applicable to the proposed Project.

5. Project Objectives	WETA's 2016 WETA Strategic Plan indicates the desire to construct and operate a Berkeley ferry service. It is the intention of both Parties that, upon completion of the Project, WETA will commence public ferry service between San Francisco and the Berkeley Marina. WETA anticipates that it will initially provide direct public ferry service to and from San Francisco during commute times. As ridership grows, WETA may include direct public ferry service to and from the Berkeley Marina to its other facilities. WETA also anticipates that it may provide direct public ferry service for special events. City desires to reconstruct or replace the Berkeley Municipal Pier, which is currently closed due to structural safety concerns, to restore public access to San Francisco Bay. City and WETA agree to work together in good faith to coordinate their efforts in pursuing these objectives. The proposed Berkeley Marina Ferry Facility Project ("**Project**") contemplated by this MOU would include a new or restored dual-use pier facility that would both serve as a passenger ferry facility for berthing public ferry service vessels and provide public access to San Francisco Bay. WETA will permit non-WETA vessel operators to call on the Berkeley Marina Ferry Facility provided they do not interfere with regularly scheduled WETA service and they meet WETA's private landing requirements, <u>and agree to pay reasonable docking fees, if applicable, to WETA</u>. The Parties anticipate that the dual-use pier will be located at or near the Berkeley Municipal Pier located at the west terminus of University Avenue along Seawall Drive. The Project would also include landside improvements, such as reconfiguration of the existing parking facility, new parking facilities, roadway improvements, bus/ride share drop areas, pedestrian trail improvements, landscaping, and security measures. The Project may also include construction of a breakwater and the dredging of a navigation channel extending west into the Bay.
6. Partnering	Federal, state, regional or local funding may become available during the term of this MOU. WETA and the City commit to collaborate and coordinate to pursue funding for the Project. Such support may include, but will not be limited to: application support letters, provision of ridership data, operating or capital cost information or other technical information required by funders, as well as WETA Board or City Council resolutions in support of one another's funding applications. City and WETA agree to work collaboratively to advocate for and coordinate with AC Transit and other potential local transit operators to provide frequent, reliable, and convenient bus or shuttle service to the Berkeley Marina Ferry Facility.

Phase 1: Planning Phase (Feasibility Study, Public Engagement, and Funding)

7. Feasibility Study	The City is currently conducting and has completed a draft feasibility and structural condition assessment to explore options for restoring, rehabilitating or reconstructing the Berkeley Municipal Pier in conjunction with ferry service. That work is nearly complete and has been fully funded by City at a cost to City of approximately $330,744. In partnership with WETA, City will expand this assessment to consider development of a WETA-scale ferry facility alongside a new or restored pier ("**Expanded Feasibility Study**"). City will serve as the project lead, with assistance from WETA, for the Expanded Feasibility Study that will include technical analyses and a public process. The Expanded Feasibility Study will also develop the conceptual designs for a dual-function facility (ferry and public access) including both waterside and landside improvements. The Expanded Feasibility Study will also include conceptual analysis on wave protection. Landside facilities will include, but are not limited to, parking areas, paths-of-travel, restrooms, bus and shuttle stops, and ride and bike share stations. The Parties will mutually agree to a final scope of work prior to initiating work on the Expanded Feasibility Study.
8. Public Engagement	All interaction with the public as part of the planning phase will be managed by City with assistance and participation from WETA. This coordination includes public notices, scoping meetings, public engagements and comments, City Council and Commission presentations.
9. Contracting	City will contract for professional consultant services for the Expanded Feasibility Study.
10. Funding	WETA will reimburse City for a total amount not to exceed $250,000 of the cost of the Expanded Feasibility Study unless otherwise agreed to by the Parties. The City will contribute for a total amount not to exceed $110,000 of the cost of the Expanded Feasibility Study. The Parties will execute a funding agreement in the form attached as Exhibit B. City and WETA will each contribute staff resources to support the Planning Phase.
11. Feasibility Determination	It is anticipated that the Planning Phase will conclude with a determination by the City Council of the City of Berkeley and the WETA Board regarding the feasibility of the proposed Project. If the City Council or WETA Board determines, each in its sole and unfettered discretion, not to proceed with the Project, this MOU shall automatically terminate and the Parties shall have no further obligations under this MOU.

Phase 2: Design (Design, Environmental Clearance, Permitting, and Funding)

12. Design Assumptions	If the Parties mutually determine to proceed to the Design Phase, the Parties will prepare an amendment to this MOU to address design, environmental review, permitting, and funding. The MOU amendment shall memorialize the Parties' determination that the proposed Project is feasible, and describe in greater detail the obligations of the Parties in the Design Phase. The Parties anticipate that the City will serve as the lead agency for CEQA review and any associated public outreach or interaction during the Design Phase. The City will also be responsible for project permitting and leading the design process, including contracting for professional design services. WETA will coordinate with the City and provide technical resources and assistance to support the Design Phase. Subject to applicable laws and the Parties' ability to secure adequate funding, WETA will pay all costs associated with Project elements associated with public ferry service, including CEQA (and, if applicable, NEPA) compliance, resource agency permitting, and design costs, City will pay all costs associated with public access aspects of the Project. For aspects of the Project that are required for both types of elements, WETA and City will implement a reasonable cost-sharing method. The City and WETA will each contribute staff resources to support the Design Phase.

Phase 3: Construction (Bidding, Construction, Construction Administration, and Funding)

13. Construction Assumptions	If, after conclusion of the Phase 2 Design Phase, the Parties determine to proceed to the Phase 3 Construction Phase, the Parties will negotiate and enter into appropriate agreements to address bidding, construction, construction management, funding, and related issues, subject to the concurrent approvals of the City Council and WETA Board The Parties anticipate that City will serve as the Project lead, with assistance from WETA to advertise and bid out the construction of the Project in accordance with applicable provisions of the Public Contract Code and any specific funding requirements. The Parties contemplate that the Project will be constructed as soon as possible after necessary permits and regulatory approvals have been approved and 100% of the construction funding has been secured. The City will contract for professional construction management services for inspection, construction support and management for the Project. Subject to applicable laws and the Parties' ability to secure adequate funding, WETA will pay all costs associated with Project elements associated with public ferry service, including any needed dredging work, and City will pay all costs associated with public access elements of the Project. For aspects of the Project that are required for both types of elements, WETA and City will implement a reasonable cost-sharing

	method. The City and WETA will each contribute staff resources to support the Construction Phase.

Phase 4: Operation

14. Operation Assumptions	Prior to the commencement of construction of the Project, the Parties shall negotiate and execute appropriate agreements to address the use, operation, maintenance and repair of the new Berkeley Marina Ferry Facility, subject to concurrent approvals of the City Council and WETA Board. Issues to be considered include responsibilities for capital rehabilitation, funding, landing and property rights, use by third parties, and related issues. It is anticipated that WETA will own all improvements to the waterside of the access control gate built exclusively to support ferry operations, including, but limited to the gangway, float, guide piles and the access control gate itself, and that City will retain ownership of the waterside improvements related to public access, and all other landside improvements and property upland of the access control gate, including all State public trust lands. City acknowledges that WETA's initiation of public ferry service between San Francisco and Berkeley is contingent upon City providing parking facilities within a reasonable distance from the access control gate. This reasonable distance and the number of required spaces will be determined and mutually agreed upon after feasibility and other necessary studies have been conducted. The parking facilities will be owned, maintained, and operated by City or its designated representative. City will evaluate the possible implementation of public/private transit connections and potential parking fees, the proceeds of which, if any, would be committed to support maintenance and operation of the landside facilities, including the parking facilities.
15. Public Ferry Service Assumptions	Vessels: The public ferry service contemplated by this MOU will likely require a dedicated vessel and a shared spare vessel to ensure reliable operations. The estimated cost of a dedicated vessel and shared spare is approximately $22 million (FY 2018 dollars). Initial Ferry Service: A minimum level of service is desired to operate an effective commuter service, which the Parties will endeavor to provide upon the initiation of the San Francisco/Berkeley ferry service consistent with the WETA System Expansion Policy. It is anticipated that the initial service would include a minimum of three departures during the AM peak (6-9 AM) from Berkeley to San Francisco and 3 departures during the PM peak (4-8 PM) from San Francisco to Berkeley. Midday and weekend service is not initially anticipated but may be added as demand warrants and funding is available. Expansion of Service: The initial ferry service level defined for Berkeley Marina service may be expanded as necessary. All service adjustments, including possible 30-minute or faster headways in the peak hour and initiation of midday or weekend services, are anticipated to be consistent with the WETA System Performance Targets Policy adopted by the WETA

	Board on June 4, 2015 and other WETA service planning policies in effect at the time of adjustment, as applicable. Emergency Response and Recovery: In the event of a natural disaster or disruptive regional event ("**Casualty Event**"), WETA ferries may be called upon by the California Office of Emergency Services ("**Cal OES**") to provide service from the Berkeley Ferry Terminal for both emergency response and recovery after the Casualty Event. In the immediate aftermath of an event, Cal OES will determine how to allocate regional transportation resources including WETA ferries. The Berkeley Marina Ferry Facility will be an asset in this emergency network and it will be a state and regional decision as to how this asset will be used. In the weeks and months following an event as the Bay Area recovers, WETA ferry service will play a critical role as a component of the regional transit network that can be quickly operationalized at facilities like Berkeley. Decisions regarding funding and asset deployment during the recovery phase will also likely take place at the state and regional level.

WETA and the City of Berkeley have entered into this Memorandum of Understanding as of the last date set forth below.

San Francisco Bay Area Water Emergency Transportation Authority

By: _____
Nina Rannells
Executive Director

Date: _____

Reviewed:

By: _____
Madeline Chun
Legal Counsel to Authority

City of Berkeley

By: _____
Dee Williams-Ridley
City Manager

Date: _____

Reviewed:

By: _____
Farimah Brown
City Attorney

Attachments:

Exhibit A: WETA System Expansion Policy

Exhibit B: Funding Agreement

Exhibit C: Amendment to Consulting Services Agreement

EXHIBIT A

WETA System Expansion Policy

https://weta.sanfranciscobayferry.com/strategic-plan

EXHIBIT B

Funding Agreement

March 12, 2019

[DATE]

City of Berkeley

_____

_____

Re: RM2 Funding Agreement - Berkeley Marina Ferry Facility Project

Dear _____:

This letter agreement memorializes the understandings between the San Francisco Bay Area Water Emergency Transportation Authority (WETA) and the City of Berkeley (CITY), to fund an expanded feasibility study of the Berkeley Marina, utilizing RM2 operating funds available to WETA.

The City of Berkeley's contractor, GHD, pursuant to an Agreement for Consulting Services between City and GHD dated May 8, 2017 ("GHD Agreement"), has already conducted a feasibility and structural condition assessment to explore options for restoring, rehabilitating or reconstructing the Berkeley Municipal Pier in conjunction with the potential for ferry service.

It is agreed that CITY shall amend the GHD Agreement to expand the scope of the GHD feasibility study to assess the potential for a WETA-scale ferry terminal, and to develop conceptual designs for a dual-function facility (public ferry service and waterfront public access) including both waterside and landside improvements.

CITY will serve as the project lead, with assistance from WETA, for the expanded feasibility study, which will include technical analyses and a public engagement process. The expanded feasibility study will include water technical analysis on wave protection and geotechnical investigation. Landside facilities will include, but are not limited to, parking areas, paths-of-travel, restrooms, bus and shuttle stops, and ride and bike share stations. The parties will mutually agree to a final scope of work prior to initiating work on the expanded feasibility study. CITY will engage professional consultant services, approved by WETA, to conduct the expanded study. CITY and WETA will each contribute staff resources to support the expanded feasibility study, and will confer on a regular basis on the progress of the work. CITY will provide drafts of the study for WETA's review prior to finalizing the work.

WETA will reimburse CITY for CITY's actual costs incurred for authorized and satisfactorily completed work and services rendered by CITY's outside professional consultants, including GHD, for the expanded feasibility study, not to exceed Two Hundred and Fifty Thousand ($250,000.00). Payment will be made within thirty (30) days of receipt of an invoice, approved by WETA (which approval shall not be unreasonably withheld, conditioned or delayed), describing work performed, itemizing all costs for which reimbursement is requested, and

stating the payment requested and the cumulative amount billed to date. CITY shall also attach to each invoice such receipts, proof of payment, and other supporting documentation as may be reasonably required by WETA.

All invoices must be made in writing and delivered or mailed to WETA as follows:

Attention: Accounting Department
San Francisco Bay Area Water Emergency Transportation Authority
Pier 9, Suite 111, The Embarcadero
San Francisco, CA 94111

Performance will begin on or after _____, and be completed by _____, unless this Agreement is terminated by either WETA or CITY as provided below. Invoices must be submitted before _____, to be paid.

Either CITY or WETA may terminate this Agreement, in each party's sole discretion, for any force majeure event, if such events (i) irrecoverably disrupt or render impossible CITY's performance hereunder; or (ii) disrupt WETA's ability to make payments hereunder. CITY will be entitled to payment for costs of work performed by CITY's outside professional consultants, including GHD, prior to the date of such termination, up to the maximum amount payable under this Agreement.

If CITY fails to perform as specified in this Agreement, WETA may terminate this Agreement for cause by advance ten (10)-day written notice and CITY will only be entitled to costs of work performed by CITY's outside professional consultants, including GHD, in accordance with this Agreement, not to exceed the maximum amount payable under the Agreement for such work.

CITY agrees to retain all documents, working papers, records, accounts and other materials relating to its performance under this Agreement for a minimum of four (4) years following the fiscal year of the last expenditure under this Agreement and WETA and its authorized representatives may inspect and audit such records during that period of time.

In performing services under this Agreement, CITY will be acting as an independent contractor and not as an agent or employee of WETA. CITY will have no authority to contract in the name of WETA, and CITY will be responsible for its own acts and those of its agents, contractors and employees.

CITY agrees that the amendment to the GHD Agreement ("GHD Amendment") shall be substantially in the form attached hereto and shall, among other things, (i) obligate GHD to defend, indemnify and hold harmless WETA and its officers, agents, officials, representatives and employees from and against any and all claims, loss, cost, damage, injury (including, without limitation, injury to or death of an employee of GHD or its subconsultants), expense and liability of every kind, nature and description that arise out of, pertain to or relate to the negligence, recklessness, or willful misconduct of GHD and its subconsultants, anyone directly or indirectly employed by the them, or anyone that they control; (ii) name WETA and its directors, officers, representatives, employees, consultants, subcontractors and agents as additional insureds under GHD's commercial general liability, business automobile liability and

professional liability insurance policies; and (iii) name WETA as a third party beneficiary of the GHD's indemnity and insurance obligations under the GHD Agreement, as amended by the GHD Amendment, and provide that such provisions may not be amended without WETA's consent.

Any amendment of the Agreement must be in writing, specifically identified as an amendment to this agreement, and signed by both CITY's City Manager and WETA's Executive Director, or their designated representatives.

Please sign and date both counterparts of this letter in the space provided below, return one counterpart to WETA, and retain the other counterpart for your files.

Sincerely,

Nina Rannells
Executive Director

* * * * * *

Accepted and Agreed this _____ day of _____, 2019.

CITY OF BERKELEY

By:_____
Name:_____
Title:_____

OAK #4851-4585-9205 v7

EXHIBIT C

Amendment to Consulting Services Agreement

March 12, 2019

15027302.2

CMS# XXXXX

AMENDMENT TO CONTRACT

THIS CONTRACT AMENDMENT is entered into DATE, between the CITY OF BERKELEY ("City"), a Charter City organized and existing under the laws of the State of California, and GHD ("Contractor") a California Corporation, doing business at 655 Montgomery Street, Suite 1010, San Francisco, CA 94111.

WHEREAS, City and Contractor previously entered into Contract Number 10632 dated June 21, 2017, for a not to exceed amount of $214,123, which Contract was authorized by the Berkeley City Council by Resolution No. 67,856- N.S.; and

WHEREAS, on January 23, 2018, by Resolution No. 68,294-N.S., the Berkeley City Council authorized amendment of said contract increasing the scope of work for an additional fee of $94,744 for a total contract amount not to exceed $330,744 for the term ending December 31, 2019; and

WHEREAS, on DATE, by Resolution No. XX,XXX-N.S., the Berkeley City Council authorized amendment of said contract as set forth below.

THEREFORE, City and Contractor mutually agree to amend said contract as follows:

1. Section 3 is amended to include the additional services described in Exhibit A of this amendment.
2. Section 4 is amended to read as follows:

COMPENSATION

For services referred to in Section 3 as amended, City will pay Contractor an additional amount not to exceed $XX,XXX for a total contract amount not to exceed $XXX,XXX. City shall make payments to Contractor in accordance with provisions described in Exhibit B, which is attached to and made part of this Contract.

3. First sentence of Section 7.1 is amended to read as follows:

INDEMNIFICATION BY CONSULTANT

"To the fullest extent permitted by law (including, without limitation, California Civil Code Sections 2782 and 2782.8), Consultant shall defend (with legal counsel reasonably acceptable to City), indemnify and hold harmless the City and the Water Emergency Transportation Authority ("WETA") and its and their officers, agents, departments, officials,

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representatives and employees (collectively, "Indemnitees") from and against any and all claims, loss, cost, damage, injury (including, without limitation, injury to or death of an employee of Consultant or its Subconsultants), expense and liability of every kind, nature and description that arise out of, pertain to or relate to the negligence, recklessness, or willful misconduct of Consultant, and Subconsultant, anyone directly or indirectly employed by the them, or anyone that the control (collectively, "Liabilities").

4. Section 10.2.1 is amended to read as follows:

INSURANCE

"City and WETA, and its and their directors, officers, partners, representatives, employees, consultants, subcontractors and agents, shall be named as additional insureds, but only with respect to the liability arising out of the activities of the named insured, and there shall be a waiver of subrogation as to each named and additional insured."

5. Section 33 is amended to add as follows:

MISCELLANEOUS

"33.5 WETA shall be deemed a third party beneficiary of Consultant's obligations under Sections 7 and 10 of this Agreement. Any amendment to Section 7 or 10 shall require the written consent of WETA to be effective. Except as provided in this Subsection 33.5, there are no other third party beneficiaries to this Agreement."

3. Section 2 is amended to read as follows;

TERM

a. This Contract shall begin on DATE, and end on DATE. The City Manager of the City may extend the term of this contract by giving written notice.

In all other respects, the contract dated DATE shall remain in full force and effect.

IN WITNESS WHEREOF, City and Contractor have executed this Contract as of the date written on the first paragraph of this Contract.

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CITY OF BERKELEY

By_____
City Manager

THIS CONTRACT HAS BEEN
APPROVED AS TO FORM BY
THE CITY ATTORNEY FOR
THE CITY OF BERKELEY
5/09

Registered by:

_____
City Auditor

Attest:

_____
Deputy City Clerk

CONTRACTOR

Name (Printed)_____

By_____
Signature and Title

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Exhibit A
Scope of Services
2st Amendment ("10632B") to Contract No. 10632

With this amendment, the contractor hereby agrees to perform the following scope of work:

TO BE INCLUDED AT THE TIME OF AMENDMENT

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Exhibit B

Payment

TO BE INCLUDED AT THE TIME OF AMENDMENT

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