Office of the City Manager

CONSENT CALENDAR
May 14, 2024

To: Honorable Mayor and Members of the City Council

From: Dee Williams-Ridley, City Manager

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

Subject: Amendment #1 to the WETA Memorandum of Understanding for the Berkeley Water Transportation Pier Ferry Project

RECOMMENDATION

Adopt a Resolution authorizing the City Manager to execute amendment #1 to the existing Memorandum of Understanding (MOU) with the Water Emergency Transportation Authority (WETA) to accept up to $3,000,000 in WETA funding for the engineering, design and environmental phase of the new pier-ferry project at the Berkeley Marina.

FISCAL IMPACTS OF RECOMMENDATION

The City has been awarded a California Coastal Conservancy grant of $2.96M and an Alameda County Transportation Commission (ACTC) grant of $5.139M to fund the engineering, detailed design and environmental studies for the Berkeley Water Transportation Pier-Ferry Project (Project). Amendment #1 to the MOU allows the City to access up to $3,000,000 in WETA funding to help the City complete the engineering, design, and environmental phase of the Project.

CURRENT SITUATION AND ITS EFFECTS

In March of 2019, the City of Berkeley and WETA executed an MOU setting forth the multi-phase framework for the Berkeley Marina Ferry Facility Project (authorized by Council Resolution No. 68,782-N.S. on March 12, 2019). The MOU contained a Funding Agreement letter dated May 9, 2019, to fund Phase 1 set forth in the MOU. That phase is complete and resulted in the Ferry Facility at Berkeley Municipal Pier Feasibility Study[1] (Feasibility Study). On December 7, 2021, City staff presented the preferred concept from the Feasibility Study, which includes landside and on-water improvements to provide a dual-purpose pier allowing both recreation and ferry access. The Feasibility Study was finalized and posted to the Project website in June, 2023[2]. The existing MOU with WETA was intended to cover the initial feasibility phase which is now complete. The next phase (Phase 2) of work includes detailed technical analyses,

[1] December 7, 2021 Work Session
[2] Feasibility Study, Ferry Facility at Berkeley Municipal Pier, June 2023

design, environmental studies, public engagement and permitting for the preferred Project concept presented in the Feasibility Study. Phase 2 will include the completion of many technical and environmental studies, including but not limited to geotechnical and seismic analyses, traffic, parking, biological (aquatic and terrestrial), plant, greenhouse gas emissions, and sea level rise. Evaluation of environmental and technical constraints will be incorporated into the detailed design, environmental documents and permitting for the Project.

WETA has allocated funding in the amount of $3,000,000 for the engineering, design and environmental phase (Phase 2) of the Project in its 2023/24 Capital Budget. This allocation will be used to support WETA staff time on the Project as well as to reimburse the City for professional service costs associated with Phase 2 of the Project not otherwise covered by the ACTC and Coastal Conservancy grants. WETA's financial contribution for Phase 2 is from Regional Measure 3 (RM3).

The existing MOU must be amended to reflect the Phase 2 scope and provide a new Funding Agreement for the allocation and source of the WETA contribution.

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 $16 million to $51 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).

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

WETA

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

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.

PREFERRED PROJECT

The Feasibility Study identified a preferred Project that consists of landslide and waterside improvements summarized below. All dimensions and concepts here are preliminary, and subject to change based on the detailed engineering and environmental studies that will occur in Phase 2. The planning-level construction cost estimate for the preferred Project is approximately $70M (not including electric ferry vessels or cost escalation, see Feasibility Study Appendix E).

- A new, 22-foot-wide pier (same width as the existing Berkeley Municipal Pier) to accommodate both ferry foot traffic, recreational activities, and emergency and maintenance vehicles. The pier extends from the shoreline at Seawall Drive westward to a new breakwater (approximately 580 feet long).
- A new breakwater creating a safe harbor from the predominantly southwesterly winds and waves for ferry boarding on the north side of the new pier (approximately 400 feet long). The breakwater would provide surface decking to allow public access for recreational activities.
- An extension of the new pier westward into the Bay beyond the breakwater for recreational use (approximately 500 feet long).
- A ferry facility including ferry berthing floats, float piles, ADA gangways, and security gates.
- Renovation of the parking lot located at 199 Seawall Drive, which would include new pavement surfacing, new striping, and new stormwater bioswales to treat stormwater.
- Improvement of an area along the southwestern side of University Avenue would provide for public buses, shuttles, and a drop-off zone for rideshare and family vehicles.
- Renovation of pedestrian pathways and safety lighting.
- Shifting the Seawall Drive vista parking zone from the west side to the east side of the road.
- A new water access point at the small peninsula located at the southwest corner of Seawall Drive.
- A new restroom and fish cleaning area.

<u>ENVIRONMENTAL SUSTAINABILITY AND CLIMATE IMPACTS</u>

The transportation system in the Bay Area has become severely impacted by the growing economy and population boom, causing severe traffic congestion and overcrowding on public transit systems. Traffic congestion keeps more vehicles on roads, and overcrowding on public transit systems can push commuters back 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 to connect to San Francisco and other locations. In spring, 2023, WETA completed the Blueprint for Zero Emission Vessel Transition. The Berkeley pier-ferry will be designed to support zero-emission ferry service.

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 will remain an effective public transit option for the foreseeable future.

RATIONALE FOR RECOMMENDATION

With access to both state and federal transportation funding, the concept of a dual-purpose public pier at the Berkeley Marina is currently the most feasible way to bring back the public recreation opportunities to the beloved Berkeley Pier, provide alternative public transportation in the form a new ferry service to an already overburdened Bay Area transportation system, as well as providing the City with transportation resiliency for emergency situations. The City's Climate Action Plan of 2009 has identified a partnership with ferry service as a priority. The amendment to the MOU does not commit the City to construction of the Project, and the City can withdraw from the MOU at any time.

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.

CONTACT PERSON

Scott Ferris, Director, Parks Recreation & Waterfront, 981-6700
Christina Erickson, Deputy Director, PRW, 981-6712
Liza McNulty, PRW Capital Improvement Program Manager, 542-4131

Attachments:
1: Resolution
2: Amendment #1 to the Project Memorandum of Understanding, Berkeley Marina Ferry Facility Project

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

AMENDING THE MEMORANDUM OF UNDERSTANDING BETWEEN CITY OF BERKELEY AND WATER EMERGENCY TRANSPORTATION AUTHORITY

WHEREAS, the City and Water Transportation Authority executed a Memorandum of Understanding effective July 1, 2019 for the Planning Phase of the Berkeley Pier-Ferry Project (Project) which included a feasibility study and public engagement; and

WHEREAS, the Planning Phase is complete; and

WHEREAS, the second phase (Phase 2) of work includes detailed technical analyses, design, environmental studies, public engagement and permitting for the preferred Project concept; and

WHEREAS, WETA has allocated $3,000,000 of Regional Measure 3 funds for the Phase 2 of the Project in its adopted 2023/24 Capital Budget; and

WHEREAS, the City has been awarded a California Coastal Conservancy grant of $2.96M and an Alameda County Transportation Commission (ACTC) of $5.139M to fund the engineering, detailed design and environmental studies for the Project; and

WHEREAS, it is necessary to amend the existing MOU to reflect the Phase 2 scope and fund allocations.

NOW THEREFORE, BE IT RESOLVED by the Council of the City of Berkeley that the City Manager is authorized to execute Amendment #1 to the MOU and its associated funding agreement between the City and Water Emergency Transportation Authority for the Planning/Design phase of a dual-purpose municipal pier. A record signature copy of the MOU and any amendments to be on file in the Office of the City Clerk.

AMENDMENT #1 TO THE PROJECT MEMORANDUM OF UNDERSTANDING

BERKELEY MARINA FERRY FACILITY PROJECT

April 1, 2024

Term, Parties

1. General	This Amendment #1 amends the Memorandum of Understanding, dated March 12, 2019 ("MOU", Exhibit A) for the funding, development and operation of the planned ferry service facility at the Berkeley Marina (the "Project"). Unless otherwise set forth in this Amendment #1, all provisions of the MOU remain in effect. Phase 1 is complete. This amendment to the MOU covers Phase 2, including Design, Environmental Clearances, Public Engagement and Permitting.
2. Term	Notwithstanding section 2 of the MOU, the parties agree that the MOU has not expired and will remain in place throughout the phases anticipated in the MOU, unless otherwise terminated by the parties. Either Party may terminate this MOU at any time and for any reason with 30 days' notice. Phase 2 will be determined to be complete after: (1) City adoption of CEQA findings, (2) City receipt of environmental permits and (3) City preparation of public contract documents.
3. WETA System Expansion Policy	On June 4, 2015 the WETA Board of Directors adopted a System Expansion Policy (MOU Exhibit A) 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. WETA is developing a 2050 Service Vision & Business Plan ("Business Plan") which will also be applicable to the proposed Project.
4. Partnering	Phase 2 funding is provided in by grants awarded to the City of Berkeley from Alameda County Transportation Commission and California State Coastal Commission and by RM3 funds provided by WETA.

Phase 1: Planning Phase (Feasibility Study - COMPLETE)

5. Feasibility Study	As part of the Phase 1 Planning Phase, the City, with assistance from WETA, prepared the Expanded Feasibility Study that included technical analyses and a public process (Feasibility Study). The Feasibility Study developed the conceptual designs for a dual-function facility (ferry and public access) including both waterside and landside improvements. The Feasibility Study provides multiple feasible alternatives for a dual-function facility to serve as a passenger ferry facility for berthing public ferry service vessels and providing public access to San Francisco Bay. WETA has developed a Berkeley Ferry Service Business Plan Version 1.0 ("Berkeley Business Plan"). The Business Plan will be periodically updated by WETA in collaboration with the City and other Project partners.

Berkeley Marina Ferry Service Project Agreement Amendment #1

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

6. Planning and Permitting	As part of the Phase 2 Planning and Permitting, City will conduct CEQA compliance environmental reviews and reports ("Environmental Review") for a new dual-function facility (including landside improvements) for a new terminal and ferry service to the City of Berkeley originating in San Francisco. The Environmental Review will include technical analyses, public outreach and participation, environmental analysis and preparation of appropriate documents under the California Environmental Quality Act (CEQA) and other studies and supporting documents needed to permit construction (i.e. for U.S. Army Corps of Engineers, California Regional Water Quality Control Board, S.F. Bay Conservation and Development Commission, etc.). City will serve as the lead agency, with assistance from WETA, for the Environmental Review. If Federal Funding and a Federal Lead Agency is identified, City and WETA will partner with the Lead Agency to conduct NEPA-compliance environmental reviews and reports as part of this Phase, with specific roles and responsibilities to be determined based on the funding agency.
7. Design	As part of the Phase 2 Design, City will prepare design engineering plans and specifications for a dual-purpose facility (including landside improvements) in the City of Berkeley ("Design Engineering"). The Design Engineering will comply with all applicable state and federal accessibility requirements. The facility will be designed as an essential facility to remain operational after a seismic event, and will have both waterside and landside components as described in the Feasibility Study. City will serve as the Project lead for the Planning, Permitting and Design Phases that will include technical studies and reports, public outreach, waterside and landside design and planning. WETA will coordinate with the City and provide technical resources and assistance to support the Design Phase.
8. Contracting	City will contract for professional services to conduct the Environmental Review and Design Engineering. City will be solely responsible for managing and paying for such contracted professional services.
9. Public Engagement	All interaction with the public as part of Phase 2 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.
10. Funding	Refer to Phase 2 funding agreement.
11. Feasibility Determination	At the conclusion of Phase 2, the Parties, subject to identification of sufficient funding, may elect to undertake Phase 3, Construction. 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.

WETA and the City of Berkeley have amended the Memorandum of Understanding dated March 12,2019 as of the last date set forth below.

San Francisco Bay Area Water Emergency Transportation Authority

By: _____
Seamus Murphy
Executive Director

Date: _____

Reviewed:

By: _____
Steven Miller
Legal Counsel to Authority

City of Berkeley

By: _____
Dee Williams-Ridley
City Manager

Date: _____

Reviewed:

By: _____
Farimah Brown
City Attorney

Attachments:

Exhibit A: Project Memorandum of Understanding, Berkeley Marina Ferry Facility Project, March 12, 2019

Exhibit B: Phase 2 Funding Agreement

EXHIBIT A

Project Memorandum of Understanding, Berkeley Marina Ferry Facility Project, March 12, 2019

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 July 1st, 2019 ("**Effective Date**") and shall remain in effect until the first to occur of: (i) December 31st, 2021 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.

ORIGINAL

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 may 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, and agree to pay reasonable docking fees, if applicable, to WETA. 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: 6/24/19

Reviewed:

By: _____
Madeline Chun
Legal Counsel to Authority

City of Berkeley

By: _____
Dee Williams-Ridley
City Manager

Date: 7/26/19

Reviewed:

By: _____
Farimah Brown
City Attorney

Registered by:

_____
City Auditor

Attachments:

Exhibit A: WETA System Expansion Policy

Exhibit B: Funding Agreement

Exhibit C: Amendment to Consulting Services Agreement

March 12, 2019

ATTEST FOR THE CITY OF BERKELEY

_____
DEPUTY CITY CLERK

EXHIBIT A

WETA System Expansion Policy

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

EXHIBIT B

Funding Agreement

March 12, 2019

15027302.2

WETA WATER EMERGENCY TRANSPORTATION AUTHORITY

May 9, 2019

City of Berkeley
Attn: City Manager
2180 Milvia St.
Berkeley, CA 94704

Re: RM2 Funding Agreement - Berkeley Marina Ferry Facility Project

Dear Ms. Dee Williams-Ridley,

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. 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 August 1st, 2019 and be completed by December 31st, 2020, unless this Agreement is terminated by either WETA or CITY as provided below. Invoices must be submitted before March 31st, 2021 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 26th day of July, 2019.

CITY OF BERKELEY

By: D. Williams-Ridley
Name: Dee Williams-Ridley
Title: City Manager

OAK #4851-4585-9205 v7

RESOLUTION NO. 68,782-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.

The foregoing Resolution was adopted by the Berkeley City Council on March 12, 2019 by the following vote:

Ayes: Bartlett, Davila, Droste, Hahn, Harrison, Kesarwani, Robinson, Wengraf, and Arreguin.

Noes: None.

Absent: None.

Jesse Arreguin, Mayor

Attest: Mark Numainville, City Clerk

SAN FRANCISCO BAY AREA WATER EMERGENCY TRANSPORTATION AUTHORITY

RESOLUTION NO. 2019-09

APPROVE MEMORANDUM OF UNDERSTANDING WITH CITY OF BERKELEY FOR A FERRY TERMINAL PLANNING AND FEASIBILITY STUDY

WHEREAS, WETA is working in partnership with the City of Berkeley to develop a ferry terminal and ferry service in Berkeley, CA consistent with the 2003 Implementation and Operations Plan adopted by the Water Transit Authority (predecessor to WETA), the 20-year vision of potential expansion projects included in the 2016 WETA Strategic Plan, and the multi-agency Core Capacity Transit Study completed by the Metropolitan Transportation Commission in 2017; and

WHEREAS, WETA undertook initial environmental and design work for a potential terminal and ferry service in Berkeley, but halted this effort in 2013 due to feasibility concerns including, but limited to, dredging, potential mitigation measures, and lack of a clear funding source; and

WHEREAS, WETA and the City of Berkeley have identified several changed conditions since 2013 that could represent new opportunities to create a feasible project to build a ferry terminal and operate ferry service in Berkeley, CA; and

WHEREAS, the City of Berkeley has initiated a $330,000 study to identify feasible options for fixing or replacing the Municipal Pier located in the Berkeley Marina as a dual-use facility that would restore public access and serve as a new landing location for small-scale ferry operations; and

WHEREAS, WETA and the City of Berkeley desire to invest up to $360,000 to expand the study to consider the feasibility of constructing a WETA-scale facility located at or near the Municipal Pier; and

WHEREAS, WETA and the City of Berkeley have drafted a Memorandum of Understanding (MOU) setting forth specific roles and responsibilities for each party during the planning phase of the project, including contributions of up to $250,000 by WETA and $110,000 by the City to expand the feasibility study; and

WHEREAS, the MOU covers only the planning phase of the project, other project phases, including design, construction, and operation, would not be pursued without future agreement between the parties once the feasibility study is completed; and

WHEREAS, on March 12, 2019, the Berkeley City Council approved a consent item authorizing the City Manager to execute the MOU with WETA; and

WHEREAS, staff recommends that the Board approve moving forward with the project feasibility study consistent with WETA and MTC plans; now, therefore, be it

RESOLVED, that the Board approves the MOU with the City of Berkeley for ferry terminal planning and feasibility study activities and authorizes the Executive Director to execute the MOU and enter into related funding agreements.

CERTIFICATION

The undersigned, Board Secretary, does hereby certify that the foregoing is a full, true and correct copy of a resolution duly and regularly adopted at a meeting of the San Francisco Bay Area Water Emergency Transportation Authority held on May 9, 2019.

YEA: J Breckenridge, J DelBono, A Intintoli, J Wunderman
NAY: N Josefowitz
ABSTAIN: None
ABSENT: None

/s/ Board Secretary
2019-09
END

EXHIBIT B

Phase 2 Funding Agreement

April 1, 2024

20680397.1

City of Berkeley
Attn: City Manager
2180 Milvia St.
Berkeley, CA 94704

Re: RM3 Funding Agreement - Berkeley Water Transportation Pier-Ferry Project Phase 2

Dear Ms. Dee Williams-Ridley,

This letter agreement ("Agreement") memorializes the understanding between the San Francisco Bay Area Water Emergency Transportation Authority (WETA) and the City of Berkeley (CITY) to fund the environmental review and design engineering (together, "Phase 2") for the Berkeley Water Transportation Pier-Ferry Project (Project).

WETA and the CITY mutually signed a MOU on March 12, 2019 setting forth general understanding of the Berkeley Marina Ferry Facility Project. Associated with that MOU, the parties agreed to a Funding Agreement letter dated May 9, 2019, to fund Phase 1 set forth in the MOU. That Phase 1 work is complete, resulting in the *Ferry Facility at Berkeley Municipal Pier Feasibility Study* (Feasibility Study), GHD, June, 2023.

Phase 2 of the Project includes detailed technical analyses, design, environmental studies, public engagement and permitting for the preferred Project concept presented in the Feasibility Study. The City has been awarded $8,000,930 of grant funding for Phase 2 work from the Alameda County Transportation Commission ($5,813,204[1]) and the California State Coastal Conservancy ($2,187,726[2]). WETA has included $3,000,000 in its adopted 2023/24 Capital Budget for the Planning/Design phase of the Project.

WETA's financial contribution for Phase 2 is generated from Regional Measure 3 (RM3). WETA's obligation to reimburse project costs is subject to compliance with all applicable rules and regulations of the Metropolitan Transportation Commission (MTC) governing RM3 funds, including *Regional Measure 3 Policies and Procedures* (MTC Resolution No. 4404 Attachment A). WETA will only reimburse eligible RM3 expenses, and invoices for reimbursement from the City must comply with MTC's requirements.

The City will serve as the Phase 2 project lead with assistance from WETA. The scope of Phase 2 work includes environmental studies, reports and permits, technical/engineering studies and reports, and development of detailed bid-ready design documents. WETA staff will be given the opportunity to review draft scope of work documents, and the parties will mutually agree to a final scope of work prior to initiating work. CITY will engage professional consultant services, approved by WETA, to conduct the Phase 2 work.

CITY and WETA will each contribute staff resources to support the Phase 2 work and will confer on a regular basis on the progress of the work. CITY will provide drafts of all studies and design submittals for WETA's review prior to finalizing the work.

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[1] Alameda County Transportation Commission Meeting Minutes 5-25-23; approval of 2024 Comprehensive Investment Plan including Berkeley Pier Ferry Project allocation
[2] California Coastal Conservancy Meeting 6-1-23; staff recommendation for Berkeley Pier allocation

CITY is responsible for all aspects of managing the Alameda County Transportation Commission (ACTC) and California State Coastal Conservancy (SCC) grants. WETA will periodically provide CITY with documentation of its staff time/costs, which CITY will submit to ACTC (along with CITY staff time/costs) to serve as grant matching funds. WETA's staff time and costs will be reimbursed by, and included within, WETA's overall $3M contribution of RM3 funds.

WETA will reimburse CITY for authorized and satisfactorily completed work and services rendered by CITY's outside professional consultants for the Phase 2 work that is not otherwise eligible for reimbursement from the ACTC or SCC grants. The CITY shall make all reasonable efforts to have Phase 2 consultant costs reimbursed by the ACTC or SCC grants prior to requesting reimbursement from WETA. WETA reimbursement shall not exceed Three Million Dollars ($3,000,000). CITY staff time is not eligible for reimbursement from WETA. The CITY will submit invoices to WETA, at a minimum, on a quarterly basis, and within 30 days following the end of each quarter of the fiscal year.

WETA will endeavor to make payment within ninety days of receipt of an invoice, approved by WETA and MTC (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. Upon its review and approval, WETA will promptly submit the CITY's invoices to MTC for reimbursement. CITY shall also attach to each invoice such receipts, proof of payment, and other supporting documentation as may be reasonably required by WETA or MTC. CITY will be responsible for providing any additional materials that are required by MTC to comply with RM3 funding and reimbursement requirements.

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 January 1, 2024 and be completed by December 31st, 2027, unless this Agreement is terminated by either WETA or CITY as provided below. Invoices must be submitted before March 31st, 2028 to be paid.

Either CITY or WETA may terminate this Agreement, in each party's sole discretion, for any reason upon thirty days' written notice to the other party. Upon termination, the parties will promptly meet and confer to discuss the impact of termination on Phase 2 work. WETA will reimburse City only for that portion of work completed (either by CITY or its outside professional consultants) prior to termination, not to exceed the maximum amount payable under the Agreement for such work.

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 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 Project 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 professional contracts executed for the work of Phase 2 shall, among other things, (i) obligate [CONTRACTOR] to defend, indemnify and hold harmless WETA and its officers, agents, officials, representatives and employees to the maximum extent allowed by law and to the same extent as the City from and against any and all claims, loss, cost, damage, injury (including, without limitation, injury to or death of an employee of [CONTRACTOR] 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 [CONTRACTOR] 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 [CONTRACTOR] 's commercial general liability, business automobile liability and professional liability insurance policies; and (iii) name WETA as a third party beneficiary of the [CONTRACTOR]'s indemnity and insurance obligations, and provide that such provisions may not be amended without WETA's consent.

Any amendment of this 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,

Seamus Murphy

Executive Director

* * * * * * *

Accepted and Agreed this _____day of _____, 2024.

CITY OF BERKELEY

By: _____

Name: Dee Williams-Ridley

Title: City Manager