WETA WATER EMERGENCY TRANSPORTATION AUTHORITY

Members of the Board

James Wunderman, Chair
Monique Moyer, Vice Chair
Jessica Alba
Jeffrey DelBono
Pippin Dew

SAN FRANCISCO BAY AREA
WATER EMERGENCY TRANSPORTATION AUTHORITY
BOARD OF DIRECTORS MEETING
Thursday, July 13, 2023 at 1:00 p.m.

Port of San Francisco
Pier 1
San Francisco, CA
and
Videoconference
Join WETA BOD Zoom Meeting
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The full agenda packet is available for download at weta.sanfranciscobayferry.com

AGENDA

1. CALL TO ORDER

2. ROLL CALL/PLEDGE OF ALLEGIANCE

3. REPORT OF BOARD CHAIR — ***Information***
   a. Chair's Verbal Report

4. REPORTS OF DIRECTORS — ***Information***
   Directors are limited to providing information, asking clarifying questions about matters not on the agenda, responding to public comment, referring matters to committee or staff for information, or requesting a report to be made at another meeting.

5. REPORTS OF STAFF — ***Information***
   a. Executive Director's Report on Agency Projects, Activities and Services
      i. Sea Change Hydrogen Vessel Update
      ii. Marketing Update
   b. Monthly Review of Financial Statements
   c. Federal Legislative Update
   d. State Legislative Update
   e. Monthly Ridership and Recovery Report

6. CONSENT CALENDAR — ***Action***
   a. Approve Board Meeting Minutes – June 5, 2023
   b. Authorize Execution of Master Funding Agreement with the Metropolitan Transportation Commission

7. APPROVE CONTRACT AWARD TO CPS HR CONSULTING FOR HUMAN RESOURCES MANAGEMENT SERVICES — ***Action***

8. APPROVE CONTRACT AWARD TO COREY, CANAPARY & GALANIS FOR SURVEYING AND MARKET RESEARCH SERVICES — ***Action***

9. APPROVE CONTRACT AWARD TO MANSON CONSTRUCTION CO. FOR DREDGING AND MARINE CONSTRUCTION SERVICES FOR THE VALLEJO TERMINAL DREDGING PROJECT — ***Action***

10. APPROVE SOLE SOURCE CONTRACT AWARD TO PACIFIC POWER GROUP, LLC FOR MAIN ENGINE PREVENTATIVE MAINTENANCE SERVICES — ***Action***

11. ADOPT WETA FY 2024-2028 REGIONAL MEASURE 3 FIVE-YEAR OPERATING PLAN — ***Action***

12. UPDATE ON INSTITUTIONAL/EMPLOYER PASS PILOT PROGRAM — ***Information***

13. PUBLIC COMMENTS FOR NON-AGENDA ITEMS

ADJOURNMENT

All items appearing on the agenda are subject to action by the Board of Directors. Staff recommendations are subject to action and change by the Board of Directors.

PUBLIC COMMENTS WETA welcomes comments from the public.

If you know in advance that you would like to make a public comment during the meeting, please email BoardOfDirectors@watertransit.org with your name and item number you would like to provide comment on no later than 15 minutes after the start of the meeting. Comments will also be accepted in real time. During the public comment period, speakers will be allotted no more than 3 minutes to speak and will be heard in the order of sign-up. Said time frames may be extended only upon approval of the Board of Directors.

Agenda Items: Speakers on individual agenda items will be called in order of sign-up after the discussion of each agenda item.

Non-Agenda Items: A 15-minute period of public comment for non-agenda items will be held at the end of the meeting. Please indicate on your speaker card that you wish to speak on a non-agenda item. No action can be taken on any matter raised during the public comment period.

Upon request, WETA will provide written agenda materials in appropriate alternative formats to individuals with disabilities. In addition, WETA will arrange for disability-related modifications or accommodations including auxiliary aids or services to enable individuals with disabilities to participate in public meetings. Please send an email with your request to: contactus@watertransit.org as soon as possible and no later than 5 days prior to the meeting and we will work to accommodate access to the meeting.

AGENDA ITEM 1
CALL TO ORDER

AGENDA ITEM 2
ROLL CALL

AGENDA ITEM 3
REPORT OF BOARD CHAIR

AGENDA ITEM 4
REPORTS OF DIRECTORS

NO MATERIALS

WETA WATER EMERGENCY TRANSPORTATION AUTHORITY

Memorandum

TO: WETA Board Members

FROM: Seamus Murphy, Executive Director

DATE: July 13, 2023

RE: Executive Director's Report

Sea Change Hydrogen Vessel Demonstration Project

Progress toward putting the Sea Change into operation continues but at a slower than expected pace.

The vessel was successfully fueled for the first time on June 15th. The United States Coast Guard (USCG), San Francisco Fire Department (SFFD) and Port of San Francisco were in attendance for this fueling and very satisfied with the process.

The team has identified some power and fuel-cell issues that need to be addressed. The power to the propulsion system on the port side is non-operational. Outside vendors are working on this issue and have identified some failed parts that will need to be replaced. Other issues affecting the fuel-cells' ability to produce full power and maintain sufficient temperatures are also being investigated.

Once the vessel is fully operational, it's estimated that two weeks will be needed for testing before the vessel is certified for operation.

Marketing Update

WETA's summer marketing campaign has featured new streaming ads, paid social content, and will soon add several billboard advertisements that target drivers along major corridors where traffic congestion has increased over the last year. Staff will share these components at the Board's July 13 meeting.

Funding Activities

The FTA's FY2023 Competitive Funding round for the Passenger Ferry Grant Program has been released with a grant application deadline of July 17. This program distributes approximately $50 million annually to passenger ferry projects nationwide. Last year, although WETA applied for a highly competitive project that scored well and was rated as "highly recommended", most of the funding was awarded to projects in the State of Alaska, with WETA receiving no funding. This year staff will be submitting a similar project to advance the electrification of the WETA fleet by building more battery charging systems at WETA terminals. This year's application requests FTA funding for installing batteries at floats in two phases: Phase 1 including Seaplane Lagoon and Gate F in San Francisco, and Phase 2 at Alameda Main Street and Gate G in San Francisco. Each phase is $10 million with a federal request of 80% of each phase ($16 million federal share total). Last year WETA was successful with gaining widespread support in the form of 50 letters of support. Although this year's application scope is smaller than the prior year due to more constrained federal funding, staff anticipates similar levels of support.

Community Events

On June 3, WETA provided special shuttle service between the Vallejo and Mare Island terminals for the Pista Sa Nayan Festival. This major Filipino cultural event was held on Mare Island at a site with limited parking. Nearly 700 passengers rode the complimentary ferry connection, and WETA's community outreach ambassadors spoke with hundreds more festival attendees about ferry service.

Global Mass Transit Conference

On June 21, WETA participated in the Global Mass Transit Conference in San Francisco. The focus of this conference was to discuss the federal government's plan to transition to a zero-emission transit system, deployment of zero emission ferries in the US, funding available, strategies, case studies, best practices, recent developments, key challenges, plans and future outlook. WETA's Executive Director participated on a panel to discuss WETA's plan to transition to zero emissions. Several ferry operators attended the conference that are members of the Public Ferry Coalition – the national coalition of public ferry operators that WETA co-chairs along with Washington State Ferries. On June 20, staff provided a tour of WETA's system to the Public Ferry Coalition members and several staff from the Federal Highway Administration that attended the conference.

Board Member Confirmation

On June 28, the Senate Committee on Rules confirmed Pippin Dew's appointment to the WETA Board of Directors.

END

AGENDA ITEM 5b
MEETING: July 13, 2023

MEMORANDUM

TO: Board Members

FROM: Seamus Murphy, Executive Director
Erin McGrath, Chief Financial Officer

SUBJECT: Review of FY 2022/23 Financial Statements Ending May 31, 2023

Recommendation
There is no recommendation associated with this informational item.

Financial Statements Summary
This report provides a summary of financial activity through May 31 against the Fiscal Year 2022/23 approved budget. Revenue and expense to date for operations is $50.8 million, which is within anticipated amounts at this point in the year. The summary table below shows the high-level comparison, with 92% of the fiscal year completed.

Operating Budget vs. Actual	Year - To - Date		Annual	
	FY2021/22 Actual Prior YTD	FY2022/23 Actual Current YTD	FY2022/23 Approved Budget	% of FY 2022/23 Budget
Revenue:				
Fare Revenue	$7,166,494	$9,740,193	$ 11,228,927	87%
Federal - COVID-19 Relief Funds	18,134,833	25,327,978	27,223,251	93%
Bridge Toll Revenues	15,048,903	12,047,754	18,250,000	66%
Contra Costa Measure J	3,393,081	3,400,195	3,709,330	92%
Other Revenue	72,363	237,072	1,300,000	18%
Total Operating Revenues	**$43,815,673**	**$50,753,192**	**$ 61,711,508**	**82%**
Expense:				
Ferry Services	$41,671,435	$ 48,275,379	$58,311,508	83%
Planning & Administration	2,144,238	2,477,813	3,400,000	73%
Total Operatings Expenses	**$43,815,673**	**50,753,192**	**$61,711,508**	**82%**
Farebox Recovery %	**17%**	**20%**		

Systemwide costs have progressed as anticipated, with variations in certain routes as detailed on the following pages. Most of the components of the budget will result in on-target or slightly below anticipated amounts. Particularly important to the budget is the fact that fuel prices did stabilize throughout the year and will end within the $15.5 million mark. On the revenue side, fare revenues appear to be trending primarily in the right direction but will likely end slightly below budgeted amounts. Also, Bridge Toll revenue will be lower than budgeted as MTC has stated that allocated amounts appear to be approximately 15% higher than toll revenues. If necessary, additional federal dollars will be utilized to close the gap.

Capital Budget expenses, as shown below, are $14.5 million for the year. This is significantly lower than budgeted amounts, primarily due to the vessel construction projects that have been delayed for a variety of reasons as well as the Gemini Mid-life refurbishment that was delayed till later this year. A financial summary is shown below.

Capital Budget vs. Actual	FY2022/23 Actual Current YTD	FY2022/23 Approved Budget	% of FY 2022/23 Budget
Revenue:			
Federal Funds	$7,983,929	$25,171,292	32%
State Funds	4,435,081	10,379,421	43%
Bridge Toll Revenues	1,693,567	7,142,670	24%
Other Revenues	374,655	4,091,525	9%
Total Capital Revenues	**$14,487,232**	**$46,784,908**	**31%**
Expense:			
Total Capital Expenses	**$14,487,232**	**$46,784,908**	**31%**

The financial reports attached show the more detailed operating, administrative, and capital activity for the month of April, year-to-date amounts against budget for the fiscal year, and historical comparisons of operating expense against the prior year.

Investment Report

In order to comply with Government Code § 53607, this report contains the monthly balances held in both the Local Agency Investment Fund (LAIF) and our commercial bank. The total balance in these two institutions is $18,555,243.

Fiscal Impact

There is no fiscal impact associated with this informational item.

END

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San Francisco Bay Area Water Emergency Transportation Authority
FY 2022-23 Operating & Administration Revenue and Expense
Through the Month Ending 05/31/23

% of Year Elapsed *92%*

	May-23 Actual	Year - To - Date FY2021-22 Actual	Year - To - Date FY2022-23 Actual	Total FY2022-23 Budget	Total Budget
OPERATING EXPENSE					
FERRY OPERATIONS:					
Harbor Bay Ferry Service (AHBF)					
Vessel Crew Labor	$113,188	$1,395,987	1,413,945	$1,551,680	*91%*
Vessel Fuel	78,214	$847,880	941,683	1,087,800	*87%*
Vessel Operations & Maintenance	58,323	$409,609	455,045	542,008	*84%*
Facility Operations & Maintenance	52,687	$467,939	578,514	793,813	*73%*
System Expense	71,687	$590,664	666,284	779,790	*85%*
Total Harbor Bay	**$374,100**	**$3,712,078**	**$4,055,471**	**$4,755,091**	***85%***
Farebox Recovery - AHBF	***21%***	***11%***	***17%***	***11%***	
Alameda/Oakland Ferry Service (AOFS)					
Vessel Crew Labor	$289,259	$3,533,256	$3,797,258	$4,999,858	*76%*
Vessel Fuel	212,296	$2,404,078	2,726,597	2,797,200	*97%*
Vessel Operations & Maintenance	69,931	$637,391	1,032,519	1,185,911	*87%*
Facility Operations & Maintenance	145,470	$1,351,531	1,600,427	2,329,236	*69%*
System Expense	221,722	$1,602,974	1,954,104	2,798,211	*70%*
Total Alameda/Oakland	**$938,678**	**$9,529,230**	**$11,110,905**	**$14,110,416**	***79%***
Farebox Recovery - AOFS	***30%***	***22%***	***23%***	***23%***	
Vallejo Ferry Service (Vallejo)					
Vessel Crew Labor	$339,565	$3,863,515	$4,223,264	$4,482,632	*94%*
Vessel Fuel	513,981	$5,919,827	6,183,106	$7,303,800	*85%*
Vessel Operations & Maintenance	148,598	$849,979	1,376,724	$1,506,018	*91%*
Facility Operations & Maintenance	291,673	$3,506,824	3,340,987	3,373,394	*99%*
System Expense	244,997	$1,748,641	2,150,238	2,872,318	*75%*
Total Vallejo	**$1,538,813**	**$15,888,786**	**$17,274,319**	**$19,538,162**	***88%***
Farebox Recovery - Vallejo	***31%***	***22%***	***26%***	***27%***	
South San Francisco Ferry Service (SSF)					
Vessel Crew Labor	$138,341	$659,823	$1,228,735	$1,206,862	*102%*
Vessel Fuel	78,214	$418,761	758,755	777,000	*98%*
Vessel Operations & Maintenance	49,879	$350,549	388,429	464,549	*84%*
Facility Operations & Maintenance	51,046	$478,524	576,099	708,666	*81%*
System Expense	38,251	$269,481	381,624	464,576	*82%*
Total South San Francisco	**$355,732**	**$2,177,139**	**$3,333,643**	**$3,621,653**	***92%***
Farebox Recovery - SSF	***8%***	***3%***	***7%***	***8%***	
Richmond Ferry Service (Richmond)					
Vessel Crew Labor	$226,376	$2,588,529	$2,856,663	$3,275,769	*87%*
Vessel Fuel	145,255	$1,623,372	1,892,864	2,175,600	*87%*
Vessel Operations & Maintenance	74,980	$528,032	584,953	697,397	*84%*
Facility Operations & Maintenance	102,703	$915,724	1,154,733	1,676,668	*69%*
System Expense	90,797	$734,547	901,061	1,248,762	*72%*
Total Richmond	**$640,111**	**$6,390,205**	**$7,390,274**	**$9,074,196**	***81%***
Farebox Recovery - Richmond	***14%***	***8%***	***11%***	***8%***	

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San Francisco Bay Area Water Emergency Transportation Authority
FY 2022-23 Operating & Administration Revenue and Expense
Through the Month Ending 05/31/23

% of Year Elapsed *92%*

	May-23 Actual	Year - To - Date FY2021-22 Actual	FY2022-23 Actual	Total FY2022-23 Budget	Total Budget
OPERATING EXPENSE (continued)					
Seaplane Lagoon Ferry Service (SPL)					
Vessel Crew Labor	$150,918	$1,469,841	$1,801,672	$1,724,089	*104%*
Vessel Fuel	89,388	$1,016,290	1,279,389	1,398,600	*91%*
Vessel Operations & Maintenance	38,751	$347,132	537,113	605,118	*89%*
Facility Operations & Maintenance	52,102	$449,711	563,201	793,966	*71%*
System Expense	85,549	$691,023	772,637	1,001,157	*77%*
Total Seaplane Lagoon	**$416,707**	**$3,973,997**	**$4,954,011**	**$5,522,930**	***90%***
Farebox Recovery - SPL	***27%***	***13%***	***20%***	***18%***	
Sub-Total Ferry Operations (Ongoing Service)	**$4,264,141**	**$41,671,435**	**$48,118,623**	**$56,622,448**	***85%***
FAREBOX RECOVERY	***25%***	***23%***	***20%***	***20%***	
Hydrogen Demostration Project					
Vessel Crew Labor	-		$57	$440,460	*0%*
Vessel Fuel	-	***Not***	-	417,400	*0%*
Vessel Operations & Maintenance	75,753	***Applicable***	91,723	37,500	*245%*
Facility Operations & Maintenance	-		3,191	8,700	*37%*
System Expense	9,514		61,785	785,000	*8%*
Total Hydrogen Demonstration	**$85,267**	**$0**	**$156,756**	**$1,689,060**	*9%*
Subtotal Ferry Operations (All)	**$4,349,408**	**$41,671,435**	**$48,275,379**	**$58,311,508**	***83%***
PLANNING & ADMINISTRATION:					
Wages and Fringe Benefits	$115,289	$1,496,428	$1,855,073	$1,775,164	*105%*
Professional & Other Services	90,999	1,199,940	1,227,007	2,466,660	*50%*
Information Tech., Office, Supplies	1,317	61,457	64,035	78,000	*82%*
Utilities	1,112	23,240	18,131	44,700	*41%*
Insurance	1,855	14,380	21,863	18,829	*116%*
Dues, Memberships, Misc.	3,527	35,332	63,840	95,000	*67%*
Leases and Rentals	1,152	236,194	226,446	250,431	*90%*
Admin Overhead Expense Transfer	(127,678)	(922,734)	(998,581)	(1,328,784)	*75%*
Sub-Total Planning & Gen Admin	**$87,573**	**$2,144,238**	**$2,477,813**	**$3,400,000**	***73%***
Total Operating Expense	**$4,436,980**	**$43,815,673**	**$50,753,192**	**$61,711,508**	***82%***
OPERATING REVENUE					
Fare Revenue	$1,069,483	$7,166,494	$9,740,193	$11,228,927	*87%*
Federal Operating Assistance	2,151,044	18,134,833	25,327,978	27,223,251	*93%*
Regional - Bridge Toll	821,550	15,048,903	12,047,754	18,250,000	*66%*
Regional - Contra Costa Measure J	309,111	3,393,081	3,400,195	3,709,330	*92%*
Other Revenue	85,792	$72,363	237,072	1,300,000	*18%*
Total Operating Revenue	**$4,436,980**	**$43,815,673**	**$50,753,192**	**$61,711,508**	***82%***

San Francisco Bay Area Water Emergency Transportation Authority
FY 2022-23 Capital Revenue and Expense
Through the Month Ending 05/31/23

Project Description	May-23 Total	Total Project Budget	Prior Year Expense	Total FY2022-23 Budget	Year-To-Date FY2022-23 Actual	Total Future Year	% of Total Project Budget
CAPITAL EXPENSES:							
FACILITIES:							
Operations and Maintenance Facilities							
North Bay Facility Fuel System Improvement		$530,450	$320,152	$100,000	$61,971	$110,298	*72%*
Central Bay Facility Oil System Modification		383,968	373,268	10,700	5,718	-	*99%*
Terminal Improvement							
Terminal Rehabilitation - Alameda Main Street*	125,192	9,760,000	507,257	4,943,465	859,558	4,309,278	*14%*
Shoreside Infrastructure for All-Electric Vessel		5,184,685	124,685	1,924,685	57,503	3,135,315	*4%*
Passenger Float Rehabiliation - South San Francisco	3,915	908,500	9,995	858,500	298,150	40,005	*34%*
Terminal Dredging - Vallejo - Surveys & Permitting		113,000	-	113,000	80,017	-	*71%*
Terminal Reconfiguration - Vallejo	6,480	550,000	-	550,000	40,568	-	*7%*
Central Bay Terminal Expansion		550,000	-	550,000	937	-	*0%*
Passenger Float Rehabiliation - Pier 9		1,362,000	-	1,362,000	-	-	*0%*
FERRY VESSELS:							
Vessel Construction							
New Commuter Class High-Speed Vessels - (Two)	31,096	30,082,500	24,999,892	3,925,652	1,521,539	1,156,956	*88%*
Electric Vessels - Expansion - (Two)		9,000,000	-	2,800,000	75,635	6,200,000	*1%*
Replacement Vessels - MV Bay Breeze and Solano	1,173,041	36,002,382	4,493,045	12,491,614	7,049,239	19,017,723	*32%*
Replacement Vessel - MV Intintoli	27,091	26,446,700	62,794	4,000,000	292,274	22,383,906	*1%*
Replacement Vessel - MV Mare Island		26,500,000	-	2,650,000		23,850,000	*0%*
Vessel Rehabilitation and Refurbishment							
Vessel Engines Conversion - Gemini Class Vessels	71,150	5,524,100	3,089,137	2,434,963	2,549,265	-	*102%*
Vessel Engines Overhaul - MV Cetus **	103	434,564	-	434,564	399,251	-	*92%*
Vessel Engines Overhaul - MV Hydrus**	73,988	354,600	-	354,600	509,975	-	*144%*
Vessel Engines & Gears Overhaul - MV Bay Breeze		491,400	140,768	210,277	263,454	140,355	*82%*
Vessel Fuel Injectors Overhaul - MV Intintoli		127,300	23,855	31,888	77,024	71,557	*79%*
Test Engine Components Replacement - MV Pyxis		315,000	-	315,000	-	-	*0%*
Test Engine Components Replacement - MV Vela		250,000	-	250,000	-	-	*0%*
Vessel Mid-Life Refurbishment - MV Gemini		4,488,000	-	4,488,000	-	-	*0%*
Vessel Engine Overhaul - MV Intintoli**		356,000	-	356,000	152,713	-	*43%*
Vessel Engine Midlife Overhaul - MV Argo**		563,000	-	563,000	115,322	-	*20%*
Vessel Engine Injector Overhaul - MV Mare Island**		132,000	-	132,000	31,709	-	*24%*
Vessel Waterjet System Upgrade - Pyxis Class Vessels		600,000	-	600,000	-	-	*0%*
General Diesel Particulate Filter Demonstration Project		335,000	-	335,000	45,000	-	*13%*
Total Capital Expenses	**$1,511,953**	**161,345,149**	**34,144,848**	**46,784,908**	**14,487,232**	**$80,415,393**	
CAPITAL REVENUES:							
Federal Funds	$1,120,728	$88,194,435	$4,172,330	$25,171,292	$7,983,929	$58,850,813	*14%*
State Funds	104,108	43,413,075	23,273,415	10,379,421	4,435,081	9,760,238	*64%*
Regional - Bridge Toll	256,771	23,765,525	5,435,371	7,142,670	1,693,567	11,187,484	*30%*
Regional - Alameda Sales Tax Measure B / BB	30,346	5,972,114	1,263,732	4,091,525	374,655	616,858	*27%*
Total Capital Revenues	**$1,511,953**	**$161,345,149**	**$34,144,848**	**$46,784,908**	**$14,487,232**	**$80,415,393**	

**Project Budget increase approved February 2023 ** These project budgets managed together in one contract*

San Francisco Bay Area Water Emergency Transportation Authority
May 31, 2023 Investment Report

	May-23
Bank of America (Checking)	$743,010
Bank of America (Prop 1B)	1,339,703
Bank of America (Measure B/BB)	7,855,772
Local Agency Investment Fund (LAIF)	8,616,758
Total	**$ 18,555,243**

FBB Federal Relations

Peter Friedmann
Ray Bucheger

801 Pennsylvania Avenue, NW
PH 21
Washington, DC 20004
(202) 783-3333

TO: **WETA Board Members**

FROM: **Peter Friedmann, WETA Federal Legislative Representative**
Ray Bucheger, WETA Federal Legislative Representative

SUBJECT: **WETA Federal Legislative Board Report – July, 2023**

This report covers the following topics:

- Update on FY24 Federal Appropriations
- Advocating for WETA-Specific Funding in FY24 Appropriations Process
- Advocating for Funding through the FTA Ferry Grant Program

Update on FY24 Federal Appropriations

After getting off to a slow start due to negotiations over the debt ceiling, the House and Senate Appropriations Committees have started taking up some of the 12 appropriations bills for FY24. To date, we have seen six appropriations bills taken up and passed by the House and Senate Appropriations Committees, including the following:

- Energy and Water Appropriations bill (House), which provides funding for the Department of Energy, the U.S. Army Corps of Engineers and U.S. Bureau of Reclamation;
- Homeland Security Appropriations bill (House), which provides funding for the Department of Homeland Security;
- Defense Appropriations bill (House), which provides funding for U.S. military activities at home and abroad;
- Legislative Branch Appropriations bill (House), which provides funding for Congress;
- Agriculture Appropriations bill (Senate), which provides funding for the USDA, FDA, the Forest Service and nutrition programs; and
- Military Construction Appropriations bill (Senate), which provides funding for military construction projects in the U.S. and overseas.

The House and Senate are in session for three weeks in July, during which time we will see movement on additional appropriations bills, although we don't know which bills the House and Senate Appropriations Committee may take up before Congress adjourns for the five-week August recess. Longer term, we do not expect any of the 12 appropriations bills to be enacted by the start of the new fiscal year, which is October 1. As usual, we expect Congress to operate under a continuing resolution (CR) from October 1 until whenever Congress completes its work. Most years, Congress manages to complete work on the annual appropriations process by the end of December. This year, there is additional motivation for Congress to avoid taking this process into

January or February, thanks to the recent bipartisan debt limit deal. If the House and Senate fail to clear all 12 annual spending bills by midnight on New Year's Eve, according to the deal, it would trigger an automatic 1 percent across-the-board funding cut if a short-term spending patch is in place.

Advocating for WETA-Specific Funding in FY24 Appropriations Process

Because neither the House nor Senate Appropriations Committees have taken up the appropriations bills that fund the U.S. Department of Transportation, we don't yet know the status of WETA's Congressionally Directed Spending (CDS) request, nor do we know the status of WETA's programmatic request for additional funding for FTA grant programs.

With respect to WETA's CDS request for project-specific funding to reconfigure the Vallejo Ferry Terminal, we were able to convince Rep Garamendi and both Senators to submit the request to the Appropriations Committee. This is significant, especially considering that Rep Garamendi was limited to making 15 requests for his entire Congressional district across all 12 appropriations bills. Many organizations are already out of the running for federal funding simply because their Congressional delegations did not submit their requests to the House or Senate Appropriations Committees.

With respect to the programmatic funding request for additional funding for FTA grant programs, we are continuing to work with the California Congressional delegation to press Senate Appropriations Committee Chair Patty Murray (D-WA), and we are continuing to work with WETA staff to get ferry operators in Maine to press Senator Collins, who is the top Republican on the Senate Appropriations Committee.

Advocating for Funding through the FTA Ferry Grant Program

We are continuing to work with WETA staff to finalize the agency's "ask" to the Federal Transit Administration (FTA) in respond to the Notice of Funding Opportunity (NOFO) issued recently by the FTA for its 5307(h) Passenger Ferry Grant Program. FTA is making $50.1 million available for FY23, of which $5 million is set aside specifically for low- or zero-emission ferries and related facilities/equipment. The level of funding available in FY23 is directly tied to our advocacy last year during the FY23 appropriations process. The "normal" funding level for this program is $30 million per year. As we have done in previous years (and similar to what we are seeking to do for FY24), we were able to convince the Appropriators to "plus-up" the amount of funding available through this program in FY23. In addition to working with WETA staff to formulate the request to FTA, we are also working with WETA staff to solicit support from key stakeholders at the local, state and federal level, including from the Bay Area Congressional delegation.

Respectfully Submitted,
Peter Friedmann and Ray Bucheger

Shaw
Yoder
Antwih
Schmelzer
& Lange

1415 L Street
Suite 1000
Sacramento
CA, 95814
916-446-4656

July 3, 2023

TO: Board of Directors - San Francisco Bay Area Water Emergency Transportation Authority

FM: Matt Robinson, Partner
Michael Pimentel, Legislative Advocate

RE: STATE LEGISLATIVE UPDATE – July 2023

Legislative Update

July 1 marked the start of the 2023-24 Fiscal Year. The Legislature sent Governor Newsom a budget bill on June 15, as constitutionally required, and on June 26, announced an agreement with the Administration on the state budget, which includes the Governor's infrastructure streamlining package (more on this below). Policy committees have been hearing bills sent over from the other house and will have until July 14 to hear and report bills to the fiscal committees or the floor. July 14 also marks the start of the Legislature's Summer Recess. The Legislature will reconvene from Summer Recess on August 14 and have a month to finish the first year's business before they adjourn for the interim recess on September 14. The Legislative Calendar, which sets the deadlines for the year and can be viewed here.

In this report, we provide an update on the state budget, the swearing in of the new Assembly Speaker, the introduction of bridge toll legislation, and other legislation of interest.

Update on State Budget

Following the adoption of the main budget appropriations bill, SB 101 (Skinner), which was sent to the Governor on June 15, the Legislature approved a revised set of bills reflecting the final state budget agreement for FY 2023-24. On June 27, the Legislature sent the Governor numerous budget bills, including AB 102 (Ting) and SB 125 (Committee on Budget and Fiscal Review), which reflect the three-party agreement with Governor Newsom on the Budget Act's transportation/transit investments and policy.

AB 102, which responds to the advocacy efforts of the California Transit Association, regional agencies, transit systems, and their allies, would restore $2 billion in General Fund support to the Transit and Intercity Rail Capital Program (TIRCP), returning General Fund investment in the TIRCP to $4 billion total for FY 2023-24 and FY 2024-25. This funding will flow to regional transportation planning agencies (RTPAs) on a population-based formula (using PUC 99313) for investment in transit and rail capital projects but allow the flexibility to direct up to 100% of this funding to meet the operational needs of agencies in their jurisdictions.

This bill would also commit $1.1 billion in new and previously appropriated transit funding for the newly created Zero-Emission Transit Capital Program (ZETCP). This funding would flow to RTPAs on a population- and revenue-based formula (using PUC 99313 and 99314). While the funds allocated for the ZETCP are proposed for zero-emission vehicles and refueling infrastructure, regions will have the flexibility to direct up to 100% of this funding to meet the operational needs of agencies in their jurisdictions. AB 102 would preserve funding for the CARB's HVIP-Transit and CEC's Clean Transportation Programs for FYs 2021-22 and 2022-23.

As noted above, the Legislature also sent the Governor SB 125 representing the transportation trailer bill. This bill would institute accountability and reform requirements on regions and their transit agencies to access the funding included in AB 102, extend statutory relief measures secured in 2020 and 2021 for transit agencies, and create a new state-level Transit Transformation Task Force at the California State Transportation Agency (CalSTA), as previously ensconced in AB 761 (Friedman).

The accountability and reform requirements included in these bills would apply to all RTPAs receiving funding under AB 102 - irrespective of whether a RTPA proposes to direct the funding it receives to transit capital or operations. Essentially, the bill now requires RTPAs to submit short- and long-term financial plans, and operations data, for regional transit to access this funding.

The accountability and reform requirements would further require that, as a condition of receiving the funding in AB 102, an RTPA post on its internet website a summary of monthly ridership data, consistent with the data submitted to the National Transit Database, from all its transit operators during the period for which it receives funding.

Finally, the final budget agreement also includes the Governor's infrastructure streamlining package, including NEPA assignment for local transit projects, expedited judicial review for certain types of transportation projects, and changes to the administrative record process under CEQA.

For a much more detailed description of the final budget agreement, please see the California Transit Association's June 26 Funding Update and June 29 Legislative Bulletin.

Update on Assembly Leadership
On Friday, June 30, Speaker-Designate Robert Rivas (D-Salinas) was sworn in as the 71st Speaker of the California State Assembly. Speaker Rivas succeeds Speaker Anthony Rendon (D-Lynwood), the third-longest serving Assembly Speaker in California history.

The change in Assembly Speaker is significant, as it is likely to usher in changes to the house's policy and budgetary priorities in the years ahead and has already led to changes to Assembly leadership. On July 3, Speaker Rivas announced on the Assembly Floor that Assembly Member Cecilia Aguiar-Curry (D-Winters) and Assembly Member Isaac Bryan (D-Los Angeles) will now serve as Assembly Speaker pro Tempore and Majority Leader, respectively. They succeed Assembly Members Chris Ward (D-San Diego) and Eloise Gomez-Reyes (D-Colton), respectively, in these roles. His office subsequently released a list of additional leadership appointments and changes to the rosters of key legislative committees. Of note in these appointments is the elevation of Assembly Members Lori Wilson (D-Suisun City) and Matt Haney (D-San Francisco) to the roles of Majority Whip and Assistant Majority Whip, respectively.

Bay Area Legislators Introduces New Bridge Toll Legislation

On June 29, Senator Scott Wiener (D-San Francisco) and a group of Bay Area legislators introduced SB 532, the Safe, Clean, and Reliable Public Transportation Emergency Act. SB 532 would temporarily raise tolls on 7 state-owned bridges in the Bay Area by $1.50 for 5-years. The bill is expected to generate $180 million annually, and would direct this revenue to the Metropolitan Transportation Commission for expenditure as follows:

- At least 90 percent of the revenues generated would be allocated to eligible transit operators in order to avoid service cuts and maintain operations, including safety, security, reliability, or cleanliness services and improvements; and,
- No more than 10 percent of the revenues would be allocated to assist eligible transit operators with restoring or reconfiguring service above levels provided during the 2022–23 fiscal year or for the purpose of funding initiatives to transform transit service pursuant to the commission’s adopted Transit Transformation Action Plan, or to make specific safety, security, reliability, or cleanliness improvements.

SB 532 is co-authored by a group of lawmakers, including Senators Cortese and Becker, and Assembly Members Haney, Ting, Lee, Bonta, and Wicks. The bill is sponsored by TransForm.

The bill will be heard in the Assembly Transportation Committee on July 5.

Legislation of Interest

SB 273 (Wiener) Tidelands and submerged lands: City and County of San Francisco. (SUPPORT)

Existing law grants to the City and County of San Francisco rights to certain tidelands and submerged lands and establishes the San Francisco Bay Conservation and Development Commission. Under existing law, the State Lands Commission is authorized to approve a mixed-use development on the San Francisco waterfront at Piers 30-32, which would include a multipurpose venue for events and public assembly. This bill would revise those provisions to instead authorize the State Lands Commission to approve a mixed-use development that includes general office use and general retail use.

SB 537 (Becker) Open Meetings: Multijurisdictional, Cross-County Agencies: Teleconferences.

The bill would authorize the legislative body of a multijurisdictional, cross-county agency, as specified, to use alternate teleconferencing provisions if the eligible legislative body has adopted an authorizing resolution, as specified. The bill would also require the legislative body to provide a record of attendance and the number of public comments on its internet website within 7 days after a teleconference meeting, as specified. The bill would require at least a quorum of members of the legislative body to participate from locations within the boundaries of the territory over which the local agency exercises jurisdiction. The bill would require the legislative body to identify in the agenda each member who plans to participate remotely and to include the address of the publicly accessible building from each member will participate via teleconference. The bill would prohibit a member from participating remotely pursuant to these provisions unless the remote location is the member’s office or another location in a publicly accessible building and is more than 40 miles from the location of the inperson meeting. The bill would repeal these alternative teleconferencing provisions on January 1, 2028.

AB 321 (Wilson) Sales and Use Tax Exemptions: Zero-Emission Public Transportation Ferries. (SPONSOR)
This bill would until January 1, 2034, exempt from those taxes the gross receipts from the sale in this state of, and the storage, use, or other consumption in this state of, zero-emission public transportation ferries. **This bill was held in the Assembly Appropriations Committee.**

AB 463 (Hart) Electricity: Prioritization of Service: Public Transit Vehicles. (SUPPORT)
This bill would provide transit agencies with priority access to electricity when facing grid disruptions caused by natural or man-made disasters, rolling blackouts, utility company "Public Safety Power Shutoffs" (PSPS), and increasing demand on California's electrical grid. **This bill was held in the Assembly Appropriations Committee.**

AB 557 (Hart) Open Meetings: Local Agencies: Teleconferences.
Beginning on January 1, 2024, this bill would extend the existing teleconferencing/remote-meeting authority that can be used when a declared state of emergency is in effect and would also extend the period for a legislative body to make the required findings related to the continuing state of emergency and social distancing from 30 days to 45 days after the first teleconferenced meeting, and every 45 days thereafter, in order to continue to meet.

AB 610 (Holden) Student Transit Pass Pilot Program: Free Student Transit Passes.
This bill would create the Student Transit Pass Pilot Program for the purposes of awarding grants to transit agencies for the costs of creating, designing, developing, advertising, distributing, and implementing free student transit passes to persons attending certain public educational institutions, providing free transit service to holders of those passes, and administering and participating in the program. The bill would authorize a transit agency to submit a grant application in partnership with one or more educational institutions and would also authorize grant funds to be used to maintain, subsidize, or expand an existing fare free program.

AB 761 (Friedman) Transit Transformation Task Force.
This bill would require the Secretary of the California State Transportation Agency, on or before July 1, 2024, to establish and convene the Transit Transformation Task Force to include representatives from the department, the Controller's office, various local agencies, academic institutions, nongovernmental organizations, and other stakeholders. The bill would require the task force to develop a structured, coordinated process for early engagement of all parties to develop policies to grow transit ridership and improve the transit experience for all users of those services. The bill would require the secretary, in consultation with the task force, to prepare and submit a report of findings based on the task force's efforts to the appropriate policy and fiscal committees of the Legislature on or before January 1, 2025. **This bill was incorporated into SB 125 (Committee on Budget and Fiscal Review).**

AB 1379 (Papan) Open Meetings: Local Agencies: Teleconferences.
This bill also provides a broad interpretation of the Brown Act for all legislative bodies to participate in meetings via teleconferencing outside of a declared state of emergency without posting the physical location of members or requiring a quorum to be present at a meeting location, but would require a

local agency to have a physical meeting location open to the public and follow certain notification procedures and meeting procedures. **This bill is dead.**

ACA 1 (Aguiar-Curry) Lower-Vote Threshold.
This measure would authorize a local government, including a special district, to impose, extend, or increase a sales and use tax or transactions and use tax imposed, or a parcel tax, for the purpose of funding the construction, rehabilitation, or replacement of public infrastructure, defined to include improvements to transit and streets and highways and projects for the protection of property from the impacts of sea level rise, as well as for affordable housing, if the proposition proposing that tax is approved by 55% of its voters.

AGENDA ITEM 5e
MEETING: July 13, 2023

MEMORANDUM

TO: **Board Members**

FROM: **Seamus Murphy, Executive Director**
Kevin Connolly, Planning & Development Manager
Gabriel Chan, Transportation Planner

SUBJECT: **Monthly Ridership and Recovery Report – May 2023**

Background

The WETA Pandemic Recovery Plan (Plan) began on July 1, 2021 with the enhancement of the Vallejo, Oakland & Alameda, and Richmond routes, the restart of the suspended Harbor Bay route, and the launch of the new Alameda Seaplane route. The following weekend also marked the relaunch of weekend service on the Vallejo, Oakland & Alameda, and Richmond routes. WETA relaunched the South San Francisco service in November 2021.

The Plan enhanced service during midday and weekend periods to reflect changing demands from regular commuters and recreational riders. Lower fares, more in line with parallel transit options such as BART or Transbay buses, is an additional feature of the Plan. The Monthly Ridership and Recovery Report presents a status report of the WETA system along with anticipated service adjustments for the upcoming weeks.

Discussion

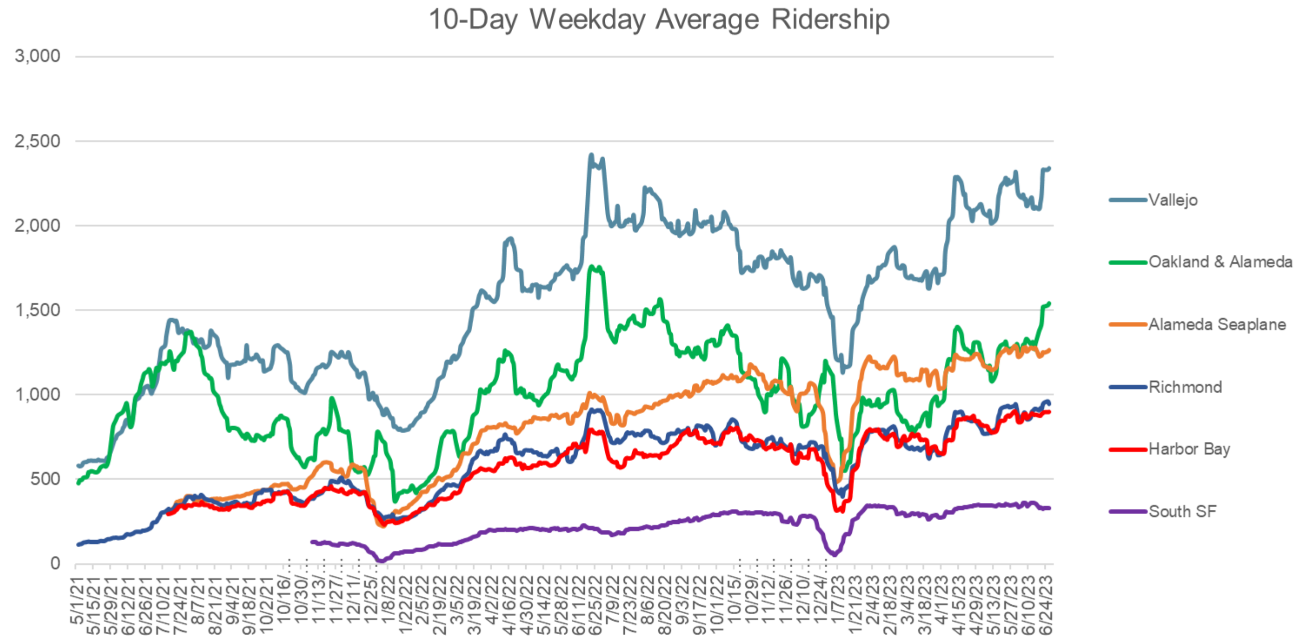
Overall, ridership has grown consistently under the Plan with encouraging signs of a summer ridership surge in 2023.

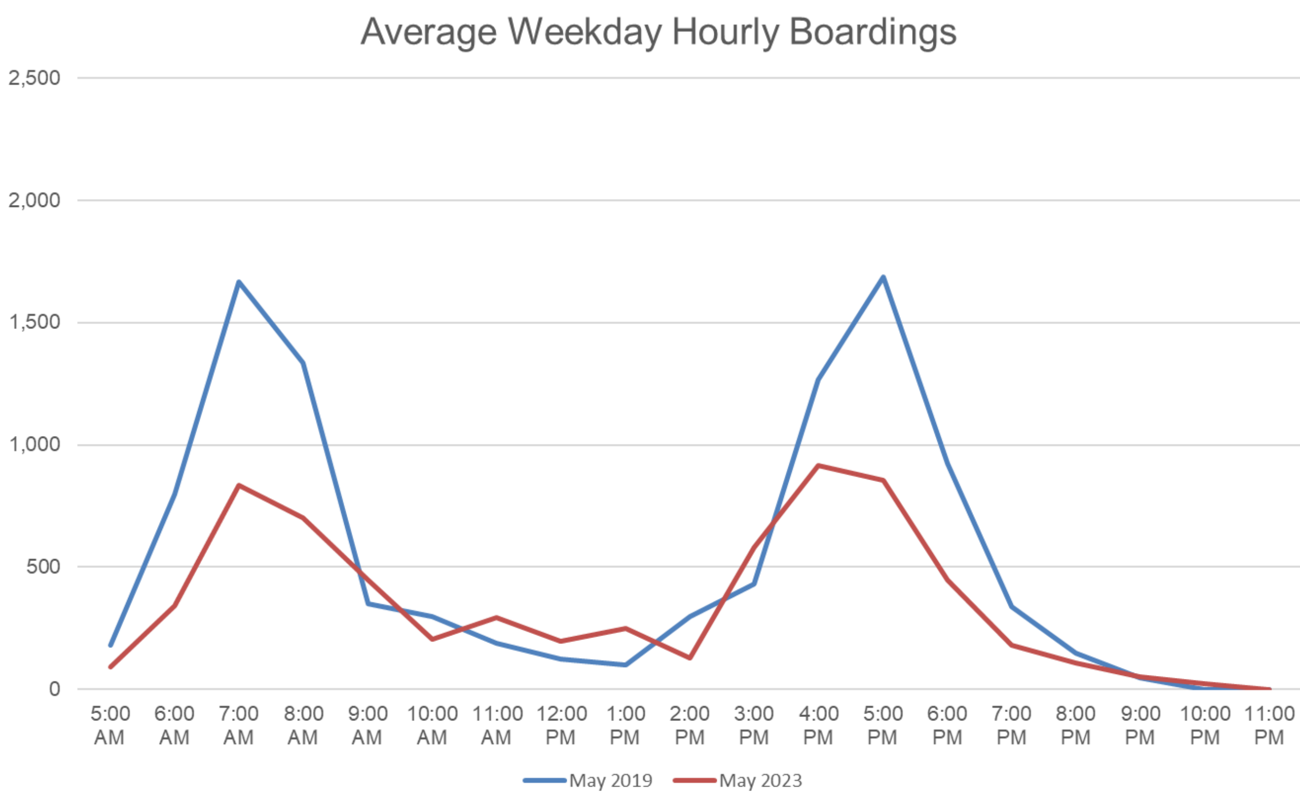
Highlights:

- WETA continues to outperform other regional transit operators in pandemic ridership recovery.
- After a winter slump, ridership is once up to budget projections.
- May weekend ridership is well over 100% of May 2019 weekends.
- May weekend ridership is comparable to Mondays and Fridays.
- Weekday commute ridership continues to tick up on all routes except South San Francisco.

Recommendations

No recommendations at this time.


10-Day Weekday Average Ridership
3,000
2,500
2,000
1,500
1,000
500
0
Vallejo
Oakland & Alameda
Alameda Seaplane
Richmond
Harbor Bay
South SF


Average Weekday Hourly Boardings
2,500
2,000
1,500
1,000
500
0
5:00 AM
6:00 AM
7:00 AM
8:00 AM
9:00 AM
10:00 AM
11:00 AM
12:00 PM
1:00 PM
2:00 PM
3:00 PM
4:00 PM
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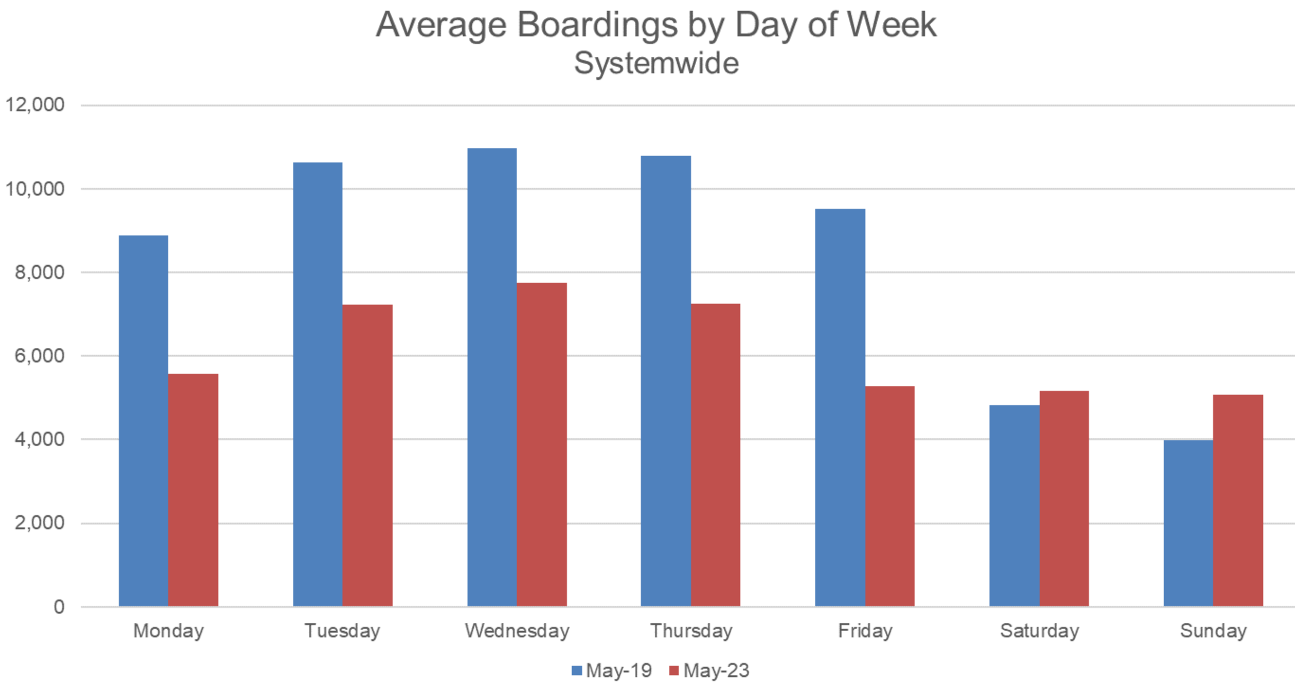
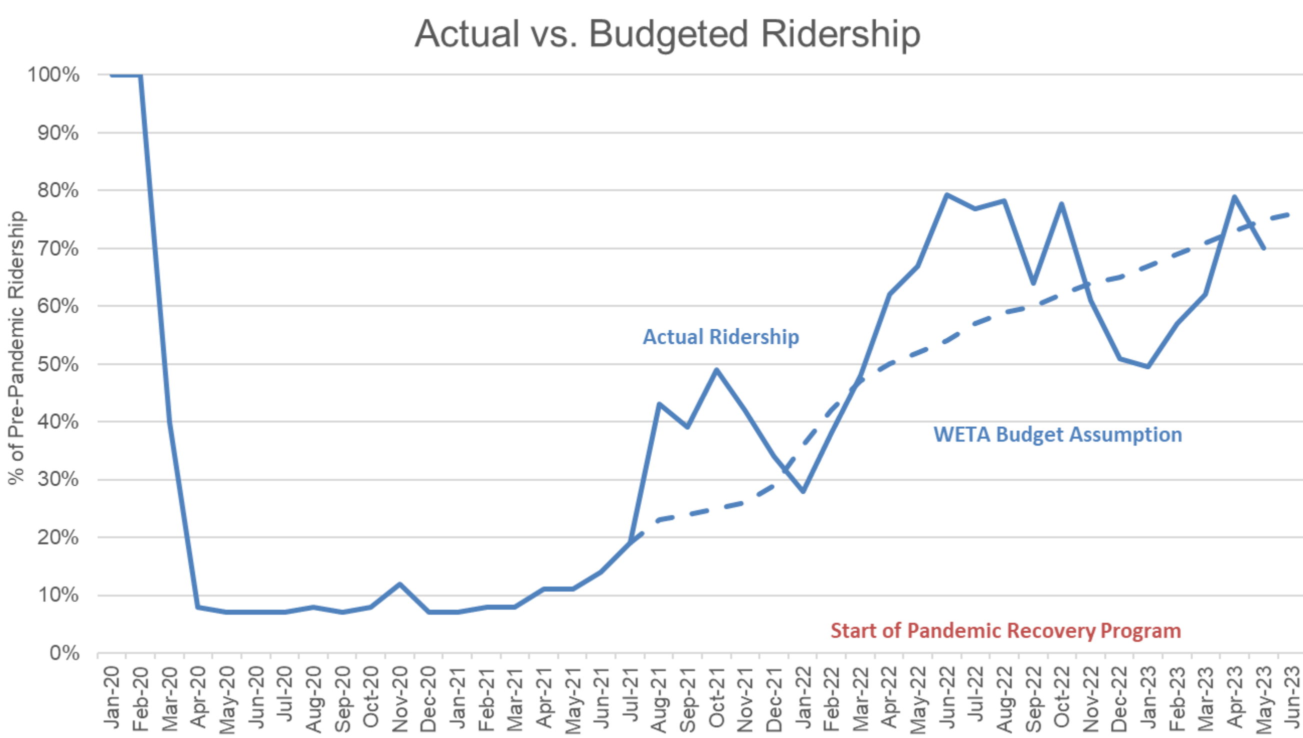
11:00 PM
May 2019
May 2023


Average Boardings by Day of Week
Systemwide
12,000
10,000
8,000
6,000
4,000
2,000
0
Monday
Tuesday
Wednesday
Thursday
Friday
Saturday
Sunday
May-19
May-23


Actual vs. Budgeted Ridership
% of Pre-Pandemic Ridership
100%
90%
80%
70%
60%
50%
40%
30%
20%
10%
0%
Actual Ridership
WETA Budget Assumption
Start of Pandemic Recovery Program
Jan-20
Feb-20
Mar-20
Apr-20
May-20
Jun-20
Jul-20
Aug-20
Sep-20
Oct-20
Nov-20
Dec-20
Jan-21
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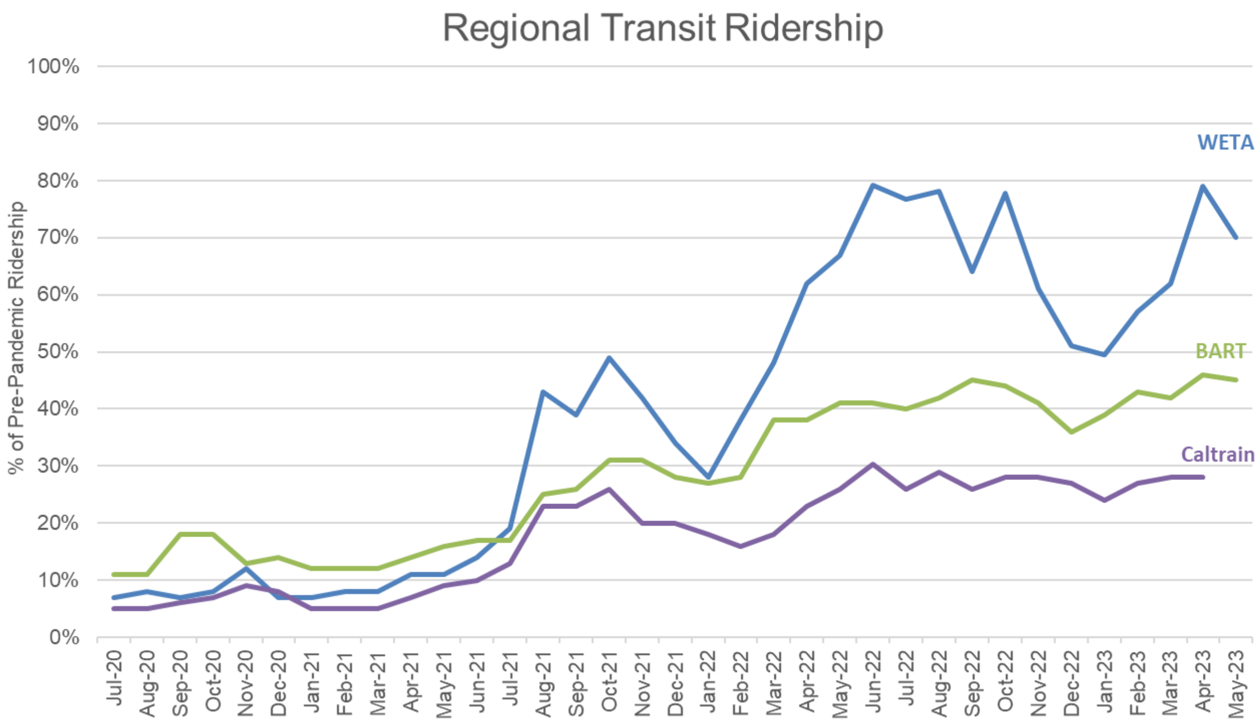
Jun-23



Note: Caltrain ridership for May will be available following their July meeting.

		May 2023	Oakland & Alameda*	Vallejo*	Richmond	Harbor Bay	Alameda Seaplane	South San Francisco**	Systemwide
Boardings	vs. last month	Total Passengers May 2023	59,496	65,331	22,531	18,426	26,939	7,743	200,466
		Total Passengers April 2023	59,718	61,501	21,907	16,982	24,632	6,750	191,490
		Percent change	-0.37%	6.23%	2.85%	8.50%	9.37%	14.71%	4.69%
	vs. same month last year	Total Passengers May 2023	59,496	65,331	22,531	18,426	26,939	7,743	200,466
		Total Passengers May 2022	50,614	52,947	18,268	12,938	18,130	4,303	157,200
		Percent change	17.55%	23.39%	23.34%	42.42%	48.59%	79.94%	27.52%
	vs. prior FY to date	Total Passengers Current FY To Date	539,516	584,296	210,533	164,291	243,978	63,944	1,806,558
		Total Passengers Last FY To Date	420,880	420,651	136,574	97,448	124,750	19,478	1,219,781
		Percent change	28.19%	38.90%	54.15%	68.59%	95.57%	228.29%	48.11%
		Avg Weekday Ridership May 2023	2,587	2,840	980	801	1,171	337	8,716
Ops Stats		Passengers Per Hour May 2023	118	84	62	92	127	56	91
		Revenue Hours May 2023	505	774	361	200	212	139	2,191
		Revenue Miles May 2023	7,105	21,220	6,712	4,128	3,509	2,420	45,094
		Farebox Recovery Year-To-Date	23%	26%	11%	17%	20%	7%	20%
		Peak hour utilization, AM – May 2023	17%	50%	29%	34%	37%	31%	33%
		Peak hour utilization, PM – May 2023	82%	62%	31%	36%	40%	26%	46%
Fuel		Fuel Used (gallons) – May 2023	62,444	151,180	42,725	23,006	26,292	23,006	328,653
		Avg Cost per gallon – May 2023	$3.40	$3.40	$3.40	$3.40	$3.40	$3.40	$3.40

** Includes special event ridership to/from Oracle Park and/or Chase Center*

*** Service suspended on the South San Francisco route until November 2021*

END

AGENDA ITEM 6a
MEETING: July 13, 2023

SAN FRANCISCO BAY AREA WATER EMERGENCY TRANSPORTATION AUTHORITY
MINUTES OF THE BOARD OF DIRECTORS MEETING

[June 5, 2023]

The Board of Directors of the San Francisco Bay Area Water Emergency Transportation Authority met in regular session at Port of San Francisco at Pier 1, San Francisco, CA and via videoconference.

1. CALL TO ORDER
Chair James Wunderman called the meeting to order at 1:01 p.m.

2. ROLL CALL
Chair James Wunderman, Director Jessica Alba, Director Jeffrey DelBono, and Director Pippin Dew were in attendance.

Chair Wunderman led the Pledge of Allegiance. He welcomed directors, staff, and meeting guests and noted that the meeting was being conducted in person and by videoconference and was being recorded. He advised guests about offering public comment and how guests could sign up to speak throughout the meeting.

3. REPORT OF BOARD CHAIR
Chair Wunderman said that he has noticed increased ridership on his ferry rides.

4. REPORTS OF DIRECTORS
Director Dew reported that the WETA sponsored Vallejo Pista Sa Nayon event was very popular and well attended.

5. REPORTS OF STAFF
Executive Director Seamus Murphy noted that WETA was receiving attention from journalists who qualified for the Hearst National Writing Championship. The finalists were asked to write two articles including one about Bay Area ferries.

Mr. Murphy introduced Planning and Development Manager Kevin Connolly to provide an update on the Oakland Alameda Estuary ferry service being planned by a partnership of public and private organizations and agencies. He stated that all the necessary pieces – landing agreements, insurance, service plan, and grant funding had been secured for a summer trial; however, PropSF, the selected contract operator, was unable to secure a vessel that is compliant with the American with Disabilities Act (ADA) and that WETA would work towards starting service in spring 2024.

Mr. Murphy stated that workforce has been a popular topic at WETA Board meetings, and one of WETA's biggest challenges when it comes to identifying Disadvantaged Business Enterprise (DBE) contractors that can work on WETA projects. He asked Government and Regulatory Affairs Manager Lauren Gularte to introduce the presentation on the Working Waterfront Coalition (WWC) and speakers Bay Crossings Owner Bobby Winston to provide some background on the WWC and former City of Richmond Director of Community Services Sal Vaca to present the plan.

Vice Chair Monique Moyer arrived at 1:08 p.m.

Mr. Winston said that the WWC is an employer-led effort to recruit and train the next generation of workers and has been laying the groundwork for this regional effort for almost a year and has landed about $1 million in state grants. He introduced Mr. Vaca who shared his presentation.

Mr. Vaca said that the WWC included marine maintenance and repair industry employers, ferry services and operators, labor, machinist institute, workforce development boards, community-based organizations, Alameda County Reentry Program, and the California State University Maritime Academy (Cal Maritime) with a working Board who would bring their energy, expertise, connections, and resources to develop a world-class training program.

Mr. Vaca listed some of the shared priorities of WETA and the WWC and asked the WETA Board to enhance its partnership with the WWC.

Chair Wunderman congratulated and thanked Mr. Winston and Mr. Vaca for their thoughtful and informative presentation. He said that understanding the needs of the region is critical. Chair Wunderman said that he appreciated the focus on high schools and wanted to know if the training programs could be brought to the community colleges. Mr. Vaca explained that the focus up to this point has been on short-term training and that the community college schedule does not offer the requisite flexibility.

In response to Chair Wunderman's question about the potential of bringing shipbuilding back to the Bay Area, Mr. Vaca said that a focused training program would be required with a very specialized set of skills that are not currently available.

Director DelBono shared some of his experiences and the appreciation of his role models who provided some guidance and direction as a juvenile.

Vice Chair Moyer shared that the facilities management world was facing the same problem and appreciated the foresight as WETA was relaunching its Strategic Plan. She commented that trade fairs and community college night classes have been good pipelines for their efforts in reaching adults wanting to change careers.

The Directors thanked Mr. Winston and Mr. Vaca for their work and their presentation and offered their support.

PUBLIC COMMENT
California State Assemblymember Lori Wilson District Director Tiffanee Jones spoke in support of the WWC program and asked to be kept aware of the progress. She thanked Mr. Winston and Mr. Vaca for their work and said that Assemblymember Wilson's office was in full support of the program.

International Association of Machinist (IAM) Directing Business Representative Don Crosatto, West Oakland Jobs Resource Center Executive Director Joyce Guy, Alameda County Workforce Development Board Executive Director Rhonda Boykin, Marine Exchange Executive Director Scott Humphrey, Inlandboatmen's Union of the Pacific (IBU) San Francisco Regional Director Robert Estrada, IBU San Francisco Regional Director Marina Secchitano, Golden Gate Bridge, Highway and Transportation District DBE Program Administrator Artemise Davenport, Master, Mates & Pilots Representative Carolyn Horgan, Blue & Gold Fleet President Captain Pat Murphy, and Ship Assist Captain Drew Kerlee spoke In support of the WWC program and offered their help to make the program a success.

Mr. Murphy provided five written reports and offered to answer questions. He introduced Transportation Planner Gabriel Chan to provide the monthly ridership report.

Mr. Chan stated that his report included the full month of April and that April ridership has brought WETA back to the summertime high of 2022.

Public Information and Marketing Manager Thomas Hall said that WETA was getting into the streaming market on Hulu and had launched some Latino social media influencer outreach. He noted that extra trips would be added for Pride weekend.

Mr. Hall followed up with the results of the March and April customer experience survey. He stated that approximately 400 passengers responded and that a few of the categories receiving the lowest score such as wi-fi and concessions were already being addressed.

The Directors thanked staff for their reports.

6. CONSENT CALENDAR

a. Approve Board Meeting Minutes – May 4, 2023
b. Approve Board Meeting Minutes – May 26, 2023
c. Extend Participation in Clipper START Pilot Program

Chair Wunderman called for public comments, and there were none.

Director DelBono made a motion to approve the consent calendar.

Director Alba seconded the motion, and the consent calendar carried unanimously.

Yeas: Alba, DelBono, Dew, Moyer, Wunderman. Nays: None. Absent: None.

7. APPROVE FISCAL YEAR 2023/24 BUDGET AND SALARY SCHEDULE

Chief Financial Officer Erin McGrath presented this item approving the fiscal year 2023/24 budget and salary schedule. She stated that the budget was similar to what was presented last month with some changes in allocations.

Director Alba asked how the planning and administration budget compared to other agencies. Ms. McGrath said she would check other agencies. Mr. Murphy said that WETA was consulting with industry peers through the American Public Transport Association (APTA) on how to best organize and effectively grow to implement large capital programs.

Chair Wunderman called for public comments, and there were none.

Vice Chair Moyer made a motion to adopt Resolution No. 2023-20 approving this item.

Director DelBono seconded the motion, and the item passed unanimously.

Yeas: Alba, DelBono, Dew, Moyer, Wunderman. Nays: None. Absent: None.

8. AUTHORIZE RESOLUTIONS AND ACTIONS RELATED TO FUNDING TO SUPPORT THE FISCAL YEAR 2023/24 OPERATING AND CAPITAL BUDGET

Ms. McGrath presented this item authorizing resolutions and actions related to funding to support the fiscal year 2023/24 operating and capital budget.

Chair Wunderman called for public comments, and there were none.

Director Alba made a motion to adopt Resolutions 2023-21, 2023-22, and 2023-23 approving this item.

Director Dew seconded the motion, and the item passed unanimously.

Yeas: Alba, DelBono, Dew, Moyer, Wunderman. Nays: None. Absent: None.

9. PUBLIC COMMENTS FOR NON-AGENDA ITEMS

No further public comments were shared.

With all business concluded, Chair Wunderman adjourned the meeting at 2:36 p.m.

\- Board Secretary
END

AGENDA ITEM 6b
MEETING: July 13, 2023

MEMORANDUM

TO: Board Members

FROM: Seamus Murphy, Executive Director
Erin McGrath, Chief Financial Officer

SUBJECT: Authorize Execution of Master Funding Agreement with the Metropolitan Transportation Commission

Recommendation
Authorize the Executive Director to execute the Master Funding Agreement (Agreement), as shown in the attached draft, including any minor clarifying changes and any related Supplements to the Agreement, with the Metropolitan Transportation Commission (MTC) for Planning, Programming, Transportation, Transit, Land Use, or Other Projects from FY 2023-24 through FY 2032-33.

Background/Discussion
MTC, established pursuant to California Government Code 66500, is the regional transportation planning, financing, and coordinating agency for the nine-county San Francisco Bay Area (Bay Area). MTC provides bridge toll funds to WETA for various planning, programming, transportation and other projects relevant to MTC.

MTC is, for the first time, requiring agencies receiving funding to enter into a general Master Funding Agreement that provides for overall rules and regulations related to the receipt of funding. This allows for an expedited process for specific funding allocations through subsequent staff actions and the issuance of supplements to the Master Agreement. This Master/Supplement structure is similar to other funding agencies such as the State of California.

MTC has identified that, in the case of WETA, the first funding source to fall under this arrangement is the Regional Measure 3 (RM3) program. MTC has prepared and has asked for the execution of this Agreement, provided as ***Attachment A***, which will then ultimately pave the way for an RM3 allocation process. Staff and legal counsel have carefully reviewed the language of the Agreement and discussed it at length with MTC and believe that the language is acceptable and necessary for purposes of freeing up RM3 funding.

RM3
The language of the Agreement is broad and does not speak to specific amounts to be allocated. For Fiscal Year 2023-24, the Board-approved budget assumed $8.7 million would be necessary for WETA operations. In order to receive these funds, the WETA Board must authorize approval of the Master Funding Agreement and WETA must provide a Five-Year Plan, which is also on the Board's agenda today, and describes how the agency will use future funding allocations. MTC then will prepare a more technical supplemental agreement to be signed by the Executive Director providing the amount required for operations in Fiscal Year 2023-24. The supplemental agreement will contain specific dollar amounts and any clarifications related to the specific rules of the funding source.

Staff has worked for the last four months with MTC to provide clarity on the specific funding that will accrue to WETA since toll collections began. As shown in the Five-Year Plan, in addition to the $8.7 million to be allocated for FY 2023-24 operations, MTC will also create a reserve account, containing approximately $60.5 million representing funds collected to date that would have accrued to WETA were it not for the lawsuit delaying allocation to eligible transit needs. Going forward those funds will accrue interest until they are used by WETA for future operating needs.

Fiscal Impact
There is no fiscal impact associated with the execution of the Master Funding Agreement. The Master Funding Agreement enables WETA to execute Supplements to Master Funding Agreement in the future.

Attachment A: MTC Master Funding Agreement

END

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MASTER FUNDING AGREEMENT

BETWEEN THE METROPOLITAN TRANSPORTATION COMMISSION

AND

WATER EMERGENCY TRANSPORTATION AUTHORITY

PLANNING, PROGRAMMING,
TRANSPORTATION, TRANSIT, LAND USE OR OTHER PROJECTS

FOR

FISCAL YEAR 2023-24 through FISCAL YEAR 2032-33

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MASTER FUNDING AGREEMENT
Between METROPOLITAN TRANSPORTATION COMMISSION
And WATER EMERGENCY TRANSPORTATION AUTHORITY
For PLANNING, PROGRAMMING,
TRANSPORTATION, TRANSIT, LAND USE OR OTHER PROJECTS

This Master Funding Agreement, effective as of July 1, 2023 (this "Master Funding Agreement" or "Agreement"), is entered into by and between the Metropolitan Transportation Commission (hereafter "MTC"), a regional transportation planning agency established pursuant to California Government Code § 66500 *et seq*., and the Water Emergency Transportation Authority (hereafter "AGENCY"). MTC and AGENCY are collectively referred to herein as "the Parties."

WITNESSETH

WHEREAS, MTC has been designated as the Metropolitan Planning Organization (MPO - federal) and the Regional Transportation Planning Agency ("RTPA" - state) for the San Francisco Bay Region; and

WHEREAS, MTC from time to time expects to provide funds available to it as MPO, RTPA or otherwise to AGENCY; and

WHEREAS, it is expected that these funds will be used for planning, programming, transportation, transit, land use or other projects relevant to MTC or its statutory purposes (the "Project" or "Projects"); and

WHEREAS, the Parties wish to set forth the terms and conditions under which MTC may from time to time provide funding to AGENCY; and

WHEREAS, before MTC will make funds available hereunder, MTC and AGENCY will enter into at least one Supplement to this Master Funding Agreement, which must be in substantially the form attached hereto as Exhibit A (each, a "Supplement") to establish the terms and conditions applicable to AGENCY when receiving funds for the Project;

NOW, THEREFORE, the Parties hereto agree as follows:

1.0 GENERAL

This Master Funding Agreement shall have no force and effect with respect to a Project or any portion thereof unless and until a Supplement has been fully executed by both MTC and AGENCY governing the relevant Project. Exhibit A, Form of Supplement, is attached hereto and incorporated herein. Each Supplement shall include the following information:

a. A description of the applicable Project scope of work;

b. A maximum payment amount for the applicable Project scope of work;

c. An indication of whether the various clauses attached hereto as Exhibits B-1 through B-7 shall apply to AGENCY's implementation of the applicable Project scope of work;

d. Any additional covenants, conditions, restrictions or reporting requirements that apply to the applicable Project scope of work or funding source MTC is providing to AGENCY;

e. Identification of the MTC and AGENCY project managers for the applicable Project scope of work;

f. The estimated budget and payment milestones for the applicable Project scope of work; and

g. Any MTC or AGENCY resolutions, authorizations or approvals, or any other key documents, relevant to the applicable Project scope of work or funding source MTC is providing to AGENCY.

Upon execution by MTC and AGENCY of such a Supplement, AGENCY shall assume the responsibility for implementing the applicable Project scope of work, and MTC will administer funding to AGENCY in accordance with this Agreement, the applicable Supplement, and any other documents incorporated by reference into such Supplement.

2.0 INTERAGENCY AGREEMENT ADMINISTRATION

The administration of this Agreement will be conducted by MTC staff. Day-to-day management of individual projects required under this Agreement is assigned to the appropriate Project Manager at AGENCY and Project Manager at MTC, as set forth in the applicable Supplement.

3.0 FUNDING

A. The total compensation to be paid to AGENCY under this Agreement shall be the sum of the amounts of compensation payable to AGENCY as set forth in each Supplement.

B. AGENCY and MTC jointly agree to exert their best efforts to manage each component of the Project in such a way that prevents costs from exceeding the estimated budget set forth in the applicable Supplement.

C. Reimbursement of AGENCY travel expenses and per diem rates are not to exceed the rate specified by the State of California Department of Personnel Administration for similar employees (i.e. non-representative employees)

4.0 TERM

This Agreement is in effect for the ten years following the Effective Date. This Agreement term may be extended by mutual written agreement.

5.0 PAYMENT

Contingent upon AGENCY's satisfactory completion of work products or milestones, as applicable, required under the applicable Supplement, AGENCY shall submit invoices to MTC for that portion of the funds available to AGENCY that have been expended. This invoice will be in the format and provided no more frequently than prescribed by MTC in the applicable Supplement. In addition, all supporting documentation must accompany expenditures included on AGENCY invoices. Payment shall be made by MTC within thirty (30) days of receipt of an acceptable invoice, which shall be subject to the review and approval of MTC's Project Manager or a designated representative. Approval of an invoice shall not be unreasonably withheld. AGENCY should submit invoices electronically via email to MTC at acctpay@bayareametro.gov or deliver or mail invoices to MTC, as follows:

Attention: Accounting Section
Metropolitan Transportation Commission
Bay Area Metro Center
375 Beale Street, Suite 800
San Francisco, CA, 94105

6.0 DELAYS AND FAILURE TO PERFORM

Whenever AGENCY encounters any difficulty that will delay timely performance of work, AGENCY shall notify MTC in writing. The parties agree to cooperate to work out a mutually satisfactory course of action.

If MTC determines that (a) AGENCY's failure to complete a product on a timely basis is due to causes solely within AGENCY's control; and/or (b) AGENCY has failed to consider MTC recommendations aimed at facilitating progress toward that product, MTC may impose such sanctions as it may determine appropriate. Sanctions may include withholding of commensurate payment due under this Agreement until compliance is achieved.

7.0 AMENDMENTS

This Agreement or any Supplement hereto may be amended by mutual agreement of MTC and AGENCY at any time during the term of the Agreement. All such changes shall be incorporated in written amendments, which shall specify the changes in work performed and any adjustments in compensation and schedule. All amendments shall be executed by the authorized Executive or a designated representative of MTC and AGENCY and specifically identified as amendments to the Agreement. The MTC Project Manager is not a designated representative, for purposes of executing an amendment.

8.0 TERMINATION

Either party may terminate this Agreement, in whole or in part, at any time upon ninety (90) days' written notice. In this event, AGENCY shall submit a requisition to MTC for an amount representing the actual cost of services performed up to the effective date of termination for which AGENCY has not been previously reimbursed. In no event shall the maximum expenditure allowed under this Agreement, as it may be adjusted by a written amendment signed by both parties, be exceeded. Upon payment of the amount found due, MTC shall be under no further obligation to AGENCY, monetarily or otherwise.

9.0 USE OF THIRD PARTY CONTRACTS

AGENCY may subcontract or subvene funds to local agencies, consultants or contractors for performance of portions of the work required under this Agreement, without the prior written consent of MTC, provided AGENCY complies with any other applicable requirements of this Agreement and the applicable Supplement hereto, and applicable federal and state requirements.

10.0 INDEMNIFICATION

AGENCY shall indemnify, defend, and hold harmless MTC, its Commissioners, representatives, agents and employees from and against all claims, injury, suits, demands, liability, losses, damages and expenses, whether direct or indirect (including any and all costs and expenses in connection therewith), incurred by reason of any act or failure to act of AGENCY, its officers, employees or agents, or subconsultants or any of them in connection with this Agreement.

11.0 LAWS AND REGULATIONS

AGENCY shall comply with any and all laws, statutes, ordinances, rules, regulations or requirements of the federal, state and/or a local government, and of any agency thereof, including but not limited to the California Department of Transportation (Caltrans) Local Assistance Procedures Manual, as they exist at the time of execution of the Agreement and as they may be amended in the future, which relate to or in any manner affect the performance of this Agreement and any Supplements.

12.0 RECORDS

AGENCY agrees to establish and maintain an accounting system conforming to generally accepted accounting principles (GAAP) that is adequate to accumulate and segregate reasonable, allowable, and allocable project costs. AGENCY further agrees to keep all records pertaining to the Project(s) being funded for audit purposes for a minimum of: (a) three (3) years following final payment to AGENCY, (b) four (4) years following the fiscal year of last expenditure under the Agreement; or (c) until completion of any litigation, claim or audit, whichever is longest.

13.0 AUDITS

AGENCY shall permit MTC and MTC's authorized representatives to have access to AGENCY's books, records, accounts, and any and all work products, materials, and other data relevant to this Agreement, for the purpose of making an audit, examination, excerpt and transcription during the term of this Agreement and for the period specified in Article 12. AGENCY shall in no event dispose of, destroy, alter, or mutilate said books, records, accounts, work products, materials and data for that period of time. Such permission shall extend to books, records, accounts, and any and all work products, materials, and other data relevant to this Agreement of the AGENCY's contractors and subcontractors, if any. If applicable, should MTC request access to the construction site and related field operations, MTC shall provide reasonable notice to AGENCY, and AGENCY shall provide access as it deems reasonable and safe, subject to the rights of the property owner if such owner is not AGENCY.

AGENCY further agrees to include in all its subcontracts hereunder exceeding $25,000 a provision to the effect that the subconsultant agrees that MTC or any of MTC's duly authorized representatives shall have access to and the right to examine any directly pertinent books, documents, papers, and records of such subconsultant for the term specified above. "Subconsultant" is defined in Article 14.0 Subcontracts, below.

14.0 SUBCONTRACTS

A. For purposes of this Agreement, "subconsultant" shall mean any consultant or contractor under contract with the AGENCY to perform Project work. Any subconsultants must be engaged under written contract with AGENCY with provisions allowing AGENCY to comply with all requirements of this Agreement. Failure of a subconsultant to provide any insurance required under this Agreement shall be at the risk of AGENCY. MTC's Project Manager shall be notified in writing of any substitution or addition of subconsultants.

For any Project funded by the Federal Transit Authority (FTA), Federal Highway Administration (FHWA) or Caltrans, AGENCY shall complete Form 10-C, as may be revised by Caltrans from time to time, within thirty (30) days of executing an agreement with a subconsultant and submit it to MTC's Project Manager. MTC shall not process payment of any invoice under the applicable Supplement relating to work by a subconsultant unless AGENCY shall have submitted to MTC a Form 10-C with respect to its contract with such subconsultant.

B. Nothing contained in this Agreement or otherwise, shall create any contractual relation between MTC and any subconsultants, and no subcontract shall relieve AGENCY of his/her responsibilities and obligations hereunder. AGENCY agrees to be as fully responsible to MTC for the acts and omissions of its subconsultants and of persons either directly or indirectly employed by any of them as it is for the acts and omissions of persons directly employed by AGENCY. AGENCY's obligation to pay its subconsultants is an independent obligation from MTC's obligation to make payments to AGENCY.

C. Applicable provisions of this Agreement shall be included in any subcontract or subconsultant agreement in excess of $25,000 entered into under of this Agreement.

15.0 PROHIBITED INTERESTS

No member, officer, employee or agent of MTC, during his/her tenure shall have any prohibited interest as defined by California Government Code Sections 1090, et seq., direct or indirect, in the Agreement or the proceeds thereof. Prohibited interests include interests of immediate family members, domestic partners, and their employers or prospective employers. Accordingly, AGENCY further covenants that it has made a complete disclosure to MTC of all facts of which AGENCY is aware upon due inquiry bearing upon any possible interest, direct or indirect, that it believes any member, officer, agent or employee of MTC (or an immediate family member, domestic partner or employer or prospective employer of such member, officer, agent or employee) presently has, or will have in the Agreement, or in the performance thereof, or in any portion of the profits thereunder. Willful failure to make such disclosure, if any, shall constitute grounds for cancellation and termination hereof by MTC.

16.0 ORGANIZATIONAL CONFLICTS OF INTEREST

AGENCY shall take all reasonable measures to preclude the existence or development of an organizational conflict of interest in connection with work performed by subconsultants or subcontractors under this Agreement. An organizational conflict of interest occurs when, due to other activities, relationships, or contracts, a firm or person is unable, or potentially unable, to render impartial assistance or advice to MTC or AGENCY; a firm or person's objectivity in performing the contract work is or might be impaired; or a firm or person has an unfair competitive advantage in proposing for award of a contract as a result of information gained in performance of this or some other Agreement.

AGENCY shall not engage the services of any subconsultant or subcontractor on any work related to this Agreement if the subconsultant or subcontractor, or any employee of the subconsultant or subcontractor, has an actual or apparent organizational conflict of interest related to work or services contemplated under this Agreement.

If at any time during the term of this Agreement AGENCY becomes aware of an organizational conflict of interest in connection with the work performed by a subconsultant or subcontractor hereunder, AGENCY shall immediately provide MTC with written notice of the facts and circumstances giving rise to this organizational conflict of interest. AGENCY's written notice will also describe alternatives for addressing or eliminating the organizational conflict of interest. If at any time during the period of performance of this Agreement, MTC becomes aware of an organizational conflict of interest in connection with performance of any work hereunder by a subconsultant or subcontractor, MTC shall similarly notify AGENCY. In the event a conflict is presented, whether disclosed by AGENCY or its subconsultant or subcontractor, or discovered by MTC, MTC will consider the conflict presented and any alternatives proposed and meet with AGENCY to determine an appropriate course of action. MTC's determination as to the manner in which to address the conflict shall be final.

Failure to comply with this section may subject AGENCY or its subconsultant or subcontractor to damages incurred by MTC in addressing organizational conflicts that arise out of work performed by such subconsultant or subcontractor, or to termination of this Agreement for breach.

17.0 CHOICE OF LAW

All questions pertaining to the validity and interpretation of the Agreement shall be determined in accordance with the laws of the State of California applicable to agreements made and to be performed within the State.

18.0 PARTIAL INVALIDITY

If any term or condition of this Agreement is found to be illegal or unenforceable, such term or condition shall be deemed stricken and the remaining terms and conditions shall remain valid and in full force and effect.

19.0 NO THIRD PARTY BENEFICIARIES

This Agreement is not for the benefit of any person or entity other than the parties.

20.0 ORDER OF PRECEDENCE

In the event of a conflict in the provisions of this Agreement, any Supplement hereto, or the Exhibits hereto incorporated by reference into such Supplement, the following order of priority shall be used in resolving such conflict: the applicable Supplement shall have first priority, then the Exhibits incorporated into such Supplement, then this Agreement.

IN WITNESS WHEREOF, this Agreement has been executed by the parties hereto as of the day and year first written above.

METROPOLITAN TRANSPORTATION COMMISSION	**WATER EMERGENCY TRANSPORTATION AUTHORITY**
______________________________	______________________________
Andrew B. Fremier, Executive Director	Seamus Murphy, Executive Director

EXHIBIT A
FORM OF SUPPLEMENT

SUPPLEMENT [insert number] TO MASTER FUNDING AGREEMENT

This Supplement No. ___ to Master Funding Agreement ("Supplement or "Agreement") is entered into this ______day of _______, 2017, by and between the Metropolitan Transportation Commission (hereafter "MTC") and [AGENCY] (hereafter "AGENCY") and supplements the Master Funding Agreement, dated _______, 2017, by and between MTC and AGENCY.

Pursuant to this Supplement, MTC agrees to provide an amount not to exceed _________ dollars ($_______) in [describe funding source] to AGENCY to fund the [brief description of Project] (as more fully described in Annex I hereto, the "Supplement Project"). The estimated budget and payment milestones for the Supplement Project scope of work is attached as Annex II hereto.

MTC will reimburse AGENCY for its actual eligible costs incurred for completed Supplement Project milestones or deliverables described in Annex II hereto.

The Supplement Project work will commence [date], and be completed no later than ________, 20__.

The clauses selected below and attached as exhibits to the Master Funding Agreement shall apply to AGENCY's performance of the applicable Supplement Project scope of work hereunder:

- ☐ Exhibit B-1, Additional Terms and Conditions (General), Paragraph A
- ☐ Exhibit B-1, Additional Terms and Conditions (General), Paragraph B
- ☐ Exhibit B-2, Additional Terms and Conditions (Federally Required Clauses)
- ☐ Exhibit B-3, Additional Terms and Conditions (State Required Clauses)
- ☐ Exhibit B-4, Additional Terms and Conditions (Prevailing Wage Rates, Apprenticeships, and Payroll Records, Non-Federally-Funded Agreements)
- ☐ Exhibit B-5, Additional Terms and Conditions (Prevailing Wage Rates, Apprenticeships, and Payroll Records, Federally-Funded Agreements)
- ☐ Exhibit B-6, Additional Terms and Conditions (Regional Toll Funds including RM1, RM2, RM3 and AB1171)
- ☐ Exhibit B-7, Additional Terms and Conditions (Regional Discretionary Federal Funds including STP and CMAQ)

[Insert any additional covenants, conditions, restrictions or reporting requirements that apply to the Supplement Project scope of work or funding source MTC is providing to AGENCY.]

[Describe/attach any MTC or AGENCY resolutions, authorizations or approvals, or any other key documents, relevant to the applicable Project scope of work or funding source MTC is providing to AGENCY.]

The MTC Project Manager for the Supplement Project is [name, telephone, email]. The AGENCY Project Manager for the Supplement Project is [name, telephone, email].

This Supplement is supplemental to the Master Funding Agreement; all terms and conditions of the Master Funding Agreement, as may be amended, remain unchanged hereby.

Capitalized terms used but not defined herein shall have the respective meanings assigned to them in the Master Funding Agreement.

METROPOLITAN TRANSPORTATION COMMISSION	**WATER EMERGENCY TRANSPORTATION AUTHORITY**
_______________________________	_______________________________
Andrew B. Fremier, Executive Director	Seamus Murphy, Executive Director

EXHIBIT B-1

ADDITIONAL TERMS AND CONDITIONS (GENERAL)

A. INSURANCE REQUIREMENTS

AGENCY shall, at its own expense, obtain and maintain (and/or cause its subconsultant(s) to obtain and maintain, as applicable) the types of insurance and financial security listed (if any) in the applicable attachment or exhibit to the relevant Supplement against claims, damages and losses due to injuries to persons or damage to property or other losses that may arise in connection with the performance of work under such Supplement, and in effect at all times for the duration of such Supplement. All policies will be issued by insurers acceptable to MTC, generally with a Best's Rating of A- or better with a Financial Size Category of VIII or better, or as otherwise specified in the applicable Supplement. Notwithstanding anything to the contrary, AGENCY may satisfy the insurance requirements herein utilizing self-insurance providing equivalent coverage.

B. CLAIMS OR DISPUTES

Unless otherwise directed in writing by MTC, AGENCY shall continue performance under this Agreement while any matters in dispute are being resolved. Further, MTC shall pay AGENCY for any undisputed work performed by AGENCY prior to or during the resolution of the matters in dispute. In the event there is a dispute concerning the interpretation of this Agreement or any aspect of the Project that the project managers identified by MTC and AGENCY are unable to resolve, the project manager for either MTC or AGENCY may request that an ad hoc Dispute Resolution Committee ("DRC") be convened to resolve the dispute. The DRC shall consist of two members, one appointed by the MTC Executive Director and the other appointed by the Chief Executive Officer of AGENCY. The responsibility of chairing each ad hoc DRC shall alternate between the agencies, beginning with MTC. Further, disputes between MTC and AGENCY that cannot be resolved by the DRC may be submitted to alternative dispute resolution, as agreed to by the parties. Fees and expenses of the mediator will be borne equally.

EXHIBIT B-2

ADDITIONAL TERMS AND CONDITIONS

(FEDERALLY REQUIRED CLAUSES)

1. EQUAL EMPLOYMENT OPPORTUNITY

In accordance with Title VI of the Civil Rights Act, as amended (42 U.S.C. § 2000d); Section VII of the Civil Rights Act of 1964, as amended (42 U.S.C. § 2000e); Section 303 of the Age Discrimination Act of 1975, as amended (42 U.S.C. § 6102); Section 202 of the Americans with Disabilities Act of 1990 (42 U.S.C. § 12132); and, for FTA-funded projects, 49 U.S.C. § 5332 and any implementing requirements that FTA may issue. AGENCY agrees that it will not, on the grounds of race, religious creed, color, national origin, age, physical disability or sex, discriminate or permit discrimination against any employee or applicant for employment.

2. DISADVANTAGED BUSINESS ENTERPRISE (DBE) POLICY

It is the policy of MTC and the U.S. Department of Transportation to ensure nondiscrimination in the award and administration of DOT-assisted contracts and to create a level playing field on which disadvantaged business enterprises, as defined in 49 Code of Federal Regulations Part 26, can compete fairly for contracts and subcontracts relating to MTC's procurement and professional services activities.

AGENCY shall not discriminate on the basis of race, color, national origin or sex in the performance of the applicable Supplement. AGENCY shall carry out applicable requirements of 49 CFR Part 26 in the award and administration of DOT-assisted contracts. Failure by AGENCY to carry out these requirements is a material breach of contract, which may result in the termination of the applicable Supplement or this Agreement, or such other remedy as MTC deems appropriate.

3. TITLE VI OF THE CIVIL RIGHTS ACT OF 1964

AGENCY agrees to comply with all the requirements imposed by Title VI of the Civil Rights Act of 1964 (42 U.S.C. § 2000(d)) and the regulations of the Department of Transportation issued thereunder (49 CFR Part 21). For FTA-funded projects, AGENCY further agrees to comply with the current FTA Circular 4702.11B, "Title VI Requirements and Guidelines for Federal Transit Administration Recipients," , the U.S. DOT Order to Address Environmental Justice in Minority Populations and Low-Income Populations, and the U.S. DOT Policy Guidance Concerning Recipients' Responsibilities to Limited English Proficient (LEP) Persons.

4. ACCESS REQUIREMENTS FOR INDIVIDUALS WITH DISABILITIES

AGENCY agrees to comply with all applicable requirements of the Americans with Disabilities Act of 1990 (ADA), as amended, 42 U.S.C. § 12101 et seq.; Section 504 of the Rehabilitation Act of 1973, as amended, 29 U.S.C. § 794; Section 16 of the Federal Transit Act, as amended, 49 U.S.C. § 5310(f); and their implementing regulations.

5. STATE ENERGY CONSERVATION PLAN

AGENCY shall comply with all mandatory standards and policies relating to energy efficiency that are contained in the State energy conservation plan issued in compliance with the Energy Policy and Conservation Act (42 U.S.C. § 6321).

6. ALLOWABILITY OF COSTS

AGENCY shall comply with the cost principles (as applicable) in Office of Management and Budget (OMB) Circulars A-87, or A-122, or 48 Code of Federal Regulations Chapter 1 Part 31, or 49 Code of Federal Regulations Part 18, or in 2 Code of Federal Regulations Parts 200 and 1201, as applicable. In addition, all subcontracts must be in accordance with 2 Code of Federal Regulations Part 200, as applicable, MTC's funding agreement with DOT and any regulations, guidelines and circulars of DOT, applicable as a result of such funding agreement. Further, all subconsultants shall agree to comply with 48 Code of Federal Regulations, Chapter 1, Part 31.

7. LICENSE FOR FEDERAL GOVERNMENT PURPOSES

FTA/FHWA reserves a royalty-free, non-exclusive and irrevocable license to reproduce, publish or otherwise use, and to authorize others to use, for federal government purposes: (a) the copyright in any work developed under the applicable Supplement; and (b) any rights of copyright to which MTC or AGENCY purchases ownership under the applicable Supplement.

8. IDENTIFICATION OF DOCUMENTS

All reports and other documents completed as part of the applicable Supplement shall carry the following notation on the front cover or title page:

"The preparation of this report has been financed in part by grants from the: **[select appropriate agency]** Federal Transit Administration/Federal Highway Administration, U.S. Department of Transportation. The contents of this report do not necessarily reflect the official views or policy of the U.S. Department of Transportation."

9. AUDITS

AGENCY agrees to grant MTC, the U.S. DOT, FTA or FHWA, as applicable, the Comptroller General of the United States, the State of California, and their authorized representatives access to AGENCY's books, records, accounts, and any and all work products, materials, and other data relevant to the applicable Supplement, for the purpose of making an audit, examination, excerpt and transcription during the term of the applicable Supplement and for the period specified in Article 14. AGENCY shall in no event dispose of, destroy, alter, or mutilate said books, records, accounts, work products, materials and data for that period of time. If, as a result of any audit, it is determined by the auditor that reimbursement of any costs including profit or fee under the applicable Supplement was in excess of that represented and relied upon during price negotiations or represented as a basis for payment, AGENCY agrees to reimburse MTC for those costs within sixty (60) days of written notification by MTC.

AGENCY further agrees to include in all its subcontracts hereunder exceeding $25,000 a provision to the effect that the subrecipient agrees that MTC the U.S. DOT, FTA or FHWA, as applicable, the Comptroller General of the United States, the State of California, and their authorized representatives shall have access to and the right to examine any directly pertinent books, documents, papers, and records of such subrecipient for the term specified above.

10. FLY AMERICA REQUIREMENTS.

AGENCY agrees to comply with 49 U.S.C. 40118 (the "Fly America Act") in accordance with the General Services Administration's regulations at 41 CFR Part 301 - 10, which provide that recipients and subrecipients of Federal funds and their consultants are required to use U.S. flag air carriers for U.S. Government-financed international air travel and transportation of their personal effects or property to the extent such service is available, unless travel by foreign air carrier is a matter of necessity as defined by the Fly America Act. AGENCY shall submit, if a foreign air carrier was used, an appropriate certification or memorandum adequately explaining why service by a U.S. flag air carrier was not available or why it was necessary to use a foreign air carrier and shall, in any event, provide a certificate of compliance with the Fly America requirements, if used. AGENCY agrees to include the requirements of this Section in all subcontracts that may involve international air transportation.

11. PROGRAM FRAUD AND FALSE OR FRAUDULENT STATEMENTS AND RELATED ACTS.

A. AGENCY acknowledges that the provisions of the Program Fraud Civil Remedies Act of 1986, as amended, 31 U.S.C. § 3801 et seq. and U.S. DOT regulations, "Program Fraud Civil Remedies," 49 CFR Part 31, apply to its actions pertaining to this Project. Upon execution of the underlying contract, AGENCY certifies or affirms the truthfulness and accuracy of any statement it has made, it makes, it may make, or causes to be made, pertaining to the underlying Supplement or the FTA assisted project for which work is being performed under the applicable Supplement. In addition to other penalties that may be applicable, AGENCY further acknowledges that if it makes, or causes to be made, a false, fictitious, or fraudulent claim, statement, submission, or certification, the Federal Government reserves the right to impose the penalties of the Program Fraud Civil Remedies Act of 1986 on AGENCY to the extent the Federal Government deems appropriate.

B. AGENCY also acknowledges that if it makes, or causes to be made, a false, fictitious, or fraudulent claim, statement, submission, or certification to the Federal Government under a contract connected with a project that is financed in whole or in part with Federal assistance originally awarded by FTA under the authority of 49 U.S.C. § 5307, the Government reserves the right to impose the penalties of 18 U.S.C. § 1001 and 49 U.S.C. § 5307(n)(1) on AGENCY, to the extent the Federal Government deems appropriate.

C. AGENCY agrees to include the above two clauses in each subcontract financed in whole or in part with Federal assistance provided by FTA. It is further agreed that the clauses shall not be modified, except to identify the subconsultant who will be subject to the provisions.

12. NO FEDERAL GOVERNMENT OBLIGATION TO THIRD PARTIES

MTC and AGENCY acknowledge and agree that, notwithstanding any concurrence by the Federal Government in or approval of the applicable Supplement or this Agreement, absent the express written consent by the Federal Government, the Federal Government is not a party to this Agreement and shall not be subject to any obligations or liabilities to MTC, AGENCY or any other party (whether or not a party to this Agreement) pertaining to any matter resulting from this Agreement.

13. DEBARMENT

This Article is only applicable if the applicable Supplement exceeds $25,000. AGENCY certifies that neither it, nor any of its participants, principals or subrecipients is or has been debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions, as they are defined in 2 CFR Parts 180 and 1200, by any Federal agency or department.

14. CLEAN AIR AND WATER POLLUTION ACTS

This Article is only applicable if the applicable Supplement exceeds $150,000. AGENCY agrees to comply with the applicable requirements of all standards, orders, or requirements issued under the Clean Air Act (42 U.S.C. § 7401 *et seq.*), the Clean Water Act (33 U.S.C. § 1251 *et seq.*),.

15. LOBBYING

This Article is only applicable if the applicable Supplement exceeds $100,000. AGENCY agrees to comply with the restrictions on the use of federal funds for lobbying activities set forth in 31 United States Code §1352 and 49 C.F.R. Part 20.

Attachments:

Attachment A – Federally Required Certifications (AGENCY shall either provide these certifications to MTC or shall provide copies of such certifications AGENCY has independently made to the Federal Government.)

EXHIBIT B-2

ATTACHMENT A

FEDERALLY REQUIRED CERTIFICATIONS

CERTIFICATION REGARDING DEBARMENT, SUSPENSION, AND OTHER RESPONSIBILITY MATTERS

Instructions for Certification:

1. **By signing and submitting this bid or proposal, the prospective lower tier participant is providing the signed certification set out below**.

2. The certification in this clause is a material representation of fact upon which reliance was placed when this transaction was entered into. If it is later determined that the prospective lower tier participant knowingly rendered an erroneous certification, in addition to other remedies available to the Federal Government, MTC may pursue available remedies, including suspension and/or debarment.

3. The prospective lower tier participant shall provide immediate written notice to MTC if at any time the prospective lower tier participant learns that its certification was erroneous when submitted or has become erroneous by reason of changed circumstances.

4. The terms "covered transaction," "debarred," "suspended," "ineligible," "lower tier covered transaction," "participant," "persons," "lower tier covered transaction," "principal," "proposal," and "voluntarily excluded," as used in this clause, have the meanings set out in the Definitions and Coverage sections of rules implementing Executive Order 12549. You may contact MTC for assistance in obtaining a copy of those regulations.

5. The prospective lower tier participant agrees by submitting this proposal that, should the proposed covered transaction be entered into, it shall not knowingly enter into any lower tier covered transaction with a person who is debarred, suspended, declared ineligible, or voluntarily excluded from participation in this covered transaction, unless authorized in writing by MTC.

6. The prospective lower tier participant further agrees by submitting this proposal that it will include the clause titled "Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion – Lower Tier Covered Transaction", without modification, in all lower tier covered transactions and in all solicitations for lower tier covered transactions.

7. A participant in a covered transaction may rely upon a certification of a prospective participant in a lower tier covered transaction that it is not debarred, suspended, ineligible, or voluntarily excluded from the covered transaction, unless it knows that the certification is erroneous. A participant may decide the method and frequency by which it determines the eligibility of its principals. Each participant may, but is not required to, check the Nonprocurement List issued by U.S. General Service Administration.

8. Nothing contained in the foregoing shall be construed to require establishment of system of records in order to render in good faith the certification required by this clause. The knowledge and information of a participant is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.

9. Except for transactions authorized under Paragraph 5 of these instructions, if a participant in a covered transaction knowingly enters into a lower tier covered transaction with a person who is suspended, debarred, ineligible, or voluntarily excluded from participation in this transaction, in addition to all remedies available to the Federal Government, MTC may pursue available remedies including suspension and/or debarment.

CERTIFICATION REGARDING DEBARMENT, SUSPENSION, INELIGIBILITY AND VOLUNTARY EXCLUSION LOWER TIER COVERED TRANSACTION

(1) The prospective lower tier participant certifies, by submission of this bid or proposal, that neither it nor its "principals" is presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction by any Federal department or agency.

(2) When the prospective lower tier participant is unable to certify to the statements in this certification, such prospective participant shall attach an explanation to this proposal.

______________________________	______________________________
Date	(signature of authorized official)
	______________________________
	(type/print name and title)

CERTIFICATION OF RESTRICTIONS ON LOBBYING

I, ____________________________ hereby certify on behalf of _________________ that:
(name and title of grantee official) (name of grantee)

1. No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.

2. If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.

3. The undersigned shall require that the language of this certification be included in the award documents for all sub awards at all tiers (including subcontracts, sub grants, and contracts under grants, loans, and cooperative agreements) and that all sub recipients shall certify and disclose accordingly.

This certification is a material representation of fact upon which reliance is placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by Section 1352, Title 31, U.S. Code. Any person who fails to file the required certification shall be subject to a civil penalty of not less than $10,000 and not more than $100,000 for each such failure.

Executed this ________ day of ____________________ , 20__

By:

____
(signature of authorized official)

____
(title of authorized official)

EXHIBIT B-3
ADDITIONAL TERMS AND CONDITIONS
(STATE-REQUIRED CLAUSES)

1) Attachment A – Fair Employment Practices Addendum
2) Attachment B – Nondiscrimination Assurances
   - **a.** Appendix A – Clauses to be inserted in every agreement subject to the ACT, as defined in Attachment B of this Exhibit and REGULATIONS, also as defined in Attachment B.
   - **b.** Appendix B – To be included as covenant running with the land, in any deed affecting a transfer of real property, structures, or improvements thereon, or interest therein
   - **c.** Appendix C – To be included for subsequent transfer of real property acquired or improved under federal-aid Program
   - **d.** Appendix D – To be included for the construction or use of or access to space on, over, or under real property acquired or improved under the federal-aid Program
3) Attachment C – State Department of Transportation Requirements

EXHIBIT B-3

ATTACHMENT A

FAIR EMPLOYMENT PRACTICES ADDENDUM

1. In the performance of the applicable Supplement, AGENCY shall not discriminate against any employee for employment because of sex, race, color, ancestry, religious creed, national origin, physical disability (including HIV and AIDS), mental disability, medical condition (e.g. cancer), age (over 40), marital status, and denial of family care leave. AGENCY shall take affirmative action to ensure that employees are treated during employment without regard to their race, sex, sexual orientation, color, religion, ancestry, or national origin, physical disability, medical condition, marital status, political affiliation, family and medical care leave, pregnancy leave, or disability leave. Such action shall include, but not be limited to, the following: employment; upgrading; demotion or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. AGENCY shall post in conspicuous places, available to employees for employment, notices to be provided by STATE setting forth the provisions of this Fair Employment section.

2. AGENCY, its contractor(s) and all subcontractors shall comply with the provisions of the Fair Employment and Housing Act (Government Code Section 12900 et seq.), and the applicable regulations promulgated thereunder (California code of Regulations, Title 2, Section 7285.0 et seq.). The applicable regulations of the Fair Employment and Housing Commission implementing Government Code, Section 12900(a-f), set forth in Chapter 5 of Division 4 of Title 2 of the California Code of Regulations are incorporated into the applicable Supplement by reference and made a part hereof as if set forth in full. Each of the AGENCY'S contractors and all subcontractors shall give written notice of their obligations under this clause to labor organizations with which they have a collective bargaining or other agreements as appropriate.

3. AGENCY shall include the nondiscrimination and compliance provisions of this clause in all contracts and subcontracts to perform work under the applicable Supplement.

4. AGENCY shall permit access to the records of employment, employment advertisements, application forms, and other pertinent data and records by STATE, the State Fair Employment and Housing Commission, or any other agency of the State of California designated by STATE, for the purposes of investigation to ascertain compliance with the Fair Employment section of the applicable Supplement.

5. Remedies for Willful Violation:

(a) STATE may determine a willful violation of the Fair Employment provision to have occurred upon receipt of a final judgment to that effect from a court in an action to which AGENCY was a party, or upon receipt of a written notice from the Fair Employment and Housing Commission that it has investigated and determined that AGENCY has violated the Fair Employment Practices Act and had issued an order under Labor Code Section 1426 which has become final or has obtained an injunction under Labor Code Section 1429.

(b) For willful violation of this Fair Employment Provision, STATE shall have the right to terminate the applicable Supplement either in whole or in part, and any loss or damage sustained by STATE in securing the goods or services thereunder shall be borne and paid for by AGENCY and by the surety under the performance bond, if any, and STATE may deduct from any moneys due or thereafter may become due to AGENCY, the difference between the price named in the Agreement and the actual cost thereof to STATE to cure AGENCY's breach of the applicable Supplement.

EXHIBIT B-3

ATTACHMENT B

NONDISCRIMINATION ASSURANCES

AGENCY HEREBY AGREES THAT, as a condition to receiving any federal financial assistance from the STATE, acting for the U.S. Department of Transportation, it will comply with Title VI of the Civil Rights Act of 1964, 78 Stat. 252, 42 U.S.C. 2000d-42 U.S.C. 2000d-4 (hereinafter referred to as the ACT), and all requirements imposed by or pursuant to Title 49, Code of Federal Regulations, Department of Transportation, Subtitle A, Office of the Secretary, Part 21, “Nondiscrimination in Federally-Assisted Programs of the Department of Transportation - Effectuation of Title VI of the Civil Rights Act of 1964” (hereinafter referred to as the REGULATIONS), the Federal-aid Highway Act of 1973, and other pertinent directives, to the end that in accordance with the ACT, REGULATIONS, and other pertinent directives, no person in the United States shall, on the grounds of race, color, sex, national origin, religion, age or disability, be excluded from participation in, be denied the benefits of, or be otherwise subjected to discrimination under any program or activity for which AGENCY receives federal financial assistance from the Federal Department of Transportation. AGENCY HEREBY GIVES ASSURANCE THAT AGENCY shall promptly take any measures necessary to effectuate the applicable Supplement. This assurance is required by subsection 21.7(a) (1) of the REGULATIONS.

More specifically, and without limiting the above general assurance, AGENCY hereby gives the following specific assurances with respect to its federal-aid Program:

1. That AGENCY agrees that each “program” and each “facility” as defined in subsections 21.23 (e) and 21.23 (b) of the REGULATIONS, will be (with regard to a “program”) conducted, or will be (with regard to a “facility”) operated in compliance with all requirements imposed by, or pursuant to, the REGULATIONS.

2. That AGENCY shall insert the following notification in all solicitations for bids for work or material subject to the REGULATIONS made in connection with the federal-aid Program and, in adapted form, in all proposals for negotiated agreements: AGENCY hereby notifies all bidders that it will affirmatively insure that in any agreement entered into pursuant to this advertisement, minority business enterprises will be afforded full opportunity to submit bids in response to this invitation and will not be discriminated against on the grounds of race, color, sex, national origin, religion, age, or disability in consideration for an award.

3. That AGENCY shall insert the clauses of Appendix A of this assurance in every agreement subject to the ACT and the REGULATIONS.

4. That the clauses of Appendix B of this Assurance shall be included as a covenant running with the land, in any deed affecting a transfer of real property, structures, or improvements thereon, or interest therein.

5. That where AGENCY receives federal financial assistance to construct a facility, or part of a facility, the Assurance shall extend to the entire facility and facilities operated in connection therewith.

6. That where AGENCY receives federal financial assistance in the form, or for the acquisition, of real property or an interest in real property, the Assurance shall extend to rights to space on, over, or under such property.

7. That AGENCY shall include the appropriate clauses set forth in Appendix C and D of this Assurance, as a covenant running with the land, in any future deeds, leases, permits, licenses, and similar agreements entered into by the AGENCY with other parties:

Appendix C;

(a) for the subsequent transfer of real property acquired or improved under the federal-aid Program; and

Appendix D;

(b) for the construction or use of or access to space on, over, or under real property acquired, or improved under the federal-aid Program.

8. That this assurance obligates AGENCY for the period during which federal financial assistance is extended to the program, except where the federal financial assistance is to provide, or is in the form of, personal property or real property or interest therein, or structures, or improvements thereon, in which case the assurance obligates AGENCY or any transferee for the longer of the following periods:

(a) the period during which the property is used for a purpose for which the federal financial assistance is extended, or for another purpose involving the provision of similar services or benefits; or

(b) the period during which AGENCY retains ownership or possession of the property.

9. That AGENCY shall provide for such methods of administration for the program as are found by the U.S. Secretary of Transportation, or the official to whom he delegates specific authority, to give reasonable guarantee that AGENCY, other recipients, sub-grantees, applicants, sub-applicants, transferees, successors in interest, and other participants of federal financial assistance under such program will comply with all requirements imposed by, or pursuant to, the ACT, the REGULATIONS, this Assurance and the Agreement.

10. That AGENCY agrees that the United States and the State of California have a right to seek judicial enforcement with regard to any matter arising under the ACT, the REGULATIONS, and this Assurance.

11. AGENCY shall not discriminate on the basis of race, religion, age, disability, color, national origin or sex in the award and performance of any STATE assisted contract or in the administration on its DBE Program or the requirements of 49 CFR Part 26. AGENCY shall take all necessary and reasonable steps under 49 CFR Part 26 to ensure nondiscrimination in the award and administration of STATE assisted contracts. The California Department of Transportation Disadvantaged Business Enterprise Program Implementation Agreement for Local Agencies is incorporated by reference in the applicable Supplement. Implementation of this program is a legal obligation and failure to carry out its terms shall be treated as a violation of the applicable Supplement. Upon notification to the recipient of its failure to carry out the Implementation Agreement, STATE may impose sanctions as provided for under 49 CFR Part 26 and

may, in appropriate cases, refer the matter for enforcement under 18 USC 1001 and/or the Program Fraud Civil Remedies Act of 1985 (31 USC 3801 et seq.)

THESE ASSURANCES are given in consideration of and for the purpose of obtaining any and all federal grants, loans, agreements, property, discounts or other federal financial assistance extended after the date hereof to AGENCY by STATE, acting for the U.S. Department of Transportation, and is binding on AGENCY, other recipients, subgrantees, applicants, sub-applicants, transferees, successors in interest and other participants in the federal-aid Highway Program.

APPENDIX A TO ATTACHMENT B

(Clauses to be inserted in every agreement subject to ACT and REGULATIONS)

During the performance of the applicable Supplement, AGENCY, for itself, its assignees and successors in interest (hereinafter collectively referred to as AGENCY) agrees as follows:

(1) Compliance with Regulations: AGENCY shall comply with the regulations relative to nondiscrimination in federally assisted programs of the Department of Transportation, Title 49, Code of Federal Regulations, Part 21, as they may be amended from time to time, (hereinafter referred to as the REGULATIONS), which are herein incorporated by reference and made a part of the applicable Supplement.

(2) Nondiscrimination: AGENCY, with regard to the work performed by it during the Agreement, shall not discriminate on the grounds of race, color, sex, national origin, religion, age, or disability in the selection and retention of sub-applicants, including procurements of materials and leases of equipment. AGENCY shall not participate either directly or indirectly in the discrimination prohibited by Section 21.5 of the REGULATIONS, including employment practices when the agreement covers a program set forth in Appendix B of the REGULATIONS.

(3) Solicitations for Sub-agreements, Including Procurements of Materials and Equipment: In all solicitations either by competitive bidding or negotiation made by AGENCY for work to be performed under a Sub-agreement, including procurements of materials or leases of equipment, each potential sub-applicant or supplier shall be notified by AGENCY of the AGENCY’s obligations under the applicable Supplement and the REGULATIONS relative to nondiscrimination on the grounds of race, color, or national origin.

(4) Information and Reports: AGENCY shall provide all information and reports required by the REGULATIONS, or directives issued pursuant thereto, and shall permit access to AGENCY’s books, records, accounts, other sources of information, and its facilities as may be determined by STATE or FHWA to be pertinent to ascertain compliance with such REGULATIONS or directives. Where any information required of AGENCY is in the exclusive possession of another who fails or refuses to furnish this information, AGENCY shall so certify to STATE or the FHWA as appropriate, and shall set forth what efforts AGENCY has made to obtain the information.

(5) Sanctions for Noncompliance: In the event of AGENCY’s noncompliance with the nondiscrimination provisions of the applicable Supplement, STATE shall impose such agreement sanctions as it or the FHWA may determine to be appropriate, including, but not limited to:

(a) withholding of payments to AGENCY under the Agreement within a reasonable period of time, not to exceed 90 days; and/or

(b) cancellation, termination or suspension of the Agreement, in whole or in part.

(6) Incorporation of Provisions: AGENCY shall include the provisions of paragraphs (1) through (6) in every sub-agreement, including procurements of materials and leases of equipment, unless exempt by the REGULATIONS, or directives issued pursuant thereto.

AGENCY shall take such action with respect to any sub-agreement or procurement as STATE or FHWA may direct as a means of enforcing such provisions including sanctions for noncompliance, provided, however, that, in the event AGENCY becomes involved in, or is threatened with, litigation with a sub-applicant or supplier as a result of such direction, AGENCY may request STATE enter into such litigation to protect the interests of STATE, and, in addition, AGENCY may request the United States to enter into such litigation to protect the interests of the United States.

APPENDIX B TO ATTACHMENT B

(To be included as covenant running with the land, in any deed affecting a transfer of real property, structures, or improvements thereon, or interest therein)

The following clauses shall be included in any and all deeds effecting or recording the transfer of PROJECT real property, structures or improvements thereon, or interest therein from the United States.

(GRANTING CLAUSE)

NOW, THEREFORE, the U.S. Department of Transportation, as authorized by law, and upon the condition that AGENCY shall accept title to the lands and maintain the project constructed thereon, in accordance with Title 23, United States Code, the Regulations for the Administration of federal-aid for Highways and the policies and procedures prescribed by the Federal Highway Administration of the Department of Transportation and, also in accordance with and in compliance with the Regulations pertaining to and effectuating the provisions of Title VI of the Civil Rights Act of 1964 (78 Stat. 252; 42 U.S.C. 2000d to 2000d-4), does hereby remise, release, quitclaim and convey unto AGENCY all the right, title, and interest of the U.S. Department of Transportation in, and to, said lands described in Exhibit “A” attached hereto and made a part hereof.

(HABENDUM CLAUSE)

TO HAVE AND TO HOLD said lands and interests therein unto AGENCY and its successors forever, subject, however, to the covenant, conditions, restrictions and reservations herein contained as follows, which will remain in effect for the period during which the real property or structures are used for a purpose for which federal financial assistance is extended or for another purpose involving the provision of similar services or benefits and shall be binding on AGENCY, its successors arid assigns.

AGENCY, in consideration of the conveyance of said lands and interests in lands, does hereby covenant and agree as a covenant running with the land for itself, its successors and assigns,

(1) that no person shall on the grounds of race, color, sex, national origin, religion, age or disability, be excluded from participation in, be denied the benefits of, or be otherwise subjected to discrimination with regard to any facility located wholly or in part on, over, or under such lands hereby conveyed (;) (and) *

(2) that AGENCY shall use the lands and interests in lands so conveyed, in compliance with all requirements imposed by or pursuant to Title 49, Code of Federal Regulations, Department of Transportation, Subtitle A, Office of the Secretary, Part 21, Non-discrimination in federally-assisted programs of the Department of Transportation - Effectuation of Title VI of the Civil Rights Act of 1964, and as said Regulations may be amended (;) and

(3) that in the event of breach of any of the above-mentioned nondiscrimination conditions, the U.S. Department of Transportation shall have a right to re-enter said lands and facilities on said land, and the above-described land and facilities shall thereon revert to and vest in and become the absolute property of the U.S. Department of Transportation and its assigns as such interest existed prior to this deed.*

*Reverter clause and related language to be used only when it is determined that such a clause is necessary in order to effectuate the purposes of Title VI of the Civil Rights Act of 1964.

APPENDIX C TO ATTACHMENT B

(To be included for subsequent transfer of real property acquired or improved under federal-aid Program)

The following clauses shall be included in any and all deeds, licenses, leases, permits, or similar instruments entered into by AGENCY, pursuant to the provisions of Assurance 7(a) of Attachment I-2.

The grantee (licensee, lessee, permittee, etc., as appropriate) for himself, his heirs, personal representatives, successors in interest, and assigns, as a part of the consideration hereof, does hereby covenant and agree (in the case of deeds and leases add 'as covenant running with the land") that in the event facilities are constructed, maintained, or otherwise operated on the said property described in this (deed, license, lease, permit, etc.) for a purpose for which a U.S. Department of Transportation program or activity is extended or for another purpose involving the provision of similar services or benefits, the (grantee, licensee, lessee, permittee, etc.), shall maintain and operate such facilities and services in compliance with all other requirements imposed pursuant to Title 49, Code of Federal Regulations, U.S. Department of Transportation, Subtitle A, Office of Secretary, Part 21, Nondiscrimination in federally-assisted programs of the Department of Transportation - Effectuation of Title VI of the Civil Rights Act of 1964, and as said Regulations may be amended.

(Include in licenses, leases, permits, etc.)*

That in the event of breach of any of the above nondiscrimination covenants, AGENCY shall have the right to terminate the (license, lease, permit etc.) and to re-enter and repossess said land and the facilities thereon, and hold the same as if said (license, lease, permit, etc.) had never been made or issued.

(Include in deeds)*

That in the event of breach of any of the above nondiscrimination covenants, AGENCY shall have the right to re-enter said land and facilities thereon, and the above described lands and facilities shall thereupon revert to and vest in and become the absolute property of AGENCY and its assigns.

*Reverter clause and related language to be used only when it is determined that such a clause is necessary in order to effectuate the purposes of Title VI of the Civil Rights Act of 1964.

APPENDIX D TO ATTACHMENT B

Appendix D – (To be included for the construction or use of or access to space on, over, or under real property acquired or improved under the federal-aid Program)

The following shall be included in all deeds, licenses, leases, permits, or similar agreements entered into by AGENCY, pursuant to the provisions of Assurance 7 (b) of Attachment I-2.

The grantee (licensee, lessee, permittee, etc., as appropriate) for himself, his personal representatives, successors in interest and assigns, as a part of the consideration hereof, does hereby covenant and agree (in the case of deeds, and leases add “as a covenant running with the land”) that:

(1) no person on the ground of race, color, sex, national origin, religion, age or disability, shall be excluded from participation in, denied the benefits of, or otherwise subjected to discrimination in the use of said facilities;

(2) that in the construction of any improvements on, over, or under such land and the furnishing of services thereon, no person on the ground of race, color, sex, national origin, religion, age or disability shall be excluded from participation in, denied the benefits of, or otherwise be subjected to discrimination; and

(3) that the (grantee, licensee, lessee, permittee, etc.,) shall use the premises in compliance with the Regulations.

(Include in licenses, leases, permits, etc.)*

That in the event of breach of any of the above nondiscrimination covenants, AGENCY shall have the right to terminate the (license, lease, permit, etc.) and to re-enter and repossess said land and the facilities thereon, and hold the same as if said (license, lease, permit, etc.) had never been made or issued.

(Include in deeds)*

That in the event of breach of any of the above nondiscrimination covenants, AGENCY shall have the right to re-enter said land and facilities thereon, and the above described lands and facilities shall thereupon revert to and vest in and become the absolute property of AGENCY, and its assigns.

*Reverter clause and related language to be used only when it is determined that such a clause is necessary in order to effectuate the purposes of Title VI of the Civil Rights Act of 1964.

EXHIBIT B-3

ATTACHMENT C

STATE DEPARTMENT OF TRANSPORTATION REQUIREMENTS

Caltrans Non – Discrimination

A. In the performance of work undertaken pursuant to the applicable Supplement, AGENCY shall not, and shall affirmatively require that its contractors shall not, unlawfully discriminate, harass or allow harassment, against any employee or applicant for employment because of sex, race, color, ancestry, religious creed, national origin, physical disability (including HIV and AIDS), medical condition (cancer), age, marital status, denial of family and medical care leave, and denial of pregnancy disability leave.

B. AGENCY shall ensure, and shall require that its contractors and all subcontractors and/or subrecipients shall ensure, that the evaluation and treatment of their employees and applicants for employment are free from such discrimination and harassment. AGENCY shall comply, and ensure that its contractors and subcontractors and/or subrecipients shall comply, with the provisions of the Fair Employment and Housing Act (Government Code, Section 12900 et seq.) and the applicable regulations promulgated thereunder (California Code of Regulations, Title 2, Section 7285.0 et seq.). The applicable regulations of the Fair Employment and Housing Commission implementing Government Code, Section 12990 (af), set forth in Chapter 5 of Division 4 of Title 2 of the California Code of Regulations, are incorporated into the applicable Supplement by reference and made a part hereof as if set forth in full.

C. Each of AGENCY's contractors, subcontractors, and/or subrecipients shall give written notice of their obligations under this clause to labor organizations with which they have collective bargaining or other labor agreements. AGENCY shall include the non-discrimination and compliance provisions hereof in all contracts and subcontracts to perform work under the applicable Supplement.

D. AGENCY shall comply with the nondiscrimination program requirements of Title VI of the Civil Rights Act of 1964. Accordingly, 49 CFR Part 21, and 23 CFR Part 200 are made applicable to the applicable Supplement by this reference. Wherever the term "Contractor" appears therein, it shall mean AGENCY.

E. AGENCY shall permit, and shall require that its contractors, subcontractors, and subrecipients will permit, access to all records of employment, employment advertisements, application forms, and other pertinent data and records by the State Fair Employment Practices and Housing Commission or any other agency of the State of California designated by STATE to investigate compliance with these non-discrimination provisions.

EXHIBIT B-4
ADDITIONAL TERMS AND CONDITIONS
(PREVAILING WAGE RATES, APPRENTICESHIPS, AND PAYROLL RECORDS NON FEDERALLY FUNDED AGREEMENTS)

AGENCY's contractor(s) and all subcontractors shall comply with applicable sections of the California Labor Code and regulations promulgated thereunder (including without limitation, Sections 1720 *et seq*. and Title 8 of the California Code of Regulations Sections 16000 *et seq*.) governing the payment of prevailing wages, as determined by the Director of the California Department of Industrial Relations, in regards to work performed and/or funded under this Agreement. In particular, AGENCY's attention is drawn to Labor Code Sections 1771 (payment of prevailing wage rate), 1775 (penalty for non-payment), 1776 (payroll records), and 1777.5 (use of apprentices). AGENCY's contractor(s) and all subcontractors, to the extent the work of such contractor(s) and subcontractors under this Agreement are subject to California Labor Code Section 1720 *et seq*., shall be registered with the Department of Industrial Relations pursuant to Labor Code section 1725.5 and shall furnish electronic certified payroll records directly to the Labor Commissioner through the internet portal of the Division of Labor Standards Enforcement. Per Master Funding Agreement Article 12.0, <u>Records</u> and 13.0 <u>Audits</u>, MTC reserves the right to request copies of the certified payroll records.

EXHIBIT B-5
ADDITIONAL TERMS AND CONDITIONS
(PREVAILING WAGE RATES, APPRENTICESHIPS, AND PAYROLL RECORDS FEDERALLY FUNDED AGREEMENTS)

The Additional Federal Clauses Applicable to Public Works included in Attachment A, attached hereto and incorporated herein by this reference, and the Davis-Bacon prevailing wages apply to work performed and/or funded under the applicable Supplement. AGENCY agrees that AGENCY will require its contractor(s) and all subcontractors will pay the higher of (i) the applicable wage set forth in Federal Wage Determinations, and (ii) the applicable California prevailing rate. Certified payroll records in the form set forth in the Public Works Payroll Reporting Form, as found at https://www.dol.gov/whd/forms/wh347.pdf, shall be prepared or collected from its contractor(s) and all subconsultant(s) on a weekly basis by the AGENCY. Per Master Funding Agreement Article 12.0, Records and 13.0 Audits, MTC reserves the right to request copies of the certified payroll records. MTC may withhold payment if the certified payrolls to be submitted by AGENCY pursuant to this Exhibit B-5, Prevailing Wage Rates, Apprenticeships, and Payroll Records, are not current.

EXHIBIT B-5

ATTACHMENT A

ADDITIONAL FEDERAL CLAUSES APPLICABLE TO PUBLIC WORKS

1. Buy America
2. Davis-Bacon Act
3. Contract Work Hours and Safety Standards Act
4. Copeland Anti-Kickback Act
5. Prompt Payment of Funds Withheld to Subcontractors

1. <u>Buy America Requirements</u>

The Buy America regulation at 49 C.F.R. § 661.13 requires notification of the Buy America requirements in a recipients' bid or request for proposal for FTA funded contracts. Recipients can draw on the following language for inclusion in their federally funded procurements. Note that recipients are responsible for including the correct Buy America certification based on what they are acquiring. Recipients should not include both the rolling stock and steel, iron, or manufactured products certificates in the documents unless acquiring both in the same procurement.

<u>Buy America</u>

The contractor agrees to comply with 49 U.S.C. 5323(j) and 49 C.F.R. part 661, which provide that Federal funds may not be obligated unless all steel, iron, and manufactured products used in FTA funded projects are produced in the United States, unless a waiver has been granted by FTA or the product is subject to a general waiver. General waivers are listed in 49 C.F.R. § 661.7. Separate requirements for rolling stock are set out at 49 U.S.C. 5323(j)(2)(C) and 49 C.F.R. § 661.11.

The [bidder or offeror] must submit to [Recipient] the appropriate Buy America certification below with its [bid or offer]. Bids or offers that are not accompanied by a completed Buy America certification will be rejected as nonresponsive.

In accordance with 49 C.F.R. § 661.6, for the procurement of steel, iron or manufactured products, use the certifications below:

Certificate of Compliance with Buy America Requirements

The bidder or offeror hereby certifies that it will comply with the requirements of 49 U.S.C. 5323(j)(1), and the applicable regulations in 49 C.F.R. part 661.

Date: ____

Signature: ____

Company: ____

Name: ____

Title: ____

Certificate of Non-Compliance with Buy America Requirements

The bidder or offeror hereby certifies that it cannot comply with the requirements of 49 U.S.C. 5323(j), but it may qualify for an exception to the requirement pursuant to 49 U.S.C. 5323(j)(2), as amended, and the applicable regulations in 49 C.F.R. § 661.7.

Date: ____

Signature: ____

Company: ____

Name: ____

Title: ____

In accordance with 49 C.F.R. § 661.12, for the procurement of rolling stock (including train control, communication, and traction power equipment) use the following certifications:

Certificate of Compliance with Buy America Rolling Stock Requirements

The bidder or offeror hereby certifies that it will comply with the requirements of 49 U.S.C. 5323(j), and the applicable regulations of 49 C.F.R. § 661.11.

Date: ____

Signature: ____

Company: ____

Name: ____

Title: ____

Certificate of Non-Compliance with Buy America Rolling Stock Requirements

The bidder or offeror hereby certifies that it cannot comply with the requirements of 49 U.S.C. 5323(j), but may qualify for an exception to the requirement consistent with 49 U.S.C. 5323(j)(2)(C), and the applicable regulations in 49 C.F.R. § 661.7.

Date: ____

Signature: ____

Company: ____

Name: ____

Title: ____

2. DAVIS-BACON ACT

For all prime construction, alteration or repair contracts in excess of $2,000 awarded by FTA, the Contractor shall comply with the Davis-Bacon Act and the Copeland "Anti-Kickback" Act. Under 49 U.S.C. § 5333(a), prevailing wage protections apply to laborers and mechanics employed on FTA assisted construction, alteration, or repair projects. The Contractor will comply with the Davis-Bacon Act, 40 U.S.C. §§ 3141-3144, and 3146-3148 as supplemented by DOL regulations at 29 C.F.R. part 5, "Labor Standards Provisions Applicable to Contracts Governing Federally Financed and Assisted Construction." In accordance with the statute, the Contractor shall pay wages to laborers and mechanics at a rate not less than the prevailing wages specified in a wage determination made by the Secretary of Labor. In addition, the Contractor agrees to pay wages not less than once a week. The Contractor shall also comply with the Copeland "Anti-Kickback" Act (40 U.S.C. § 3145), as supplemented by DOL regulations at 29 C.F.R. part 3, "Contractors and Subcontractors on Public Building or Public Work Financed in Whole or in part by Loans or Grants from the United States." The Contractor is prohibited from inducing, by any means, any person employed in the construction, completion, or repair of public work, to give up any part of the compensation to which he or she is otherwise entitled.

3. CONTRACT WORK HOURS AND SAFETY STANDARDS ACT

For all contracts in excess of $100,000 that involve the employment of mechanics or laborers, the Contractor shall comply with the Contract Work Hours and Safety Standards Act (40 U.S.C. §§ 3701; 3708), as supplemented by the DOL regulations at 29 C.F.R. part 5. Under 40 U.S.C. § 3702 of the Act, the Contractor shall compute the wages of every mechanic and laborer, including watchmen and guards, on the basis of a standard work week of 40 hours. Work in excess of the standard work week is permissible provided that the worker is compensated at a rate of not less than one and a half times the basic rate of pay for all hours worked in excess of 40 hours in the work week. The requirements of 40 U.S.C. § 3704 are applicable to construction work and provide that no laborer or mechanic be required to work in surroundings or under working conditions which are unsanitary, hazardous or dangerous. These requirements do not apply to the purchase of supplies or materials or articles ordinarily available on the open market, or to contracts for transportation or transmission of intelligence.

In the event of any violation of the clause set forth herein, the Contractor and any subcontractor responsible therefor shall be liable for the unpaid wages. In addition, the Contractor and subcontractor shall be liable to the United States (in the case of work done under contract for the District of Columbia or a territory, to such District or to such territory), for liquidated damages. Such liquidated damages shall be computed with respect to each individual laborer or mechanic, including watchmen and guards, employed in violation of this clause in the sum of $10 for each calendar day on which such individual was required or permitted to work in excess of the standard workweek of forty hours without payment of the overtime wages required by this clause.

The FTA shall upon its own action or upon written request of an authorized representative of the Department of Labor withhold or cause to be withheld, from any moneys payable on account of work performed by the Contractor or subcontractor under any such contract or any other Federal contract with the same prime Contractor, or any other federally-assisted contract subject to the Contract Work Hours and Safety Standards Act, which is held by the same prime Contractor, such sums as may be determined to be necessary to satisfy any liabilities of such Contractor or subcontractor for unpaid wages and liquidated damages as provided in this section.

The Contractor or subcontractor shall insert in any subcontracts the clauses set forth in this section and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The prime Contractor shall be responsible for compliance by any subcontractor or lower tier subcontractor with the clauses set forth in this agreement.

4. COPELAND ANTI-KICKBACK ACT

Compliance with Copeland Act requirements - The AGENCY's contractor shall comply with the requirements of 29 CFR part 3, which are incorporated by reference in this contract.

5. PROMPT PAYMENT OF FUNDS WITHHELD TO SUBCONTRACTORS

The AGENCY shall hold retainage from the prime contractor and shall make prompt and regular incremental acceptances of portions, as determined by the agency of the contract work and pay retainage to the prime contractor based on these acceptances. The AGENCY's prime contractor or subcontractor shall return all monies withheld in retention from a subcontractor within 30 days after receiving payment for work satisfactorily completed and accepted including incremental acceptances of portions of the contract work by the agency. Federal regulation (49 CFR 26.29) requires that any delay or postponement of payment over 30 days may take place only for good cause and with the agency's prior written approval. Any violation of this provision shall subject the violating AGENCY's prime contractor or subcontractor to the penalties, sanctions, and other remedies specified in Section 7108.5 of the California Business and Professions Code. These requirements shall not be construed to limit or impair any contractual, administrative, or judicial remedies otherwise, available to the prime contractor or subcontractor in the event of a dispute involving late payment, or nonpayment by the prime contractor, deficient subcontract performance, or noncompliance by a subcontractor. This provision applies to both DBE and non-DBE prime contractors and subcontractors.

EXHIBIT B-6

ADDITIONAL TERMS AND CONDITIONS

(REGIONAL TOLL FUNDS INCLUDING RM1, RM2, RM3, AND AB 1171)

Recitals

WHEREAS, Streets and Highways Code (SHC) Sections 30950 *et seq.* created the Bay Area Toll Authority ("BATA") which is a public instrumentality governed by the same board as that governing MTC; and

WHEREAS, pursuant to SHC Section 31010(b), funds generated in excess of those needed to meet the toll commitments as specified by paragraph (4) of subdivision (b) of Section 188.5 of the SHC shall be available to BATA for funding projects consistent with SHC Sections 30913 and 30914; and

WHEREAS, MTC adopted Resolution No. 3434, Revised, which establishes commitments of bridge toll funds, including such AB 1171 funds, to specific projects and corridors; and

WHEREAS, on November 8, 1988, voters approved Regional Measure 1 ("RM1"), which authorized a standard auto toll of $1 on the seven state-owned toll bridges in the San Francisco Bay Area to fund various transportation projects within the region; and

WHEREAS, on March 2, 2004, voters approved Regional Measure 2 ("RM2"), increasing the toll for all vehicles on the seven state-owned toll bridges in the San Francisco Bay Area by $1.00 to fund various transportation projects within the region that have been determined to reduce congestion or to improve travel in the toll bridge corridors; and

WHEREAS, RM2 established the Regional Traffic Relief Plan and listed specific capital projects and programs and transit operating assistance as eligible to receive RM2 funding as identified in SHC Section 30914(c) and (d). The funding amounts assigned to certain of the programs and projects were subsequently revised by MTC Resolution No. 3801; and

WHEREAS, to the extent the Project is receiving RM2 funding hereunder, SHC Section 30914(c) lists the Project to which this Exhibit B-6 and the applicable Supplement apply as one such eligible transportation project and designates AGENCY as project sponsor; and

WHEREAS, pursuant to MTC Resolution No. 3636, MTC established procedures whereby eligible transportation project sponsors may submit allocation requests for Regional Measure 2 Bridge Toll funding. A copy of MTC Resolution No. 3636 is attached hereto and incorporated herein as Attachment D, MTC Resolution No. 3636; and

WHEREAS, on June 5, 2018, voters approved Regional Measure 3 ("RM3"), increasing the toll for all vehicles on the seven state-owned toll bridges in the San Francisco Bay Area by three successive $1.00 tolls (applied on January 1, 2019, January 1, 2022, and January 1, 2025) to fund various transportation projects within the region that have been determined to reduce congestion or to improve travel in the toll bridge corridors; and

WHEREAS, RM3 established the Regional Measure 3 Expenditure Plan and listed specific capital projects and operating assistance programs as eligible to receive RM3 funding as identified in SHC Section 30914.7(a) and (c); and

WHEREAS, to the extent the Project is receiving RM3 funding hereunder, SHC Section 30914.7(a) lists the Project or SHC Section 30914.7(c) lists the operating assistance program to which this Exhibit B-6 and the applicable Supplement apply as one such eligible transportation project and designates AGENCY as project sponsor; and

WHEREAS, pursuant to MTC Resolution No. 4404, MTC established procedures whereby eligible transportation project sponsors may submit allocation requests for RM3 Bridge Toll funding. A copy of MTC Resolution No. 4404 is attached hereto and incorporated herein as Attachment E, MTC Resolution No. 4404; and

WHEREAS, AGENCY submitted one or more allocation requests for RM2, RM3, AB 1171, and/or RM1 funding for the Project to which this Exhibit B-6 applies. A copy of the applicable allocation request(s) as well as AGENCY's resolution(s) approving the allocation request(s) are attached to the applicable Supplement and incorporated herein as Attachment A, Updated Initial Project Report, and Attachment B, AGENCY Resolution(s), respectively; and

WHEREAS, by the resolution(s) attached to the applicable Supplement and incorporated herein as Attachment C, MTC Resolution(s) Approving Project Request, MTC approved AGENCY's request(s) for the applicable funds for the applicable Project.

I. AGENCY AGREES

A. AGENCY agrees to perform or caused to be performed the activities described in Attachment A, Updated Initial Project Report. AGENCY will provide all necessary staffing and support resources to complete the Project as described in Attachment A, AGENCY agrees to meet all conditions listed in Attachment C, MTC Resolution(s) Approving Project Request.

B. AGENCY shall provide MTC with annual progress reports throughout the term of this Agreement in accordance with the monitoring and reporting requirements specified in MTC Resolution No. 3636, Revised (if receiving RM2 funds) and/or MTC Resolution No. 4404 (if receiving RM3 funds).

C. AGENCY shall submit invoices to MTC no less than annually, but may submit invoices as frequently as monthly. In either case, AGENCY shall submit an invoice to MTC within thirty (30) days after the end of each period for which payment is sought covering costs for the Project activities accomplished through the end of such period, not covered by previously submitted invoices. Each invoice shall be supported by the following information: (i.) A brief narrative progress report of the activities accomplished during the invoice period, including the percentage of the contract complete and the percentage of funding expended; (ii.) the costs requested for reimbursement with RM1, RM2, RM3 and/or AB 1171 funds, as applicable; (iii.) the total costs expended for the invoice period broken down by type and source of funding; (iv.) the total RM1, RM2, RM3 and/or AB 1171 funds, as applicable received as reimbursement to date; (v.) the total costs expended for project name to date broken down by type and source of funding; and (vi.) any additional supporting data in a form and detail required by MTC.

D. AGENCY agrees to spend RM1, RM2, RM3 and/or AB 1171 funds, as applicable, at a rate not exceeding the schedule attached to the applicable Supplement and incorporated herein as Attachment F, Reimbursement Schedule.

E. AGENCY shall comply with and shall assure that any AGENCY contractor performing Project work with RM1, RM2, RM3 and/or AB 1171 funds, as applicable, received under this Agreement complies with MTC Resolution No. 3636, Revised (if receiving RM2 funds) and/or MTC Resolution No. 4404 (if receiving RM3 funds), as well as the provisions of MTC's RM2 Policies and Procedures contained in MTC Resolution No. 3636, Revised (if receiving RM2 funds) and/or MTC Resolution No. 4404 (if receiving RM3 funds), relative to constructing, operating, and maintaining the Project. MTC may update Resolution No. 3636 or Resolution No. 4404 from time to time. The AGENCY agrees to comply with the most current Resolution that is approved at any given time.

F. AGENCY is responsible for completing the Project within cost, scope and schedule as described in Attachment A, Updated Initial Project Report, as it may be updated from time to time. Any updates must be approved by AGENCY and MTC in writing before being incorporated into this Agreement.

G. AGENCY certifies that:

- The Project is consistent with the Regional Transportation Plan ("RTP").
- The Project is exempt from environmental review or all environmental permits or clearances necessary for the Project have been or will be obtained, and the year of Project funding for the construction phase of the Project has taken into consideration the time necessary to obtain permitting approval for the Project as an operable and useable segment.
- The Project or portion thereof to be funded under this Agreement will be fully funded upon the execution of the applicable Supplement.
- AGENCY has reviewed the Project needs and has adequate internal staffing and support resources to deliver and complete the Project within the cost, scope, and schedule set forth in the Initial Project Report, as updated, attached to the applicable Supplement as Attachment A.
- If applicable to the Project, AGENCY is an eligible sponsor of projects in MTC Resolution No. 3434, Revised.
- If applicable to the Project, AGENCY is an eligible sponsor of projects in MTC Resolution No. 4404.
- If applicable, AGENCY is authorized to submit an application for RM2 funds for the Project in accordance with SHC Section 30914(c).
- If applicable, AGENCY is authorized to submit an application for RM3 funds for the Project in accordance with SHC Section 30914.7(a) or 30914.7(c).
- If applicable, AGENCY is authorized to submit an application for AB 1171 funds for the Project in accordance with SHC Section 31010(b).
- The Project is in compliance with the requirements of the California Environmental Quality Act (Public Resources Code Section 2l000 *et seq*.), and with the State Environmental Impact Report Guidelines (l4 California Code of Regulations Sections l5000 *et seq*.), and if relevant, the National

Environmental Policy Act (NEPA) (42 USC 4321 *et seq*.) and the applicable regulations thereunder.

- There is no legal impediment to AGENCY making allocation requests for RM1, RM2, RM3 and/or AB 1171 funds, as applicable.
- There is no pending or threatened litigation which might in any way adversely affect the Project or the ability of AGENCY to deliver such Project.
- For bus operators, AGENCY has submitted a copy of the California Highway Patrol (CHP) certification, which was issued within the last 13 months indicating compliance with California Vehicle Code §1808.1 and Public Utility Code §99251 (CHP "pull notice system and periodic reports").
- For ferry operators, AGENCY certifies that it is current on all inspections and certifications required by federal and state agencies.
- If RM3 funding was received in the prior year, AGENCY has included the RM3 costs and revenues in its general fiscal audit for that year. AGENCY also assures that it will include the RM3 costs and revenues in its general fiscal audit for the year in which funds are requested.

H. In addition to AGENCY's commitment under Article 10, INDEMNIFICATION, of the Master Funding Agreement, AGENCY agrees at its own cost, expense, and risk to defend any and all claims, actions, suits, or other legal proceedings brought or instituted against MTC, its Commissioners, representatives, agents, and employees, or any of them, arising out of such act or omission, and to pay and satisfy any resulting judgments. In addition to any other remedy authorized by law, so much of the funding due under this allocation of RM1, RM2, RM3 and/or AB 1171 funds, as applicable, as shall reasonably be considered necessary by MTC may be retained until disposition has been made of any claim for damages.

I. If any revenues or profits from any non-governmental use of the Project are collected by AGENCY, those revenues or profits shall be used exclusively for the public transportation services for which the Project was initially approved, either for capital improvements or maintenance and operational costs, otherwise MTC is entitled to a proportionate share equal to MTC's percentage participation in the Project. MTC's percentage participation shall equal the amount of funds allocated to Project, divided by the total Project budget as shown in Attachment E, Reimbursement Schedule, as updated from time to time, as such amount may be adjusted to reflect total project costs.

J. Project assets purchased by AGENCY with RM1, RM2, RM3 and/or AB 1171 funds, as applicable, including facilities and equipment, shall be used for the intended public transportation uses and should said facilities and equipment cease to be operated or maintained for their intended public transportation purposes for their useful life, MTC shall be entitled to a present day value refund or credit (at MTC's option) based on MTC's share of the fair market value of the facilities and equipment at the time the public transportation uses ceased, which sum shall be paid back to MTC in the same proportion that RM1, RM2, RM3 and/or AB 1171 funds, as applicable, were originally used.

K. AGENCY shall post on both ends of the Project construction site(s), unless prohibited by the site owner if such owner is not the AGENCY, at least two signs visible to the public stating that the Project is funded with RM1, RM2, RM3 and/or AB 1171 funds, as applicable.

L. AGENCY's City Manager, General Manager, Executive Director, Chief Executive Officer, or equivalent officer, or designee, is delegated the authority to make non-substantive changes or minor amendments to the initial project report as he/she deems appropriate; otherwise, Article 7, AMENDMENTS, of this Agreement applies.

M. AGENCY agrees to comply with the provisions of MTC Resolution No. 3636, Revised (if receiving RM2 funds) and/or MTC Resolution No. 4404 (if receiving RM3 funds), and the MTC Resolutions set forth in Attachment C, MTC Resolution(s) Approving Project Request.

II. MTC AGREES

A. MTC agrees to provide AGENCY with RM1, RM2, RM3 and/or AB 1171 funds, as applicable, within the allocation amounts in Attachment C, MTC Resolution(s) Approving Project Request and as restated in the relevant Supplement for the purpose of funding the Project as described in Attachment A.

The entire funding amount is available for reimbursement based on the schedule included in Attachment E, Reimbursement Schedule, to the applicable Supplement. In addition, if applicable, MTC agrees to support AGENCY's allocation request from the State according to the Allocation Request Schedule provided in Attachment G to the applicable Supplement.

su However, RM3 Operating Program funds will be made available for reimbursement in the subsequent year(s) where allowed by law or otherwise authorized by the Commission.

III. IT IS MUTUALLY AGREED

A. MTC may terminate the applicable Supplement, in its sole discretion, for any force majeure event, including but not limited to any earthquake, flood or other natural *disaster*, any epidemic, blockade, rebellion, war, act of sabotage or civil commotion, fire, explosion or strike, or prolonged economic conditions affecting the ability of the Bay Area Toll Authority to make payments to bond holders who shall in all circumstances have priority to payment of funds, if such event (i) irrecoverably disrupts or renders impossible AGENCY's performance hereunder; or (ii) disrupts MTC's ability to make payments hereunder. If MTC so terminates the applicable Supplement, AGENCY will be entitled to payment for non-recoverable Project costs incurred prior to the date of such termination, including but not limited to any amounts AGENCY owes to the owner of the Project construction sites, if such owner is not AGENCY, up to the maximum amount payable under this Agreement.

B. If AGENCY fails to perform as specified in this Agreement and the applicable Supplement, MTC may terminate the applicable Supplement or this Agreement for cause. Termination shall be effected by serving a sixty (60) day advance written notice of termination on AGENCY, setting forth the manner in which AGENCY is in default. If AGENCY does not cure the breach or describe to MTC's satisfaction a plan for curing the breach within the sixty (60) day period, MTC may terminate this Agreement or the applicable Supplement for cause. In the event of such termination for cause, AGENCY will be entitled only to those costs incurred for already completed Project work, not to exceed the maximum amount payable under this Agreement for such Project work, however, in no event shall MTC be required to reimburse AGENCY for any costs incurred for work causing or contributing to the default.

C. If the Project is cancelled, suspended indefinitely, or otherwise not completed for any reason, AGENCY shall repay MTC any RM1, RM2, RM3 and/or AB 1171 funds, as applicable, expended that exceed MTC's proportionate share of eligible costs for the Project.

D. Upon completion of the Project, AGENCY will properly account for all Project costs incurred.

E. The applicable Supplement shall terminate upon closeout of the PROJECT in accordance with Policies and Procedures in MTC Resolution No. 3636, Revised (if receiving RM2 funds) or MTC Resolution No. 4404 (if receiving RM3 funds), or on the termination date, if any, set forth in the Supplement, whichever is sooner.

F. The terms and conditions of this Agreement include the following and each is incorporated by reference herein as if fully set forth herein.

Attachment A – Updated Initial Project Report (Allocation Request)
Attachment B – AGENCY Resolution(s) (and opinion of counsel, if applicable)
Attachment C – MTC Resolution(s) Approving Project Request(s)
Attachment D – MTC Resolution No. 3636, Revised
Attachment E – MTC Resolution No. 4404
Attachment F – Reimbursement Schedule
Attachment G – Allocation Request Schedule

EXHIBIT B-7

ADDITIONAL TERMS AND CONDITIONS

(REGIONAL DISCRETIONARY FEDERAL FUNDS INCLUDING STP AND CMAQ)

1. TERMINATION

Notwithstanding Article 8.0, TERMINATION in the Master Funding Agreement, MTC may terminate this Agreement without cause upon ten (10) days prior written notice. If MTC terminates this Agreement without cause, AGENCY shall be entitled to payment for costs incurred for incomplete deliverables, up to the maximum amount payable for each deliverable. If AGENCY fails to perform as specified in this Agreement, MTC may terminate this Agreement for cause by written notice and AGENCY shall be entitled only to costs incurred for work product acceptable to MTC, not to exceed the maximum amount payable under this Agreement for such work product.

2. RETENTION OF RECORDS

AGENCY agrees to establish and maintain an accounting system confirming to GAAP that is adequate to accumulate and segregate reasonable, allowable, and allocable project costs.

AGENCY further agrees to keep all records pertaining to the project being funded for audit purposes for a minimum of three (3) years following final payment to AGENCY or four (4) years following the fiscal year of the last expenditure under this Agreement, whichever is longer, in accordance with generally accepted accounting principles. Copies of AGENCY audits, if any, performed during the course of Project development and at Project completion shall be forwarded to MTC no later than one hundred eighty (180) days after fiscal year end close.

3. AUDITS

Notwithstanding Article 13.0, AUDITS in the Master Funding Agreement, AGENCY agrees to grant MTC, or any agency that provides MTC with funds for the Project, including but not limited to, the U.S. Department of Transportation, FHWA, the Comptroller General of the United States, the State, and their authorized representatives access to AGENCY's books and records for the purpose of verifying that funds are properly accounted for and proceeds are expended in accordance with the terms of this Agreement. All documents shall be available for inspection during normal business hours at any time while the Project is underway and for the retention period specified in Article 4.

AGENCY further agrees to include in all its third-party contracts hereunder a provision to the effect that the contractor agrees that MTC, the U.S. Department of Transportation, FHWA, the Comptroller General of the United States, the State, or any of their duly authorized representatives shall have access to and the right to examine any directly pertinent books, documents, papers, and records of such subcontractor, during normal business hours, for the term specified above. The term "contract" as used in this clause excludes agreements not exceeding $25,000.

4. LICENSE TO WORK PRODUCTS

AGENCY hereby grants to MTC an irrevocable, non-exclusive, royalty-free license to use without restriction and share with any person or entity all drawings, designs, specifications, manuals, reports, studies, surveys, models, software, source code and source code documentation, documentation or system architecture, and any other documents, materials, data, and products ("Work Products") developed, prepared, or assembled by AGENCY or AGENCY's consultant(s) or its subconsultants pursuant to this Agreement. MTC may exercise their licenses to Work Products through sublicenses to a third party, without the approval of AGENCY or AGENCY's consultant(s) or subconsultants. FHWA reserves a royalty-free, non-exclusive and irrevocable license to reproduce, publish or otherwise use, and to authorize others to use, for federal government purposes: (a) the copyright in any work developed under this Agreement; and (b) any rights of copyright to which AGENCY or AGENCY's consultant(s) or subconsultants purchase ownership under this Agreement.

5. EQUAL EMPLOYMENT OPPORTUNITY

In accordance with Title VI of the Civil Rights Act, as amended (42 U.S.C. § 2000d); Section 303 of the Age Discrimination Act of 1975, as amended (42 U.S.C. § 6102); Section 202 of the Americans with Disabilities Act of 1990 (42 U.S.C. § 12132); and 49 U.S.C. § 5332 for FTA-funded projects, AGENCY agrees that it shall not, on the grounds of race, religious creed, color, national origin, age, physical disability or sex, discriminate or permit discrimination against any employee or applicant for employment.

6. DISADVANTAGED BUSINESS ENTERPRISES (DBE)

It is the policy of MTC and the U.S. Department of Transportation to ensure nondiscrimination in the award and administration of DOT-assisted contracts and to create a level playing field on which disadvantaged business enterprises, as defined in 49 Code of Federal Regulations Part 26, can compete fairly for contracts and subcontracts relating to MTC's procurement and professional services activities.

AGENCY shall not discriminate on the basis of race, color, national origin or sex in the performance of this Agreement. AGENCY shall carry out applicable requirements of 49 CFR Part 26 in the award and administration of DOT-assisted contracts. Failure by AGENCY to carry out these requirements is a material breach of contract, which may result in the termination of this agreement or such other remedy as MTC deems appropriate.

7. TITLE VI OF THE CIVIL RIGHTS ACT OF 1964

AGENCY agrees to comply with all the requirements imposed by Title VI of the Civil Rights Act of 1964 (47 U.S.C. § 2000(d)) and the regulations of the Department of Transportation issued thereunder (49 CFR Part 21).

8. ACCESS REQUIREMENTS FOR INDIVIDUALS WITH DISABILITIES

AGENCY agrees to comply with all applicable requirements of the Americans with Disabilities Act of 1990 (ADA), 42 U.S.C. § 12101 et seq.; Section 504 of the Rehabilitation Act of 1973, as amended, 29 U.S.C. § 794; Section 16 of the Federal Transit Act, as amended, 49 U.S.C. § 5310(f); and their implementing regulations.

9. STATE ENERGY CONSERVATION PLAN

AGENCY shall comply with all mandatory standards and policies relating to energy efficiency that are contained in the State energy conservation plan issued in compliance with the Energy Policy and Conservation Act (42 U.S.C. § 6321).

10. DEBARMENT

AGENCY certifies that neither it, nor any of its participants, principals or subcontractors is or has been debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions, as they are defined in 49 CFR Part 29, by any Federal agency or department.

11. CLEAN AIR AND WATER POLLUTION ACTS

AGENCY agrees to comply with the applicable requirements of all standards, orders, or requirements issued under the Clean Air Act (42 U.S.C. § 7501 *et seq.*), the Clean Water Act (33 U.S.C. § 1251 *et seq.*), Executive Order 11738, and Environmental Protection Agency regulations (40 CFR Part 15).

12. LOBBYING

AGENCY agrees to comply with the restrictions on the use of federal funds for lobbying activities set forth in 31 United States Code §1352 and 49 C.F.R. Part 20.

13. INDEMNIFICATION

Notwithstanding Article 10.0, INDEMNIFICATION, in the Master Funding Agreement AGENCY shall indemnify and hold harmless MTC, Caltrans, their Commissioners, Directors, officers, agents and employees from any and all claims, demands, suits, loss, damages, injury and/or liability (including any and all costs and expenses in connection therewith), incurred by reason of any act or failure to act of AGENCY, its officers, directors, employees, agents and contractors, or any of them, under or in connection with this Agreement; and AGENCY agrees at its own cost, expense and risk to defend any and all claims, actions, suits, or other legal proceedings brought or instituted against MTC, Caltrans, their Commissioners, Directors, officers, agents, and employees, or any of them, arising out of such act or omission, and to pay and satisfy any resulting judgments.

14. COMPLIANCE WITH LAWS

AGENCY shall comply with any and all laws, statutes, ordinances, rules, regulations or requirements of the federal, state, or local government, and any agency thereof, including, but not limited to MTC, the U.S. DOT, FHWA, the State, and Caltrans, which relate to or in any manner affect the performance of this Agreement. Those laws, statutes, ordinances, rules, regulations, and procedural requirements that are imposed on MTC as an AGENCY of federal or state funds are hereby in turn imposed on AGENCY (including, but not limited to, 49 CFR Part 18, "Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments"), and are herein incorporated by this reference and made a part hereof.

AGENCY contractors shall agree to comply with all 48 CFR, Chapter 1, Part 31, Contract Cost Principles and Procedures. In addition, AGENCY certifies that the AGENCY and its contractors shall comply with the requirements of the California Environmental Quality Act (CEQA), California Public Resources Code Section 21,000 *et seq.* and with the State Environmental Impact Report Guidelines (14 California Code of Regulators Section 15000 *et seq.*) and the National Environmental Policy Act (NEPA), 42 U.S.C. Section 4321 *et seq.* and the applicable regulations thereunder.

15. IDENTIFICATION OF DOCUMENTS

AGENCY shall ensure that all reports and other documents completed as part of this Agreement shall carry the following notation on the front cover or title page:

"The preparation of this report has been financed in part by grants from the U.S. Department of Transportation. The contents of this report do not necessarily reflect the official views or policy of the U.S. Department of Transportation."

SAN FRANCISCO BAY AREA WATER EMERGENCY TRANSPORTATION AUTHORITY

RESOLUTION NO. 2023-24

AUTHORIZE EXECUTION OF MASTER FUNDING AGREEMENT WITH THE METROPOLITAN TRANSPORTATION COMMISSION

WHEREAS, the Metropolitan Transportation Commission (MTC) is the regional transportation planning, financing, and coordinating agency for the nine-county San Francisco Bay Area, and it provides bridge toll funds to WETA for various planning, programming, transportation and other projects; and

WHEREAS, MTC is requiring recipients of funding to enter into a Master Funding Agreement, a preliminary draft of which is attached to the staff report for this action, containing general rules and regulations applicable to all MTC funding sources; and

WHEREAS, MTC will issue supplemental agreements to the Master Funding Agreement for specific funding allocations, such as Regional Measure 3; and

WHEREAS, WETA staff and legal counsel have reviewed the Master Funding Agreement and find it acceptable and necessary for WETA to receive funding from MTC; and

WHEREAS, the Executive Director recommends the Board authorize the execution of the Master Funding Agreement, including any clarifying changes and any related Supplements to the Master Funding Agreement, with MTC for Planning, Programming, Transportation, Transit, Land Use or Other Projects from FY 2023-24 through FY 2032-33; now, therefore, be it

RESOLVED, that the Board of Directors hereby authorizes the Executive Director to execute the Master Funding Agreement in a form substantially the same as that presented to the Board at its meeting on this date, including any clarifying changes and any related Supplements to the Master Funding Agreement, with the Metropolitan Transportation Commission for Planning, Programming, Transportation, Transit, Land Use or Other Projects from FY 2023-24 through FY 2032-33.

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 July 13, 2023.

YEA:
NAY:
ABSTAIN:
ABSENT:

/s/ Board Secretary
2023-24
END

AGENDA ITEM 7
MEETING: July 13, 2023

MEMORANDUM

TO: **Board Members**

FROM: **Seamus Murphy, Executive Director**
Erin McGrath, Chief Financial Officer

SUBJECT: **Approve Contract Award to CPS HR Consulting for Human Resources Management Services**

Recommendation

Approve contract award to CPS HR Consulting for Human Resources Management Services in an aggregate amount not to exceed $200,000 for the initial two-year term, and an additional $200,000 for one two-year option term, and authorize the Executive Director to negotiate and execute an agreement and take any other related actions to support this work.

Background

WETA does not have a full-time Human Resources (HR) professional. In the past, the Authority has utilized smaller, as-needed consultants as HR needs have arisen, but there has not been consistent, ongoing support. The Board authorized the release of a Request for Proposals (RFP) for on-call HR services to fill the role of an HR professional and improve procedures and practices in a way that improves access to HR-related information. The consultant's responsibilities will include single tasks such as creating an employee handbook and new employee onboarding process, as well as ongoing tasks including employee recruitment, assistance with employee relations, annual reviews, assistance with hybrid work policies and procedures, and other as-needed HR management duties.

Discussion

WETA released the RFP on March 13, 2023 using its Bonfire procurement portal. WETA allowed, as part of the process, questions from interested parties and posted an addendum addressing those questions on April 1, 2023.

Forty-three firms or individuals downloaded the RFP document and ten firms submitted proposals by the April 28th deadline. A panel of two WETA staff members and one outside HR professional (evaluation committee) evaluated the proposals. In accordance with the RFP, the evaluation committee performed a preliminary responsiveness check to confirm that each of the proposals contained all the required documentation and necessary information to be deemed responsive to the RFP. The evaluation committee rejected proposals from three firms as non-responsive because they did not address or include all the required elements of the RFP.

The seven responsive proposers were:

- CPS HR Consulting
- Deirdre Orr Consulting
- Maerly, LLC
- Municipal Resource Group, LLC
- Rogue HR, LLC
- Saorsa LLC
- Schultz HR Consulting, Inc.

The evaluation committee evaluated all seven proposers per the following criteria included in the RFP:

- **Criteria No. 1: Scope Understanding and Approach:** Proposer's understanding of the services; proposer's proposed approach to providing the services and working with WETA staff; organization chart of proposed team; and staffing plan *(40% of score)*.
- **Criteria No. 2: Proposer's Qualifications and Experience:** Proposer's qualifications to perform the services; proposer's relevant experience performing work that is the same or similar to the services, including the scope and dollar value of prior projects completed and proposer's references; and sufficiency of proposer's financial strength, resources and capabilities to perform the services *(30% of score)*.
- **Criteria No. 3: Qualifications and Experience of Key Personnel:** Key personnel's qualifications to perform the services and key personnel's relevant experience performing work that is the same or similar to the services *(20% of score)*.
- **Criteria No. 4: Cost Proposal:** Reasonableness of billing rates *(10% of score)*.

Most important to WETA was to identify a firm that could relate to the unique nature of a small government organization with growing needs and an experienced, high-functioning staff. The chosen consultant would need to provide an array of HR services as well as a dynamic approach to unscheduled but unavoidable and ongoing HR needs. Significant importance was placed on the understanding of the scope of the work in addition to the qualifications and experience of the proposer and its key personnel. Because of the varied, dynamic nature of the work to be undertaken on behalf on WETA, a demonstrated history of working with similar clients became a very important metric as well as identified staffing that would be consistent, available to WETA for in-person meetings with staff, and with demonstrated ability to handle a wide variety of HR needs.

The procurement was highly competitive. In accordance with the RFP, the evaluation committee completed a preliminary evaluation of all seven proposals and then conducted interviews with the proposers with the four highest preliminary scores determined to be sufficiently viable to allow for further consideration. A table summarizing the final average scoring for each criteria, considering written proposals and interviews, can be found below.

	Rogue HR	**Deirdre Orr Consulting**	**Saorsa**	**Maerly**	**Schultz HR**	**MRG**	**CPS HR**
Criteria 1	27	28	28	30	34	34	36
Criteria 2	16	18	17	21	26	28	29
Criteria 3	12	13	14	15	18	18	19
Criteria 4	4	6	7	5	6	7	8
Total	59	64	67	71	85	87	93

CPS HR Consulting (CPS) received the highest score and is the recommended consultant. CPS is a Joint Powers Authority (JPA), created in 1985, with a charter mandating that they serve only public sector clients. The firm employs 90 full-time employees as well as 200+ project consultants and technical experts nationwide. CPS has worked with more than 1,200 government and public/non-profit clients throughout the United States and Canada. Both the written proposal and follow-up interview resulted in the evaluation committee determining that CPS had the best understanding of WETA's needs, the most varied and deep experience with the HR tasks and challenges that WETA outlined in its RFP, and provided access to resources that will reduce WETA's staff workload related to HR and benefits. WETA will have a dedicated team leader who will be a consistent face for WETA staff to contact for any HR questions they may have, however the firm will provide additional staff as needed for tasks related to writing an Employee Handbook, recruiting and retention needs, employee evaluations, and other HR needs. The approach of utilizing a contracted HR support team will provide greater benefit at less cost than hiring a full-time HR professional.

Pending Board approval, WETA plans to administer this contract on a task order basis with specific programs, projects, and campaigns agreed upon prior to work beginning. Per the RFP, the proposed contract length is an initial two-year term with one two-year option term to be exercised at the discretion of the Executive Director, with maximum total compensation of $400,000.

DBE/SBE Participation
This contract is not federally funded, and as such it is not subject to Federal Transit Administration (FTA) Disadvantaged Business Enterprise (DBE) or Small Business Enterprise (SBE) goals.

Fiscal Impact
The 2023/24 budget includes sufficient funds to be expended under this contract. Funding for future years under these contracts will be included in future budgets.

END

SAN FRANCISCO BAY AREA WATER EMERGENCY TRANSPORTATION AUTHORITY

RESOLUTION NO. 2023-25

APPROVE CONTRACT AWARD TO CPS HR CONSULTING FOR HUMAN RESOURCESMANAGEMENT SERVICES

WHEREAS, On March 13, 2023, WETA issued a Request for Proposals (RFP) for human resources management services; and

WHEREAS, in accordance with the RFP and WETA's Administrative Code, WETA established an evaluation committee that reviewed all proposals received by the RFP's due date; and

WHEREAS, based on the evaluation criteria in the RFP, the evaluation committee determined CPS HR Consulting was the highest-ranked proposer; and

WHEREAS, the Executive Director recommends the Board award a contract to CPS HR Consulting for an amount not to exceed $200,000 for the two-year base term and $200,000 for the two-year option term; now, therefore, be it

RESOLVED, that the Board of Directors hereby approves entering into an agreement with CPS HR Consulting for human resources management services in an amount not to exceed $200,000 for the two-year base term and $200,000 for the two-year option term; and be it further

RESOLVED, that the Board of Directors authorizes the Executive Director to execute an agreement with CPS HR Consulting and to take any other necessary actions consistent with this action, including exercising the two-year option term if in WETA's best interests.

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 July 13, 2023.

YEA:
NAY:
ABSTAIN:
ABSENT:

____
/s/ Board Secretary
2023-25
END

MEMORANDUM

TO: **Board Members**

FROM: **Seamus Murphy, Executive Director**
Thomas Hall, Public Information & Marketing Manager

SUBJECT: **Approve Contract Award to Corey, Canapary & Galanis for Surveying and Market Research Services**

Recommendation
Approve contract award to Corey, Canapary & Galanis for surveying and market research services in an amount not to exceed $150,000 annually for five years and authorize the Executive Director to negotiate and execute an agreement and take any other related actions to support this work.

Background
WETA has historically contracted with firms to plan and conduct onboard passenger surveys on a triennial basis using the Board-approved on-call professional services vendor list. The pandemic disrupted the cadence of these surveys; a full onboard survey was last conducted in July and August 2022. The results of that survey were presented to the Board in December 2022.

At that December 2022 meeting, Directors stated a preference for frequent surveying in the aftermath of the pandemic as travel patterns and transit ridership profiles continue to change dynamically. At the Board's February 2023 meeting, Directors expressed an additional interest in market research to determine potential non-passenger audiences who may be persuadable targets to enhance ridership.

In lieu of continuing to use firms on the general professional services vendor list, staff found value in conducting a dedicated procurement specifically focused on surveying and market research services to ensure a competitive process. The Board approved the release of a Request for Proposals (RFP) for surveying and market research services at its March 2, 2023 meeting.

Discussion
WETA released the RFP on March 29, 2023, using its Bonfire procurement portal. WETA solicited questions from interested parties and posted an addendum addressing those questions on April 24, 2023.

Thirty-one firms or individuals downloaded the RFP document and seven firms submitted proposals by the May 5, 2023 deadline. All seven proposers were found to meet the minimum submission requirements.

The qualified proposers were, in alphabetical order:

- CDM Smith Inc.
- ComEngage, LLC
- Convey

- Corey, Canapary & Galanis
- EMC Research Inc.
- Level 7 Market Research
- Maroon Society

A panel of three WETA staff members independently evaluated all seven proposers per the following criteria included in the RFP.

- **Criteria No. 1: Project Understanding and Approach:** Proposer's understanding of the services; proposer's proposed approach to providing the services and working with WETA staff; organization chart of proposed team; and staffing plan *(30% of score)*.
- **Criteria No. 2: Proposer's Qualifications and Experience:** Proposer's qualifications to perform the services; proposer's relevant experience performing work that is the same or similar to the services, including the scope and dollar value of prior projects completed and proposer's references; and sufficiency of proposer's financial strength, resources and capabilities to perform the services *(35% of score)*.
- **Criteria No. 3: Qualifications and Experience of Key Personnel:** Key personnel's qualifications to perform the services and key personnel's relevant experience performing work that is the same or similar to the services *(20% of score)*.
- **Criteria No. 4: Cost Proposal:** Reasonableness of billing rates and price proposal to complete example project *(15% of score)*.

For this procurement, significant weight was placed on the proposers' project understanding and approach, qualifications, and experience (Criteria No. 1 and 2). Surveying and market research is a highly specialized field, and particular attention was paid to proposers' experience in and familiarity with successfully completing this work in Bay Area transit environments. Qualifications of key personnel (Criteria No. 3) were also strongly considered with attention being given to the experience level of staff proposed to be in key project management roles for WETA's contract. Cost (Criteria No. 4) was evaluated via a two-step process considering both the hourly rate of the proposed project manager as well as a cost proposal for an example project modeled after the core project under this contract (the onboard rider survey). The latter allowed the evaluation panel insight into how the survey would be staffed by the proposer, a key factor in controlling costs and allowing more extensive market research work to be undertaken.

A table summarizing average scoring from the panel can be found below. Scores are rounded to the nearest integer.

Proposer	Crit. No. 1 (Max 30)	Crit. No. 2 (Max 35)	Crit. No. 3 (Max 20)	Crit. No. 4 (Max 15)	Total Score (Max 100)
Corey, Canapary & Galanis	30	34	19	15	**98**
EMC Research Inc.	27	32	17	12	**88**
CDM Smith Inc.	25	31	17	12	**85**
ComEngage LLC	25	29	17	12	**83**
Maroon Society	23	27	17	13	**80**
Level 7 Market Research	24	27	17	10	**78**
Convey	22	29	16	10	**77**

The procurement was highly competitive, drawing a number of well-known firms and very strong proposals. After individual review, the members of evaluation panel had a consensus and clear top scorer among the proposers: Corey, Canapary & Galanis (CC&G).

CC&G's proposal displayed a thorough and clear understanding of WETA's previous surveying work and needs for the continuation and refinement of that work in addition to new work in the field of market research. CC&G has extensive local expertise with transit agencies, including ferry operators, and presented a draft approach to an onboard rider survey that closely matches staff expectations with some additional factors that should improve the quality of the data and the sample rate.

Other items that led to the evaluation panelists to rate CC&G as the highest scorer included the fact that the firm uses in-house employees as interviewers for in-person surveys as opposed to subcontractors, which lessens the burden of coordination for WETA; a significantly lower project cost proposal than other firms; and participation of the firm's principals in WETA's projects. In addition, all key staff proposed for WETA's contract identified by CC&G have at least 15 years of relevant experience.

Pending Board approval, WETA plans to administer this contract on a task order basis with work beginning quickly in hopes of executing an onboard rider survey in October 2023. Per the RFP, the proposed contract length is five years, with maximum compensation of $150,000 annually.

DBE/SBE Participation
This contract is not federally funded, and as such it is not subject to Disadvantaged Business Enterprise (DBE) or Small Business Enterprise (SBE) goals.

Fiscal Impact
Funds for the work to be executed under this contract were included in the approved FY24 budget. In future fiscal years, work assigned under this contract via task order will be subject to funds being included in the budget for the work.

END

SAN FRANCISCO BAY AREA WATER EMERGENCY TRANSPORTATION AUTHORITY

RESOLUTION NO. 2023-26

APPROVE CONTRACT AWARD TO COREY, CANAPARY & GALANIS FOR SURVEYING AND MARKET RESEARCH SERVICES

WHEREAS, On March 29, 2023, WETA issued a Request for Proposals (RFP) for surveying and market research services; and

WHEREAS, in accordance with the RFP and WETA's Administrative Code, WETA established an evaluation committee that reviewed all proposals received by the RFP's due date; and

WHEREAS, based on the evaluation criteria in the RFP, the evaluation committee determined Corey, Canapary & Galanis (CC&G) was the highest-ranked proposer; and

WHEREAS, the Executive Director recommends the Board award a contract to CC&G for an amount not to exceed $150,000 annually for a term of five years; now, therefore, be it

RESOLVED, that the Board of Directors hereby approves entering into an agreement with Corey, Canapary & Galanis for surveying and market research services in an amount not to exceed $150,000 annually for a term of five years; and be it further

RESOLVED, that the Board of Directors authorizes the Executive Director to execute an agreement with Corey, Canapary & Galanis and to take any other necessary actions consistent with this action.

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 July 13, 2023.

YEA:
NAY:
ABSTAIN:
ABSENT:

/s/ Board Secretary
2023-26
END

MEMORANDUM

TO: Board Members

FROM: Seamus Murphy, Executive Director
Kevin Connolly, Planning & Development Manager
Chad Mason, Senior Planner/Project Manager

SUBJECT: Approve Contract Award to Manson Construction Co. for Dredging and Marine Construction Services for the Vallejo Terminal Dredging Project

Recommendation
Approve the following actions relative to the *Terminal Dredging – Vallejo* project (Project):

1. Approve contract award to Manson Construction Co. (Manson) of Seattle, Washington for marine construction services in the amount of $2,118,000 and authorize a contract contingency of 15 percent for a total sum of $2,435,700; and

2. Authorize the Executive Director to enter into a contract and take any other related actions as may be necessary to support the Project.

Background
The Vallejo terminal ferry basin requires maintenance dredging every two to four years to support ongoing service operations. A full dredge of the Vallejo terminal area is due in 2023. Maintenance dredging is required to ensure that the passenger float is buoyant at all tidal levels and to ensure access is maintained for WETA ferry vessels. The scope of work for the Project includes:

- Removing the passenger float for access to the dredging site
- Relocation of the spare passenger float from Pier 48 ½ in San Francisco to Vallejo where it will serve as a temporary terminal
- Installation of the temporary ferry terminal including the passenger float, pilings, and gangway
- Dredging of the ferry terminal basin
- Delivery and reinstallation of the spare passenger float at Pier 48 ½ in San Francisco

The Project will be conducted during the summer/fall 2023 dredge window.

Foth & Van Dyke and Associates Inc. (Foth) has assisted WETA in providing technical dredging assistance on several previous dredging projects at the Vallejo terminal. Foth is assisting staff, under an on-call professional services contract with permitting, procurement, material sampling, and dredging surveys in preparation for the Project. Foth will also monitor the work and performance of the marine contractor performing the 2023 dredging work.

Discussion
On May 4, 2023, the Board of Directors authorized issuance of an Invitation for Bids (IFB) for the Project and the IFB was released to the public on May 15. A pre-bid conference was held on May 23 and was attended by four marine construction firms. A total of two addendums

were issued providing additional information, clarification, and answers to questions from bidders. Bids were due to WETA on or before June 15. Two bids were received in response to the IFB. The table below summarizes the base bid price for each submittal.

FIRM	BASE BID PRICE
The Dutra Group	$2,309,050
Manson Construction Co.	$2,118,000

The bid submitted by Manson was the apparent low bid based upon the price proposal submitted. In accordance with the IFB process utilized for this Project, staff, in consultation with legal counsel, has reviewed the bid documents submitted by Manson and has determined it is a responsive bidder. Additionally, staff has verified references submitted by Manson and determined it to be responsible and acceptable for performing this work.

Staff has determined Manson to be the lowest responsive and responsible bidder for the Project and recommends that the Board authorize award of a contract for this work in the amount of $2,118,000. This bid amount is greater than the engineer's estimate of $1,431,000 but it is within the total project budget. Staff has analyzed Manson’s bid price and deems it fair and reasonable notwithstanding the engineer’s estimate because the dredging mobilization, demobilization, and costs associated with moving the temporary boarding facility at Pier 48 ½ have increased substantially since the last dredging episode in 2021, on which the engineer’s estimate was based. Staff also recommends that the Board establish a 15 percent owner’s contingency for unanticipated work necessary to complete this Project.

WETA’s overall annual Disadvantaged Business Enterprise (DBE) goal for Federal Fiscal Year 2023/24 is 0.48 percent and the Small Business Enterprise (SBE) goal is 7.5 percent for Federal Transit Administration (FTA) assisted contracts. Staff has reviewed the DBE/SBE materials provided by Manson and has determined that 0 percent DBE 2023/24 participation and 0 percent SBE participation is anticipated during the performance of this contract.

Fiscal Impact
The *Vallejo Ferry Terminal Dredging* project is included in the FY 2023/24 Capital Budget with a total project budget of $2,842,000. The Project is funded with FTA grant funds, and RM1 Bridge Toll Revenues. Sufficient funds are included in the project budget to support the award of this contract.

END

SAN FRANCISCO BAY AREA WATER EMERGENCY TRANSPORTATION AUTHORITY

RESOLUTION NO. 2023-27

AWARD CONTRACT TO MANSON CONSTRUCTION CO. FOR VALLEJO TERMINAL DREDGING

WHEREAS, the WETA Board of Directors authorized staff to issue an Invitation for Bids for the *Terminal Dredging – Vallejo* project (Project) on May 4, 2023; and

WHEREAS, WETA issued an Invitation for Bids (IFB) for the Project on May 15, 2023; and

WHEREAS, WETA issued the solicitation, and evaluated bids, in accordance with Federal Transit Administration regulations as well as its Administrative Code; and

WHEREAS, by the IFB bid date of June 15, 2023, WETA received two bids in response to the IFB; and

WHEREAS, WETA staff recommends the award of a contract to Manson Construction Co., the lowest responsive and responsible bidder, at its bid price of $2,118,000, which price was deemed fair and reasonable; now, therefore, be it

RESOLVED, that the Board of Directors hereby approves entering into an agreement with Manson Construction Co. for dredging and related services at the Vallejo Terminal in the amount of $2,118,000 and authorizes a contract contingency of 15 percent for a total sum of $2,435,700; and be it further

RESOLVED, that the Board of Directors authorizes the Executive Director to execute the agreement and take any other related actions to support this work.

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 July 13, 2023.

YEA:
NAY:
ABSTAIN:
ABSENT:

/s/ Board Secretary
2023-27
END

AGENDA ITEM 10
MEETING: July 13, 2023

MEMORANDUM

TO: **Board Members**

FROM: **Seamus Murphy, Executive Director**
Timothy Hanners, Operations & Maintenance Manager
Jeffery Powell, Engineering & Maintenance Administrator

SUBJECT: **Approve Sole Source Contract Award to Pacific Power Group, LLC for Main Engine Preventative Maintenance Services**

Recommendation

1. Approve the award of a Sole Source Contract to Pacific Power Group, LLC (PPG) in the amount of $1,484,577 for main propulsion engine maintenance services for the MV *Carina, Cetus, Hydrus, Bay Breeze, Dorado,* and *Mare Island*; and
2. Approve a contract contingency in the amount of $303,423; and
3. Authorize the Executive Director to negotiate and execute an agreement with PPG and take any other required actions to support this work.

Background/Discussion

Six WETA vessels are due for main engine preventative maintenance work in Fiscal Year 2023-2024.

The two MTU 12V4000 M64 main propulsion engines installed in MV *Carina* have been in operation since 2016, they are approaching the time for mid-life overhaul at 13,500 engine hours. The four MTU 12V4000 M64 main engines in MV *Cetus* and *Hydrus* are approaching their diesel fuel injector replacement interval of 6,250 engine hours. The MTU 16V2000 M70 port main engine on MV *Bay Breeze* is approaching its diesel fuel injector replacement interval of 3,500 hours. The two MTU 12V4000 M65R main engines in MV *Dorado* are approaching their diesel fuel injector replacement interval of 5,000 hours. The two MTU 16V4000 M73 engines installed in MV *Mare Island* have been in operation since 2019, they are approaching the time for mid-life overhaul at 9,000 engine hours.

To remain in compliance with the preventative maintenance schedules for these engines, they must undergo mid-life overhauls and injector changes by an authorized MTU service dealer. The work also ensures that all engines remain within the OEM specifications for safe, reliable, and efficient operation.

The mid-life engine overhaul on MV *Carina* will take place dockside at the Central Bay Operations & Maintenance Facility while the engines remain in the vessel as several major engine subcomponents are removed for inspection, refurbishment, or replacement. For MV *Mare Island* the work will take place dockside at the North Bay Operations & Maintenance Facility. These mid-life engine overhauls will each take 2-3 weeks per engine.

The diesel fuel injector changes will occur dockside at WETA's vessel maintenance facilities or at shipyards depending on other maintenance schedules. The fuel injector changes will take between two and three days per engine. Following all preventative maintenance engine work the vessels will undergo a complete sea trial to prove the maintenance actions.

Scope of Work and Proposed Schedule
In order to accomplish the necessary services in a way that preserves factory warranties, an authorized MTU service dealer is required to provide parts, labor, materials, testing, and commissioning. The necessary preventative maintenance is scheduled to occur throughout Fiscal Year 2023-2024 at times that minimize impacts to service schedules.

Sole Source Discussion
There is a sole source justification to award these engine maintenance services to PPG as it is the only available MTU certified dealer can accomplish the scope of work needed to preserve important factory warranties. MTU has confirmed that PPG is currently the sole factory-assigned dealership available to WETA for the provision of MTU engines, parts, and services.

PPG is well qualified to carry out this project as it has the requisite technical application experience with these engine models in terms of inspections, service, repairs, injector changes, and mid-life engine overhauls; and it has a large workforce of seasoned and experienced mechanics qualified on MTU 2000 and 4000 series engines. Further, PPG has the unique ability to provide the requisite on-site labor resources to complete the engine overhauls in the shortest possible timeframes in support of WETA vessel operating schedules.

PPG has provided main propulsion engine purchase and service support for WETA on several vessel procurement and repower projects in the past, including new construction of *Hydrus* Class, *Pyxis* Class, and *Dorado* Class vessels. PPG performs ongoing service and repair to WETA's vessels and is also the factory-assigned representative to provide sales, service, and repair for Golden Gate Ferry vessels in the San Francisco Bay Area.

Staff analyzed PPG's price proposal and find it to be fair and reasonable. PPG's pricing is within 3% of WETA's independent cost estimate, see attachment A; and the price is in alignment with historical engine mid-life overhaul and injector change services on these families of engines.

The recommended contract authorization amount of $1,484,577 includes a base award for engine overhaul work, transportation, testing, and sea trials. It is the nature of work on vessels that a need for unanticipated work is sometimes only discovered after work commences. Staff therefore recommends establishing a 20% contingency for this contract in the amount of $303,423. Table 1 below outlines the allocation of the contract amount plus estimated contingency to each vessel—note however that the contingency amount may vary for each vessel:

Table 1

Mare Island	QL3	$	658,529.00
Carina	QL3	$	432,285.00
Bay Breeze	QL1	$	33,472.00
Cetus	QL1	$	121,839.00
Hydrus	QL1	$	121,839.00
Dorado	QL1	$	116,613.00
Contingency		$	303,423.00
Total		$	1,788,000.00

In accordance with the above analysis, staff has determined that this procurement meets the requirements for sole source procurement under federal regulations and as set forth in the

WETA Administrative Code Section 502.2(E), which allows the agency to procure items non-competitively when there is only a single source of supply available or only one contractor is qualified to provide the service or product. Because PPG is the only MTU certified dealer can accomplish the scope of work needed to preserve important factory warranties, a competitive bidding process would serve no useful purpose for this procurement.

Fiscal Impact

The Main Engine Work for these six vessels are included in the FY 2023/2024 Capital Budget with a total project budget (including management of the project) of $1,866,000. The Project is funded 80% through Federal State of Good Repair Funds with matching funds through RM1. Sufficient funds are included in the project budget to support the award of this contract.

END

Engineer's - Independent Cost Estimate - Contract 23-011

Total ICE	**$ 1,517,000**	
Base Contract Awarded	**$ 1,484,577**	
Tolerance	**-2.14%**	**over (less than) the ICE**

12V4000 M64 QL3's

BASIS: Labor Hour Estimates and Proposed Parts List

Labor	400	hours	2 techs for 2.5 weeks @ straight time/engine
Labor Rate	250	$/hr	
Labor Cost per Vessel	100,000		
Parts Cost + Tax	335,000	total	
Drydock Labor Inefficiency	0%		
Estimated Cost for CARINA Top-End Overhauls	**435,000**		

16V4000 M73 QL3's

BASIS: Labor Hour Estimates and Proposed Parts List

Labor	800	hours	2 techs for 5 weeks @ straight time/engine
Labor Rate	250	$/hr	
Labor Cost per Vessel	200,000		
Parts Cost + Tax	480,000	total	
Drydock Inefficiency	0%		
Estimated Cost for MARE ISLAND Top-End Overhauls	**680,000**		

12V4000 M64 Injector Changes

Labor	40	hours	1 tech for 1 week @ straight time
Labor Rate	250	$/hr	
Labor Cost per Vessel	10,000		
Injector Cost + Tax	4,000	each	
Injectors per Vessel	24		
Drydock Labor Inefficiency	10%		
Total Cost Estimate for CETUS & HYDRUS Injector Service	**107,000**		

16V2000 M70 Injector Change

Labor	24	hours	1 tech for 3 days @ straight time
Labor Rate	250	$/hr	
Labor Cost per Vessel	6,000		
Injector Cost + Tax	4,000	each	
Injectors per Vessel	16		
Total Cost Estimate for BAY BREEZE Injector Service	**70,000**		

12V4000 M65L Injector Changes

Labor	40	hours	1 tech for 1 week @ straight time
Labor Rate	250	$/hr	
Labor Cost per Vessel	10,000		
Injector Cost + Tax	4,500	each	
Injectors per Vessel	24		
Total Cost Estimate for DORADO Injector Service	**118,000**		

SAN FRANCISCO BAY AREA WATER EMERGENCY TRANSPORTATION AUTHORITY

RESOLUTION NO. 2023-28

APPROVE SOLE SOURCE CONTRACT AWARD TO PACIFIC POWER GROUP, LLC FOR MAIN ENGINE PREVENTATIVE MAINTENANCE SERVICES

WHEREAS, WETA has identified the need for the maintenance and mid-life overhaul of main propulsion engines and diesel fuel injectors on the ferry vessels MV *Carina*, *Cetus, Hydrus, Bay Breeze, Dorado*, and *Mare Island* in order to remain in compliance with the preventative maintenance schedules for these engines; and,

WHEREAS, WETA has determined that Pacific Power Group, LLP (PPG) is the MTU factory-assigned dealership for the sales, parts, and service of MTU Series 2000 and 4000 engines in the Bay Area region, and hence is the only firm able and qualified to perform the needed services; and,

WHEREAS, WETA has determined that engaging PPG to perform the needed services meets the requirements for a sole source procurement under federal regulations and as set forth in WETA's Administrative Code; and

WHEREAS, WETA has conducted an analysis of PPG's proposed price and determined it to be fair and reasonable; now, therefore, be it

RESOLVED, that the Board of Directors hereby approves entering into an agreement with Pacific Power Group, LLP for the necessary preventative maintenance services in an amount up to $1,484,577; and be further

RESOLVED, that the Board of Directors establishes a contract contingency in the amount of $303,423; and be it further

RESOLVED, that the Board of Directors authorizes the Executive Director to execute the agreement with PPG and take any other required actions to support this work.

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 July 13, 2023.

YEA:
NAY:
ABSTAIN:
ABSENT:

____

/s/ Board Secretary
2023-28
END

AGENDA ITEM 11
MEETING: July 13, 2023

MEMORANDUM

TO: Board Members

FROM: Seamus Murphy, Executive Director
Kevin Connolly, Manager, Planning & Development
Michael Gougherty, Principal Planner
Gabriel Chan, Transportation Planner

SUBJECT: Adopt WETA FY 2024-2028 Regional Measure 3 Five-year Operating Plan

Recommendation

Adopt the *WETA Fiscal Year 2024-2028 Regional Measure 3 Five-year Operating Plan* in compliance with Regional Measure 3 (RM3) operating assistance funding requirements.

Background

RM3 requires that WETA adopt a plan that includes systemwide and route-specific performance measures related to fare-box recovery, ridership, and any other measures deemed appropriate by WETA. Such a plan is a necessary step toward a supplemental agreement to the Master Funding Agreement between WETA and MTC that will establish a five-year plan for funding WETA's ferry services. In accordance with these requirements, WETA has developed a Five-Year Operating Plan (5YOP) that defines the enhancement and expansion of the ferry system using operating funds available to WETA through the RM3 program. WETA intends to update this plan on an annual basis to reflect evolving project timeframes and service levels. This first installment covers fiscal year (FY) 2024 through 2028 and closely adheres to the recently adopted WETA 2022 Short-range Transportation Plan (SRTP). Other plans and studies that inform the 5YOP include the WETA Strategic Plan (2016), Plan Bay Area 2050, and draft work from the in-process 2050 Service Vision and Business Plan project.

Discussion

The plan assumes the continuation of WETA's Pandemic Recovery Program – an enhanced and expanded service plan paired with fare reductions put into operation in July 2021. The intent of the Pandemic Recovery Program was to attract riders back to the ferry system while at the same time appealing to new riders and the public with service that departed from the pre-pandemic peak-period orientation of ferry service. Also, in acknowledgement of the ferry system's limited ridership profile (mainly higher income San Francisco office workers), the Pandemic Recovery Program lowered fares by up to 40 percent on some routes, providing an even footing with parallel transit services and breaking down price as a barrier to riding the ferry. After nearly two years, the Pandemic Recovery Program has set WETA on a positive trajectory as ridership has outpaced other regional operators measured against pre-pandemic levels.

In addition to continuing the enhancement and expansion of ferry services established in the Pandemic Recovery Program, the 5YOP assumes the development and implementation of key expansion projects for the ferry system. New services along the San Francisco waterfront will be made possible by a new terminal on Treasure Island and the opening of a permanent terminal at 16th Street in San Francisco's Mission Bay neighborhood. An all-electric service between Berkeley and San Francisco will be introduced after a new recreational pier and ferry terminal is constructed in the Berkeley Marina. Finally, service to and from Redwood City from both Oakland and San Francisco will offer ferry access to the mid-Peninsula region providing a valuable linkage from two of the Bay Area's largest cities to the office locations of several technology employers.

As with the region's other transit agencies, WETA faces a challenge in adjusting to a reliance on high farebox recovery rates driven by the pre-pandemic model of peak period focused ridership and premium fares. Unlike many other agencies, WETA can benefit from two developments that will enable a more fiscally sustainable service moving forward.

First, the infusion of RM3 operating revenues will allow WETA to continue the policy goals envisioned in the Pandemic Recovery Program by replacing federal COVID Relief funds used for operations. This new source will help maintain existing services that have been successful in attracting new riders to the ferry. Since the initiation of the Pandemic Recovery Plan, ridership on the system has increased 55 percent.

The second development is the rapid introduction of zero-emission battery-electric power to the ferry fleet. Ultimately, the move to battery-electric power will reduce operating expenses by approximately 20 percent for much of the WETA network. Funding the shoreside power, battery-equipped floats and battery-electric vessels will require approximately $143 million in RM3 capital funding. That local investment will be paired with almost $100 million in state and federal funds secured to date.

Funding opportunities for the conversion of greenhouse gas-emitting transportation uses to climate-friendly technologies are increasingly available at the regional, state and federal level. WETA will be aggressively pursuing these opportunities. In addition, technology is advancing at a rapid pace and as technology improves and becomes more prevalent, costs decrease. The current estimate to convert most of the WETA system to battery electric power will be balanced as a result. The 5YOP will be renewed every year, allowing for an annual recalibration of the zero-emission effort.

While the service plan and capital improvements contribute to a vision of a future expanded and enhanced ferry service, the likelihood will be that plans and projects will evolve. Service will also adjust over time as demand shifts with a regional economy still in flux. Without a return to ridership levels approaching those in the pre-pandemic era, there will have to be modifications to ensure cost-effective services both for existing and new candidate ferry services. The 5YOP will be renewed on an annual basis to document this changing service delivery dynamic.

<u>Plan Overview</u>

The *WETA FY 2024-2028 Regional Measure Three Five-year Operating Plan* consists of four primary sections and two appendices:

1) Executive Summary
2) Plan Overview
3) Current Service Profile FY24
4) Future Service Profile & Assumptions

Appendix A: Detailed RM3 Expenditures and Funding
Appendix B: WETA RM3 Performance Measures

Key assumptions for the future service profile include the following:

1. Operating levels and expenses in FY24 are consistent with WETA's FY24 Budget
2. Ridership grows at 3-5% annually
3. Overall operating expenses increase at 3% annually
4. RM3 operating funds are reduced per MTC guidance in FY 24-25 and equal $35 million beginning in FY26
5. WETA maximizes the use of other operating revenue sources (RM2, RM1, TDA) prior to accessing RM3 operating funds
6. An estimated reserve account balance of approximately $60 million will be available based on MTC guidance
7. Service expansion is consistent with Plan Bay Area 2050 and the most recent WETA Short Range Transit Plan (SRTP), including:
    a. San Francisco REEF service linking Treasure Island, San Francisco Ferry Building, and a new Mission Bay ferry landing starting in FY27
    b. Berkeley ferry service to San Francisco starts in FY28
8. WETA maintains a $2.7 million set-aside for pilot projects and services in FY24 and allocates additional budget in subsequent years
9. Conversion to battery electric vessels results in a 20% reduction in operating expenses
10.

The *WETA FY 2024-2028 Regional Measure Three Five-year Operating Plan* is included as Attachment A.

<u>Fiscal Impact</u>
There is no fiscal impact associated with this action item as the 5YOP plan is consistent with the proposed FY2023-24 WETA budget.

END

Attachment A – *Regional Measure Three Five-year Operating Plan FY 2024-2028*

San Francisco Bay Ferry
A SERVICE OF WETA

REGIONAL MEASURE 3
5-YEAR OPERATING PLAN
FY 2024-2028

May 24, 2023

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Executive Summary

Regional Measure Three (RM3) requires a Five-year Operating Plan (5YOP) that defines the enhancement and expansion of the ferry system using operating funds available to the Water Emergency Transportation Authority (WETA) through the RM3 program. WETA intends to update this plan on an annual basis as projects and service levels are constantly changing to meet Bay Area transportation needs. This first installment covers fiscal year (FY) 2024 through 2028 and closely adheres to the recently adopted WETA 2022 Short Range Transit Plan (SRTP). Other plans and studies that inform the 5YOP include the WETA Strategic Plan (2016), Plan Bay Area 2050, and draft work from the in-process 2050 Service Vision and Business Plan project.

The plan assumes the continuation of WETA's Pandemic Recovery Program (PRP) – an enhanced and expanded service plan paired with fare reductions put into operation in July 2021. The intent of the PRP was to attract riders back to the ferry system while at the same time appealing to new riders and the public with service that departed from the pre-pandemic peak-period orientation of ferry service. Also, in acknowledgement of the ferry system's limited ridership profile (mainly higher income San Francisco office workers), the PRP lowered fares by up to 40 percent on some routes, providing an even footing with parallel transit services and breaking down price as a barrier to riding the ferry. After nearly two years, the PRP has set WETA on a positive trajectory as ridership has outpaced other regional operators measured against pre-pandemic levels.

In addition to continuing the enhancement and expansion of ferry services established in the PRP, the 5YOP assumes the development and implementation of key expansion projects for the ferry system. New services along the San Francisco waterfront will be made possible by a new terminal on Treasure Island and the opening of a permanent terminal at 16th Street in San Francisco's Mission Bay neighborhood. An all-electric service between Berkeley and San Francisco will be introduced after a new recreational pier and ferry terminal is constructed in the Berkeley Marina. After FY28, service to and from Redwood City from both Oakland and San Francisco will offer ferry access to the mid-Peninsula region providing a valuable linkage from two of the Bay Area's largest cities to the office locations of several technology employers.

As with the region's other transit agencies, WETA faces a challenge in adjusting to a reliance on high farebox recovery rates driven by the pre-pandemic model of peak period focused ridership and premium fares. Unlike many other agencies, WETA can benefit from two developments that will enable a more fiscally sustainable service moving forward.

First, the infusion of RM3 operating revenues will allow WETA to continue the policy goals envisioned in the PRP by replacing federal COVID Relief funds used for operations. This new source will help to keep fares consistent with other regional operators (consistent with WETA Fare Policy) and continue to attract new riders to the ferry. Since the initiation of the PRP, ridership on the system has increased 55 percent.

The second development is the rapid introduction of zero-emission battery-electric power to the ferry fleet. Ultimately, the move to battery-electric power will reduce operating expenses by approximately 20 percent for much of the WETA network. Funding the shoreside power, battery-equipped floats and battery-electric vessels will require up to $143 million in RM3 capital funding through FY2035. That local investment will be paired with almost $100 million in state and federal funds secured to date. The ability to reduce operating expenses will more than pay for this initial investment over time.

Funding opportunities for the conversion of greenhouse gas-emitting transportation uses to climate-friendly technologies are available at the regional, state and federal level. WETA will be aggressively pursuing these opportunities. In addition, technology is advancing at a rapid pace and as technology improves and becomes more prevalent, costs decrease. The current estimate to convert most of the WETA system to battery electric power will almost surely come down as a result. Fortunately, the 5YOP will be renewed every year, allowing for an annual recalibration of the zero-emission effort.

While the service plan and capital improvements contribute to a vision of a future expanded and enhanced ferry service, the likelihood will be that plans and projects will change. Service will also adjust over time as demand shifts with a regional economy still in flux. Without a return to ridership levels approaching those in the pre-pandemic era, there will have to be modifications to ensure cost-effective services both for existing and new candidate ferry services. The 5YOP will be renewed on an annual basis to document this changing service delivery dynamic.

Plan Overview

The WETA FY2024-FY2028 Regional Measure Three Five-Year Operating Plan (5YOP) is based on the recently published WETA FY2024-FY2028 Short-range Operating Plan (SRTP). The 5YOP assumes one scenario for a future operation, unlike the four alternative futures covered in the SRTP. That scenario assumes a gradual increase in ridership consistent with recent growth and the continuation of service and fares established in WETA's PRP and reaffirmed in the recent Five-year Fare Program.

The 5YOP also assumes ferry expansion consistent with the recent SRTP and Plan Bay Area 2050 with some adjustments for delivery dates.

Current Service Profile FY24

Overview

WETA operates six regional routes—Alameda & Oakland, Alameda Seaplane, Harbor Bay, Vallejo, Richmond, and South San Francisco. The Alameda Seaplane, Harbor Bay, and South San Francisco routes are weekday-only services. In addition to regional routes, WETA continues to offer short hop services between Vallejo & Mare Island, Alameda Main Street and Oakland, and on weekends between Downtown San Francisco and Pier 41. WETA also operates special event service to Oracle Park and Chase Center.

The WETA Board approved a five-year fare program in March 2023 that will take effect starting in July 2023. The fare program continues the existing fare established as part of the PRP but introduces annual adjustments for inflation. WETA is a participant in the Clipper START program as well as the pilot Bay Pass program and also offers free or discounted transfers to bus services at many of its origin terminals.

Service and Ridership by Route

Alameda Main St. & Oakland

Terminals	**Service Hours**	**Total Transit Time**	**Typical Vessel Capacity**	**Total Ridership FY22**
Oakland Alameda Main St. Downtown San Francisco Ferry Terminal	Weekdays: 6:30am – 9:10pm Weekends: 8:30am – 9:40pm	40 minutes	400	479,196

Alameda Seaplane

Terminals	Service Hours	Total Transit Time	Typical Vessel Capacity	Total Ridership FY22
Alameda Seaplane Lagoon Downtown San Francisco Ferry Terminal	Weekdays: 6:30am – 10:20pm	20 minutes	400	145,786

Harbor Bay

Terminals	Service Hours	Total Transit Time	Typical Vessel Capacity	Total Ridership FY22
Alameda Harbor Bay Downtown San Francisco Ferry Terminal	Weekdays: 6:30am – 6:40pm	25 minutes	330	113,207

Vallejo

Terminals	Service Hours	Total Transit Time	Typical Vessel Capacity	Total Ridership FY22
Mare Island Vallejo Downtown San Francisco Ferry Terminal	Weekdays: 5:15am – 8:00pm Weekends: 9:00am – 8:50pm	60 minutes	445	484,686

Richmond

Terminals	Service Hours	Total Transit Time	Typical Vessel Capacity	Total Ridership FY22
Richmond Downtown San Francisco Ferry Terminal	Weekdays: 6:30am – 8:25pm Weekends: 9:50am – 8:10pm	35 minutes	400	158,986

South San Francisco

Terminals	Service Hours	Total Transit Time	Typical Vessel Capacity	Total Ridership FY22
Alameda Main St. Oakland South San Francisco	Weekdays peak only: 6:05am – 8:00am; 3:20pm – 5:20pm	60 minutes	225	24,075

Fare Chart (effective July 1, 2023)

	Alameda Seaplane	Alameda/ Oakland	Alameda Harbor Bay	South San Francisco	Vallejo	Richmond	Short Hop[2]
One-Way (Clipper/Mobile Ticket/Paper Ticket)	Standard	Standard	Standard	Standard	Standard	Standard	Standard
Adult	\$4.60	\$4.60	\$4.60	\$7.00	\$9.30	\$4.60	\$1.00
Youth (5-18 yrs.)	\$2.30	\$2.30	\$2.30	\$3.50	\$4.60	\$2.30	\$0.50
Senior/Disabled/Medicare (65+ valid ID) [1]	\$2.30	\$2.30	\$2.30	\$3.50	\$4.60	\$2.30	\$0.50
Children (under 5 with paying adult)	Free	Free	Free	Free	Free	Free	Free
School Groups [3]	\$1.80	\$1.80	\$1.80	\$2.75	\$3.60	\$1.80	N/A
Oracle Park/Chase Center Event Services (one-way)	No Service	Special [4]	No Service	No Service	Special [5]	No Service	No Service
Adult	N/A	\$10.50	N/A	N/A	\$18.25	N/A	N/A
Youth (5-18 yrs.)	N/A	\$8.00	N/A	N/A	\$13.50	N/A	N/A
Senior/Disabled/Medicare (65+ valid ID) [1]	N/A	\$8.00	N/A	N/A	\$13.50	N/A	N/A
Children (under 5 with paying adult)	N/A	Free	N/A	N/A	Free	N/A	N/A

1. Seniors, persons with disabilities and Medicare cardholders may ride at a discount if they hold a Regional Transit Connection Discount Card, Medicare card, DMV Disabled Placard ID, or proof of age 65 or older..
2. One-way between Oakland and Alameda or between the SF Ferry Building and Pier 41 or between Mare Island and Vallejo.
3. School groups must reserve tickets in advance at www.sanfranciscobayferry.com/school-groups
4. Service between Oracle Park and Alameda-Oakland. Also, service between Chase Center and Alameda-Oakland began in October 2019.
5. Service between Oracle Park and Vallejo. There is no service between Chase Center and Vallejo.

Future Service Profile & Assumptions

System Enhancement and Expansion

WETA's capital program continues to move forward over the next five years with many significant growth milestones. The agency plans to open four new ferry terminals at Treasure Island (FY2027), Mission Bay (FY2027), Berkeley (FY2028), and Redwood City (FY2029) and expand the fleet from 16 to 26 vessels by FY29.

Future Service Assumptions

At this time, WETA is assuming the following for its future service (expenditure details in Appendix A):

1) Operating levels and expenses in FY24 are consistent with WETA's FY24 Budget
2) Ridership grows at 5% annually for the first two years of the plan and 3% annually after that.
3) Overall operating expenses increase at 3% annually
4) RM3 operating funds ramp up to $35 million by FY26
5) WETA maximizes the use of other operating revenue sources (RM2, RM1, TDA) prior to accessing RM3 operating funds
6) A reserve account balance of $60 million is available based on RM3 revenues collected from January 2019 to June 2023
7) Service expansion is consistent with Plan Bay Area 2050 and the most recent WETA Short Range Transit Plan (SRTP), including:
    a. San Francisco REEF service linking Treasure Island, San Francisco Ferry Building, and a new Mission Bay ferry landing starting in FY27
    b. Berkeley ferry service to San Francisco starts in FY28
8) WETA maintains a $2.7 million set-aside for pilot projects and services in FY24.
9) On services WETA converts to battery electric vessels, operating expenses are 20% lower

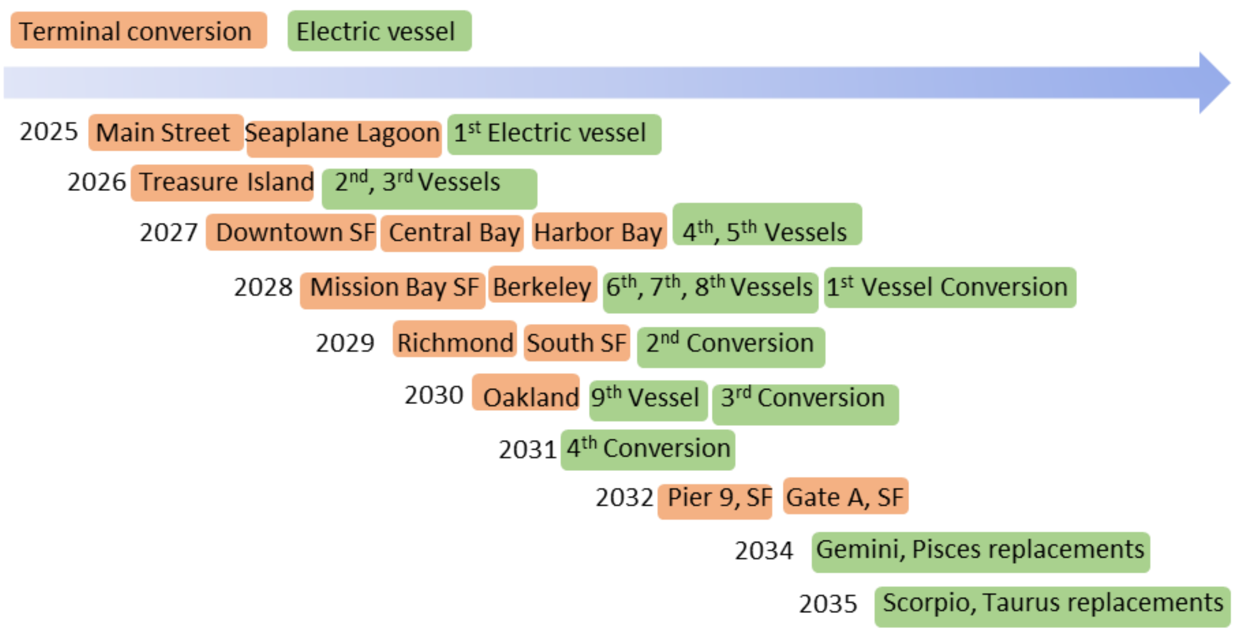
Battery Electric Ferry Conversion

WETA is pursuing an aggressive development strategy to bring battery-electric power to WETA facilities combined with the purchase of new vessels and conversion of existing vessels. Following the recommendations of two recent studies, the development strategy centers on a phased approach starting with near-term opportunities in the central bay region of San Francisco, Alameda and Oakland. Expansion to mid-range terminals in Richmond, South San Francisco and Harbor Bay will follow in Phase II. Long-range services are not viable for battery-electric power given the anticipated evolution of battery-electric technology. Another technology will have to emerge for services over 30 miles in length. However, by 2030, the plan envisions zero-emission operations in every WETA service with the exception of Vallejo and Redwood City.

WETA has already secured almost $100 million in grant funding from state and federal sources towards shoreside infrastructure, battery-equipped floats and both new and converted vessels. That funding will be paired with RM3 capital funds to deliver the improvements necessary to transition eight of the ten WETA services anticipated to be in operation by 2030. The services scheduled for transition to all-electric operations are: Alameda-Oakland, Alameda Seaplane, Harbor Bay, South San Francisco, Richmond, Berkeley and the San Francisco waterfront (Treasure Island, Mission Bay). New battery-powered vessels and the conversion of existing vessels will enable zero-emission operations to be introduced on an aggressive schedule. In addition, as vessels age out of the fleet, they will be replaced by new electric vessels.

Figure 1.0 below presents the anticipated schedule of vessel procurements, vessel conversions and shoreside improvements necessary to deliver zero-emission operations by 2030.

Figure 1.0 WETA Battery-electric Ferry Improvement Program



Conclusion

WETA has established a robust and aggressive expansion and service enhancement plan for the next five years—consistent with the goals of the RM3 legislation that voters approved in 2018. The $300 million in RM3 capital funds will advance projects like electrification and the construction of new terminals across the region. This will allow WETA to advance the Bay Area as a region towards its access, mobility, equity, and environmental goals. It also gives the agency leverage when pursuing competitive funding opportunities at the state and federal levels. For operations, WETA will be able to continue offering high quality service as well as launch planned new routes with the $35 million in annual operating RM3 funds.

WETA will revisit the plan annually and ensure that operating funds are spent efficiently. As travel behavior continues to change in the years after the pandemic, the agency remains flexible in its service offerings and will work with MTC to make adjustments as needed.

Appendix A. RM3 Expenditures and Funding

RM3 Expenditure Plan	FY24	FY25	FY26	FY27	FY28
Operating	$ 8,768,288	$ 28,121,504	$ 30,072,573	$ 32,068,614	$ 33,801,396

RM3 Transfer to Reserve	$ 12,909,792	$ (0)	$ 4,927,427	$ 2,931,386	$ 1,198,604
Operating Reserve Account	$ 60,047,971	$ 72,957,763	$ 72,957,763	$ 77,885,190	$ 80,816,576

Operating Expenditures	FY24	FY25	FY26	FY27	FY28
Harbor Bay	$ 5,551,112	$ 5,717,645	$ 5,889,175	$ 4,852,680	$ 4,998,260
Alameda Seaplane	$ 6,706,150	$ 6,907,335	$ 5,691,644	$ 5,862,393	$ 6,038,265
Oakland/Alameda	$ 13,104,288	$ 13,497,417	$ 13,902,339	$ 14,319,409	$ 11,799,193
Richmond	$ 10,217,560	$ 10,524,087	$ 10,839,809	$ 11,165,004	$ 11,499,954
SSF	$ 4,970,225	$ 5,119,332	$ 5,272,912	$ 5,431,099	$ 5,594,032
Vallejo	$ 21,194,950	$ 21,830,799	$ 22,485,722	$ 23,160,294	$ 23,855,103
Treasure Island	$ -	$ -	$ -	$ 3,676,106	$ 3,786,389
Mission Bay	$ -	$ -	$ -	$ 2,529,663	$ 2,605,553
Berkeley	$ -	$ -	$ -	$ -	$ 5,756,540
Redwood City	$ -	$ -	$ -	$ -	$ -
Planning & Administration	$ 3,945,194	$ 4,063,550	$ 4,185,456	$ 4,311,020	$ 4,440,351
Pilots	$ 2,737,741	$ 2,000,000	$ 4,500,000	$ 4,635,000	$ 4,774,050
Annual Operating Expenses	**$ 68,427,220**	**$ 69,660,163**	**$ 72,767,057**	**$ 79,942,668**	**$ 85,147,690**

Operating Revenues	FY24	FY25	FY26	FY27	FY28
Fare Revenue	$ 12,707,852	$ 13,743,542	$ 14,863,641	$ 17,371,528	$ 20,885,547
Federal COVID Relief Funds	$ 20,214,365				
RM2 - Operating	$ 13,999,000	$ 15,300,000	$ 15,300,000	$ 15,300,000	$ 15,300,000
RM2 - Planning & Admin	$ 3,000,000	$ 3,000,000	$ 3,000,000	$ 3,000,000	$ 3,000,000
Measure J	$ 3,761,720	$ 3,807,450	$ 3,845,380	$ 3,874,238	$ 3,892,601
STA Operating Assistance	$ 3,238,254	$ 3,687,667	$ 3,435,464	$ 3,538,528	$ 3,644,683
Treasure Island Service	$ -	$ -	$ -	$ 2,472,260	$ 2,236,437
Other (Pilots, etc.)	$ 2,737,741	$ 2,000,000	$ 2,250,000	$ 2,317,500	$ 2,387,025
RM3	$ 8,768,288	$ 28,121,504	$ 30,072,573	$ 32,068,614	$ 33,801,396
Total Annual Operating Revenues	**$68,427,220**	**$69,660,163**	**$72,767,057**	**$79,942,668**	**$85,147,690**

Farebox Recovery Ratio	21%	22%	23%	24%	28%

Appendix B. RM3 Performance Measures For Ferry Operating Projects

The RM3 performance measures detailed in this proposal should be viewed as interim measures that may evolve in a future fiscal year to include additional focus areas and specific numeric targets, where appropriate. WETA and MTC will monitor ferry performance using the interim measures until MTC's Policies and Procedures manual is revised to develop permanent performance measure not just for ferry but the other recipients of RM3 operating funds as well.

The objective in establishing performance measures is to ensure that RM3 operating dollars are directed toward services that are financially well-managed, aligned with regional policies, and effective at meeting customer needs. Given that the three components of the RM3 operating program have varying market demands and policy goals, different performance measures apply.

Recipients shall report progress toward performance measures through their annual Operating Agreements. In the interim, performance shall be measured in terms of year-to-year improvement. In the future, the RM3 Policies and Procedures manual may be revised to adopt numeric performance targets against which performance would be measured. In the case of WETA's Ferry Network, performance shall be measured on a systemwide basis and on an individual route level for expansion routes funded by RM3.

Recipients shall have five years following the establishment of performance measures to meet the standards set for RM3 operating projects. If sponsors have not met the adopted performance measure targets by the close of this period, MTC and project sponsors will take steps as outlined in the RM3 Policies and Procedures. Potential responses include extending the time frame allotted to meet performance measures, revising performance measures, or developing new marketing programs.

For the purposes of RM3 operating program performance measures, the following definitions of terms shall apply:

1. Ridership: ridership shall be measured as change in boardings (total of all adult, youth and student, senior and disabled, inter-operator paid transfer, and non-revenue boardings) on the WETA network .
2. Farebox recovery: farebox recovery shall be defined as the ratio of fares collected to the total operating costs. Operating costs are defined as the fully allocated cost for providing service . Operators may adjust fare revenues for discounted products (e.g., youth fares, senior fares, multi-ride passes, etc.) to the Clipper standard one-ride fare for the purposes of this calculation.
3. Operating cost: operating cost shall be quantified as the fully loaded operating cost, unless an alternative methodology is approved by MTC staff. Fully loaded operating cost is defined as the hourly operating rate that includes both direct and indirect costs. The total service cost shall include both revenue and non-revenue hours for the segment or route/s receiving funds.

WETA Ferry System Performance Measures

Performance Measure	Performance Target
1. Farebox recovery ratio	Greater than or equal to prior year (yes/no)
2. Passengers per total hour	Greater than or equal to prior year (yes/no)
3. Percent of trips departing on-time	Greater than or equal to prior year (yes/no)
4. Percent of missed trips	Less than or equal to prior year (yes/no)

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SAN FRANCISCO BAY AREA WATER EMERGENCY TRANSPORTATION AUTHORITY

RESOLUTION NO. 2023-29

ADOPT WETA FY 2024-2028 REGIONAL MEASURE THREE FIVE-YEAR OPERATING PLAN

WHEREAS, Bay Area voters approved Regional Measure 3 (RM3) in June, 2018, which authorized an additional $3.00 toll increase to fund, in part, WETA's operating program; and

WHEREAS, the Metropolitan Transportation Commission (MTC) is responsible for funding operating assistance eligible for RM3 funds; and

WHEREAS, to be eligible for RM3 operating assistance, WETA must adopt a plan that includes systemwide and route-specific performance measures related to fare-box recovery, ridership, and any other measures deemed appropriate by WETA; and

WHEREAS, such a plan will form the basis for a required supplemental agreement to the Master Funding Agreement between WETA and MTC that will establish a five-year plan for funding WETA's ferry services; and

WHEREAS, at a public meeting on July 13, 2023, WETA staff presented to the Board a proposed Five-Year Operating Plan that complies with all RM3 requirements; now, therefore, be it

RESOLVED, that the Board of Directors hereby adopts the Regional Measure Three Five-year Operating Plan in compliance with RM3 operating assistance funding requirements.

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 July 13, 2023.

YEA:
NAY:
ABSTAIN:
ABSENT:

/s/ Board Secretary
2023-29
END

AGENDA ITEM 12
MEETING: July 13, 2023

MEMORANDUM

TO: Board Members

FROM: Seamus Murphy, Executive Director
Kevin Connolly, Planning & Development Manager
Michael Gougherty, Principal Planner
Arthi Krubanandh, Transportation Planner

SUBJECT: Update on Institutional/Employer Pass Pilot Program

Recommendation
There is no recommendation associated with this informational item.

Background/Discussion
In January 2020, upon WETA's invitation, MTC staff presented an overview of the Fare Coordination and Integration Study (FCIS) which was launched by the Bay Area's transit operators and the Metropolitan Transportation Commission (MTC). The study, co-managed by staff from BART and MTC, was launched with the intent to identify changes to the Bay Area's transit fare policies that will improve the passenger experience and grow transit ridership. The study was closely collaborated with a Staff Working Group from Bay Area transit operators, including WETA. Study oversight was provided by the Fare Integration Task Force, consisting of the members from Clipper Executive Board, Bay Area County Transportation Authorities, and small transit operator representatives.

In December 2021, WETA received an update on the outcomes of the study that included recommended near-term pilot program and long-term fare policy initiatives. The Board communicated an interest in expanding the program to a larger volume of participants, and in understanding the program's impact on ridership and revenue. WETA staff continues to advocate for these goals with the project staff and other transit members of the staff working group.

The first and near-term pilot is the launch of an all-transit agency institutional/employer pass. The pilot is carried out in two phases and is implemented on Clipper (Clipper BayPass). MTC and BART are the lead agencies for program administration and the Title VI process.

Phase 1 of the pilot was launched in August 2022 and provides unlimited rides on all participating Bay Area transit systems, including WETA. The participants in Phase 1 pilot are UC Berkeley, San Francisco State University, Santa Rosa Junior College, San Jose State University, and three affordable housing properties in the mid-Peninsula.

As of May 2023, two million Clipper BayPass trips were taken region wide since the launch of the program. The number of trips taken on the WETA system has remained consistent since the program launch (monthly average of 470 trips). MTC is evaluating the performance of the Year 1 pilot and will release the results later this year. The evaluation process includes Clipper trip data and surveys conducted during Year 1.

Phase 2 of the pilot extends to employers within the transit-concentrated locations such as downtown San Jose, San Francisco, and Oakland.

The second phase of the pilot will be rolled out in two stages:

1. The first stage will be a soft launch in late Summer 2023 for up to 3 employers and up to a total of 5,000 employees. Discussion between employers in the immediate vicinity of WETA service areas and MTC has been initiated and is on-going.
2. The second stage will be a full-scale launch in Fall 2023 for up to 7 employers and up to a total of 15,000 employees.

The purpose of a soft launch is for MTC to assess performance by managing the participation volume prior to full-scale launch. Some of the goals of this phase are to improve regional transit ridership, to support climate change goals by reducing vehicle miles traveled, and to serve a broader set of employers beyond traditional office workers. MTC and BART are working on marketing efforts to support the launch of Phase 2.

Upcoming milestones to launch Phase 2 are:

1. MTC will finalize contracts with employers for the soft launch. Contract terms will include pilot duration, and responsibilities of MTC and employers.
2. MTC intends to execute a participation agreement with all participating transit operators. Some of the program parameters outlined in the participating agreement will include the guiding principles, pilot duration, roles and responsibilities, program revenues, and coordination around existing institutional programs.

Funding Plan

MTC has identified approximately $6 million of regional funds targeted toward the two phases of this pilot, with $5.5 million distributed to transit agencies to offset fare revenue risk incurred by the participating transit agencies. The remaining $0.5 million will be utilized for other administrative costs such as support, communications, and Clipper card purchases. Of the $5.5 million, $4.5 million is budgeted to offset impacts associated with Phase 1 and the remaining $1 million is budgeted to offset impacts associated with Phase 2 of the pilot.

Fiscal Impact

MTC will allocate funds to support the pass to transit agencies from funding set aside and committed during the Blue Ribbon Transit Recovery Action plan process. MTC proposes to price Clipper BayPass at revenue neutral or revenue positive levels. MTC will identify additional funds if it is required to manage and evaluate impacts to transit operator revenues.

END