

MEMORANDUM

October 6, 2016

TO: MEMBERS, PORT COMMISSION
Hon. Willie Adams, President
Hon. Kimberly Brandon, Vice President
Hon. Leslie Katz
Hon. Eleni Kounalakis
Hon. Doreen Woo Ho

FROM: Elaine Forbes
Interim Executive Director

SUBJECT: Request Approval of (1) the Lease Disposition and Development Agreement, and (2) the Form of Construction Lease for the duration of construction, both with the San Francisco Bay Area Water Emergency Transportation Authority, and (3) Schematic Drawings, all in connection with the Expansion of the Downtown San Francisco Ferry Terminal Expansion Project located between the Ferry Building and Pier 14 in the Ferry Building Area, including Adoption of California Environmental Quality Act Findings and specific mitigation measures, as stated in the Mitigation Monitoring and Reporting Program

DIRECTOR'S RECOMMENDATION: Approve the Attached Resolution

EXECUTIVE SUMMARY

Port staff requests Port Commission approval of a Lease Disposition and Development Agreement (LDDA) and form of Construction Lease with the San Francisco Bay Area Water Emergency Transportation Authority ("WETA") (collectively, "Transaction Documents") and Schematic Drawings in connection with the expansion of the Downtown San Francisco Ferry Terminal. The project is located between the Ferry Building and Pier 14 in the Ferry Building area. An informational presentation on the proposed Downtown Ferry Terminal Expansion Project (DTFX) was provided during the Port Commission's last meeting on September 27, 2016 and accompanied by a Memorandum dated September 22, 2016.

The Expansion of the Downtown Ferry Terminal will include the addition of two new ferry gates, reconstruction of the existing Gate E, and major enhancements to the passenger waiting area, among other improvements. The project is estimated to cost \$75 million (hard and soft costs). If the LDDA is approved, the Port would be obligated

to fund approximately \$300,000 of the costs – equal to 20% of the rehabilitation costs for Gate E. Funding for this type of rehabilitation is included in the Port’s 2-year budget.

Two key documents will govern WETA’s rights and obligations relative to Port property leading up to and through construction of the DTFX: the LDDA and the Construction Lease. The purpose of the LDDA is to set forth the requirements for the development of the Project and the conditions for delivery of the construction lease to WETA. The LDDA provides WETA with the certainty it needs to invest further in the project.

The LDDA protects the Port because the Port is not obligated to deliver the construction lease unless and until the conditions in the LDDA are satisfied or the Port waives said conditions. After WETA completes construction of the improvements described in the Scope of Development, the Port will issue a Certificate of Completion, which will terminate the LDDA. Port Commission approval of the LDDA is required because it concerns a major development on Port property and sets forth requirements for delivering a long-term lease.

Port and WETA Staff developed a plan that would allow WETA to start construction of the DTFX project next year and open the new facilities for use as early as the end of 2019. The work will be phased to meet the construction windows available for performing “in-water” work. The construction contractor will be required to phase and stage the project in a manner that allows WETA to continue operating its Alameda/Oakland and Alameda Harbor Bay ferry services for the entire duration of the project. Beginning in June 2017, the project includes dredging, demolition and pile driving; new Gate F in 2018; and new Gate E and public plaza in 2019.

If the Port Commission approves the LDDA and Construction lease, staff will return in early 2017 for consideration of a long-term lease with WETA, which will govern operations, maintenance, and capital responsibilities for the water-side and land-side improvements.

STRATEGIC OBJECTIVES

The expansion of the Downtown Ferry Terminal will assist with achieving three Port Strategic Plan goals and objectives:

- Livability: *Work with transportation agency partners to ensure an integrated transportation plan that includes programs to ease traffic congestion along the waterfront and expand public transit – including water taxis and ferries – as well as pedestrian and bicycle access.*
- Resiliency: *Assess all pending and new projects for the effects of rising sea level and ensure appropriate adaptation measures can be implemented.*
- Economic Vitality: *Expand the system of active water berths for visiting commercial, transportation, and recreational vessels.*

BACKGROUND

The Port and WETA have been working together for the past 8 years on a coordinated effort to prepare for the expansion of the Downtown Ferry Terminal. The DTFX builds on previous planning efforts and projects that the Port constructed in the 1990s. These included a comprehensive land use planning process for the Ferry Building area that resulted in renovation of the Ferry Building and construction of the mid-Embarcadero Roadway and construction of the first phase of the Downtown Ferry Terminal project in 2003, which included Gate B located in the North Basin, Gate E located in the South Basin, access areas, and the Pier 14 breakwater.

The purpose of the DTFX is to support and expand ferry service on San Francisco Bay in accordance with City and regional policies to encourage transit use and in furtherance of WETA's Strategic Plan. An informational presentation on WETA's Strategic Plan was provided during the Port Commission's last meeting on September 27, 2016.

The Downtown Ferry Terminal now accommodates six ferry routes serving more than 10,000 passengers with approximately 130 ferry arrivals and departures daily. The Project will add new and rehabilitate ferry gates, improve pedestrian circulation and ferry patron boarding, enhance emergency response capabilities, and accommodate anticipated increases in ferry ridership as new ferry services from downtown San Francisco to Richmond, Treasure Island, and other locations under study are introduced through 2030.

The DTFX will include the following major project components:

- Demolition and removal of Pier 2 (currently red-tagged due to deteriorated condition);
- Dredging of approximately 20,500 cubic yards for the new Gates F and G;
- Construction of new Gates F and G, and reconfiguration and rehabilitation of existing Gate E;
- Construction of a pile supported promenade to access the ferry gates;
- Construction of a new, raised plaza for passenger queuing, staging for emergency response, and for public access; and
- Installation of boarding area amenities including weather protection canopies, ticket machines and fare collection equipment, lighting, and ferry information signs.

Sea Level Rise

The best sea-level-rise science from the National Research Council for the Coasts of California estimate that - for the 50-year life span of the Downtown Ferry Terminal through year 2070 - the high end of the mean projected sea-level rise will be approximately 38 inches. The DTFX will build all new facilities at an elevation to meet this anticipated rise. Currently, Gate E is at an elevation of around 11.8 feet above mean lower low water (MLLW). To meet the projected 50-year sea-level rise, the new gates, the rebuilt Gate E, and pedestrian areas will be reconstructed at 14.5 feet above MLLW. The gates will also be adaptable to address projected sea-level rise beyond year 2070.

Funding

WETA is funding the project through a combination of State and Federal sources. The current construction budget is approximately \$65 million and the total project budget including soft costs is approximately \$75 million.

Regulatory Approvals

As with most Port projects a great deal of complexity is involved in designing the Project and securing the required regulatory approvals. WETA directed preparation of a full EIR/EIS to meet California Environmental Quality Act (CEQA) and National Environmental Policy Act (NEPA) requirements. These documents were completed and certified in October 2014. The following entitlements and approvals were also successfully completed:

- **National Marine Fisheries Service/Fish and Wildlife Service** – Section 7 and Essential Fish Habitat Biological Opinion
- **California Department of Fish and Wildlife** – Incidental Take Permit
- **State Historic Preservation Office** – Section 106 NHPA Consultation
- **City of San Francisco** – Historic Resource Commission
- **Port of San Francisco** – Waterfront Design Advisory Committee and Engineering Peer Review
- **Bay Conservation and Development Commission (BCDC)** – Design Review Board and Engineering Criteria Review Board
- **Dredge Material Management Office** – Suitability Determination
- **San Francisco Bay Regional Water Quality Control Board** – CWA section 401 water quality certification
- **Dredge Material Management Office.** WETA has obtained approval of dredging required to implement the DFTX Project

Permits expected to be finalized by the end of this year include a major BCDC permit, which is scheduled for consideration by BCDC at its November 17, 2016 meeting, and the Army Corps of Engineers permit.

LEASE DISPOSITION AND DEVELOPMENT AGREEMENT (LDDA)

With nearly all approvals completed, WETA is prepared for site construction. Two key documents will govern WETA's rights and obligations relative to the Port and the Port's property leading up to and through construction: the LDDA and the Construction Lease.

The purpose of the LDDA is to set forth the requirements for the development of the Project and the conditions for delivery of the Construction Lease to WETA. The LDDA provides WETA with the certainty it needs to invest further in the procurement of a "Construction Manager At-Risk" through an RFQ process that will commence upon approval of the Transaction Documents by both the WETA Board, (approval of which is being sought at the WETA Board's October 6, 2016 meeting) and the Port Commission. The LDDA protects the Port because the Port is not obligated to grant WETA real property rights to construct the Project unless and until the conditions in the LDDA are satisfied or the Port waives said conditions. Upon WETA's completion of construction

the Port will issue a Certificate of Completion, which terminates the LDDA and the Construction Lease. Port Commission approval of the LDDA is required because it concerns a major development on Port property and sets forth requirements for delivering a long-term lease.

Attachments to the LDDA include 1) the "Scope of Development", which describes the improvements to be constructed; 2) the "Schedule of Performance", which sets forth the deadlines by which the parties are required to act during the construction phase of the Project; and 3) the approved "Schematic Drawings", which depict the proposed improvements. These documents are also attached as Exhibits to this Memorandum.

While the LDDA contains many standard provisions to protect the Port from risks or liability related to construction and from a failure to complete improvements, the LDDA with WETA includes the following key project specific conditions:

- **Good faith negotiations for site boundary changes.** To allow for projects like the seawall improvements, Agricultural Building, Ferry Plaza or others to move forward during the term of the LDDA, the LDDA includes a provision for good faith negotiations to change the boundaries of the site that the Port may initiate.
- **As-is.** Provision noting that WETA will construct improvements on the site in its "as-is" condition; disclaimers include condition of seawall and WETA's acceptance of risks associated with construction on property bayward of the seawall.
- **Construction phasing which limits impacts on ferry operations.** By first constructing the new Gates F and G, WETA will be able to accommodate ferry services that are currently at Gate E.
- **Cost sharing of Gate E.** The Port agrees to fund 20 percent of the cost to rehabilitate (Gate E), with WETA agreeing to fund 80 percent of such costs. The current cost estimate for Gate E rehabilitation is \$1.5 million, with the Port share being \$300,000.

Construction. WETA will oversee the day-to-day management of the DFTX construction and agrees to complete the Improvements as described in the LDDA and within the times described in the Schedule of Performance, attached as Exhibit D to this Memorandum, or within any extension of time that the Port grants.

- **Labor and Contracting Commitments.** WETA will be responsible for procuring and awarding contracts for final design, construction management, and construction of the project, in consultation with Port staff. WETA will execute a Project Labor Agreement (PLA) in conjunction with award of the construction contract and adhere to City contracting requirements as is permissible under federal and local laws. WETA developed the PLA in conjunction with the San Francisco Building & Construction Trades Council (SFBCTC). Port staff, the Contracts Monitoring Division. The Mayor's Office of Economic & Workforce

Development (OEWD), Workforce Compliance Division have reviewed and approved WETA's use of the PLA for the Project.

CONSTRUCTION LEASE

The Construction Lease provides WETA with exclusive rights to the project area to enable WETA to perform its obligations under the terms of the LDDA and construct the Project.

The Construction Lease term will be approximately 36 months (estimated time for construction of the Project) and will terminate upon termination of the LDDA. WETA will not be charged rent during the construction lease term. The Construction lease is expected to be executed by January 31, 2017. The Port may grant extensions to this date if WETA is using reasonably diligent efforts to meet all pre-conditions to lease execution (pre-conditions include final, non-appealable regulatory approvals in place and Port-approval of all construction documents).

Upon completion of the DFTX Project and termination of the LDDA and the Construction Lease, Port and WETA will enter into a long-term lease, which will be presented for the Port Commission's consideration in early 2017.

SCHEDULE AND PHASING

Port and WETA staff developed a plan that will allow WETA to start construction of the DFTX project next year and open the new facilities for use as early as the end of 2019. The work will be phased to meet the construction windows available for performing "in-water" work. Beginning in June 2017, WETA will proceed with its early construction work. This work will include site preparation activities such as dredging, demolition, and pile driving. Upon completion of construction documents for the new deck structure, WETA will undertake the remainder of the project beginning in November 2017. The construction contractor will be required to build the project in phases that allows WETA to continue operating its Alameda/Oakland and Alameda Harbor Bay ferry services for the entire duration of the project. Gate F will be constructed and be operational for this service before Gate E is removed and renovated.

The construction plan includes the following milestones:

- 2017: Mobilization, dredging, demolition, and pile driving;
- 2018: Phase 1 & 2 deck construction, new Gate F operational, Gate E removed from service; and
- 2019: Phase 3 deck construction, Gate E reconstruction and float rehabilitation, new Gate G operational, plaza appurtenances and amenities installed.

POST-CONSTRUCTION – FUTURE LONG-TERM LEASE

A long-term lease will govern the operations phase of the DFTX, specific terms of which are under negotiation between the Port and WETA. The basic framework for the long-term lease agreement is described below as well as in a 2015 Memorandum of Understanding between the Port and WETA. The draft Long-Term lease terms will be summarized in greater detail in early 2017, when Port staff will bring the lease forward for approval.

Property Rights

Upon project completion, ownership of DFTX facilities will be split between the Port and WETA. WETA will own, manage and maintain the waterside berthing facilities up to and including the landside portal/access gates and certain landside facilities built as a part of the DFTX for exclusive WETA use and the Port will own and manage all pile-supported landside facilities beyond the shore side portal gates, which include the passenger access ways and plaza area.

Operation, Maintenance and Capital Expenses

Similar to the allocation of Property Rights among the parties, upon project completion WETA will be responsible for operation, maintenance and capital expenses for all waterside berthing facilities, and the Port will be responsible for operation, maintenance and capital expenses of new landside facilities. The Port agrees to grant WETA rights to access terminal landside facilities on a long-term basis to support operations of regular day-to-day ferry service and to support its mandate to provide emergency response services. The Port shall be responsible for all costs associated with operating and maintaining the landside facilities¹ as will be further defined in the long-term lease.

Summary of Anticipated Business Terms of the Long-Term Lease

There are two key financial terms associated with the Project which will be addressed in the long-term Lease. First, with respect to all new facilities, WETA will construct, own, operate, and maintain the facilities at their sole expense, instead of paying landing fees or rent associated with its use of such facilities. Port staff resources will be minimized and WETA will have direct control over the new facilities, including primary responsibility for scheduling landings and for providing authorization for excursion vessels and event use of berthing facilities. Second, with respect to the one existing facility that is included in the project (Gate E), the Port will transfer ownership and maintenance responsibilities of the facility - in current, as-is condition - to WETA and will also provide 20 percent of the funding required to rehabilitate that facility. The Port will no longer be responsible for the maintenance and repair costs and WETA will be able to incorporate Gate E into the project consistent with the operations and maintenance of Gates F and G. The total cost to rehabilitate Gate E is approximately \$1.5 million today, with the Port's 20 percent share estimated at \$300,000. The long-term lease will also allow the Port to initiate renovation of Gate B with intent of pursuing a similar agreement with WETA for funding and operation and maintenance of that facility.

CEQA

WETA and the Federal Transit Administration ("FTA") have prepared a joint Environmental Impact Statement/Environmental Impact Report ("EIS/EIR," State Clearing House No. 2011032066) that meets requirements of both National Environmental Policy Act ("NEPA") and California Environmental Quality Act ("CEQA"). Because the Project requires other approvals subject to CEQA, several state and local agencies are also responsible agencies under CEQA for the Project including Port, BCDC and the California State Lands Commission. FTA's final NEPA approval, in the

¹ The maintenance costs to the Port associated with the project are estimated to be the equivalent of .5 FTE, or approximately \$75,000 annually.

form of its Record of Decision, was published with the release of the Final EIS/EIR to the public on August 29, 2014. WETA's Board of Directors certified the Final EIS/EIR for the Project on October 2, 2014.

Mitigation Monitoring and Reporting Program (MMRP)

The EIR/EIS also identifies certain mitigation measures that are required to be followed during project implementation, as set forth in the Mitigation Monitoring and Reporting Program ("MMRP"). WETA will be responsible for implementing and in certain instances monitoring the required measures. As a responsible agency under CEQA, the Port is making CEQA findings in Resolution 16-39. The CEQA findings include the agreement by Port to perform/monitor the mitigation measures listed in such resolution, and also listed in the MMRP, attached as Attachment A to such resolution.

- MM CUL-1, Inadvertent Discovery Measures
- MM CUL-2, Treatment of Human Remains
- MM CUL-3, Replacement in Accordance with Secretary of the Interior Standards for Rehabilitation
- MM CUL-4, Plan for Protection Against, and Response to, Inadvertent Damage
- MM CUL-5, Stop Construction if Buried Paleontological Resources Are Discovered
- MM CUL-6, Consultation with Local Agencies Regarding Final Design of Weather Protection Canopies and Secretary of the Interior's Standards for Rehabilitation
- MM HAZ-1, Prepare a Hazardous Materials Management Plan

CONCLUSION AND NEXT STEPS

After several years of planning and design, environmental review, public review, and permit entitlement, construction implementation of an expanded Downtown San Francisco Ferry Terminal is set to begin. If the Port Commission approves the Transaction Documents and Schematic Drawings, WETA will move forward in issuing a RFQ for construction services, and the Port and WETA will work to finalize a long term lease for ferry operations at the Downtown Ferry Terminal.

RECOMMENDATION

Port staff respectfully requests approval of the Transaction Documents and the Schematic Drawings for the Downtown Ferry Terminal Expansion Project, including adoption of CEQA findings and specific mitigation measures, as stated in the MMRP, through authorization of the attached Resolution.

Prepared by: James Hurley, Project Manager
Dan Hodapp, Senior Waterfront Planner

For: Byron Rhett, Deputy Director
Planning and Development

Exhibit A: Scope of Development
Exhibit B: Schematic Drawings
Exhibit C: Schedule of Performance

**PORT COMMISSION
CITY AND COUNTY OF SAN FRANCISCO**

RESOLUTION NO. 16-39

WHEREAS, Charter Section B3.581 empowers the Port Commission with the power and duty to use, conduct, operate, maintain, manage, regulate and control the Port area of the City and County of San Francisco; and

WHEREAS, The Downtown San Francisco Ferry Terminal, which is generally located behind and adjacent on both sides of the Ferry Building, is within Port's jurisdiction; and

WHEREAS, The San Francisco Bay Area Water Emergency Transportation Authority ("WETA") was created by the State of California to develop and operate a regional ferry transit system on San Francisco Bay and to coordinate ferry transit response to regional emergencies; and

WHEREAS WETA currently operates regional ferry services to and from Port facilities under License Agreement #14955 between the Port and WETA permitting WETA to use ferry terminal landings at the Downtown San Francisco Ferry Terminal (Gate B and Gate E) and China Basin (East Berth and West Berth) for the purposes of ferry passenger embarkation and debarkation; and

WHEREAS, The Port and WETA are coordinating efforts on the development of the proposed Downtown San Francisco Ferry Terminal Expansion Project ("Project") to improve facilities at the existing Downtown San Francisco Ferry Terminal; and

WHEREAS, The Project includes construction of two (2) new ferry gates and vessel berthing facilities (new Gates F and G), rehabilitation or replacement of one (1) existing ferry gate and vessel berthing facilities (existing Gate E), pile supported pedestrian circulation areas, amenities such as weather protection canopies, a new pile supported plaza between the Ferry Building and the Agriculture Building for passenger queuing, staging for evacuees in the event of a major emergency, and other Port activities as further described in the Scope of Development and attached to the Memorandum for Agenda Item 10A for the Port Commission meeting of October 11, 2016; and

WHEREAS, The Port, acting as a responsible agency under the California Environmental Quality Act ("CEQA"), hereby adopts the following findings of fact and law under CEQA, and the State CEQA Guidelines in conjunction with its approval of the Transaction Documents and the Schematic Drawings of the proposed Project, as described in more detail below:

A. WETA and the Federal Transit Administration (“FTA”) have prepared a joint Environmental Impact Statement/Environmental Impact Report (“EIS/EIR”, State Clearing House No. 2011032066) that meets requirements of both National Environmental Policy Act (“NEPA”) and CEQA. Because the Project requires other approvals subject to CEQA, several state and local agencies are also responsible agencies under CEQA for the Project including Port, the San Francisco Bay Conservation and Development Commission and the California State Lands Commission. FTA’s final NEPA approval, in the form of its Record of Decision, was published with the release of the Final EIS/EIR to the public on August 29, 2014. WETA’s Board of Directors certified the Final EIS/EIR for the Project on October 2, 2014; and

B. The EIS/EIR has been made available for review by the Port and the public. The Port, as a responsible agency under CEQA, has considered the EIS/EIR for the Project, including the environmental effects of the Project set forth therein. The EIS/EIR are available for public review at the Pier 9 office of WETA, which is the custodian of records.

C. The Project described in the EIS/EIR, will result in significant environmental effects that could not be mitigated to a less than significant level despite implementation of mitigation measures.

D. The Port finds that these approvals are within the scope of the Project and activities evaluated in the EIS/EIR.

E. The Port further finds that since the EIS/EIR was finalized, there have been no substantial Project changes and no substantial changes in Project circumstances that would require major revisions to the EIS/EIR due to the involvement of new significant environmental effects or an increase in the severity of previously identified significant impacts, and there is no new information of substantial importance that would change the conclusions set forth in the EIS/EIR.

F. The Port has not identified any feasible alternative or additional feasible mitigation measures within its powers that would substantially lessen or avoid any significant effect the Project would have on the environment.

G. The Port hereby adopts the following mitigation measures and Mitigation Monitoring and Reporting Program attached as Attachment A to this resolution, as it pertains to these mitigation measures:

- MM CUL-1, Inadvertent Discovery Measures
- MM CUL-2, Treatment of Human Remains
- MM CUL-3, Replacement in Accordance with Secretary of

- the Interior Standards for Rehabilitation
- MM CUL-4, Plan for Protection Against, and Response to, Inadvertent Damage
- MM CUL-5, Stop Construction if Buried Paleontological Resources Are Discovered
- MM CUL-6, Consultation with Local Agencies Regarding Final Design of Weather Protection Canopies and Secretary of the Interior’s Standards for Rehabilitation
- MM HAZ-1, Prepare a Hazardous Materials Management Plan

WHEREAS, Port staff and WETA have negotiated the terms of the (1) Lease Disposition and Development Agreement (“**LDDA**”), (2) form of Construction Lease No. L-16200 (collectively, the “**Transaction Documents**”), described in the Memorandum for Agenda Item 10A for the Port Commission meeting of October 11, 2016, copies of which are on file with the Commission Secretary; and

WHEREAS, Port staff has reviewed and approved the Schematic Drawings depicting the scope of the proposed Project, attached as an Exhibit to the LDDA and attached to the Memorandum for Agenda Item 10A for the Port Commission meeting of October 11, 2016; and

WHEREAS, The Project will generate additional significant public benefits for the Port and the City, including: (i) the expansion of berthing facilities for ferries and passenger queuing and waiting areas in the Ferry Building area; (ii) the creation of new public access areas; (iii) the creation of a plaza that will be built to an “essential structure” standard and will serve as a staging area for emergency response and evacuation in the event of a disaster; and (iv) an expansion of maritime facilities and functions at the Port which are consistent with Public Trust uses and purposes; now therefore be it

RESOLVED, That the Port Commission approves the form and the substance of the Transaction Documents, including all attachments and exhibits thereto, and the transactions and other agreements which such Transaction Documents contemplate, incorporating the material business terms set forth in the Memorandum for Agenda Item 10A for the Port Commission meeting on October 11, 2016; and be it further

RESOLVED, That the Port Commission hereby approves the Schematic Drawings of the proposed Project on file with the Port Commission Secretary and the representative Schematic Drawings as shown in the Exhibit to the Memorandum for Agenda Item 10A for the Port Commission meeting on October 11, 2016; and be it

RESOLVED, That the Port Commission authorizes the Executive Director to enter into other agreements, encroachment permits, easement agreements, and

other related covenants and property documents necessary to implement the transactions contemplated by the Transaction Documents, and to enter into any additions, amendments or other modifications to the Transaction Documents including preparation and attachment of, or changes to, any or all of the attachments and exhibits that the Executive Director, in consultation with the City Attorney, determines are in the best interests of the City, do not materially decrease the benefits or otherwise materially increase the obligations or liabilities of the City or Port, and are necessary or advisable to complete the transactions that the Transaction Documents contemplate and effectuate the purpose and intent of this resolution, such determination to be conclusively evidenced by the execution and delivery by the Executive Director of such other agreements, easement agreements and other related covenants and property documents, and/or additions, amendments or other modifications to the Transaction Documents; and be it further

RESOLVED, That the Port Commission authorizes the Executive Director and any other appropriate officers, agents or employees of the City to take any and all steps (including the execution and delivery of any and all certificates, agreements, notices, consents, escrow instructions, closing documents and other instruments or documents) as they or any of them deems necessary or appropriate, in consultation with the City Attorney, in order to consummate the transactions contemplated under the Transaction Documents, in accordance with this resolution, or to otherwise effectuate the purpose and intent of this resolution, such determination to be conclusively evidenced by the execution and delivery by any such person or persons of any such documents; and be it further

RESOLVED, That the Port Commission approves, confirms and ratifies all prior actions taken by the officials, employees and agents of the Port Commission or the City with respect to the Transaction Documents and Schematic Drawings.

I hereby certify that the foregoing resolution was adopted by the Port Commission at its meeting of October 11, 2016.

Secretary

Attachments: Attachment A to Resolution, Mitigation Monitoring and Reporting Program