



Agenda Item No. (5)(C)(2)

To: Board of Directors  
Special Meeting of September 11, 2020

From: Denis J. Mulligan, General Manager

Subject: **APPROVE ISSUANCE OF WORKER ADJUSTMENT AND RETRAINING NOTIFICATION (WARN) ACT NOTICES IN RESPONSE TO COVID-19 SERVICE IMPACTS AND DEPLETION OF ASSOCIATED FEDERAL FUNDING**

### **Recommendation**

It is recommended that the Board of Directors (Board) approve the issuance of federal Worker Adjustment and Retraining Notification (WARN) Act Notices to potentially-affected employees and union representatives in response to service impacts resulting from the COVID-19 pandemic and depletion of the Coronavirus Aid, Relief, and Economic Security (CARES) Act grant funding. This recommendation is made with the understanding that if additional federal grants to support transit operations during the pandemic are made to the Golden Gate Bridge, Highway and Transportation District, then the contemplated layoffs may not be necessary.

### **Summary**

The COVID-19 pandemic has resulted in significant losses to the Golden Gate Bridge, Highway and Transportation District (District), both in terms of ridership demand and finances. Ridership today on Golden Gate Transit and Golden Gate Ferry is approximately 20% and 3%, respectively, of ridership for the same period last year. While post-COVID Bridge traffic initially hovered in the 35% range of usual traffic, it is now approximately 65% of pre-COVID periods. Further, since the Shelter-in-Place Orders took effect, weekly District toll and transit fare revenues have been \$1.5 to \$3 million below weekly revenues for the same period last year. Other revenue sources have also declined.

On March 27, 2020, the federal government passed the CARES Act, which included funding to support transit operations during the pandemic. As a result of that legislation, the District received \$51.6 million, which allowed the District to keep all regular full-time employees employed during the pandemic, even with demand for services at a fraction of pre-COVID levels. However, the CARES Act funding is estimated to be depleted next month. Hence, in the absence of an additional infusion of federal monies, or a robust return in customer demand for bus and ferry service, there will not be sufficient finances to keep present staffing levels.

Federal WARN obligations require a covered employer<sup>1</sup> to provide written notice at least 60 calendar days in advance of:

1. A temporary or permanent “plant closing”, or discontinuance of an operating unit, that affects 50 or more full-time employees;
2. A “mass layoff” including a reduction-in-force of between 50 and 499 full-time workers at a single site of employment during a 30-day period, if the reduction affects at least 33 percent of the employer’s active full-time work force at the site and is expected to exceed 6 months; or,
3. Extension of a temporary layoff affecting the number of employees in (2) or (3) at a single site of employment that was originally expected to last 6 months or less.

Additionally, under the WARN Act, for employees who are represented by a union, the employer is required to send the notice to the union and not the employee. Only non-represented employees are to be individually notified by the employer.

Staff is currently developing modified service and operations plans to meet existing demand and financial constraints. Consequently, a definitive list of affected positions is presently not available. It is expected that most, if not all, classifications in the bus and ferry divisions will be affected, as well as the majority of non-represented classifications in the District Division. Therefore, it is recommended that all of these potentially-affected employees receive a WARN Act notice. Staff will be bringing a final list of affected positions to the Board at a future meeting for approval. Once the final list of affected positions is approved, staff who had been previously noticed will be informed of any changes in the notice.

Considering the current reality that the District’s CARES Act funds will be expended next month, no additional infusion of federal monies is certain, demand in transit services continues to be sluggish, and the WARN notice obligations require a 60-day notice, staff recommends that the Board of Directors authorize the issuance of a WARN Act notice to potentially-affected staff.

The decision to issue the WARN Act notice is not a decision to necessarily lay off any employees. However, it does provide the flexibility to effect a layoff at some future date if additional federal assistance is not forthcoming.

### **Fiscal Impact**

There is no fiscal impact associated with the approval of this recommendation.

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<sup>1</sup> The federal WARN Act generally excludes government employers but not “public and quasi-public entities which engage in business (i.e., take part in a commercial or industrial enterprise, supply a service or good on a mercantile basis, or provide management of public assets, raising revenue and making desired investments), and which are separately organized from the regular government.” The District likely meets this definition.