

North Bay Operations & Maintenance Facility Fuel Farm Filter Manifold Installation

RFQ 21-020



Request for Quotations

Scope of Work, Professional Services
Agreement, and Forms

August 20, 2021

SAN FRANCISCO BAY AREA

**WATER EMERGENCY
TRANSPORTATION AUTHORITY**

San Francisco Bay Area Water Emergency Transportation Authority

Request for Quotations for NBOMF Fuel Farm Filter Installation

Contract No. 21-020

Issued: August 17, 2021

The San Francisco Bay Area Water Emergency Transportation Authority (WETA) requests price quotations from qualified firms to install an in-line fuel filter manifold and associated piping systems changes at the North Bay Operations and Maintenance Facility (the Project), as described in Attachment A, "Scope of Work" for this Request for Quotations (RFQ).

1. **Schedule.** Listed below is the anticipated solicitation schedule—all dates are subject to revision at WETA's sole discretion:

Quotations Due	2:00PM local time on September 10, 2021
Requests for Clarifications Due	September 3, 2021
Anticipated Date of Notice to Proceed	September 17, 2021
Anticipated Time of Performance	All work complete by October 15, 2021

2. **Questions; Requests for Clarification.** Submit all requests for questions and clarification in writing to Martin Robbins, Project Engineer for WETA, at robbins@sanfranciscobayferry.com by the date and time in the Schedule set forth above.
3. **Quotation Submission Instructions.** Submit quotations in writing via e-mail to both Tim Hanners, Operations & Maintenance Manager, at hanners@watertransit.org and Martin Robbins (contact info above) by the date and time in the Schedule set forth above. Quotations must include all of the following information:
- Attachment B, Cost Proposal Form
 - Statement of Experience & Qualifications – provide a brief letter describing the experience and qualifications of the proposed workforce assigned to this project
 - Proposed Project Work Schedule – indicating major milestones
 - Attachment E, List of Subcontractors Form (if any)
 - Attachment F, Non-Collusion Declaration
 - Provide a detailed cost breakdown of the lump sum price indicated on the Cost Proposal Form (Attachment B) indicating labor hours, labor rate, itemized list of all materials, and any subcontractor costs
4. **Minimum Qualifications.** By submitting a quotation, bidders represent and warrant that they meet all of the following minimum qualifications:
- Familiarity working with diesel fuel piping
 - General pipefitting expertise
 - General pipe welding, fabrication, and installation experience
5. **Sample Agreement.** WETA's Sample Agreement for this Project is provided as Attachment C. The Sample Agreement contains the terms and conditions applicable to this Project. Bidders are responsible for reviewing and considering the Sample Agreement requirements when preparing quotations. By submitting a quotation, bidders are deemed to have accepted all terms and conditions in the Sample Agreement.

6. **Federal Requirements**. Not applicable.
7. **Diversity Program for Contracts**. Not applicable.
8. **Insurance**. The successful bidder must comply with the insurance requirements included in Attachment D.
9. **Public Works Requirements**. This Project includes work that is considered "public work" under the Public Contract Code and Labor Code. Therefore, the public works requirements in Attachment H apply to this RFQ and any contract entered into pursuant to this RFQ. Bidders must complete and submit the forms included in Attachments E and F with their quotation, The Payment Bond Form referenced included in Attachment G will be completed by the successful bidder and is included in this RFQ for reference purposes.
10. **Confidentiality**. The California Public Records Act (Government Code Sections 6250 et seq.) mandates public access to government records. Unless the information is exempt from disclosure by law, the content of the quotation, as well as any other written communication between WETA and the bidder, is a public record that must be made available to the public. A bidder may not designate its quotation as confidential.
11. **Conflicts of Interest**. By submitting a quotation, the bidder represents and warrants all of the following:
 - A. No director, officer or employee of WETA is in any manner interested directly or indirectly in the quotation or in the Agreement which may be made under it or in any expected profits to arise therefrom, as set forth in Article 4, Division 4, Title I (commencing with Sec. 1090) of the Government Code of the State of California.
 - B. The bidder presently has no interest and agrees that it will not acquire any interest which would present a conflict of interest under California Government Code Sections 1090 et seq. or Sections 87100 et seq. during the performance of services under this Agreement.
 - C. The bidder will not knowingly employ any person having such an interest in the performance of a contract awarded pursuant to this RFQ. Violation of this provision may result in a contract awarded pursuant to this RFQ being deemed void and unenforceable.
 - D. If the bidder is required to publicly disclose financial interests under WETA's Conflict of Interest Code, bidder agrees to promptly submit a Statement of Economic Interest on the form provided by WETA upon receipt.
 - E. The bidder acknowledges and understands that no person previously in the position of director, officer, employee or agent of WETA may act as an agent or attorney for, or otherwise represent, the Proposer by making any formal or informal appearance, or any oral or written communication, before WETA, or any officer or employee of WETA, for a period of twelve (12) months after leaving office or employment with WETA if the appearance or communication is made for the purpose of influencing any action involving the issuance, amendment, awards or revocation of a permit, license, grant or contract.
 - F. The bidder has no organizational conflicts of interest at this time. Alternatively, the bidder must disclose all known organizational conflicts of interest in its quotation. 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 WETA; 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.

12. WETA's Rights. WETA reserves the right to reject or accept any quotation, to waive any minor irregularities in quotations or procurement procedures, and to request additional information from bidders at any stage of the evaluation process. WETA reserves the right to not award any contract as a result of this procurement and may terminate the procurement and commence a new procurement for part or all of the Project at any time. WETA will not reimburse any firm for costs incurred as a result of preparing or submitting a quotation, including negotiating with WETA on any matter related to this procurement.

13. Quotation Evaluation and Contract Award. WETA intends to award this contract to the responsible and responsive bidder submitting the lowest quotation (see Attachment B). If a contract is awarded, the selected bidder must execute and deliver executed copies of the contract (Attachment C) within ten (10) working days of receipt, together with all required documents, including but not limited to, insurance certificates.

Attachments A through H Follow

ATTACHMENT A

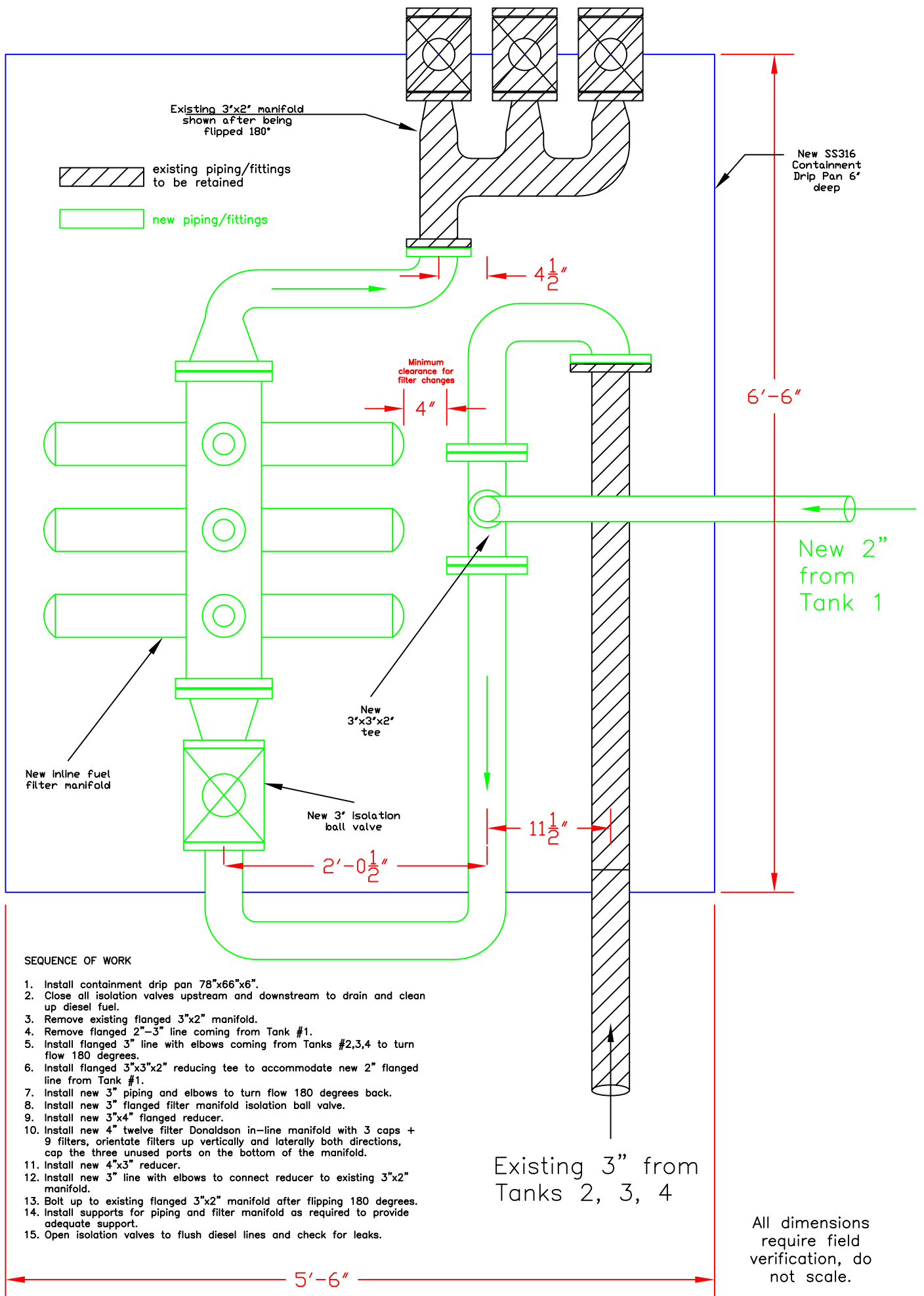
SCOPE OF WORK

The Scope of Work is detailed below and is further defined by the concept sketch provided:

- Modify the existing fuel farm piping system to allow for installation of a twelve (12) filter inline fuel filter assembly as described herein, see the nominal Sequence of Work on the concept sketch, note that three (3) of the twelve (12) filter ports on the manifold will be capped and remain un-used
- Procure the necessary SS316 sheet metal, piping supports, piping, various pipe fittings, valves, fasteners, gaskets, miscellaneous materials/supplies, the Donaldson inline 12 fuel filter manifold (Part Number 1KDFF1012) with pressure adapters and gauges (Part Numbers P563809 and P562709), three (3) blanking caps (Part Number DFF1005), and twenty-seven (27) fuel 4 μ filters (Part Number DBB8666) required to perform the flushing and complete the installation
- For piping use ASTM A333, for fittings use ASME B16.9, ANSI 150# flanges, and full port ball valves shall be ASTM A216 WCB carbon steel flanged ANSI 150# with 50/50 seats and SS316 balls
- Perform a detailed and comprehensive site check to confirm all existing conditions and dimensions, ensure that all nine (9) filters can be removed and installed without structural interference
- Fabricate and install a SS316 sheet metal drip pan containment, sized at approximately 78" x 66" x 6" and install it under the area of the piping work, confirm dimensions provide proper coverage of work areas and capture any fuel dripping or leak sources
- At the Contractor's discretion and sole expense, the existing fuel piping may be temporarily isolated and removed to provide access for dimensional verifications of pipe sections and assemblies prior to shop fabrication. If the Contractor chooses to perform this work, it shall arrange for temporary isolation of the fuel piping with WETA's facility operator (Operator), clean up and properly dispose of any diesel fuel spilled during this step, piping and fuel systems shall be restored to ensure continued ability to fuel ferries following the dimensional verifications. Contractor shall be solely responsible for all costs, expenses, and liability arising from its performance of this work item.
- Once all piping materials are received, shop fabricate flanged pipe sections, assemblies, piping supports, et cetera and verify all dimensions and structural clearances
- Working with the Operator, schedule the appropriate work window to complete the piping removals and installations within an eight (8) hour time window, this coordination is necessary as the facility is required to fuel vessels every evening beginning at 6:00pm local time
- At the beginning of the agreed upon work time window, coordinate with the Operator to secure and electrically tag-out all fuel pumps and close all valves both upstream and downstream of the piping sections to be removed
- Unbolt all flanged piping connections to remove the designated piping sections, clean up and properly dispose of any diesel fuel in the drip pan
- Install and bolt up all new flanged piping sections and assemblies including the inline fuel filter manifold using appropriate fasteners and gaskets suitable for diesel fuel service

- Support all new pipe sections and assemblies with uni-strut type legs and ring clamps using SS316 hardware
- At the completion of all installations perform a visual inspection with the Operator to ensure that all piping systems are in place and ready for testing and service
- Coordinating with the Operator, open all valves and un-tag the fuel pumps in order to flush the system, flood the filters, and check for leaks
- Flush into a barrel at least ten (10) gallons of fuel through each of the four (4) vessel fueling hoses located on the floats at the NBOMF, correct any leaks noted in the areas of work
- Following the flush and the leak test, change all nine (9) filters and clean up and properly dispose of any spilled diesel fuel
- Following the flush properly dispose of the diesel fuel flushed through the system and the nine (9) filters used for the flush
- Turn over the nine (9) remaining fuel filters to the Operator for future use
- Paint all new piping and fittings with one coat of epoxy primer, followed by two (2) coats of epoxy paint, color safety orange to match existing
- Clean up the worksite to the satisfaction of WETA

Concept Sketch and Filter Manifold Data Sheet Follow



SEQUENCE OF WORK

1. Install containment drip pan 78"x66"x6".
2. Close all isolation valves upstream and downstream to drain and clean up diesel fuel.
3. Remove existing flanged 3"x2" manifold.
4. Remove flanged 2"-3" line coming from Tank #1.
5. Install flanged 3" line with elbows coming from Tanks #2,3,4 to turn flow 180 degrees.
6. Install flanged 3"x3"x2" reducing tee to accommodate new 2" flanged line from Tank #1.
7. Install new 3" piping and elbows to turn flow 180 degrees back.
8. Install new 3" flanged filter manifold isolation ball valve.
9. Install new 3"x4" flanged reducer.
10. Install new 4" twelve filter Donaldson in-line manifold with 3 caps + 9 filters, orientate filters up vertically and laterally both directions, cap the three unused ports on the bottom of the manifold.
11. Install new 4"x3" reducer.
12. Install new 3" line with elbows to connect reducer to existing 3"x2" manifold.
13. Bolt up to existing flanged 3"x2" manifold after flipping 180 degrees.
14. Install supports for piping and filter manifold as required to provide adequate support.
15. Open isolation valves to flush diesel lines and check for leaks.



Clean Fuel & Lubricant Solutions

Inline 12 Manifold

1KDF1012

Clean Solutions Filter Manifolds expand capacity and increase flow rate beyond the capability of a single or dual filter head. The 1KDF1012 Inline 12 Manifold is constructed of heavy duty carbon steel with no external aluminum. It handles flow rates of up to 700 gpm / 2650 lpm.

Dividing the flow between multiple filters plumbed in parallel slows the flow rate per filter, reducing pressure drop and extending filter life.

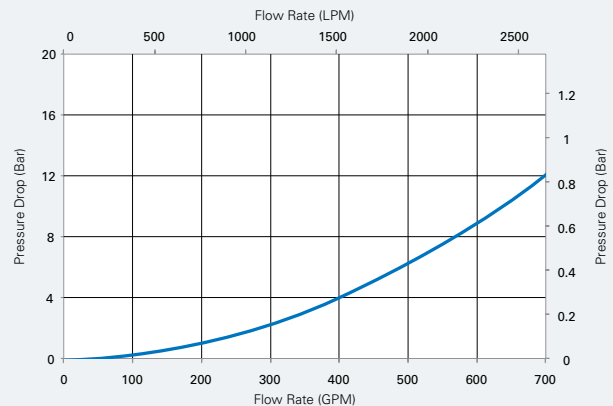
A variety of filter medias are available to meet the specific application requirements.



SPECIFICATIONS

Filter Quantity*	12
Mounting Connection	4" ANSI 150 Flanges
Max. Flow Range**	700 gpm / 2650 lpm
Shipping Weight	128 lbs / 58 kg
Sampling	Includes up-stream and down-stream mini-mess sampling ports with M16 x 2 thread
Fluid Compatibility	All diesel fuels and lubricants
Working Pressure	150 psi / 1034 kPa / 10.3 bar
Construction	No External Aluminum
Compatible Filters	DBB8664, DBB8665, DBB8666, DBB8777, DBB0248
Accessories (Sold Separately)	P174396 Electrical Indicator DFF1005 Blanking Cap P563809 Gauge Adapter P562709 Pressure Gauge
Operating Temperature	-40 to 245 °F / -40 to 120 °C

1KDF1012 Manifold



*Filters sold separately

**Actual flow rate varies based on fluid viscosity, pumping pressure and filter loading.

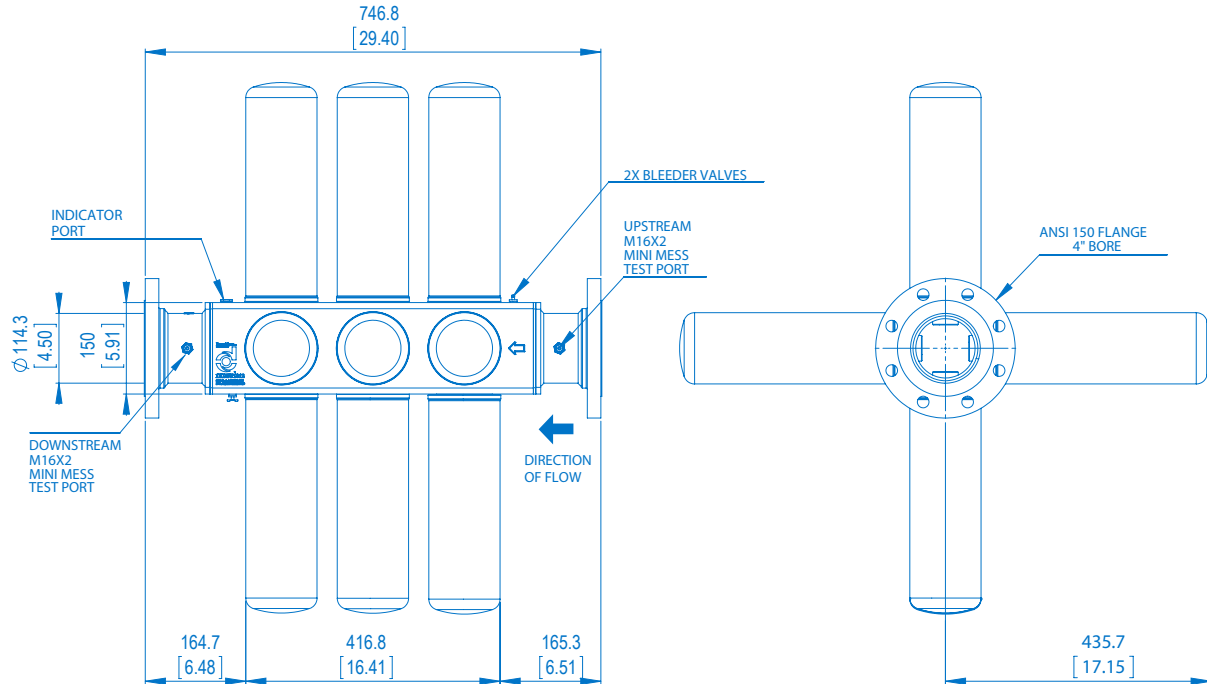
FEATURES

- Fast, easy and safe to service
- Requires no electrical or air hook-ups
- Large capacity in small foot print
- Flexible mounting options (horizontal or vertical)
- Cost effective high flow filtration
- Incorporated drain plugs facilitate clean servicing
- Comes shipped in reusable trunk

APPLICATIONS

- Bulk fuel and lubricant filtration and water removal
- High flow transfer into or out of tanks and dispensing
- Hard-to-filter high viscosity oils
- Inline industrial filtration of gear oils and lubricants
- Kidney loop applications
- No external aluminum for underground mining applications

DIMENSIONS



INSTALLATION

- Up to 6 filter orifices may be blocked off to enable flush configuration (sold separately)
- Install on pressure side of pump with arrows pointing in direction of flow
- May be mounted horizontally or vertically
- Allow 16.5" / 410 mm clearance to face for filters
- Ensure proper containment for servicing filters (drip pan or other)
- Install filter manifolds per local codes and regulations
- Optional P562709 pressure gauge and P563809 gauge adapter sold separately
- Use with Clean Solutions filter models DBB8664, DBB8665, DBB8666, DBB8777, DBB0248

REPLACEMENT PARTS & SERVICE

- Service filter when flow slows or predetermined differential pressure is reached
- When servicing change all filters, all replacement filters must be identical
- Isolate manifold, relieve pressure and drain prior to removing old filters
- Install new filters on heads by spinning clockwise, tighten ½ turn after filter seats in gasket
- Dispose of used filters appropriately



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Minneapolis, MN USA

800-374-1374 (USA/Canada)

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shop.donaldson.com

Need a Clean Solution?

As a global organization, we have offices throughout the world. Please direct your inquiry to clean.solutions@donaldson.com. This will enable us to address your inquiry in the shortest possible time.

Mexico	Brazil	South East Asia	Korea
Latin America	Europe & Middle East	Greater China	Australia
Caribbean	South Africa	Japan	India

Brochure No. F111516 ENG (04/2020)

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ATTACHMENT B**COST PROPOSAL FORM**

**Request for Quotations for NBOMF Fuel Farm Filter Installation
Contract No. 21-020**

Issued August 20, 2021

Quotations and Forms are due by 2:00PM local time on September 10, 2021

Name of Company Bidding	
Address	
Designated Point of Contact	
Telephone Number	
E-Mail Address	
Quotation Pricing – enter total dollar amount for the Scope of Work (see Attachment A). Pricing to include all labor, costs, expenses, fees, and taxes (this value is the basis for contract award)	
Authorized Signature of Bidder	
Printed Name	
Date Submitted	

Attach to this form a detailed cost breakdown indicating total labor hours, labor rate, itemized list of all materials, and any subcontractor costs.

ATTACHMENT C
SAMPLE AGREEMENT

See Following Pages

ATTACHMENT C
PROFESSIONAL SERVICES AGREEMENT #21-020

between

SAN FRANCISCO BAY AREA WATER EMERGENCY TRANSPORTATION AUTHORITY

and

[CONTRACTOR]

This Agreement is made and entered into as of [Date] (Effective Date), by and between the San Francisco Bay Area Water Emergency Transportation Authority (WETA) and [Contractor] located at [Address] (Contractor). For purposes of this AGREEMENT, each of the WETA and Contractor may be referred to individually as a "Party" or together, as "Parties."

RECITALS

WHEREAS, WETA requires NBOMF Fuel Farm Filter Installation Services and has issued a Request for Quotations (RFQ) dated August 20, 2021, Attachment A: Scope of Work which is attached and incorporated into this Agreement as Exhibit A; and

WHEREAS, the Contractor desires to provide such services and has represented that it is experienced and qualified to perform such services. It has submitted a written proposal, dated [Date], a copy of which is attached and incorporated into this Agreement as Exhibit B;

NOW THEREFORE, THE PARTIES AGREE AS FOLLOWS:

1. CONTRACTOR'S REPRESENTATIONS AND WARRANTIES

In the performance of the Services, as defined in Section 2, the Contractor represents and warrants that:

- a. Professional Expertise. It has and will exercise the degree of professional care, skill, efficiency, and judgment of contractors with special expertise in diesel fuel system piping and filtration; that it carries all applicable licenses, certificates, and registrations in current and good standing that may be required to perform the work; and that it will retain all such licenses, certificates, and registrations in active status throughout the duration of this engagement.
- b. Intellectual Property Rights. In the performance of Services, its use of any third party's intellectual property does not and will not infringe or violate the patent, copyright, trade-secret, or other intellectual-property or proprietary rights of any third party. Contractor further represents and warrants that it has or will have all appropriate licenses, agreements, or ownership rights pertaining to all patent, copyright, trade-secret, or other intellectual-property or proprietary rights needed for the performance of its obligations under this Agreement including without limitation that it will have all necessary rights to use patentable or copyrightable materials, equipment, devices, or processes not furnished by WETA. Contractor assumes all risks arising from the use of any such patented or copyrighted materials, equipment, devices, or processes.

- c. Existence and Powers. Contractor is a [insert type of entity] duly organized, validly existing and in good standing under the laws of the State of California, and has the authority to do business in the State of California. It has the full legal right, power, and authority to own its properties and to carry on its business as now owned and operated and as required by this Agreement.
- d. Corporate Authorization and Binding Obligation. Contractor has the authority and legal capacity to enter into and perform its obligations under this Agreement. This Agreement has been duly authorized, executed and delivered by all necessary corporate action of Contractor and constitutes a legal, valid and binding obligation of Contractor, enforceable against Contractor in accordance with its terms, except to the extent that its enforceability may be limited by bankruptcy, insolvency or other similar laws affecting creditor's rights from time-to-time in effect and equitable principles of general application. The persons signing this Agreement on behalf of Contractor have authority to do so.
- e. No Conflict. Neither the execution and delivery by Contractor of this Agreement nor the performance by Contractor of its obligations under the Agreement: (a) conflicts with, violates or results in a breach of any constitution, law or governmental regulation, bylaws or certificates of incorporation applicable to Contractor; or (b) conflicts with, violates or results in a breach of any order, judgment or decree, or any contract, agreement or instrument, to which Contractor is a party or by which Contractor or any of its properties or assets are bound.
- f. No Litigation. Except as disclosed in writing to WETA before the Effective Date of this Agreement, there is no legal proceeding, at law or in equity, pending or, to the best of Contractor's knowledge, overtly threatened or publicly announced against Contractor, or any of its affiliates or its parent or subsidiary corporations, or otherwise affecting Contractor, in which an unfavorable decision, ruling, or finding, in any single case or in the aggregate, could reasonably be expected to have a material and adverse effect on the execution and delivery of this Agreement by Contractor or on the validity or enforceability of this Agreement against Contractor.
- g. Claims and Demands. Except as disclosed in writing to WETA before the Effective Date of this Agreement, there are no material and adverse claims and demands based in contract or tort law pending or, to the best of its knowledge, threatened against Contractor, or any of its affiliates or its parent or subsidiary corporations, with respect to any project similar to the one that is the subject of this Agreement.

2. SCOPE OF SERVICES

The scope of the Contractor's services will consist of services set forth in Exhibit A, as supplemented by Exhibit B, except when inconsistent with Exhibit A (collectively referred to as the "Services").

3. COMPONENT PARTS OF THE AGREEMENT

This Agreement consists of the following documents, all of which are incorporated into this Agreement by this reference. In the event of any conflict of inconsistency between the following documents, they are listed in order of precedence:

- a. Amendments to the Agreement
- b. This Agreement
- c. Exhibit A, Scope of Work

- d. Exhibit B, Contractor's Proposal, including all forms, and supporting materials, as accepted by WETA
- e. Exhibit C, Insurance Requirements
- f. Exhibit D, Public Works Requirements

4. TIME OF COMPLETION

The Contractor must commence work upon WETA's issuance of a written notice to proceed, and unless the Agreement is terminated sooner pursuant to Section 22, must complete the Services by October 15, 2021. The Contractor will furnish all materials, equipment and services called for under this Agreement, and perform all work in accordance with this Agreement.

5. KEY PERSONNEL

It is understood and agreed by the Parties that at all times during the term of this Agreement that [Name], will serve as the [primary staff person/designated representative] of the Contractor to undertake, render and oversee all of the services under this Agreement (Key Personnel). The Contractor may not reassign Key Personnel or assign another resource to the Key Personnel role until and unless WETA, in its sole discretion, approves a replacement in writing. WETA reserves the right to direct the removal of any personnel, including but not limited to Key Personnel, when in WETA's opinion the individual's performance is unsatisfactory. Replacement of personnel will not excuse the Contractor from compliance with all of the requirements of this Agreement, including any schedule.

6. COMPENSATION

The Contractor agrees to perform the services set forth in Section 2 for the total all-inclusive fixed contract price of \$[Amount] in accordance with Exhibit A and Exhibit B. This Total Contract Price includes all labor, materials, taxes, overhead, insurance, travel expenses, employee benefits, profit, and other costs and expenses incurred by the Contractor. WETA will pay the Contractor in accordance with Section 7.

7. MANNER OF PAYMENT

WETA will compensate the Contractor based on the following milestone schedule:

Milestone	Amount
All materials ordered and on-hand for start of fabrication, as evidenced by invoices or other supporting documentation approved by WETA	50% of Total Contract Price
WETA issues written final acceptance of all work	50% of Total Contract Price

The Contractor must submit invoices upon WETA's written certification that Contractor has completed each of the above milestones. The Contractor must submit invoices to WETA as soon as possible but no later than 30 days after WETA's certification that Contractor has completed a milestone. All invoices must include the contract number, the milestone for which the Contractor is requesting payment, the full name, phone number, and email of the person to contact with invoice questions.

PDF invoices should be emailed to the WETA Project Manager, Martin Robbins at robbins@sanfranciscobayferry.com with cc to payables@watertransit.org. No hard copy invoices are required if WETA acknowledges receipt of the email invoice.

WETA will endeavor to pay approved invoices within thirty (30) days of their receipt. If WETA objects to any invoice submitted by Contractor, WETA will so advise the Contractor in writing giving reasons for its objection. If any invoice submitted by the Contractor is disputed by WETA, only that portion so disputed may be withheld from payment and the Contractor must continue to perform diligently during the pendency of any dispute resolution process that may ensue.

8. NOTICES

All communications relating to the day-to-day activities of the project will be exchanged between WETA's Project Manager for this Project, Martin Robbins at robbins@sanfranciscobayferry.com and (415) 726-0356, and the Contractor's [Name] at [Email] and [Phone].

All other notices and communications regarding interpretation of the terms of this Agreement and changes thereto will be given to the other Party in writing and may be given by personal delivery to a representative of the parties, by emailing as follows, or by overnight mailing or courier service the same, addressed as follows:

If to WETA: San Francisco Bay Area Water Emergency Transportation Authority
Attn: Tim Hanners
9 Pier, Suite 111
San Francisco, CA 94111
Email: hanners@watertransit.org

If to the Contractor: _____

Attention: _____
Email: _____

The addresses to which notice may be given may be changed from time to time by notice emailed or mailed as described above. Notice will be deemed given on the day after that on which it is emailed, delivered in person, or deposited with a courier.

9. OWNERSHIP OF WORK

All reports, designs, drawings, plans, photographic images, video and sound recording, specifications, analyses, charts, tables, schedules and all other materials prepared, or in the process of being prepared, for the services to be performed by the Contractor will be and are the property of WETA. WETA will be entitled access to and copies of these materials during the progress of the work. Any such materials remaining in the hands of the Contractor or in the hands of any subcontractor upon completion or termination of the work must be immediately delivered to WETA. If any materials are lost, damaged or destroyed before final delivery to WETA, the Contractor must replace them at its own expense, and the Contractor assumes all risks of loss, damage or destruction of or to such materials. The Contractor may retain a copy of all material produced under this Agreement for its use in its general business activities.

Any and all rights, title, and interest (including without limitation copyright and any other intellectual property or proprietary right) to materials prepared under this Agreement are hereby assigned to WETA. The Contractor agrees to execute any additional documents which may be necessary to evidence such assignment.

The Contractor represents and warrants that all materials prepared under this Agreement are original or developed from materials in the public domain (or both) and that all materials prepared under and services provided under this Agreement do not infringe or violate any copyright, trademark, patent, trade secret, or other intellectual-property or proprietary right of any third party.

10. PUBLIC WORKS REQUIREMENTS

The work to be performed under this Agreement is considered "public work" under the Public Contract Code and Labor Code. Therefore, the public works requirements set forth in Exhibit D apply to this Agreement.

11. CONFIDENTIALITY

Any WETA materials to which the Contractor has access or materials prepared by the Contractor during the course of this Agreement ("confidential information") must be held in confidence by the Contractor, who must exercise all reasonable precautions to prevent the disclosure of confidential information to anyone except the officers, employees and agents of the Contractor as necessary to accomplish the rendition of services set forth in Section 2 of this Agreement.

The Contractor, its employees, subcontractors, and agents may not release any reports, information or other materials prepared in connection with this Agreement, whether deemed confidential or not, to any third party without the approval of WETA.

12. USE OF SUBCONTRACTORS

Unless identified in Contractor's proposal as accepted by WETA, the Contractor may not subcontract any services to be performed by it under this Agreement without the prior written approval of WETA. Any subcontractors must be engaged under written contract with the Contractor with provisions allowing the Contractor to comply with all requirements of this Agreement. The Contractor will be solely responsible for reimbursing any subcontractors, and WETA will have no obligation to them.

13. CHANGES

WETA may, at any time, by written order, make changes to Exhibit A. If such changes cause an increase in the budgeted cost of or the time required for performance of the Services, an equitable adjustment as mutually agreed will be made in the limit on compensation set forth in Section 6 or in the time of required performance as set forth in Section 4, or both.

In the event that the Contractor encounters any unanticipated conditions or contingencies that may affect the Services, schedule or the amount of compensation specified herein, the Contractor will so advise WETA immediately upon notice of such condition or contingency. The written notice will explain the circumstances giving rise to the unforeseen condition or contingency and will set forth the proposed adjustment in schedule or compensation. The Contractor must give this notice to WETA prior to performing work related to any proposed adjustment. The pertinent changes will be expressed in a written supplement to this Agreement prior to implementation of such changes.

14. RESPONSIBILITY; INDEMNIFICATION

To the maximum extent permitted by law, the Contractor must indemnify, keep and save harmless WETA and its directors, officers, agents and employees against any and all suits, claims or actions arising out of any of the following:

- a. Any injury to persons or property that may occur, or that may be alleged to have occurred, arising from the performance of this Agreement by the Contractor caused by a negligent act or omission or willful misconduct of the Contractor or its employees, subcontractors or agents, including but not limited to any failure to comply with applicable law as set forth in Section 32; or
- b. Any allegation that materials or services provided by the Contractor under this Agreement infringe or violate any copyright, trademark, patent, trade secret, or any other intellectual-property or proprietary right of any third party.

The Contractor further agrees to defend any and all such actions, suits or claims, with counsel acceptable to WETA in its sole discretion, and pay all charges of attorneys and all other costs and expenses of defenses as they are incurred. If any judgment is rendered, or settlement reached, against WETA, or any of the other individuals enumerated above in any such action, the Contractor must, at its expense, satisfy and discharge the same. This indemnification will survive termination or expiration of the Agreement.

15. INSURANCE

Contractor is required to procure and maintain at its sole cost and expense the insurance coverage listed in Exhibit C. Contractor will provide a certificate evidencing that it meets the insurance requirements prior to WETA issuing a Notice to Proceed, and will provide updated certificate(s) each year. Contractor will maintain the required insurance for the duration of this Agreement and will provide WETA with at least 30 days notice of any modification or cancellation of any policy.

16. CONTRACTOR'S STATUS

Neither the Contractor nor any party contracting with the Contractor are deemed to be an agent or employee of WETA. The Contractor is and will be an Independent Contractor, and the legal relationship of any person performing services for the Contractor will be one solely between that person and the Contractor.

17. ASSIGNMENT

The Contractor may not assign any of its rights nor transfer any of its obligations under this Agreement without the prior written consent of WETA.

18. WETA WARRANTIES

WETA makes no warranties, representations or agreements, either express or implied, beyond such as are explicitly stated in this Agreement.

19. WETA REPRESENTATIVE

Except when approval or other action is required to be given or taken by the WETA Board of Directors, the WETA Executive Director or the Executive Director's designee will represent and act for WETA.

20. DISPUTE RESOLUTION

The Contractor will be solely responsible for providing timely written notice to WETA of any claims for additional compensation and/or time in accordance with the provisions of this Agreement. It is WETA's intent to investigate and attempt to resolve any Contractor claims before the Contractor has performed any disputed work. Therefore, Contractor's failure to provide timely notice will constitute a waiver of Contractor's claims for additional compensation and/or time.

Claims by the Contractor disputing any interpretation of the meaning and intent of this Agreement by WETA or arising from performance of this Agreement must be referred in writing to WETA's Project Manager for a written decision. All such claims must be filed within ten (10) calendar days after Contractor knows, or should have known, of the issues giving rise to the claim, and must be accompanied by written documentation substantiating the reasons for which the Contractor believes additional compensation/time may be due, the nature of the costs involved, and the amount of the potential claim. WETA's Project Manager will respond to the Contractor in writing with a decision within thirty (30) calendar days following receipt of the Contractor's claim. WETA may, in its discretion, extend the time for its response if necessary, or may request, in writing, within thirty (30) calendar days of receipt of the claim, any additional documentation supporting the claim or relating to defenses or claims WETA may have against the Contractor.

If there is a dispute over any claim, the Contractor must continue to work during the dispute resolution process in a diligent and timely manner as directed by WETA, and will be governed by all applicable provisions of the Agreement. The Contractor must maintain cost records of all work which is the basis of any dispute.

Unless agreed upon by the parties, all disputes will use the following escalation procedures:

- a. Contractor and WETA will use good faith efforts to resolve all disputes informally at the Project Manager level. In the event such efforts are unsuccessful, either Party may request that WETA provide a written determination as to the proposed resolution of the dispute.
- b. Within thirty (30) calendar days of the request, the Project Manager will provide a written determination as to the dispute, which will include the basis for its decision. Upon Contractor's written acceptance of the Project Manager's determination, the Agreement may be modified and the determination implemented or, failing agreement, WETA may in its sole discretion pay such amounts and/or revise the time for performance in accordance with the Project Manager's determination.
- c. If the Project Manager's determination is not accepted by the Contractor, or if the Project Manager fails to respond within thirty (30) calendar days, the matter will promptly be referred to senior executives of the Parties having designated authority to settle the dispute. The senior executives will exchange memoranda stating the issues in dispute and their respective positions and then meet for negotiations at a mutually agreed time and place. At either Party's request, such meeting will take place within thirty (30) calendar days of the referral of the claim to senior management pursuant to this paragraph. If the matter has not been resolved within thirty (30) calendar days of commencement of senior management negotiations, the Parties may mutually agree to try to settle the dispute by means of alternate dispute resolution methodologies such as mediation or arbitration.
- d. In the event that efforts to resolve disputes under this Section are unsuccessful, Contractor must file a government claim, pursuant to California Government Code Section 910 et seq., in order to initiate a civil action.

21. SUSPENSION

WETA has the right to suspend this Agreement at any time and for any reason, including but not limited to non-appropriation of funds and reasons related to the impacts of the

COVID-19 pandemic, by giving five (5) calendar days' prior written notice to Contractor. Upon receipt of such notice, Contractor must not commit itself to any further expenditure of time or resources ("Suspension Period").

The Suspension Period will continue until WETA provides written notice to Contractor to resume performance of this Agreement, provided at WETA's sole discretion. With the exception of Contractor's obligations under Sections 14 and 27 of this Agreement, which continue in full force and effect during the Suspension Period, Contractor will not provide any services required under this Agreement during the Suspension Period. WETA will have no obligation to compensate Contractor during the Suspension Period. If WETA, in its sole discretion, exercises its right to terminate this Agreement following suspension of work, the terms and conditions in Section 22 of this Agreement will apply.

During the Suspension Period, WETA may require Contractor to provide a written plan for resuming services to WETA's satisfaction. Contractor agrees to provide such a plan and any additional information requested by WETA. WETA reserves the right to continue the Suspension Period until Contractor and WETA mutually agree to a written plan for resuming performance of this Agreement.

After Contractor resumes services pursuant to the agreed-upon plan, if applicable, the parties may determine it is necessary to modify the plan, or WETA may subsequently suspend this Agreement again upon five (5) calendar days' written notice to Contractor. In the event of a subsequent Agreement suspension, the terms and conditions of this section will apply.

Under no circumstances will WETA be liable for any costs, expenses, wages, actual or projected lost profits, or damages of any kind incurred by Contractor during the Suspension Period, or as a result of suspension of this Agreement or the impacts of the COVID-19 pandemic. Contractor agrees not to make any claims against WETA for losses of any kind related to suspension of this Agreement.

22. TERMINATION

WETA will have the right to terminate this Agreement or any task order at any time for cause or for convenience (including but not limited to for non-appropriation of funds) by giving written notice to the Contractor. Upon receipt of such notice, the Contractor must not commit itself to any further expenditure of time or resources. If the Agreement is terminated for any reason other than a breach or default by the Contractor, WETA will pay the Contractor in accordance with the provisions of the applicable task order and this Agreement all sums actually due and owing from WETA for all services performed and all expenses incurred up to the day written notice of termination is given, plus any costs reasonably and necessary incurred by the Contractor to effect such termination.

If the Agreement or any task order is terminated for breach or default, WETA will provide Contractor a reasonable opportunity to cure any breach or default prior to termination. If the Agreement or any task order is terminated for breach or default, WETA will pay the Contractor an amount to cover only those services actually performed and expenses incurred in full accordance with the terms and conditions of this Agreement and task order up to the effective date of termination.

Upon termination for any reason, Contractor must transfer title to WETA (to the extent that title has not already been transferred) and deliver in the manner, at the times, and to the

extent directed by WETA the work in process, completed work, and all other material produced as a part of, or acquired in respect of the performance. All data, work in process, completed work, and other material produced as a part of, or acquired in respect of the performance, whether complete or incomplete, must be delivered promptly to WETA in native format, or other such format as instructed by WETA. Additionally, at WETA's request, for up to ninety (90) calendar days after any expiration or termination of this Agreement, Contractor will provide reasonable transition assistance; and for any such services outside the scope of this Agreement, Contractor may charge its then-prevailing rates for such services, but no more than the rates it charges to other customers for similar or comparable services and no more than reasonable rates.

In the event of termination, WETA will not in any manner be liable for the Contractor's actual or projected lost profits had the Contractor completed the services required by this Agreement or any task order.

23. MAINTENANCE, AUDIT AND INSPECTION OF RECORDS

All Contractor and subcontractor costs incurred in the performance of this Agreement will be subject to audit. The Contractor and its subcontractors must permit WETA and the State Auditor to inspect, examine, make excerpts from, transcribe, and copy the Contractor's books, work, documents, papers, materials, payrolls records, accounts and any and all data relevant to the Agreement at any reasonable time, and to audit and verify statements, invoices or bills submitted by the Contractor pursuant to this Agreement. The Contractor must also provide such assistance as may be required in the course of such audit. The Contractor must retain these records and make them available for inspection hereunder for a period of four (4) years after expiration or termination of the Agreement.

If, as a result of the audit, it is determined by WETA's auditor or staff that reimbursement of any costs including profit or fee under this Agreement was in excess of that represented and relied upon during price negotiations or represented as a basis for payment, the Contractor agrees to reimburse WETA for those costs within sixty (60) days of written notification by WETA.

24. WORKERS' COMPENSATION COMPLIANCE

Contractor is required to secure the payment of compensation of its employees in accordance with Labor Code section 3700. Contractor certifies the following:

Contractor is aware of the provisions of Section 3700 of the Labor Code which require every employer to be insured against liability for workers' compensation or to undertake self-insurance in accordance with the provisions of that Code, and Contractor will comply with such provisions before commencing the performance of the any work or services under the Agreement or any subcontract.

25. EQUAL EMPLOYMENT OPPORTUNITY

In connection with the performance of this Agreement, the Contractor may not discriminate against any employee or applicant for employment because of race, color, religion, citizenship, political activity or affiliation, national origin, ancestry, physical or mental disability, marital status, age, medical condition (as defined under California law), veteran status, sexual orientation, gender identity, gender expression, sex or gender (which includes pregnancy, childbirth, breastfeeding, or related medical conditions), taking or requesting statutorily protected leave, or any other characteristics protected under federal, state, or local laws. The Contractor must take affirmative actions to ensure that applicants are employed, and that employees are treated during their employment, without regard to

their race, religion, color, sex, disability, national origin, or any other characteristic protected under state, federal, or local laws. Such actions 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. The Contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided by WETA's contracting officer setting forth the provisions of this nondiscrimination clause. The Contractor further agrees to insert a similar provision in all subcontracts, except subcontracts for standard commercial supplies or raw materials.

The Contractor will, in all solicitations or advancements for employees placed by or on behalf of the Contractor, state that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex, sexual orientation, gender identity, or national origin.

The Contractor will not discharge or in any other manner discriminate against any employee or applicant for employment because such employee or applicant has inquired about, discussed, or disclosed the compensation of the employee or applicant or another employee or applicant. This provision will not apply to instances in which an employee who has access to the compensation information of other employees or applicants as a part of such employee's essential job functions discloses the compensation of such other employees or applicants to individuals who do not otherwise have access to such information, unless such disclosure is in response to a formal complaint or charge, in furtherance of an investigation, proceeding, hearing, or action, including an investigation conducted by the employer, or is consistent with the Contractor's legal duty to furnish information.

The Contractor will send to each labor union or representative of workers with which the Contractor has a collective bargaining agreement or other contract or understanding, a notice, to be provided by WETA's contracting officer, advising the labor union or workers' representative of the Contractor's commitments under Section 202 of Executive Order No. 11246 of September 24, 1965, and will post copies of the notice in conspicuous places available to employees and applicants for employment.

The Contractor will comply with all provisions of Executive Order No. 11246 of September 24, 1965, and of the rules, regulations, and relevant orders of the Secretary of Labor. The Contractor will furnish all information and reports required by Executive Order No. 11246 of September 24, 1965, and by the rules, regulations, and orders of the Secretary of Labor, or pursuant thereto, and will permit access to the Contractor's books, records, and accounts by WETA and the Secretary of Labor for purposes of investigation to ascertain compliance with such rules, regulations, and orders.

In the event of the Contractor's noncompliance with the nondiscrimination clauses of this Agreement or with any of such rules, regulations, or orders, this Agreement may be cancelled, terminated, or suspended in whole or in part and the Contractor may be declared ineligible for further WETA contracts in accordance with procedures authorized in Executive Order No. 11246 of September 24, 1965, and such other sanctions may be imposed and remedies invoked as provided in Executive Order No. 11246 of September 24, 1965, or by rule, regulation, or order of the Secretary of Labor, or as otherwise provided by law.

The Contractor will include the provisions of all of the above paragraphs in this Section 24 in every subcontract or purchase order entered into under this Agreement, unless exempted by rules, regulations, or orders of the Secretary of Labor issued pursuant to Section 204 of Executive Order No. 11246 of September 24, 1965, so that such provisions will be binding upon each subcontractor or vendor. The Contractor will take such action with respect to any subcontract or purchase order as may be directed by the Secretary of Labor as a means of enforcing such provisions including sanctions for noncompliance, provided, however, that in the event the Contractor becomes involved in, or is threatened with, litigation with a subcontractor or vendor as a result of such direction, the Contractor may request the United States to enter into such litigation to protect the interests of the United States.

26. NON-DISCRIMINATION ASSURANCE

The Contractor may not discriminate on the basis of race, color, national origin, or sex in the performance of this Agreement. The Contractor must carry out applicable requirements of 49 C.F.R. Part 26 in the award and administration of U.S. DOT-assisted contracts. Further, the Contractor agrees to comply with all provisions prohibiting discrimination on the basis of race, color, or national origin of Title VI of the Civil Rights Act of 1964, as amended, 42 U.S.C. §§ 2000d et seq., and with U.S. DOT regulations, "Nondiscrimination in Federally-Assisted Programs of the Department of Transportation – Effectuation of Title VI of the Civil Rights Act," 49 C.F.R. Part 21. The Contractor must obtain the same assurances from its joint venture partners, subcontractors, and subconsultants by including this assurance in all subcontracts entered into under this Agreement. Failure by the Contractor to carry out these requirements is a material breach of this Agreement, which may result in the termination of this Agreement or such other remedy as WETA deems appropriate.

27. CONFLICT OF INTEREST

The Contractor warrants and represents that it presently has no interest and agrees that it will not acquire any interest that would present a conflict of interest under California Government Code §§ 1090 et seq. or §§ 87100 et seq. during the performance of services under this Agreement. The Contractor further covenants that it will not knowingly employ any person having such an interest in the performance of this Agreement. Violation of this provision may result in this Agreement being deemed void and unenforceable.

Depending on the nature of the work performed, a Contractor of WETA is subject to the same conflict of interest prohibitions that govern WETA employees and officials (Cal. Govt. Code Section 1090 et seq. and Cal. Govt. Code Section 87100 et seq. as well as all applicable federal regulations and laws). During the proposal process or the term of the Agreement, Contractor and its employees may be required to disclose financial interests.

Depending on the nature of the work performed, the Contractor may be required to publicly disclose financial interests under WETA's Conflict of Interest Code. Upon receipt, the Contractor agrees to promptly submit a Statement of Economic Interest on the form provided by WETA.

No person previously in the position of director, officer, employee or agent of WETA may act as an agent or attorney for, or otherwise represent, the Contractor by making any formal or informal appearance, or any oral or written communication, before WETA, or any officer or employee of WETA, for a period of twelve (12) months after leaving office or employment with WETA if the appearance or communication is made for the purpose of

influencing any action involving the issuance, amendment, award or revocation of a permit, license, grant or contract.

The Contractor must take all reasonable measures to preclude the existence or development of an organizational conflict of interest in connection with work performed under this Agreement and other solicitations. 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 WETA; 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.

The Contractor may not engage the services of any subcontractor or independent Contractor on any work related to this Agreement if the subcontractor or independent Contractor, or any employee of the subcontractor or independent Contractor, 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, the Contractor becomes aware of an organizational conflict of interest in connection with the work performed hereunder, the Contractor immediately must provide WETA with written notice of the facts and circumstances giving rise to this organizational conflict of interest. The Contractor's written notice will also propose alternatives for addressing or eliminating the organizational conflict of interest. If at any time during the term of this Agreement, WETA becomes aware of an organizational conflict of interest in connection with the Contractor's performance of the work hereunder, WETA will similarly notify the Contractor. In the event a conflict is presented, whether disclosed by the Contractor or discovered by WETA, WETA will consider the conflict presented and any alternatives proposed and meet with the Contractor to determine an appropriate course of action. WETA's determination as to the manner in which to address the conflict will be final.

During the term of this Agreement, the Contractor must maintain lists of its employees, and the subcontractors and independent Contractor used and their employees. The Contractor must provide this information to WETA upon request. However, submittal of such lists does not relieve the Contractor of its obligation to assure that no organizational conflicts of interest exist. The Contractor must retain this record for five (5) years after WETA makes final payment under this Agreement. Such lists may be published as part of future WETA solicitations.

The Contractor must maintain written policies prohibiting organizational conflicts of interest and must ensure that its employees are fully familiar with these policies. The Contractor must monitor and enforce these policies and must require any subcontractors and affiliates to maintain, monitor and enforce policies prohibiting organizational conflicts of interest.

Failure to comply with this section may subject the Contractor to damages incurred by WETA in addressing organizational conflicts that arise out of work performed by the Contractor, which damages the Contractor agrees to reimburse, or to termination of this Agreement for breach.

28. HAZARDOUS CHEMICALS AND WASTES

The Contractor will bear full and exclusive responsibility for any release of hazardous or non-hazardous chemicals or substances during the performance of the Agreement. The Contractor must immediately report any such release to WETA. The Contractor will be

solely responsible for all claims and expenses associated with the response to, removal and remediation of the release, including, without limitation, payment of any fines or penalties levied against WETA by any agency as a result of such release and the Contractor agrees to hold harmless, indemnify and defend WETA from and against any claims arising from such release. For purposes of this section only, the term "claims" includes: (1) All notices, orders, directives, administrative or judicial proceedings, fines, penalties, fees or charges imposed by any governmental agency with jurisdiction; and (2) Any claim, cause of action, or administrative or judicial proceeding brought against WETA, its directors, employees, and agents for any loss, cost (including reasonable attorney's fees), damage or liability, sustained or suffered by any person or entity, including WETA.

If the performance of the Agreement creates any hazardous wastes, Contractor must properly disposed of such hazardous wastes according to federal, state and local laws, at the Contractor's sole expense. The Contractor must dispose of the wastes under its own EPA Generator Number. In no event will WETA be identified as the generator. The Contractor must notify WETA of any such hazardous wastes and WETA reserves the right to receive a copy of the results of any tests conducted on the wastes and, at its cost, to perform additional tests or examine those wastes, prior to its disposition. The Contractor agrees to hold harmless, indemnify and defend WETA from and against any claims arising from the disposal of the hazardous wastes, regardless of the absence of negligence or other malfeasance by Contractor. Disposal of all hazardous materials must be performed in accordance with all applicable federal, state and local laws and regulations.

The indemnification obligations in this section will survive termination or expiration of the Agreement.

29. PUBLICITY

The Contractor, its employees, subcontractors and agents may not refer to WETA, or use any logos, images or photographs of WETA for any commercial purpose, including, but not limited to, advertising, promotion or public relations, without WETA's prior written consent. Such written consent will not be required for the inclusion of WETA's name on a customer list.

30. ATTORNEYS' FEES

If any legal proceeding should be instituted by either of the parties to enforce the terms of this Agreement or to determine the rights of the parties under this Agreement, the prevailing party in said proceeding will recover, in addition to all court costs, reasonable legal fees.

31. WAIVER

Any waiver of any breach or covenant of this Agreement must be in a writing executed by a duly authorized representative of the party waiving the breach. A waiver by any of the parties of a breach or covenant of this Agreement does not waive any succeeding breach or any other covenant unless specifically and explicitly stated in such waiver.

32. SEVERABILITY

If any provision of this Agreement is deemed invalid or unenforceable, that provision may be reformed and/or construed consistently with applicable law as nearly as possible to reflect the original intentions of this Agreement, and in any event, the remaining provisions of this Agreement will remain in full force and effect.

33. NO THIRD PARTY BENEFICIARIES

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

34. COMPLIANCE WITH LAWS, PRACTICES AND POLICIES

Contractor and its employees, agents, and subcontractors performing the Services under this Agreement must at all times comply with all applicable local, state, federal laws, ordinances, statutes, and regulations (including without limitation any applicable health and safety standards) in effect at the time Services under this Agreement are performed. Contractor, when present at WETA's facilities, will observe and obey (and compel its officers, employees, guests, and those doing business with it, to observe and obey) all generally applicable policies, practices, and procedures of WETA.

35. APPLICABLE LAW

This Agreement, its interpretation and all work performed under it will be governed by the laws of the State of California.

36. BINDING ON SUCCESSORS

All of the terms, provisions and conditions of this Agreement are binding upon and inure to the benefit of the parties and their respective successors, assigns and legal representatives.

37. COUNTERPARTS

This Agreement may be executed in one or more counterparts, each of which will be deemed an original. All counterparts will be construed together and will constitute one agreement.

38. ENTIRE AGREEMENT; MODIFICATION

This Agreement, including any attachments, constitutes the entire Agreement between the parties with respect to the subject matter hereof and may not be amended except by a written amendment executed by authorized representatives of both parties. In the event of a conflict between the terms and conditions of this Agreement and the attachments, the terms of this Agreement will prevail.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement by their duly authorized officers.

CONTRACTOR*:

WETA:

NAME

SAN FRANCISCO BAY AREA WATER
EMERGENCY TRANSPORTATION
AUTHORITY

By: _____

By: _____

Date: _____

Date: _____

Name: _____

Name: Seamus Murphy

Title: _____

Title: Executive Director

Approved as to form:

By: _____

Date: _____

Name: _____

Legal Counsel to WETA

Title: _____

** If the Contractor is a corporation, this Agreement must be executed by two corporate officers, consisting of: (1) the president, vice president or chair of the board; and (2) the secretary, assistant secretary, chief financial officer or assistant treasurer. In the alternative, this Agreement may be executed by a single officer or a person other than an officer provided that evidence satisfactory to WETA is provided demonstrating that such individual is authorized to bind the corporation (e.g. a copy of a certified resolution from the corporation's board or a copy of the corporation's bylaws).*

ATTACHMENT D

INSURANCE REQUIREMENTS FOR CONTRACTOR

CONTRACTOR shall procure and maintain for the duration of the agreement insurance against claims for injuries to persons or damages to property which may arise from or in connection with the performance of work hereunder by the CONTRACTOR, its agents, representatives, or employees or SUBCONTRACTORS:

PART 1 - INSURANCE REQUIREMENTS

1.01 GENERAL

A. Any person, firm or corporation CONTRACTOR authorizes to work upon the Property, including any SUBCONTRACTOR, shall be deemed to be CONTRACTOR's agent and shall be subject to all the applicable terms of this Section. Prior to entry upon the Property by such agents, CONTRACTOR shall provide WETA with satisfactory evidence (e.g., in the form of a Certificate of Insurance) that it and its SUBCONTRACTORS or other agents who will perform work under this agreement are insured in accordance with the following. Such insurance shall remain in effect throughout the term of this Agreement and shall be at the sole cost and expense of CONTRACTOR (or its agents or SUBCONTRACTORS).

1.02 WORKERS' COMPENSATION COVERAGE

A. CONTRACTOR shall at its own cost and expense procure and maintain Workers' Compensation coverage to its employees, as required by the California Labor Code including Longshoreman's and Harbor Workers Act Insurance, in compliance with the laws of the State of California, and Federal laws where applicable. The CONTRACTOR shall also maintain Employer's Liability coverage with minimum limits of One Million Dollars (\$1,000,000) for each disease or occurrence, with a policy limit of One Million Dollars (\$1,000,000).

B. The policy shall contain a waiver of subrogation in favor of WETA and its respective officers, directors, employees, volunteers and agents while acting in such capacity.

C. Prior to commencing work or entering onto the Property, CONTRACTOR shall provide WETA the Designated Representative with a certificate evidencing coverage, and upon request, a certified duplicate original of the policy. The certificate and policy shall also provide that the CONTRACTOR's policy will not be cancelled without 30 days prior written notice to WETA's Designated Representative.

1.03 COMMERCIAL GENERAL LIABILITY

A. CONTRACTOR shall, at its own cost and expense, procure and maintain Commercial General Liability insurance which shall include, as additional insureds, WETA and its respective directors, officers, employees, volunteers and agents while acting in such capacity.

B. The insurance shall provide bodily injury and property damage coverage with a combined single limit for bodily injury and property damage of at least \$1 million per occurrence or claim and a general aggregate limit of at least \$2 million. This insurance shall include but not be limited to premises and operations; contractual liability, personal and advertising injury; explosion, collapse, and underground coverage, products and completed operations, and broad form property damage.

C. Prior to commencing work or entering onto the Property, CONTRACTOR shall provide the Designated Representative of WETA with a Certificate(s) of Insurance evidencing coverage, and upon request, a certified duplicate original of the policy

D. The policy(ies) shall indicate that it is primary to any other insurance and the insurance company(ies) providing such policy(ies) shall be liable thereunder for the full amount of any loss or claim, up to and including the total limit of liability, without right of contribution from any of the insurance effected or which may be effected by WETA. The policy shall contain a waiver of subrogation in favor of WETA and its respective directors, officers, employees, volunteers, agents while acting in such capacity.

E. The policy shall also contain either a Cross Liability endorsement or Severability of Interests Clause and stipulate that inclusion of WETA as additional insureds shall not in any way affect WETA's rights either as respects any claim, demand, suit or judgment made, brought or recovered against the CONTRACTOR. Said policy shall protect CONTRACTOR and WETA in the same manner as though a separate policy had been issued to it, but nothing in said policy shall operate to increase the insurance company's liability as set forth in its policy beyond the amount or amounts shown or to which the insurance company would have been liable if only one interest had been named as an insured.

1.04 BUSINESS AUTOMOBILE LIABILITY

A. CONTRACTOR shall, at its own cost and expense, procure and maintain Business Automobile Liability insurance providing bodily injury and property damage coverage with a combined single limit of at least \$2 million per occurrence for all owned, non-owned and hired automobiles. This insurance shall provide contractual liability covering all motor vehicles and mobile equipment to the extent coverage may be excluded from commercial general liability insurance. Such insurance shall include, as additional insureds, WETA and its respective directors, officers, employees, volunteers, and agents while acting in such capacity. Said policy shall contain a waiver of subrogation in favor of WETA and its respective directors, officers, employees, volunteers, agents while acting in such capacity. Prior to commencing work or entering onto the Property, CONTRACTOR shall provide the Manager, Operations of WETA with a Certificate(s) of Insurance evidencing coverage, and upon request, a certified duplicate original of the policy.

B. If CONTRACTOR's property is self-insured, CONTRACTOR hereby agrees to waive any subrogation rights it may acquire in favor of WETA and its respective directors, officers, employees, volunteers, agents while acting in such capacity.

1.05 UMBRELLA COVERAGE

A. CONTRACTOR shall, at its own cost and expense, procure and maintain Umbrella Liability Insurance coverage of at least \$4 million per occurrence and in the annual aggregate in excess of Commercial General Liability, Business Automobile Liability, Professional Liability, and CONTRACTOR's Pollution Liability Insurance.

1.06 GENERAL INSURANCE REQUIREMENTS

A. Acceptable Insurance

1. All policies will be issued by insurers acceptable to WETA (generally with a Best's Rating of A10 or better). Upon evidence of financial capacity satisfactory to WETA, CONTRACTOR's obligation hereunder may be satisfied in whole or in part by adequately funded self-insurance. All insurance specified above shall remain in force until all work to be performed is satisfactorily completed, all of CONTRACTOR's personnel and equipment have been removed from the property, and the work has been formally accepted. The failure to procure or maintain required insurance and/or an adequately funded self-insurance program will constitute a material breach of this Agreement.

2. Prior to commencing work or entering onto the property, CONTRACTOR shall provide WETA's Designated Representative with a Certificate(s) of Insurance evidencing the coverage listed above, and upon request, a certified duplicate original of the policy(ies). The Certificate shall stipulate that the insurance company(ies) issuing such policy(ies) shall give written notice to the Executive Director or the owner's designated representative of any material alteration or reduction in coverage of aggregate limits, if such limits apply, and provide at least thirty (30) days' notice of cancellation.

B. Claims-Made Insurance

1. If any insurance specified above shall be provided on a claim-made basis, then in addition to coverage requirements above, such policy shall provide that:

(a) Policy retroactive date coincides with or precedes the CONTRACTOR's start of work (including subsequent policies purchased as renewals or replacements).

(b) CONTRACTOR shall make every effort to maintain similar insurance for at least three (3) years following project completion, including the requirement of adding all named insureds.

(c) If insurance is terminated for any reason, CONTRACTOR agrees to purchase an extended reporting provision of at least two years to report claims arising from work performed in connection with this Agreement.

(d) Policy allows for reporting of circumstances or incidents that might give rise to future claims.

C. Failure to Procure or Maintain Insurance

1. The failure to procure or maintain required insurance and/or an adequately funded self-insurance program will constitute a material breach of the agreement.

D. Regulatory Compliance

1. In addition to the requirements described above, CONTRACTOR shall comply with any additional coverages required by the United States Department of Transportation, the Environmental Protection Agency and/or related state and local laws, rules and regulations. The CONTRACTOR and/or SUBCONTRACTORS shall obtain all permits, licenses and other forms or documentation which are required and forward them with the required evidence of insurance to WETA.

E. Terms of Policies

1. Except as provided in Section 2 concerning claims made insurance policies, all insurance specified above shall remain in force until all work to be performed is satisfactorily completed, all of CONTRACTOR's personnel and equipment have been removed from WETA's property, and the work has been formally accepted.

F. Evidence of Insurance

1. The CONTRACTOR shall furnish to WETA Certificates of Insurance or, upon request a certified copy of all policies, for all specified coverages prior to commencing work within ten (10) business days of award of contract. All policies and certificates required hereunder shall provide for thirty (30) days written notice to WETA of cancellation or reduction in limits. The certificates and policies shall also evidence any specific requirements of coverage as set forth in this Section.

G. Reporting of Incidents, Losses or Claims

1. The CONTRACTOR agrees to immediately notify WETA's Manager of Operations, at **(415) 364-3192** following any accident or injury, which occurs in connection with the Work under this AGREEMENT. In addition, the CONTRACTOR shall provide a detailed written report of the accident or injury to WETA within seven (7) days of its occurrence.

**Attachment F:
Non-Collusion Declaration**

The undersigned declares:

I am the _____ of _____, the party making the foregoing bid.

The bid is not made in the interest of, or on behalf of, any undisclosed person, partnership, company, association, organization, or corporation. The bid is genuine and not collusive or sham. The Bidder has not directly or indirectly induced or solicited any other Bidder to put in a false or sham bid. The Bidder has not directly or indirectly colluded, conspired, connived, or agreed with any Bidder or anyone else to put in a sham bid, or to refrain from bidding. The Bidder has not in any manner, directly or indirectly, sought by agreement, communication, or conference with anyone, to fix the bid price of the Bidder or any other Bidder, or to fix any overhead, profit, or cost element of the bid price, or of that of any other Bidder. All statements contained in the bid are true. The Bidder has not, directly or indirectly, submitted his or her bid price or any breakdown thereof, or the contents thereof, or divulged information or data relative thereto, to any corporation, partnership, company, association, organization, bid depository, or to any member or agent thereof to effectuate a collusive or sham bid, and has not paid, and will not pay, any person or entity for such purpose.

Any person executing this declaration on behalf of a Bidder that is a corporation, partnership, joint venture, limited liability company, limited liability partnership, or any other entity, hereby represents that he or she has full power to execute, and does execute, this declaration on behalf of the Bidder.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct and that this declaration is executed on _____[date], at _____[city], _____[state].

Signature of Bidder

Title

Date

**Attachment G:
Payment Bond Form
(For Reference Only – To Be Completed by Successful Bidder)**

WHEREAS the San Francisco Bay Area Water Emergency Transportation Authority (WETA) (hereinafter referred to as “WETA”) has entered into a contract with _____, (hereinafter referred to as “PRINCIPAL”) for construction of **CONTRACT NO. [XXXX], [TITLE]**, (hereinafter referred to as the “Contract”); and

WHEREAS said PRINCIPAL is required under the terms of said Contract to furnish a bond of recurring payment of claims to which reference is made in Section 9554 of the Civil Code;

NOW, THEREFORE, we, the undersigned PRINCIPAL, and _____, as Surety, are held and firmly bound unto WETA in the penal sum of _____ **Dollars and _____ Cents (\$_____)** lawful money of the United States, to be paid to WETA or its successors and assigns, for which payment we bind ourselves, our heirs, executors, administrators, successors, and assigns, jointly and severally, firmly by these presents.

THE CONDITION OF THIS OBLIGATION IS SUCH that if said PRINCIPAL or any of its subcontractor fails to pay any of the persons named in Section 9100 of the Civil Code, or amounts due under the Unemployment Insurance Code with respect to work or labor performed under the Contract, or for any amounts required to be deducted, withheld, and paid over to the Employment Development Department from the wages of employees of the PRINCIPAL or its subcontractor pursuant to Section 13020 of the Unemployment Insurance Code, with respect to such work and labor, the Surety will pay for the same and also will pay, in case suit is brought upon this bond, a reasonable attorney’s fee, to be fixed by the court.

This bond will inure to the benefit of any of the persons named in Section 9100 of the Civil Code so as to give a right of action to such persons or their assigns if any suit is brought upon this bond.

This bond is given to comply with Sections 9550 and 9554 of the Civil Code. The liability of the PRINCIPAL and Surety hereunder is governed by the provisions of said Code, all acts amendatory thereof, and all other statutes referred to therein.

The Surety hereby stipulates and agrees that no change, extension of time, alteration or addition to the terms of the Contract or to the Work to be performed thereunder or the specifications accompanying the same shall in any way affect its obligation on this bond, and it does hereby waive notice of any such change, extension of time, alteration or addition to the terms of the Contract or to the Work or to the specifications.

IN WITNESS WHEREOF, the above bound parties have executed this instrument under their seals this _____ day of _____, 2021, the name and corporate seal of each corporate body being hereto affixed and these presents duly signed by its undersigned representative, pursuant to authority of its governing body.

PRINCIPAL:

Company Name

*By: _____
Name, Title

*By: _____
Name, Title

SURETY

Name and Address:

*By: _____
Name, Attorney-in-Fact

**Note: To be considered complete, both the Principal and an admitted Surety Insurer authorized by the California Insurance Commissioner to transact surety business in the State of California must sign the Payment Bond. In addition, the Surety's signature must be notarized and a copy of the Surety's Power of Attorney must be attached.*

ATTACHMENT H: PUBLIC WORKS REQUIREMENTS

1. **RETENTION ON PROGRESS PAYMENTS.** From each invoice/billing statement, five percent (5%) will be deducted and held in retention by WETA, the remainder less any deductions described above will be paid to the Contractor as progress payments, in accordance with Public Contract Code Sections 7201 and 9203, and Section 7 of the Agreement.

Upon Contractor's request, WETA will make payment of funds withheld from progress payments, pursuant to the requirements of California Public Contract Code Section 22300, if Contractor deposits in escrow with WETA or with a bank acceptable to WETA, securities eligible for investment under California Government Code Section 16430, bank or savings and loan certificates of deposit, interest bearing demand deposit accounts, standby letters of credit, or any other security mutually agreed to by Contractor and WETA, upon the following conditions:

1. Contractor shall bear the expenses of WETA and the escrow agent in connection with the escrow deposit made.
2. Securities or certificates of deposit to be placed in escrow shall be of a value at least equivalent to the amounts of retention to be paid to Contractor pursuant to this section.
3. Contractor shall enter into an escrow agreement satisfactory to WETA, which agreement shall be substantially similar to the form provided in California Public Contract Code Section 22300.
4. Contractor shall obtain the written consent of the surety to such agreement.

2. **CLAIMS PROCEDURES.** Compliance with all change order procedures is a prerequisite to filing a Public Contract Code Claim pursuant to this Section. Claims must be submitted no later than (a) 30 days after change order negotiations and procedures are complete as per Section 13 of the Agreement or (b) 30 days after the occurrence of the event giving rise to the claim.

In accordance with the procedures set forth in Public Contract Code Sections 9204 and 20104-20104.6, a Contractor may submit a claim by registered or certified mail with return receipt requested, for one or more of the following: (a) a time extension, including, without limitation, for relief from damages or penalties for delay assessed by WETA; (b) payment by WETA of money or damages arising from work done by, or on behalf of, the Contractor pursuant to this Agreement and payment for which is not otherwise expressly provided or to which the Contractor is not otherwise entitled; or (c) payment of an amount that is disputed by WETA.

The Contractor must furnish reasonable documentation to support the claim, including but not limited to: (1) a clear, concise recital of the basis upon which the claim is asserted, including a designation of the provisions of the Agreement upon which the claim is based; (2) a statement as to the amount of time and/or compensation sought pursuant to the claim; (3) whether the Contractor's claim arises from an ongoing occurrence, and if so a description of the specific work activities affected by the claim; (4) a time impact analysis

in the event that Contractor requests a time extension; (5) full and complete cost records supporting the amount of any claim for additional compensation; and (6) a notarized certification by the Contractor as follows: "Under the penalty of law for perjury or falsification and with specific reference to the California False Claims Act, Government Code Section 12650 et seq., the undersigned hereby certifies that the information contained herein is a true, accurate and complete statement of all features relating to the claim asserted." Failure by the Contractor to provide sufficient documentation will result in denial of the claim. WETA reserves the right to request additional documentation or clarification of the documentation provided.

Upon receipt of a claim, WETA will conduct a reasonable review and provide a written statement to the Contractor identifying what portion of the claim is disputed and what portion is undisputed within 45 days of receipt of the claim. WETA and Contractor may, by mutual agreement, extend the 45 day time period. For any undisputed portion of a claim, WETA must make payment within 60 days of its issuance of the written statement.

If the Contractor disputes WETA's written statement, or if WETA fails to respond, the Contractor may demand an informal conference to meet and confer for settlement of the issues in dispute. WETA will then schedule the meet and confer conference within 30 days of the demand. Within 10 business days following the meet and confer conference, WETA will provide a written statement identifying the portion of the claim that remains in dispute. Any payment due on an undisputed portion of the claim will be made within 60 days of the meet and confer conference.

After the meet and confer conference, any disputed portion of the claim will be submitted to non-binding mediation. Alternatively, upon receipt of a claim, the parties may mutually agree to waive, in writing, mediation and proceed directly to the commencement of a civil action or binding arbitration, as applicable. If mediation is unsuccessful, the parts of the claim that remain in dispute will be subject to applicable procedures set forth below.

WETA's failure to respond to a claim within the time periods described above will result in the claim being deemed rejected in its entirety. Additionally, amounts not paid in a timely manner will bear interest at 7 percent (7%) per year.

In the event that the mediation is unsuccessful, Contractor must file a government claim pursuant to Government Code Sections 910 et seq. in order to initiate a civil action. In any civil action filed to resolve claims, the court will submit the matter to non-binding mediation within 60 days following the filing or responsive pleading, provided that the parties have not already participated in mediation of the claim as outlined above. If the matter remains in dispute after nonbinding mediation, the court will submit the matter to judicial arbitration pursuant to Code of Civil Procedure Section 1141.10 et seq. If the matter remains in dispute after judicial arbitration, WETA or the Contractor may request a trial de novo.

3. **UTILITY RELOCATION.** Pursuant to California Government Code Section 4215, if during the course of the Agreement, the Contractor encounters utility installations which are not shown or indicated in the Agreement plans or in the specifications or which are

found in a location substantially different from that shown, and such utilities are not reasonably apparent from visual examination of the worksite, then it must promptly notify WETA in writing. Where necessary for the performance of the Agreement, WETA will amend the Agreement to adjust the scope of work and the compensation to allow the Contractor to make such adjustment, rearrangement, repair, removal, alteration, or special handling of such utility, including repair of the damaged utility. At any time, if the Contractor fails to give the notice specified above and thereafter acts without instructions from WETA, then it will be liable for any or all damage to such utilities or other work under the Agreement which arises from its operations subsequent to the discovery, and it will repair and make good such damage at its own cost.

4. **USE OF SUBCONTRACTORS.** Contractor will not subcontract any work to be performed by it under this Agreement without the prior written approval of WETA. Contractor will be solely responsible for reimbursing any subcontractors and Authority will have no obligation to them. Attention is directed to the requirements of Sections 4100 to 4113, inclusive, of the California Public Contract Code which are applicable to this Agreement. Each Contractor must list the name, business address, California contractor license number and public works contractor registration number issued in accordance with Labor Code Section 1725.5 for each subcontractor to whom the Contractor proposes to subcontract a portion of the work in an amount in excess of one-half of one percent (.5%) of the Grand Total Amount, along with a description of the portion of the work which will be done by each subcontractor, by executing the "List of Subcontractors" form included in Attachment E.
5. **CONTRACTOR'S LICENSE REQUIREMENTS.** Contractor and any approved subcontractors must hold such current and valid Contractor's Licenses as required by California law.
6. **NON-COLLUSION DECLARATION.** Pursuant to Public Contract Code section 7106, Contractor must execute a Non-Collusion Declaration, in a form provided by WETA in Attachment F.
7. **EXCAVATION.** In accordance with state law (Public Contract Code Section 7104), with respect to any work involving digging trenches or excavations that extend deeper than four feet, the Contractor must notify WETA promptly in writing of any of the following conditions: (a) material that the Contractor believes may be hazardous waste, as defined in California Health and Safety Code Section 25117, that is required to be removed to a Class I, Class II or Class III disposal site in accordance with provisions of existing law; (b) subsurface or latent physical conditions at the site differing from those indicated; (c) unknown physical conditions at the site of any unusual nature, differing materially from those ordinarily encountered and generally recognized as inherent in work of the character provided for in the Agreement. Contractor must notify WETA of such conditions prior to disturbing them and must await direction from WETA as to how to proceed.
8. **TRENCH SAFETY.** Excavation for any trench 5 feet or more in depth will not begin until the Contractor has received approval from WETA, of the Contractor's detailed plan for worker protection from the hazards of caving ground during the excavation of such trench.

Such plan must be submitted at least 5 days before the Contractor intends to begin excavation for the trench and must show the details of the design of shoring, bracing, sloping or other provisions to be made for worker protection during such excavation. No such plan will allow the use of shoring, sloping or a protective system less effective than that required by the Construction Safety Orders of the Division of Industrial Safety; and if such plan varies from the shoring system standards established by the Construction Safety Orders, the plan must be prepared and signed by an engineer who is registered as a Civil or Structural Engineer in the State of California. Attention is directed to the provisions of Section 6705 of the Labor Code concerning trench excavation safety plans.

- 9. PAYMENT BOND.** For all Agreements over \$25,000, the successful Contractor must provide a payment bond in the amount equal to one hundred percent (100%) of the Grand Total Price of the Agreement and issued by a California admitted surety. The payment bond will provide WETA with security for Contractor's full payment to all subcontractors for costs of materials, equipment, supplies, and labor furnished in the course of the performance of the Agreement. Full compensation for furnishing the payment bond is included in the Grand Total Price. For reference, the Payment Bond Form is included in Attachment G.
- 10. ANTITRUST CLAIM ASSIGNMENT.** In entering into an Agreement or a subcontract to supply goods, services, or materials pursuant to this Agreement, the Contractor or subcontractor offers and agrees to assign to WETA all rights, title, and interest in and to all causes of action it may have under Section 4 of the Clayton Act (15 U.S.C. Sec. 15) or under the Cartwright Act (Chapter 2 (commencing with Section 16700) of Part 2 of Division 7 of the Business and Professions Code), arising from purchases of goods, services, or materials pursuant to this Agreement or a subcontract. This assignment will be made and become effective at the time the awarding body tenders final payment to the Contractor, without further acknowledgment by the parties.
- 11. THIRD-PARTY CLAIMS.** Pursuant to Public Contract Code Section 9201, WETA will have full authority to compromise or otherwise settle any claim relating to the Agreement at any time. WETA will provide for timely notification to the Contractor of the receipt of any third-party claim, relating to the Agreement. Notice will be in writing and will be provided within thirty (30) days. WETA will be entitled to recover its reasonable costs incurred in providing the notification.
- 12. EXAMINATION AND AUDIT OF RECORDS.** Pursuant to Government Code Section 8546.7, the Contractor must retain all project-related records for a period of 3 years after final payment on this Agreement, which will be subject to audit or inspection by WETA or the State Auditor during this period. Separate and apart from the obligations under Section 8546.7, WETA will have the right to audit project records at WETA's discretion under the following circumstances: (a) submission of a Public Records Act request regarding the project; (b) inability to resolve a disputed Agreement change order; or (c) submission of a construction claim.

13. NOTICE OF TAXABLE POSSESSORY INTEREST. In accordance with Revenue and Taxation Code Section 107.6, this Agreement may create a possessory interest subject to personal property taxation for which the Contractor will be responsible.

14. LABOR COMPLIANCE REQUIREMENTS. In the performance of this Agreement, Contractor's attention is directed to the following requirements of the Labor Code.

A. Hours of Labor. Eight hours labor constitutes a legal day's work. Contractor shall forfeit, as penalty to WETA, \$25 for each worker employed in the performance of the Contract by the Contractor or by any subcontractor under it for each calendar day during which such worker is required or permitted to work more than eight hours in any one day and 40 hours in any one calendar week in violation of the provisions of the California Labor Code and in particular, Sections 1810 to 1815, inclusive. Work performed by employees of the Contractor in excess of eight hours per day and 40 hours during any one week shall be permitted upon compensation for all hours worked in excess of eight hours per day at not less than one-and-one-half times the basic rate of pay, as provided in Section 1815.

B. Prevailing Wages. Contractor shall comply with California Labor Code Sections 1770 to 1780, inclusive. In accordance with Section 1775, the Contractor shall forfeit as a penalty to WETA an amount as determined by the Labor Commissioner not to exceed \$200 for each calendar day or portion thereof for each worker paid less than stipulated prevailing wage rates for such work or craft in which such worker is employed for any work done under the contract by him or by any subcontractor under it in violation of the revisions of the Labor Code and in particular, Labor Code Sections 1770 to 1780, inclusive. The amount of this forfeiture shall be determined by the Labor Commissioner and shall be based on consideration of the mistake, inadvertence, or neglect of the Contractor or subcontractor in failing to pay the correct rate of prevailing wages, or the previous record of the Contractor or subcontractor in meeting their respective prevailing wage obligations, or the willful failure by the Contractor or subcontractor to pay the correct rates of prevailing wages. A mistake, inadvertence, or neglect in failing to pay the correct rate of prevailing wages is not excusable if the Contractor or subcontractor had knowledge of the obligations under the Labor Code. In addition to said penalty and pursuant to Section 1775, the difference between such stipulated prevailing wage rates and the amount paid to each worker for each calendar day or portion thereof for which each worker was paid less than the stipulated prevailing wage rate shall be paid to each worker by the Contractor or subcontractor.

Pursuant to the provisions of Section 1773 of the Labor Code, WETA has obtained the general prevailing rate of per diem wages and the general prevailing rate for holiday and overtime work applicable to the work to be done from the Director of the Department of Industrial Relations. Copies of the prevailing wage rates are on file at WETA and are available for review upon request. Pursuant to §1773.2 of the Labor Code, the Contractor shall post general prevailing wage rates at a prominent place at the site of the work.

If a worker employed by a subcontractor on a Public Works Project is not paid the general prevailing per diem wages by the subcontractor, the Contractor is not liable for the penalties described above unless the Contractor had knowledge of that failure of the subcontractor to pay the specified prevailing rate of wages to those workers or unless the Contractor fails to comply with all of the following requirements:

- 1) The Contract executed between Contractor and the subcontractor for the performance of work on Public Works Project shall include a copy of the requirements in Sections 1771, 1775, 1776, 1777.5, 1813 and 1815 of the Labor Code.
- 2) Contractor shall monitor the payment of the specified general prevailing rate of per diem wages by the subcontractor to the employees by periodic review of the certified payroll records of the subcontractor.
- 3) Upon becoming aware of the subcontractor's failure to pay the specified prevailing rate of wages to the subcontractor's workers, the Contractor shall diligently take corrective action to halt or rectify the failure, including, but not limited to, retaining sufficient funds due the subcontractor for work performed on the Public Works Project.
- 4) Prior to making final payment to the subcontractor for work performed on the Public Works Project, the Contractor shall obtain an affidavit signed under penalty of perjury from the subcontractor that the subcontractor has paid the specified general prevailing rate of per diem wages to the subcontractor's employees on the Public Works Project and any amounts due pursuant to Section 1813 of the Labor Code.

Pursuant to Section 1775 of the Labor Code, the Division of Labor Standards Enforcement shall notify the Contractor on a Public Works Project within fifteen (15) days of the receipt by the Division of Labor Standards Enforcement of a complaint of the failure of a subcontractor on that Public Works Project to pay workers the general prevailing rate of per diem wages. If the Division of Labor Standards Enforcement determines that employees of a subcontractor were not paid the general prevailing rate of per diem wages and if WETA did not retain sufficient money under the Contract to pay those employees the balance of wages owed under the general prevailing rate of per diem wages, the Contractor shall withhold an amount of money due the subcontractor sufficient to pay those employees the general prevailing rate of per diem wages if requested by the Division of Labor Standards Enforcement. Contractor shall pay any money retained from and owed to a subcontractor upon receipt of notification by the Division of Labor Standards Enforcement that the wage complaint has been resolved. If notice of the resolution of the wage complaint has not been received by the Contractor within one hundred eighty (180) days of the filing of a valid notice of completion or acceptance of the Public Works Project, whichever occurs later, the Contractor shall pay all monies retained

from the subcontractor to WETA. These monies shall be retained by WETA pending the final decision of an enforcement action.

C. Payroll Records. Contractor and each subcontractor shall submit electronic certified payroll records to the California Labor Commissioner in the manner and format set forth in California Labor Code section 1771.4. In addition to submitting certified payroll to the California Labor commissioner, Contractor shall submit certified payroll to WETA once per week.

Electronic submittal will be a web-based system, accessed electronically on the internet at the address provided by WETA. The web-based system is LCPtracker. Contractor and each subcontractor will be given a Log On identification and password to access the reporting system. Contractor shall be responsible for managing and certifying all lower tier subcontractors certified payroll submittals.

Upon request by WETA, Contractor shall be required to submit paper copies of certified payrolls and other required labor compliance documents.

The Contractor's attention is directed to the following provisions of Labor Code Section 1776. The Contractor shall be responsible for the compliance with these provisions by its subcontractors.

- 1) Each contractor and subcontractor shall keep an accurate payroll record, showing the name, address, social security number, work classification, straight time and overtime hours worked each day and week, and the actual per diem wages paid to each journeyman, apprentice, worker, or other employee employed by him or her in connection with the public work.
- 2) The payroll records enumerated under subdivision (a) shall be certified and shall be available for inspection at all reasonable hours at the principal office of the Contractor on the following basis:
 - i. A certified copy of an employee's payroll record shall be made available for inspection or furnished to such employee or his or her authorized representative on request.
 - ii. A certified copy of all payroll records enumerated in subdivision (a) shall be made available for inspection or furnished upon request to WETA, the Division of Labor Standards Enforcement and the Division of Apprenticeship Standards of the Department of Industrial Relations.
 - iii. A certified copy of all payroll records enumerated in subdivision (a) shall be made available upon request to the public for inspection or copies thereof made; provided, however, that a request by the public shall be made through either WETA, the Division of Apprenticeship Standards or the

Division of Labor Standards Enforcement. If the requested payroll records have not been provided pursuant to paragraph (2), the requesting party shall, prior to being provided the records, reimburse the costs of preparation by the Contractor, subcontractor and the entity through which the request was made. The public shall not be given access to such records at the principal office of the Contractor.

- 3) Unless required to be furnished directly to the Labor Commissioner in accordance with Labor Code Section 1771.4(3)(b), the certified payroll records shall be on forms provided by the Division of Labor Standards Enforcement or shall contain the same information as the forms provided by the Division.
- 4) The Contractor shall file a certified copy of the records enumerated in subdivision (a) with the entity that requested such records within ten (10) days after receipt of a written request.
- 5) Any copy of records made available for inspection as copies and furnished upon request to the public or WETA, the Division of Apprenticeship Standards or the Division of Labor Standards Enforcement shall be marked or obliterated in such a manner as to prevent disclosure of an individual's name, address and social security number. The name and address of the Contractor shall not be marked or obliterated.
- 6) The Contractor shall inform WETA of the location of records enumerated under subdivision (a), including the street address, city and county, and shall, within five working days, provide a notice of a change of location and address.
- 7) In the event of noncompliance with the requirements of this Section, the Contractor shall have ten (10) days in which to comply subsequent to receipt of written notice specifying in what respects such contractor must comply with this Section. Should noncompliance still be evident after such 10-day period, the Contractor shall, as a penalty the State or WETA, forfeit one hundred dollars (\$100) for each calendar day, or portion thereof, for each worker, until strict compliance is effectuated. Upon the request of the Division of Apprenticeship Standards or the Division of Labor Standards Enforcement, such penalties shall be withheld from progress payments then due. The penalties specified in subdivision (g) of Labor Code Section 1776 for noncompliance with the provisions of said Section 1776 may be deducted from any monies due or which may become due to the Contractor.

- 8) The Contractor and each subcontractor shall preserve their payroll records for a period of three (3) years from the date of completion of the Contract.

D. Labor Non-discrimination. Attention is directed to Section 1735 of the Labor Code which provides that Contractor shall not discriminate against any employee or applicant for employment because of race, religious creed, color, national origin, ancestry, physical disability, mental disability, medical condition, genetic information, marital status, sex, gender, gender identity, gender expression, age, sexual orientation, or military and veteran status of any person, except as provided in Section 12940 of the Government Code. Contractor further agrees to include a similar provision in all subcontracts, except subcontracts for standard commercial supplies or raw materials.

E. Apprentices. The Contractor and all subcontractors shall comply with the requirements of California Labor Code sections 1777.5, 1777.6 and 1777.7 regarding the employment of apprentices.

15. COORDINATION WITH FEDERAL AND CALIFORNIA PREVAILING WAGE LAWS.

When both Federal and California Prevailing Wage Laws apply to the Agreement, the Contractor and any subcontractor shall pay their workers the higher of the two prevailing wage rates. To the extent that contract provisions required by Federal and State law are inconsistent, the Contractor is responsible for complying with the more comprehensive or stricter requirements. The Contractor and all subcontractors shall insert this clause in any lower-tier contract. Federal prevailing wage rate, if applicable, are contained in a separate section.

16. PROHIBITION AGAINST CONTRACTING WITH DEBARRED SUBCONTRACTORS.

The Contractor is prohibited from performing work on a public works project with a subcontractor who is ineligible to perform work on the public works project pursuant to Section 1777.1 or 1777.7 of the Labor Code.

17. PAYMENT OF WORKERS' COMPENSATION. By executing this Agreement, the Contractor certifies as follows: "I am aware of the provisions of Section 3700 of the Labor Code which require every employer to be insured against liability for workers' compensation or to undertake self-insurance in accordance with the provisions of that code, and I will comply with such provisions before commencing the performance of the work of this Agreement."

18. PUBLIC WORKS REGISTRATION. The Contractor, and any subcontractors, must be registered with the California Department of Industrial Relations pursuant to Labor Code Section 1725.5. This Agreement is subject to monitoring and enforcement by the DIR pursuant to Labor Code Section 1771.4. The Contractor must post job site notices, as prescribed by regulation. The Contractor shall furnish the records specified in Labor Code Section 1776 directly to the Labor Commissioner, monthly in a format prescribed by the Labor Commissioner.

19. PERMITS, LICENSES, TRAINING. The Contractor shall procure all permits, licenses, certifications, and training (including OSHA permits pursuant to Labor Code Section 6500), pay all charges and fees, and give all notices necessary and incident to the due and lawful prosecution of the work.

The Environmental Quality Act (Public Resources Code, Section 21000 to 21176) may be applicable to permits, licenses and other authorizations which the Contractor must obtain from state or local agencies in connection with performing the work of the Contract. The Contractor shall comply with the provisions of that Act in obtaining such permits, licenses and other authorizations and they shall be obtained in sufficient time to prevent delays to the work. The Contractor shall comply with permits obtained by WETA, if any, for the work.

For all work to be performed on surfaces coated with any detectable level of lead, and to the extent applicable, the Contractor must comply with Cal/OSHA Construction Safety Orders, Lead, Section 1532.1; California Code of Regulations, Titles 8 and 17; and the EPA's Lead-Based Paint Renovation, Repair and Painting (RRP) Rule. To the extent applicable, the Contractor, and any subcontractors, must ensure workers possess all required California Department of Public Health certifications in accordance with California Code of Regulations, Title 17, Section 35001 *et seq.* and California Code of Regulations, Title 8, Section 1532.1.

20. WAGE KICKBACKS AND WORKER REGISTRATION FEES PROHIBITED. The Contractor and subcontractors at any tier shall comply with Labor Code sections 1778 through 1779. The Contractor and subcontractors shall not take, receive, or conspire with another to take or receive, for their own use or the use of any other person any portion of the wages of any worker or subcontractor in connection with this Agreement. The Contractor and subcontractors shall not charge, collect, or attempt to charge or collect, directly or indirectly, a fee or valuable consideration for registering any person to work in connection with the Agreement, or for giving information as to where such employment may be procured, or for placing, assisting in placing, or attempting to place, any person in connection with the Agreement.