

**REQUEST FOR PROPOSALS
(RFP #19-008)**

FOR

PROFESSIONAL SERVICES FOR WETA HOVERCRAFT FEASIBILITY STUDY

The San Francisco Bay Area Water Emergency Transportation Authority (“WETA”) is seeking proposals from qualified firms (“Proposers”) in response to this Request for Proposals (“RFP”) for professional services to support a Hovercraft Feasibility Study (“Study”).

A. BACKGROUND

In April 2011, WETA completed a Hovercraft Feasibility Study that represented a screening-level evaluation of the feasibility of using hovercraft to provide commuter service from the cities of Hercules, Martinez and Antioch to downtown San Francisco. WETA is looking to update and expand upon the 2011 WETA study of hovercraft technology. See Section C for an explanation of the Study’s scope of work.

The estimated budget to complete the Study will have a not-to-exceed amount of \$500,000. The estimated timeframe for the Study is 12 months. Proposers will be required to submit a Cost Proposal, as further described in Section I.3 of this RFP. The Proposer selected for this project will be required to enter into an Agreement with WETA, a form of which is provided as Attachment A.

Proposers are strongly encouraged to obtain Disadvantaged Business Enterprise (DBE) participation on this project, although there is no contract-specific DBE goal. Please indicate whether the firm is a certified DBE and include a copy of the firm’s DBE certification with the proposal, if applicable. If any subcontractors/subconsultants/suppliers will be used, please identify which of the subcontractors/subconsultants/suppliers are DBEs and provide copies of their DBE certifications. For DBE questions or assistance, please contact Lauren Gularte at gularte@watertransit.org or visit WETA’s [DBE webpage](#).

B. PROPOSAL TIMELINE

Listed below is the anticipated schedule that outlines pertinent dates of which Proposers should be aware that all dates are subject to revision at WETA’s discretion:

June 24, 2019	Issuance of RFP
July 9, 2019 at 1:00pm PST	Pre-proposal Conference
July 15, 2019 by 5:00pm PST	Written requests for clarifications are due
July 18, 2019	Response to requests for clarifications
August 1, 2019 by 2:00pm PST	Proposals due
Week of August 12, 2019	Proposer interviews, if held
Week of August 19, 2019	Contract Negotiations, if necessary
September 5, 2019	Contact Award (tentative)

C. SCOPE OF WORK

The Scope of Work (“Work”) for this RFP includes development of a Hovercraft Feasibility Study that will update and expand upon the findings from WETA’s 2011 Hovercraft Study. The goal of this Study is to provide decision-makers with as complete a picture as possible to help determine if WETA should proceed with the pursuit of hovercraft service.

The desired areas of expertise will include marine engineering, hovercraft technology, transportation planning, and environmental analysis, at a minimum. WETA will consider proposals from individual firms or teams of firms so long as all required areas of expertise are provided for.

For the Study, the consultant will research current hovercraft technologies and services, identify potential markets for hovercraft service, and assess up to five potential corridors for hovercraft service (these five corridors can be existing WETA ferry routes or new markets). The Study will also help WETA understand the capital and operating costs associated with hovercraft, the environmental impacts (especially on sensitive coastal areas) of hovercraft technologies, the operational considerations for hovercraft service and provide a first look at the pros and cons of utilizing hovercraft over, or in tandem with, conventional vessels in WETA’s system

The following objectives and example scope of work are to be used as a general guide and are not intended to be a complete list nor description of all work necessary. Proposers responding to this RFP are expected to be familiar with all aspects of project management. Proposers must provide a detailed scope of work (see Section I.2.c) for the Study as part of their proposal.

Objectives of the Study:

1. Review related existing studies, assessments and reports
2. Re-examine the 2011 WETA Hovercraft Feasibility Study and determine if those recommendations are still valid; includes updating hovercraft technology assessments, capital and operating costs, operational considerations, and environmental performance
3. Convene Hovercraft Stakeholder and Hovercraft Technical Advisory Committees to provide input on Study
4. Identify and assess five (5) potential water transportation corridors for hovercraft service
5. Assess constraints such as comparative advantage relative to alternate modes (other transit options, driving alone, etc.)
6. Conduct market analysis to quantify potential ridership for five corridors. Identify contributing factors of market demand by potential riders
7. Compare the cost-effectiveness of hovercraft service relative to existing WETA service as well as other transportation modes
8. Estimate potential fare levels and farebox revenue
9. Identify minimum ridership thresholds for service levels relative to current WETA vessel types

10. Estimate capital costs and potential funding sources (including how much each source might be reasonably expected to provide and the feasibility of receiving it)
11. Estimate operating costs and funding sources, including potential non-farebox revenues (including how much each source might be reasonably expected to provide and the feasibility of receiving it)
12. Identify potential partnership opportunities (public and private)
13. Estimate vehicle miles traveled reduced

Example Scope of Work and Deliverables:

1. Manage meetings with the Hovercraft Stakeholder and Hovercraft Technical Advisory Committees assembled by WETA (assume up to 4 meetings for each group)
2. Summary of 2011 Hovercraft Feasibility Study
3. Review of other studies, assessments and projects completed since 2011
4. Summary of 2011 Hovercraft Feasibility Study
5. Review of other studies, assessments and projects completed since 2011
6. Update technology assessment from 2011 Study
7. Update capital and operating costs from 2011 Study
8. Update operational considerations & environmental performance from 2011 Study
9. Five (5) Potential Hovercraft Corridor Assessments
10. Draft and Final Reports, Recommendation to WETA Board of Directors

D. SAMPLE AGREEMENT

The Proposer selected for this project will be required to execute an Agreement, a sample of which is attached as Attachment A. Compensation will be provided on a time and materials basis with work authorized through task orders issued by WETA. Attention is directed in particular to the Agreement's terms regarding insurance. If a Proposer desires any modifications to the Agreement, they must be submitted for consideration with the Proposal. Otherwise, the Proposer will be deemed to have accepted the form of Agreement without modification.

E. RFP CONTENT; EXAMINATION OF DOCUMENTS

This RFP sets forth the requirements for the preparation, submission and contents of proposals submitted to WETA. Further, this RFP describes the process and factors under which each proposal will be evaluated, and the Selected Consultant identified.

This RFP includes the following documents:

- (1) Request for Proposals
- (2) Attachment A: Form of Professional Services Agreement

Proposers are solely responsible for examining, with appropriate care and diligence, all of these documents and fully informing themselves of all relevant aspects of the Work. By submitting a response to this RFP, Proposers represent that they have examined this RFP and are familiar with the scope of Work.

F. PRE-PROPOSAL CONFERENCE

WETA will conduct a Pre-proposal Conference. Attendance is not mandatory but is highly recommended. The Pre-proposal Conference will take place at **1:00pm Pacific Standard Time on Tuesday, July 9, 2019** at Pier 9, Suite 111, San Francisco, CA 94111. Proposers may request to join via teleconference if unable to attend in person by contacting the Project Manager. The purpose of the Pre-proposal Conference will be to answer questions about the RFP. All statements and interpretations provided by WETA representatives at the Pre-proposal Conference are non-binding on WETA unless contained in a subsequent written Addendum.

G. REQUEST FOR CLARIFICATION OF RFP

A request for clarification regarding the meaning or interpretation of this RFP or the scope of Work may be requested in written form by contacting the Project Manager, Taylor Rutsch, at rutsch@watertransit.org. All requests must be submitted by **5:00pm Pacific Standard Time on Tuesday, July 16, 2019** set forth in Section B.

WETA specifically requests that any questions concerning this RFP, except those concerning DBE participation, be directed only to the Project Manager, Taylor Rutsch at rutsch@watertransit.org. Questions regarding DBE participation should be directed to Lauren Duran Gularte at gularte@watertransit.org.

Should WETA determine that clarification of a possibly ambiguous or incomplete statement contained in the RFP is in order, WETA will issue a written addendum clarifying the matter, which will be posted on WETA's website (weta.sanfranciscobayferry.com). Each Proposer has an on-going responsibility to check WETA's website for addenda. WETA has no obligation to provide any other notice of addenda being issued. WETA's failure to respond to a request for clarification or modification will be deemed to be a rejection of such request. Any WETA determination on any Proposer request will be final. Addenda issued for this RFP, if any, must be expressly acknowledged in Proposer's cover letter.

H. PROPOSAL DUE DATE: SUBMISSION OF PROPOSALS

All proposals should be submitted to:

San Francisco Bay Area Water Emergency Transportation Authority
ATTENTION: Taylor Rutsch
Pier 9, Suite 111, The Embarcadero
San Francisco, CA, 94111

Two (2) hard copies and one (1) digital copy of proposals on a USB drive must be received at the above address by **2:00pm Pacific Standard Time on Friday, August 2, 2019**. Proposals received after the date and time specified above will be considered late and will not be accepted.

Proposals in response to this RFP should be submitted in a sealed envelope labeled [TECHNICAL PROPOSAL - WETA RFP #19-008] and include the name of the Proposer. Cost

proposal information must be submitted in a separate sealed envelope labeled [COST PROPOSAL – WETA RFP #19-008], and include the name of the Proposer.

I. PROPOSAL CONTENTS AND FORMAT

Each proposal submitted in response to this RFP must respond fully to the requirements of this RFP and include the following elements in the sequence listed below. It is expected that proposals submitted to WETA be of professional caliber in context and appearance; however, expensive binders are neither required nor desired. All descriptions and materials should be clear, concise, and provide sufficient information to minimize questions and assumptions. Proposals should be limited to 15 pages, excluding cover letter, table of contents, resumes, assurances and miscellaneous section, DBE certifications, and the Cost Proposal. Proposers are encouraged to print double-sided pages to conserve resources.

1. **Cover Letter.** The signed cover letter must be on company letterhead clearly stating the firm name of the Proposer, business address, telephone numbers, and e-mail address. The cover letter must be signed by an individual who is legally authorized to bind the firm to the Proposal, including the Cost Proposal, and should include the following information:

- Introduce the firm and summarize its qualifications. Including information such as form of organization, length of time in business, office location(s), number of staff and a general summary of qualifications documenting the strengths of the firm or person, areas of expertise and licensing. Include name, email address and phone number for the firm's contact person.
- Identify any major subconsultants participating on the project.
- Name(s) of authorized principals with authority to negotiate and contractually bind the firm.
- A statement that binds the Proposer to the proposed scope of Work and Cost Proposal for ninety calendar days.
- Include an express acknowledgement of the receipt of a complete set of RFP documents and all Addenda issued for this RFP, if any.
- Indicate whether there are any required disclosures pursuant to the Levine Act. See Section N. Include any such disclosure in a separate document as per Section I.2.d.ii
- Indicate whether there are any conflicts of interest that would limit the Proposer's ability to provide the requested Work. See Section Q. Disclose any such conflicts in a separate document as per Section I.2.d.iii.
- Confirm acceptance of or indicate exceptions to the Agreement (see Section I.2.d.iv). This confirmation must include an explicit acknowledgement that Consultant will meet all insurance requirements in the Agreement.
- Confirm that there are no portions of the Proposal that contain confidential information, or indicate that the Proposal includes a confidentiality index pursuant to Section O. If Proposer is marking information as confidential and submitting a confidentiality index, the cover letter must include a statement that the Proposer i) waives all claims against WETA for disclosure of any portion of the Proposal not included in the confidentiality index; and ii) agrees to indemnify and defend WETA against all claims arising from WETA's nondisclosure of material included in the confidentiality index.

2. **Technical Proposal.** Technical Proposals must contain the following four sections:

- a. **Understanding of Project Objectives:** In this section, Proposers must provide the following information:

- i. A discussion demonstrating the Proposer's understanding of the Work to be provided and their significance to WETA's day-to-day activities.
 - ii. Identification of additional tasks, if any, not identified in Section C that may be required to successfully meet the objectives of Work requested in this RFP
 - b. **Capabilities and Relevant Experience:** In this section, provide a summary of the general and specific qualifications of the proposed key staff that will be assigned to the project.
 - i. Include an organizational chart clearly identifying any subconsultants participating in the work, the Project Manager, Principal-in-Charge, and highlighting staff working in the key areas of expertise required for the Study. Include resumes for key staff as an appendix to the proposal.
 - ii. List up to three relevant client references for the proposed Project Manager.
 - iii. Identify up to three projects completed or underway that are similar in nature and scope to the proposed Study. Projects listed should be related to transit, maritime, public works or another relevant industry and have been undertaken or completed in the past five (5) years. Listings must include:
 - a. Project name, location and description (describe relevance to this project)
 - b. Original contract value and final cost
 - c. Specific project role of Proposer firm or key staff
 - c. **Management Approach:** In this section, provide a thorough explanation of the approach planned for the project.
 - i. Provide a detailed scope of work, by task, identifying deliverables, work sequence, data and materials required from WETA and others, and other information or expertise that the Proposers plan on bringing into the study based on the objectives and example work scope listed in Section C. Clearly identify tasks which will be the responsibility of WETA or of others.
 - ii. Describe management approach to coordinating with WETA and other Study participants, including how to manage and facilitate the Stakeholder and Technical Advisory Committee meetings and support preparation of staff reports and other written outreach material.
 - iii. Depict a schedule for the detailed scope of work that identifies the overall timeline for completing the project, including key milestones and deliverables, as well as public outreach efforts. WETA expects that the Study will kick-off in September 2019.
 - d. **Assurance and Miscellaneous Items:** In this section, the Proposer must provide the following information:
 - i. **Levine Act Disclosure:** If required, disclose any Levine Act-related information, as described in Section N of this RFP, below.
 - ii. **Conflict of Interest Disclosure:** Disclose any conflict of interest, as more fully described in Section Q and the Agreement.
 - iii. **Agreement:** If a Proposer desires any modifications to the Agreement (See Attachment A), they must be submitted for consideration with the Proposal. Otherwise, the Proposer will be deemed to have accepted the form of Agreement without modification.
 - iv. **Financial Stability:** Provide pertinent information to allow WETA to reasonably formulate a determination about the financial stability and strength of the Proposer such as financial references, financial statements, or other

relevant documentation. Describe any administrative proceedings, claims lawsuits, settlements, or other exposures pending against the Proposer.

3. **Cost Proposal.** This section must be submitted separately in a sealed envelope. Outline a Cost Proposal for the project showing anticipated expenses for each task proposed in the detailed scope of work developed in Section I.2.c. including all staffing costs, as well as expenses and assumptions. The Cost Proposal should assume enough meeting time to coordinate adequately with staff. Include an hourly labor rate schedule per position for the consultant team and/or subconsultants that indicates overhead rates. WETA intends to use the Cost Proposal as the basis for developing a final not-to-exceed budget for the project and may initiate negotiations with the highest ranked Proposer regarding the Cost Proposal per Section K.5 of the RFP.

J. WITHDRAWAL OF PROPOSAL

Submission of a Proposal shall constitute a firm offer to WETA for ninety (90) calendar days from the submission deadline for Proposals.

A Proposer may withdraw its Proposal any time before the date and time when Proposals are due, without prejudice, only by submitting a written request for its withdrawal to WETA. A telephone or email request is not acceptable

K. PROPOSAL EVALUATION PROCESS

1. **WETA Evaluation Committee.** WETA will establish an evaluation committee appointed by the Executive Director with responsibility for (1) reviewing all proposals and (2) conducting the evaluation and interviews, if any, described in this RFP. WETA reserves the right to reject or accept any and all proposals, to waive any minor irregularities in proposals or procedures, and to request additional information from Proposers at any stage of the evaluation.

2. **Evaluation Criteria.** WETA intends to award a contract to the most qualified, responsible firm submitting a responsive Proposal. Ranking will be based on a maximum of 100 points, weighted as indicated below. In determining the number of points a Proposal will receive in each category, WETA will consider the Proposal material submitted, oral interviews (if applicable), additional information requested by WETA, client references and any other relevant information about a given Proposer. The following criteria will be used by the WETA's Evaluation Committee in the evaluation of the Proposals:

Proposals will be evaluated on each Proposer's overall qualifications to perform the Work described in this RFP, including the firm's understanding and response to the tasks in Section C. In addition, WETA will also consider the qualifications and experience of the proposed personnel. The proposals will be evaluated using the following criteria:

1.	Understanding of Project Objectives (Section I.2.a)	20%
2.	Capabilities and Relevant Experience (Section I.2.b)	30%
3.	Management Approach (Section I.2.c)	50%
Total		100%

3. **Preliminary Evaluation of Proposals.** The evaluation committee will first preliminarily evaluate the Technical Proposals and establish those Proposals that are considered sufficiently viable to allow for further consideration (the competitive range). The evaluation committee may also reject any Proposals it deems not within the competitive range.

4. **Final Evaluation of Proposal.** After completing the preliminary evaluation of Technical Proposals, the evaluation committee may require that some or all Proposers attend an interview (may be in person or conducted via telephone per WETA's request) in order to seek clarification regarding the various Proposals. WETA will review Cost Proposals from each firm in the competitive range to confirm that adequate staffing and budget has been proposed to perform the Work and detailed scope of work included in the Technical Proposal. WETA also reserves the right to request additional information and to require any such information in writing. The evaluation committee may also contact any reference listed in the Proposal or otherwise seek input about Proposers. WETA reserves the right to complete the evaluation process without any interviews or additional information, so Proposers are encouraged to submit their best Proposal with their initial submission.

At the end of the final evaluation process, WETA will select the highest ranked Proposer based on the evaluation criteria above and based on all information, including both the written submissions and any additional information learned by the evaluation committee during the final evaluation process.

5. **Negotiations.** Upon completion of the evaluation process, WETA will rank each firm as set forth above. WETA may accept highest-ranked Proposal or negotiate terms and conditions of the Agreement with the highest-ranked firm. If negotiations are unsuccessful, WETA will terminate the negotiations with that firm and may open negotiations with the next highest-ranked firm. If negotiations with this firm are also not successful, WETA may repeat the negotiations process with the next-highest-ranked firms, or, at its sole discretion, WETA may reject all remaining Proposals.

6. **Notice of Intent to Award.** If the Contract is to be awarded, Proposers will be notified of WETA's intent to award the Contract at least 72 hours before the WETA Board acts to award the Contract.

L. CONTRACT AWARD AND EXECUTION

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 Work at any time. WETA also reserves the right to award multiple contracts as a result of this RFP. Formal contract award will only occur as and when, if at all, the WETA Board takes such action. WETA will not reimburse any firm for costs incurred as a result of preparing or submitting a proposal, including negotiating with WETA on any matter related to this RFP.

If the WETA Board acts to award the Agreement, the selected Proposer must execute and deliver execution copies of the Agreement within ten (10) working days of receipt, together with all required documents, including but not limited to, the insurance certificates. If the Proposer is an individual, the Agreement must be executed by the individual personally. If the Proposer is a co-partnership, it is desirable that the Agreement be executed by all of the partners, but it may be executed by one (1) of them. If the Proposer 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). If the Proposer is a joint venture, the Agreement must be executed on behalf of each participating firm by officers or other authorized

individuals. If the Proposer is an LLC, the Agreement must be executed by an officer or member who is authorized to bind the LLC.

M. PROTEST PROCEDURES

Chapter 5, Article XII, of WETA's Administrative Code provides that specific protest procedures set forth in an RFP prevail over those that may be included in WETA's Administrative Code. The following procedures therefore apply.

All Protests should be submitted to WETA's Executive Director

Protests based upon restrictive requirements or alleged improprieties in the RFP procedure which are apparent or reasonably should have been discovered prior to the Proposal due date, must be filed in writing at least five (5) calendar days prior to the Proposal due date. The protest must clearly specify in writing the grounds and evidence on which the protest is based and the relief sought. Protesters must first have availed themselves of the procedures for requesting modifications or clarifications of the RFP prior to submitting any protest.

Protests based upon WETA's notification of intent to award the Contract must be submitted in writing within forty-eight (48) hours of receipt of notice intent to award. The protest must clearly specify in writing the grounds and evidence on which the protest is based and the relief sought.

Protests that are received outside of the above time period will be rejected. For timely protests based upon restrictive requirements or alleged improprieties in the RFP procedures, the Executive Director will respond with a written determination prior to the Proposal due date. If the Executive Director's determination could affect proposal submission, an appropriate extension of the proposal due date may be granted. The decision of the Executive Director is final.

For timely protests based upon the notice of intent to award, the Executive Director will make efforts to notify other Proposers of the protest. The Executive Director will refer the matter to the Board with a recommendation regarding the protest. The Board will afford the protestor an opportunity to address the full Board. After consideration of the protestor's evidence, the Executive Director's recommendation, and any other relevant information, the Board may determine whether to reject or allow the protest. Upon Board action, a written statement of its reasons will be included in the record. The decision by the Board is final.

No protests will be considered after contract award, except for compelling reasons whereby the lateness is due to WETA's untimely handling of the protest submission. In no event will WETA consider protests filed after contract award due to the neglect of the protestor. Failure to comply with the time periods for filing protests as set forth in this section will be a basis for rejection of the protest.

N. LEVINE ACT

The Levine Act (Government Code 84308) is part of the Fair Political Practices Act that applies to elected officials who serve on appointed Boards such as the San Francisco Bay Area Water Emergency Transportation Authority. The Levine Act prohibits any Authority Member who has received \$250.00 or more within the previous twelve months from an applicant from participating in or influencing the decision on awarding a contract with WETA. The Levine Act also requires a member of WETA who has received such a contribution to disclose the contribution on the record of the proceeding. In addition, Authority Members are prohibited from soliciting or accepting a contribution from a party applying for a contract while the matter of awarding the

contract is pending before WETA or for three months following the date a final decision concerning the contract has been made.

Applicants must disclose on the record any contribution of \$250.00 or more that they have made to an Authority Member within the twelve-month period preceding submission of their response to this RFP. This duty applies to your company, any member of your team, any agents for you or other team members and to the major shareholders of any closed corporation that is part of your team. If you have made a contribution that needs to be disclosed, you must provide written notice of the date, amount, and receipt of the contribution(s) in writing to WETA's Executive Director. This information, if any, must accompany your response to this RFP.

O. CONFIDENTIALITY

1. **Confidentiality Index and Waiver of Claims.** The California Public Records Act (Cal. Govt. Code Sections 6250 et seq.) (CPRA) mandates public access to government records. Therefore, unless the information is exempt from disclosure by law, the content of the Proposal, as well as any other written communication between WETA and the Proposer, may be a public record that must be made available to the public.

If the Proposer believes any communication contains information exempt from disclosure under the CPRA, including trade secrets or other proprietary information that the Proposer believes would cause substantial injury to the Proposer's competitive position if disclosed, the Proposer must request that WETA withhold from disclosure the exempt information by marking each page containing such exempt information as confidential and must also submit a separate confidentiality index including all of the following information:

- 1) The section and page number of the Proposal where the information is located.
- 2) An explanation of why the information is exempt from disclosure under the CPRA.

By submitting a Proposal, Proposer i) consents to the release of any portion of its Proposal not included in the confidentiality index; and ii) waives all claims against WETA, its directors, officers, employees and agents, for the disclosure of such information.

If the Proposer does not include a confidentiality index in its Proposal, WETA will have no obligation to withhold any information from disclosure and may release the information sought without liability to WETA.

In the event of conflicts between the confidentiality index and confidentiality designations in the body of the Proposal, the confidentiality index prevails.

A Proposer may not designate its entire Proposal as confidential nor may a Proposer designate Proposal Forms or its Price Proposal as confidential. WETA will not honor such designations and will disclose submittals so designated to the public.

2. **Confidentiality Indemnity.** Upon receipt of a request pursuant to the CPRA seeking Proposal material relating to this RFP, WETA will withhold material designated in the confidentiality index that is exempt from disclosure. If WETA determines that information in the confidentiality index is not exempt from disclosure, WETA will give reasonable notice to Proposer prior to releasing any material listed in the confidentiality index.

By submitting a Proposal, Proposer agrees to indemnify, defend, and hold harmless WETA, its directors, officers, employees and agents, from any and against all damages (including but not limited to attorneys' fees that may be awarded to the party requesting the Proposer information), and pay any and all cost and expenses, including attorneys' fees, related to the withholding of the information included in the confidentiality index. If Proposer fails to accept a tender of a defense, WETA reserves the right to resolve all claims at its sole discretion, without limiting any rights stated herein.

P. EX PARTE COMMUNICATION

Proposers and Proposers' representatives may not communicate orally with an officer, director, employee, or agent of WETA, outside the procedures set forth in this RFP, until after a final agreement between the Proposer and WETA has been executed. Proposers and their representatives are not prohibited, however, from making oral statements or presentations in public to one or more representatives of WETA during a public meeting. Any written communication regarding the RFP between a Proposer (or the Proposer's representative) and WETA's Executive Director, Board Member, officer, employee or consultant, regardless of who initiates the communication, other than as part of the procurement process set forth in this RFP, before WETA issues a Notice to Proceed, will be available for disclosure to the general public.

Q. CONFLICT OF INTEREST

By submitting a Proposal, the Proposer represents and warrants that no director, officer or employee of WETA is in any manner interested directly or indirectly in the Proposal or in the Agreement which may be made under it or in any expected profits to arise there from, as set forth in Article 4, Division 4, Title I (commencing with Sec. 1090) of the Government Code of the State of California.

The Proposer warrants and represents that it 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 Work under this Agreement. The Proposer 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, the Proposer may be required to publicly disclose financial interests under WETA's Conflict of Interest Code. The Proposer agrees to promptly submit a Statement of Economic Interest on the form provided by WETA upon receipt. 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.

The Proposer warrants that it has no organizational conflicts of interest at this time. Alternatively, the Proposer must disclose all known organizational conflicts of interest. 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.

See Agreement for additional conflict of interest provisions that will be in effect during the contract term.

R. NON-COLLUSION

By submitting a proposal in response to this RFP, each Proposer certifies that its proposal is genuine and not a sham or collusive or made in the interest of or on behalf of any person not named therein; that the Proposer has not, directly or indirectly, induced or solicited any other person to submit a sham proposal or any other person to refrain from responding to this RFP; and that the Proposer has not in any manner sought collusion to secure any improper advantage over any other person submitting a response to this RFP.

S. OTHER TERMS AND CONDITIONS

This RFP does not commit the WETA to enter into a contract nor does it obligate the WETA to pay for any costs incurred in preparation and submission of proposals in anticipation of a contract.

WETA reserves the right to:

- Reject any and all proposals
- Issue subsequent RFPs
- Remedy errors in the RFP process
- Make the selection based at its sole discretion
- Approve or disapprove of any staff or use of subconsultants assigned to the WETA before and throughout the contract term
- Approve, disapprove or modify proposed plans, timelines and deliverables
- Negotiate with any, all or none of the firms
- Accept other than the lowest price offered
- Waive formalities and irregularities in the proposals
- Enter into an agreement with another firm in the event the originally selected firm defaults or fails to execute an agreement with WETA

An agreement shall not be binding or valid with WETA until it is executed by authorized representatives of the WETA and the Proposer.

ATTACHMENTS:

Attachment A: Form of Professional Services Agreement

HOVERCRAFT FEASIBILITY STUDY

RFP NO. 19-008

ATTACHMENT A

FORM OF PROFESSIONAL SERVICES AGREEMENT #19-008

between

SAN FRANCISCO BAY AREA WATER EMERGENCY TRANSPORTATION AUTHORITY

and

[CONSULTANT]

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

RECITALS

WHEREAS, WETA requires [SUBJECT] Services and has issued an RFP dated _____, a copy of which is attached and incorporated as Exhibit A; and

WHEREAS, the Consultant 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 _____, a copy of which is attached and incorporated as Exhibit B.

WHEREAS, on _____, WETA's Board of Directors authorized award of the Agreement to the Consultant.

NOW THEREFORE, THE PARTIES AGREE AS FOLLOWS:

1. RENDITION OF SERVICES

The Consultant agrees to provide professional services to WETA in accordance with the terms and conditions of this Agreement. In the performance of its work, the Consultant represents that it (1) has and will exercise the degree of professional care, skill, efficiency, and judgment of consultants with special expertise in providing such services; (2) carries all applicable licenses, certificates, and registrations in current and good standing that may be required to perform the work; and (3) will retain all such licenses, certificates, and registrations in active status throughout the duration of this engagement.

2. SCOPE OF SERVICES

The scope of the Consultant's services will consist of services set forth in Exhibit A, as supplemented by Exhibit B, except when inconsistent with Exhibit A. Services will be performed on a task order basis, with individual task orders including specific scopes of services and other task-specific terms and conditions. In the event of any conflict or inconsistency between a task order and this Agreement, including Exhibits A and B, this Agreement, including Exhibits A and B, will control.

3. COMPONENT PARTS OF THE AGREEMENT

This Agreement consists of the following documents, all of which are incorporated into the 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, WETA's RFP
- (d) Exhibit B, Consultant's Proposal, both technical and cost proposal, and including all forms and attachments
- (e) Exhibit C, Insurance Requirements

4. **TERM**

The term of this Agreement will be for a base term commencing upon WETA's issuance of a written notice to proceed and continuing for a [xxx]-year base term. At WETA's sole discretion, it may extend this agreement such that the total term will not exceed [xxx] years. WETA may extend the agreement in any combination of years up to the maximum amount. Task Orders may be issued under this Agreement any time during the base term, or option terms if exercised. The Consultant's performance of services will commence for each Task Order upon receipt of the Notice to Proceed issued by WETA for the respective Task Order and the Consultant will complete the services within the period specified in the Task Order. In the event that a Task Order specifies a performance period extending beyond the term of the Agreement, including any options, the Agreement will remain in full force and effect until all outstanding services under all Task Orders are completed or terminated. If WETA determines to exercise any option term(s), WETA will provide the Consultant at least thirty (30) days advance written notice prior to the expiration of the then current term of WETA's intention to exercise its option to extend the term.

5. **KEY PERSONNEL**

It is understood and agreed by the parties that at all times during the term of this Agreement that _____, will serve as the primary staff person/designated representative of the Consultant to undertake, render and oversee all of the services under this Agreement. Upon written notice by the Consultant and approval by WETA, which will not be unreasonably withheld, the Consultant may substitute this person with another person, who must possess similar qualifications and experience for this position.

6. **COMPENSATION**

There is no guaranteed compensation under this Agreement. However, the maximum aggregate compensation authorized to be expended for services provided under this Agreement may not exceed \$500,000. Compensation for each Task Order will be as set forth in each Task Order and will be on a time and materials basis with a not-to-exceed maximum. The hourly rate by personnel category that applies to all Task Orders will be as set forth in Exhibit B.

7. **MANNER OF PAYMENT**

The Consultant may submit invoices on a monthly basis for each complete calendar month. Invoices must be submitted to WETA as soon as possible but no later than 30 days after the end of each month. Charges will be based upon services performed during the billing period.

Invoices must describe in detail the services rendered by Consultant during the billing period and must state the number of hours, and applicable hourly rate of each person. All invoices must include the contract number and task order number and must include 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, 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 Consultant, WETA will so advise the Consultant in writing giving reasons for its objection. If any invoice submitted by the Consultant is disputed by WETA, only that portion so disputed may be withheld from payment and the Consultant 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 [INSERT POINT OF CONTACT] and the Consultant's Designated Representative.

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 or by mailing the same postage prepaid, addressed as follows:

If to WETA: San Francisco Bay Area Water Emergency Transportation Authority
Attn: _____
9 Pier, Suite 111
San Francisco, CA 94111

If to the Consultant: _____

Attention: _____

The address to which mailings may be made may be changed from time to time by notice mailed as described above. Any notice given by mail will be deemed given on the day after that on which it is deposited in the United States Mail as provided above.

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 Consultant 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 Consultant 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 Consultant must replace them at its own expense, and the Consultant assumes all risks of loss, damage or destruction of or to such materials. The Consultant 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 Consultant agrees to execute any additional documents which may be necessary to evidence such assignment.

The Consultant 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. CONFIDENTIALITY

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

The Consultant, 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.

11. USE OF SUBCONTRACTORS

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

12. CHANGES

WETA may, at any time, by written order, make changes within the scope of work and services described in this Agreement or any Task Order. If such changes cause an increase in the budgeted cost of or the time required for performance of the agreed upon work, an equitable adjustment as mutually agreed will be made in the limit on compensation set forth in the Task Order or in the time of required performance as set forth in the Task Order, or both. In the event that the Consultant encounters any unanticipated conditions or contingencies that may affect the scope of work or services, schedule or the amount of compensation specified herein, the Consultant 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. This notice must be given to WETA prior to the time that the Consultant performs work or services related to any proposed adjustment. The pertinent changes will be expressed in a written supplement to this Agreement or Task Order prior to implementation of such changes.

13. RESPONSIBILITY; INDEMNIFICATION

To the maximum extent permitted by law, the Consultant 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 Consultant caused by a negligent act or omission or willful misconduct of the Consultant or its employees, subcontractors or agents; or
- B. Any allegation that materials or services provided by the Consultant 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 Consultant 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 Consultant must, at its expense, satisfy and discharge the same. This indemnification will survive termination or expiration of the Agreement.

14. INSURANCE

Consultant is required to procure and maintain at its sole cost and expense the insurance coverage listed in Exhibit C. Consultant 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. Consultant 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.

15. CONSULTANT'S STATUS

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

16. ASSIGNMENT

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

17. WETA WARRANTIES

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

18. 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 such person or persons as she may designate in writing from time to time, will represent and act for WETA.

19. DISPUTE RESOLUTION

WETA and Consultant agree to attempt in good faith to resolve all disputes informally. If agreed to by both parties, alternate methods of dispute resolution, such as mediation, may be utilized. Unless otherwise directed by WETA, the Consultant must continue performance under this Agreement while matters in dispute are being resolved. Consultant must file a government claim in accordance with Government Code Section 900 et seq. prior to initiating any civil action.

20. 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 Consultant. Upon receipt of such notice, the Consultant 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 Consultant, WETA will pay the Consultant 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 Consultant to effect such termination.

If the Agreement or any Task Order is terminated for breach or default, WETA will provide Consultant 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 Consultant 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, Consultant 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.

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

21. MAINTENANCE, AUDIT AND INSPECTION OF RECORDS

All Consultant and subconsultant costs incurred in the performance of this Agreement will be subject to audit. The Consultant and its subconsultants must permit WETA and the State Auditor to inspect, examine, make excerpts from, transcribe, and copy the Consultant'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 Consultant pursuant to this Agreement. The Consultant must also provide such assistance as may be required in the course of such audit. The Consultant 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 Consultant agrees to reimburse WETA for those costs within sixty (60) days of written notification by WETA.

22. WORKERS' COMPENSATION COMPLIANCE

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

Consultant 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 Consultant will comply

with such provisions before commencing the performance of the any work or services under the Agreement or any subcontract.

23. EQUAL EMPLOYMENT OPPORTUNITY

In connection with the performance of this Agreement, the Consultant will not discriminate against any employee or applicant for employment because of race, religious creed (including religious dress and grooming practices), color, national origin, ancestry, physical disability, mental disability, medical condition, genetic information, marital status, sex, sexual orientation, gender (which includes pregnancy, childbirth, breastfeeding, or related medical conditions), gender identity, gender expression, age (if 40 or over), military and veteran status, taking or requesting statutorily protected leave, or any other category protected under federal, state, or local laws,

The Consultant will take affirmative action to ensure that applicants are employed, and that employees are treated during their employment, without regard to their race, religious creed (including religious dress and grooming practices), color, national origin, ancestry, physical disability, mental disability, medical condition, genetic information, marital status, sex, sexual orientation, gender (which includes pregnancy, childbirth, breastfeeding, or related medical conditions), gender identity, gender expression, age (if 40 or over), military and veteran status, taking or requesting statutorily protected leave, or any other category protected under federal, state, or local laws, Such actions will 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 Consultant agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided by the consulting officer setting forth the provisions of this nondiscrimination clause.

The Consultant will, in all solicitations or advertisements for employees placed by or on behalf of the consultant, 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 Consultant 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. This provision shall 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 Consultant will send to each labor union or representative of workers with which it has a collective bargaining agreement or other contract or understanding, a notice to be provided by the agency contracting officer, advising the labor union or workers' representative of the Consultant's commitments under section 202 of Executive Order 11246 of September 24, 1965, and shall post copies of the notice in conspicuous places available to employees and applicants for employment.

The Consultant will comply with all provision of Executive Order 11246 of September 24, 1965, and of the rules, regulations, and relevant orders of the Secretary of Labor.

The Consultant will furnish all information and reports required by Executive Order 11246 of September 24, 1964, and by the rules, regulations, and orders of the Secretary of Labor, or pursuant thereto, and will permit access to his books, records, and accounts by the contracting agency and the Secretary of Labor for purposes of investigation to ascertain compliance with such rules, regulations, and orders.

In the event of the Consultant's noncompliance with the nondiscrimination clauses of this contract or with any of such rules, regulations, or orders, this contract may be canceled, terminated or suspended in whole or in part and the Consultant may be declared ineligible for further Government contracts in accordance with procedures authorized in Executive Order 11246 of September 24, 1965, and such other sanctions may be imposed and remedies invoked as provided in Executive Order 11246 of September 24, 1965, or by rule, regulation, or order of the Secretary of Labor, or as otherwise provided by law.

The Consultant will include the provisions of 41 C.F.R. section 60-1.4 in every subcontract or purchase order unless exempted by rules, regulations, or orders of the Secretary of Labor issued pursuant to section 204 of Executive Order 11246 of September 24, 1965, so that such provisions will be binding upon each subcontractor or vendor. The Consultant 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.

24. NON-DISCRIMINATION ASSURANCE

The Consultant agrees to carry out applicable requirements of 49 CFR Part 26 in the award and administration of U.S. DOT-assisted contracts. Further, the Consultant 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/or the Fair Employment and Housing Act Government Code section 12940 et seq. and the applicable regulations promulgated thereunder (California Code of Regulations, Title 2, Section 7285 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 applicable regulations of the Fair Employment and Housing Commission implementing Government Code Section 12940 et seq., set forth in Chapter 5 of Division 4 of Title 2 of the California Code of Regulations, are incorporated into this Contract by reference and made a part hereof as if set forth in full.

In the event of the Consultant's noncompliance with the nondiscrimination clauses of this contract or with any of such rules, regulations, or orders, this contract may be canceled, terminated or suspended in whole or in part

25. CONFLICT OF INTEREST

The Consultant 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 Consultant 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 Consultant 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, Consultant and its employees may be required to disclose financial interests.

Depending on the nature of the work performed, the Consultant may be required to publicly disclose financial interests under WETA's Conflict of Interest Code. Upon receipt, the Consultant 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 Consultant 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 Consultant 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 Consultant may not engage the services of any subcontractor or independent Consultant on any work related to this Agreement if the subcontractor or independent Consultant, or any employee of the subcontractor or independent Consultant, 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 Consultant becomes aware of an organizational conflict of interest in connection with the work performed hereunder, the Consultant immediately must provide WETA with written notice of the facts and circumstances giving rise to this organizational conflict of interest. The Consultant'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 Consultant's performance of the work hereunder, WETA will similarly notify the Consultant. In the event a conflict is presented, whether disclosed by the Consultant or discovered by WETA, WETA will consider the conflict presented and any alternatives proposed and meet with the Consultant 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 Consultant must maintain lists of its employees, and the subcontractors and independent Consultant used and their employees. The Consultant must provide this information to WETA upon request. However, submittal of such lists does not relieve the Consultant of its obligation to assure that no organizational conflicts of interest exist. The Consultant 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 Consultant must maintain written policies prohibiting organizational conflicts of interest and must ensure that its employees are fully familiar with these policies. The Consultant 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 Consultant to damages incurred by WETA in addressing organizational conflicts that arise out of work performed by the Consultant, which damages the Consultant agrees to reimburse, or to termination of this Agreement for breach.

26. PUBLICITY

The Consultant, 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.

27. 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.

28. 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.

29. 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.

30. NO THIRD PARTY BENEFICIARIES

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

31. COMPLIANCE WITH LAWS

Consultant and its employees, agents, and subconsultants performing the Services under this Agreement must at all times comply with all applicable local, state, federal laws, ordinances, statutes, and regulations in effect at the time Services under this Agreement are performed. Consultant must indemnify and hold harmless WETA from and against any and all claims or expenses caused or occasioned directly or indirectly by its failure to so comply.

32. APPLICABLE LAW

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

33. 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.

34. 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 as of the day and year first above written.

CONSULTANT*:

NAME

By: _____
Date: _____
Name: _____
Title: _____

By: _____
Date: _____
Name: _____
Title: _____

WETA:

SAN FRANCISCO BAY AREA WATER
EMERGENCY TRANSPORTATION
AUTHORITY

By: _____
Date: _____
Name: Nina Rannells
Title: Executive Director

Approved as to form:

Legal Counsel to WETA

** If the Consultant 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).*

**PROFESSIONAL SERVICES FOR WETA HOVERCRAFT FEASIBILITY STUDY
RFP NO. 19-008**

EXHIBIT A

WETA RFP

[To be inserted prior to Contract Award]

**PROFESSIONAL SERVICES FOR WETA HOVERCRAFT FEASIBILITY STUDY
RFP NO. 19-008**

EXHIBIT B

CONSULTANT PROPOSAL

[To be inserted prior to Contract Award]

**PROFESSIONAL SERVICES FOR WETA HOVERCRAFT FEASIBILITY STUDY
RFP NO. 19-008**

EXHIBIT C

INSURANCE REQUIREMENTS

CONSULTANT shall, at its own expense, obtain and maintain in effect at all times the following types of insurance against claims, damages and losses due to injuries to persons or damage to property or other losses that may arise in connection with the performance of work under this Agreement, placed with insurers with a Best's rating of A- or better.

- a) **COMMERCIAL GENERAL LIABILITY** coverage (including but not limited to premises and operations; completed operations and products liability; personal injury and advertising injury; use of non-owned watercraft; explosion, underground, and collapse coverage; and contractual liability on written contracts) of not less than:

One Million Dollars (**\$1,000,000**) combined single limit per occurrence for bodily harm and property damage; and

Two Million Dollars (**\$2,000,000**) general aggregate annual limit.

Policy shall include a Waiver of Subrogation and Additional Insured endorsement. Policy will also contain Separation of Interests Clause and Primary and Non-contributory language.

- b) **AUTOMOBILE LIABILITY INSURANCE** coverage (including but not limited to use of all owned and non-owned vehicles, uninsured motorists, and leased and hired vehicles) of not less than:

One Million Dollars (**\$1,000,000**) combined single limit per occurrence and aggregate for bodily harm and property damage.

Policy shall include a Waiver of Subrogation and Additional Insured endorsement

- c) **PROFESSIONAL LIABILITY (Errors and Omissions) INSURANCE** coverage for Errors and Omissions in an amount not less than one million dollars (**\$1,000,000**) per occurrence or claim, two million dollars (**\$2,000,000**) aggregate.

d) **WORKERS COMPENSATION INSURANCE** as required by the State of California, with Statutory Limits, and Employer's Liability Insurance with limit of no less than one millions dollars (**\$1,000,000**) per accident for bodily injury or disease. *(Not required if consultant provides written verification it has no employees.)*

Policy shall include a Waiver of Subrogation and Additional Insured endorsement. Policy will also contain Primary and Non-contributory language.

Signature: _____

Name: _____

Title: _____

Date: _____