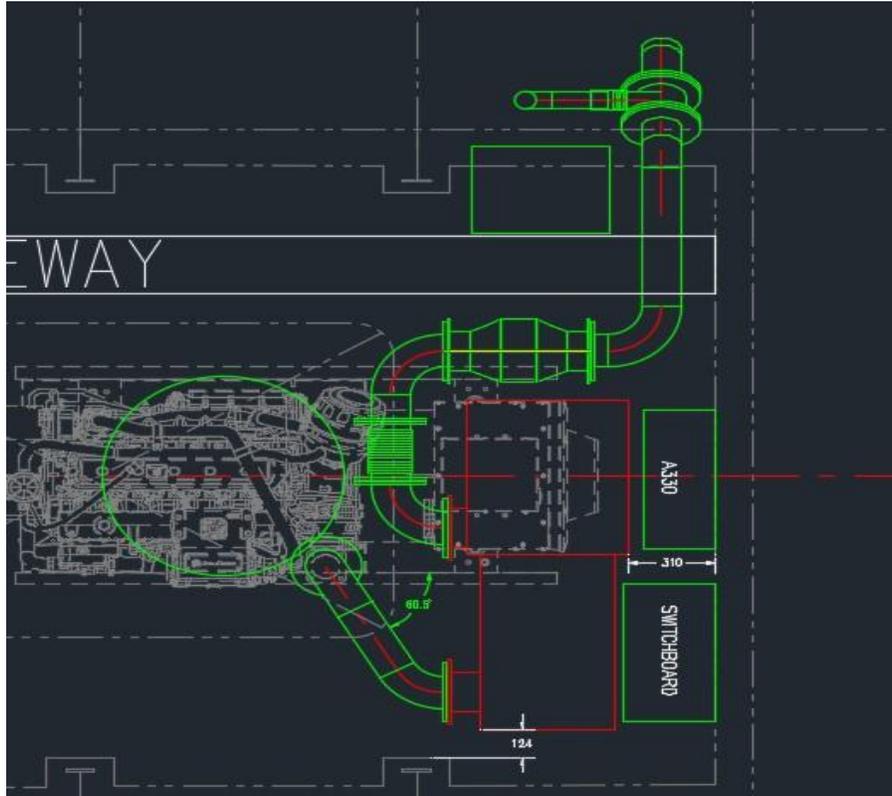


PYXIS Generator Diesel Particulate Filter Demonstration Project

RFP #21-024



Request for Proposals

Scope of Work, Professional Services
Agreement, and Forms

October 29, 2021

SAN FRANCISCO BAY AREA

**WATER EMERGENCY
TRANSPORTATION AUTHORITY**

SAN FRANCISCO BAY AREA WATER EMERGENCY TRANSPORTATION AUTHORITY

**REQUEST FOR PROPOSALS FOR THE PYXIS GENERATOR
DIESEL PARTICULATE FILTER DEMONSTRATION PROJECT
RFP #21-024**

ISSUED: October 29, 2021

PART A: INSTRUCTIONS

1. BACKGROUND

WETA, a local agency with multi-county jurisdiction, was established by the California Legislature to expand regional ferry service and coordinate waterborne emergency response activities on San Francisco Bay. WETA’s vision is to develop, operate and manage an expanded and enhanced region-wide ferry system that provides a reliable, state-of-the-art and attractive transportation option for the Bay Area, and to play a critical role in coordinating and providing water transportation to serve emergency response and economic recovery needs.

WETA is seeking proposals from shipyards or similar marine services firms (Proposers) to provide all services for the provision and installation of a diesel particulate filter (DPF) and integral diesel oxidation catalyst (DOC) serving one of the diesel generators on the vessel M/V PYXIS (Services). For detailed information regarding the required Services, please refer to Part B - Scope of Services/Technical Specifications. The individual or firm selected pursuant to this RFP (Selected Proposer) will be expected to provide any and all Services in compliance with applicable local, state, and United States Coast Guard laws, rules and regulations.

2. SOLICITATION TIMELINE

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

October 29, 2021	Issuance of RFP
November 12, 2021, 1:00pm local time	Virtual Pre-Proposal Conference
November 19, 2021, 2:00pm local time	Written requests for clarifications are due
November 29, 2021	Response to requests for clarifications
December 9, 2021, 2:00pm local time	Proposals due
Week of December 13, 2021	Proposer interviews, if held
January 6, 2022	Possible WETA Board Meeting for Award
January 14, 2022	Possible Notice to Proceed to Contractor
June 30, 2022	All Work Complete

3. PRE-PROPOSAL CONFERENCE

WETA will conduct a virtual Pre-Proposal Conference via Zoom. Attendance is not mandatory but is highly recommended. The Pre-Proposal Conference will take place on November 12, 2021 at 1:00pm local time.

Instructions to attend the Pre-Proposal Conference will be disseminated to all Proposers who register for the event. Proposers must register by sending an e-mail to Tim Hanners at hanners@watertransit.org.

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 unless contained in a subsequent written Addendum.

4. REQUESTS FOR CLARIFICATION OF RFP; ADDENDA

All requests for clarification regarding the meaning or interpretation of any part of this RFP should be in writing and sent to Tim Hanners at hanners@watertransit.org. All requests must be submitted by the date and time set forth in Part A, Section 2.

Should WETA determine that a clarification of the RFP is in order, WETA will issue a written addendum clarifying the matter, which will be posted on WETA's website <https://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.

5. EX PARTE COMMUNICATIONS

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 Selected 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.

6. CONFIDENTIALITY

The California Public Records Act (CPRA) (Government Code Sections 6250 et seq.) mandates public access to public records not exempt from disclosure under the CPRA. 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 a Proposer, is a public record that must be made available to the public upon request.

A. Confidentiality Index and Waiver of Claims

If the Proposer believes its proposal, any other communications with WETA, or any documents or materials of any kind provided to WETA to supplement or explain its proposal, or in response to any WETA inquiry or request in connection with this RFP ("supplemental materials"), 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 submitting:

- (1) An unredacted copy of the proposal, communication and/or supplemental materials marking each page containing such exempt information as confidential; and
- (2) A redacted copy of the proposal, communication and/or supplemental materials that redacts the purportedly exempt information; and
- (3) A "confidentiality index" that complies with the following requirements:
 - i. For proposals, the confidentiality index must include: (i) the section and page number of the proposal where the information exempt from disclosure is located; and (ii) an explanation of why the information is exempt from disclosure under the CPRA.
 - ii. For communications and supplemental materials, the confidentiality index must include: (i) the section and page number of the communication or supplemental document where the information exempt from disclosure is located, as appropriate; and (ii) an explanation of why the information is exempt from disclosure under the CPRA.
- (4) A signed letter with the following statement: "By submitting this 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."

By submitting a proposal, communication, or supplemental material, Proposer:

- (1) Consents to the release of the redacted version of the proposal, communication, or supplemental material; and
- (2) Consents to the release of any portion of its proposal, communication, or supplemental material not included in the confidentiality index; and
- (3) Waives all claims against WETA, its directors, officers, employees and agents, for the disclosure of such information.

If the Proposer does not include an unredacted copy, redacted copy, confidentiality index and signed indemnification statement, with its proposal, communication, or supplemental material in accordance with the requirements of this section, WETA will have no obligation to withhold any

information in the proposal, communication, or supplemental material from disclosure and may release the proposal, communication, or supplemental material without liability to WETA.

A Proposer may not designate its entire proposal or major portions of its Proposal as confidential. Proposers may not designate WETA forms as confidential. WETA will not honor such designations, and will disclose submittals so designated to the public.

B. Review of Confidentiality Index

Upon receipt of a request pursuant to the CPRA seeking a proposal, communication or supplemental material relating to this RFP, WETA may provide the redacted version of the requested record or may withhold information 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 the Proposer prior to releasing any material listed in the confidentiality index.

In the event of a conflict between the redacted version of a record, the confidentiality index, and confidentiality designations in the body of the record, the redacted version of the record prevails.

C. Confidentiality Indemnity

Proposers agree 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 a 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.

7. LEVINE ACT

The Levine Act (Government Code 84308) is part of the Political Reform Act of 1974 and applies to elected officials who serve on appointed boards such as the WETA Board of Directors (Board). The Levine Act prohibits any Board Member from participating in or influencing the decision on awarding a contract with WETA to anyone who has contributed \$250.00 or more to the Board Member within the previous twelve months. The Levine Act also requires a member of the Board who has received such a contribution to disclose the contribution on the record of the proceeding. In addition, Board 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.

Proposers must disclose on the record any contribution of \$250.00 or more that they have made to a WETA Board Member within the twelve-month period preceding submission of their response to this RFP. This duty applies to the Proposer, any member of Proposer's team, any agents for the Proposer other team members, and to the major shareholders of any closed corporation that is part of the Proposer's team.

Proposers must indicate in the cover letter submitted with their proposal whether any contribution(s) must be disclosed pursuant to the Levine Act. If the Proposer has made a contribution that needs to be disclosed, the Proposer must include with its proposal a separate written document stating the date, amount, and receipt of the contribution(s).

8. CONFLICTS 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 services 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 the Sample Agreement in Part C of the RFP for additional conflict of interest provisions that will be in effect during the contract term.

9. 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.

10. SAMPLE AGREEMENT; EXCEPTIONS

The Selected Proposer will be required to execute a contract with WETA, a sample of which is included in Part C of this RFP. Proposers must review all of the terms and conditions set forth in the Sample Agreement. Submittal of a proposal will be deemed acceptance of all of the terms set forth in this RFP and the Sample Agreement unless the Proposer includes any modifications requested to the Sample Agreement in its cover letter, or in an attachment thereto. All requests for exceptions must be in writing, separately identified, and delineated for each section of the Sample Agreement. WETA reserves the right to request further clarification of any requested exception during negotiations and to exclude unacceptable exception(s). No exceptions may be requested after the deadline for the submittal of proposals.

11. PERFORMANCE BOND

Not applicable.

12. FEDERAL REQUIREMENTS

Not applicable.

13. DIVERSITY PROGRAM FOR CONTRACTS

Not applicable.

14. PROPOSAL CONTENT 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. All descriptions and materials should be clear, concise, and provide sufficient information to minimize questions and assumptions. Proposals should be limited to 10 pages, excluding cover letter, table of contents, resumes, required forms, DBE certifications, and the cost proposal. Proposers are encouraged to print double-sided pages to conserve resources.

WETA, at its option, may require a Proposer to provide additional information and/or clarify submitted information.

A. Cover Letter

The cover letter must be on company letterhead, be signed by an individual who is legally authorized to bind the firm to the proposal (including the cost proposal) and must include all of the following information:

- Proposer's name, including all firms involved in a joint venture and any subcontractors.
- If the Proposer is a joint venture: (1) provide an executed copy of the Joint Venture contract with the proposal; and (2) outline the specific areas of responsibility (including administrative, technical, and financial) for each member of the Joint Venture.
- Proposer's business address, telephone numbers, and e-mail address.

- Introduce the firm and summarize its qualifications.
- Name(s) of authorized principals with authority to negotiate and contractually bind the firm.
- A statement that binds the Proposer to its proposal and Cost Proposal Form for 90 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.
- If Proposer submits a confidentiality index, the statement required in Part A, Section 6.A of this RFP. Alternatively, if the Proposer does not submit a confidentiality index in accordance with Part A, Section 6.A, a statement confirming that the Proposal does not contain any confidential information and may be released, in its entirety, by WETA in response to a request made pursuant to the California Public Records Act.
- Indicate whether there are any required disclosures pursuant to the Levine Act. See Part A, Section 7. Include any such disclosure in a separate document as per Part A, Section 7.
- Indicate whether there are any conflicts of interest that would limit the Proposer's ability to provide the requested services. See Part A, Section 8.
- Requests for exceptions to the Sample Agreement must be stated in the cover letter, or in an attachment thereto. All requests for exceptions to the Sample Agreement must be in writing, separately identified, and delineated for each section of the Sample Agreement. See Part A, Section 10 and Part C of this RFP.

B. Project Understanding and Approach

In this section, provide all of the following information:

- A discussion demonstrating the Proposer's understanding of the Services and their significance to WETA's day-to-day activities.
- Proposer's proposed approach to providing the Services, including identification of all subconsultants or subcontractors the Proposer intends to use for this Project.
- A discussion on potential impacts to cost, scope and schedule based on lessons learned performing work similar to the Services, including Proposer's recommendations to lower and/or control costs, if applicable.
- Identification of additional tasks, if any, not identified in the Scope of Services/Technical Specifications in Part B of this RFP that may be required to successfully meet the stated objectives of this RFP.
- Proposer's approach to working with WETA staff.
- Explain how Key Personnel and subcontractors will be managed.

C. Proposer's Qualifications and Experience

In this section, the Proposer must provide information about its company so that WETA can evaluate Proposer's stability and ability to support the commitments in their proposal.

Description of Proposer's qualifications to perform the Services, specifically including:

- Marine Design and Engineering
- Marine Diesel Exhaust Systems

- Marine Electrical Power Systems
- USCG Regulatory Approval
- Aluminum Structural Welding
- Marine Pipe Welding
- Insulation, Sheathing, and Lagging
- Vibration and Noise Measurement & Analysis
- Marine Propulsion Systems
- Sea Trial Testing

D. Proposer's Business and Financial Qualifications

In this section, Proposers must provide pertinent information to allow the 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.

E. Qualifications and Experience of Key Personnel

“Key Personnel” are those individuals who are essential to the successful completion and execution of the Services. Key Personnel must be available for the duration of the engagement and may not be substituted by the Selected Proposer without WETA's prior written approval. Substitution of Key Personnel without WETA's prior written approval will constitute a breach of the Agreement awarded pursuant to this RFP. WETA reserves the right to direct the removal of any individual, including Key Personnel. In this section, Proposers must provide the following for all Key Personnel:

- Name and title
- A description of their qualifications and experience relevant to performing the Services
- Number of years of experience performing work similar to or related to the Services
- A resume

F. References

Proposers must provide at least two (2) references of customers for whom, within the past five years, the Proposer has provided the same or similar services as those called for in this RFP. For each reference include:

- Entity name
- Contact name, email address and phone number
- A brief description of the project and the roles of the respective team members in successfully completing the project.

G. All Required Forms

Proposers must submit all the required forms listed in Part D of the RFP, including the Cost Proposal and Schedule of Values Forms pursuant to the instructions in Section 15 below. Failure to execute and submit all the required forms and provide all the requested information may result in the Proposal being rejected as nonresponsive.

15. COST PROPOSAL & SCHEDULE OF VALUES FORMS

Submit completed forms as provided in Attachment C, the Cost Proposal Form and Schedule of Values. Costs must include, but not be limited to, labor, materials, supplies, taxes, fees, overhead, insurance, and profit.

WETA may, in its sole discretion, retain up to 5% of each milestone payment until final acceptance.

16. PROPOSAL SUBMISSION INSTRUCTIONS

All proposals and must be submitted in digital format to:

San Francisco Bay Area Water Emergency Transportation Authority
ATTENTION: Tim Hanners
Pier 9, Suite 111, The Embarcadero
San Francisco, CA, 94111
hanners@watertransit.org

Submit by sending one (1) digital copy on a portable USB drive of the Proposal and all required forms (all in PDF format); and submit a duplicate Proposal via e-mail to the above named individual at the physical and e-mail addresses shown above.

Proposals received after the date and time specified in Section 2 will be considered late and will not be accepted.

17. WAIVER

Proposers are solely responsible for examining, with appropriate care and diligence, all parts of this RFP and fully informing themselves of all relevant aspects of the Part B - Scope of Services/Technical Specifications. By submitting a proposal, the Proposer represents and warrants that the Proposer has:

- sufficiently examined and are familiar with each part of this RFP and with all matters affecting the performance of the Scope of Services/Technical Specifications; and
- checked its proposal for errors and omissions; and
- confirmed that the prices stated in its proposal are correct for performing the Scope of Services/Technical Specifications and as intended by it.

The Proposer waives any claim against WETA for costs incurred in preparing a proposal and responding to this RFP.

18. WITHDRAWAL OF PROPOSAL

Submission of a Proposal shall constitute a firm offer to WETA for 90 calendar days from the submission deadline for proposals stated in Section 2 of this RFP.

A Proposer may withdraw its proposal any time before the date and time when proposals are due, without prejudice, by submitting a written request, via e-mail, for its withdrawal to the name and address stated below. A telephone request is not acceptable.

San Francisco Bay Area Water Emergency Transportation Authority
ATTENTION: Tim Hanners
Pier 9, Suite 111, The Embarcadero
San Francisco, CA, 94111
hanners@watertransit.org

19. EVALUATION PROCESS

A. 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.

B. Preliminary Evaluation of Proposals

The Evaluation Committee will conduct a preliminary responsiveness check to confirm that each proposal contains all the required documentation and information necessary to be deemed responsive to the RFP. WETA may reject as non-responsive any proposal that does not include the documents and information required by the RFP. However, WETA reserves the right to request additional information and clarifications during the evaluation and selection process from any or all Proposers regarding their proposals.

C. Evaluation Criteria

WETA intends to award a contract to the most qualified, responsible firm submitting a responsive proposal. Ranking of Proposers will be based on a maximum of 100 points, allocated as indicated below. To determine the number of points a Proposer will receive in each category, the Evaluation Committee will consider the proposal material submitted, 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:

Evaluation Criteria	Maximum Points
Project Understanding and Approach <ul style="list-style-type: none"> • Proposer’s understanding of the Services. • Proposer’s proposed approach to providing the Services and working with WETA staff. • Organization chart of proposed team. • Staffing plan for the Project. 	10
Proposer’s Qualifications and Experience <ul style="list-style-type: none"> • Proposer’s qualifications to perform the Services, specifically including its demonstrated ability to satisfy the requirements of Part A, Section 14.C. • Proposer’s relevant experience performing work that is the same or similar to the Services, including the scope and dollar value of prior projects completed and Proposer’s references. • Sufficiency of Proposer’s financial strength, resources and capabilities to perform the Services, as measured by information provided in response to Part A, Section 14.D. 	15
Qualifications and Experience of Key Personnel <ul style="list-style-type: none"> • Key Personnel’s qualifications to perform the Services. • Key Personnel’s relevant experience performing work that is the same or similar to the Services. 	15
Cost Proposal	60
Total Possible Points	100

D. Revised Proposals, Interviews and Negotiations

After completing the preliminary evaluation, the Evaluation Committee may conduct further discussion or interviews with firms whose proposals the Evaluation Committee considers 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. 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 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.

Upon completion of the final evaluation process, WETA will rank each firm based on the evaluation criteria above, considering all information, including written submissions and any additional information the Evaluation Committee received during the final evaluation process. WETA may accept the 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.

E. Notice of Intent to Award

If WETA determines to award a contract pursuant to this RFP, Proposers will be notified of WETA's intent to award the contract at least 72 hours before the contract is awarded by WETA's Executive Director or the WETA Board of Directors.

20. WETA'S RIGHTS; WAIVER OF COSTS

This RFP does not commit WETA to entering into a contract nor does it obligate WETA to pay for any costs incurred in preparation and submission of proposals submitted in response to this RFP. 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. WETA reserves the right to:

- Remedy errors in the RFP process
- Reject any and all proposals
- Waive formalities and irregularities in proposals
- Modify or rescind the any part of or the entire RFP
- Negotiate with any, all or none of the Proposers
- Issue subsequent RFPs for the Services
- Accept a proposal that does not offer the lowest price

In the event the Selected Proposer defaults or fails to execute a contract with WETA, WETA may enter a contract with another proposer.

21. 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.

A. Protests Based Upon the RFP

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 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 by WETA via a written addendum. The decision of the Executive Director is final.

B. Protests Based Upon the Notification of Intent to Award a Contract

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. 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 rule on the protest and will respond with a written determination. The decision of the Executive Director is final.

C. Submission of Protests

All Protests should be submitted in writing to WETA's Executive Director at murphy@watertransit.org. Protests that are received outside of the above time periods specified in this section will be rejected. 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.

22. 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 Services at any time. Formal contract award will only occur as and when, if at all, the WETA Board takes such action.

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.

PART B: SCOPE OF SERVICES/TECHNICAL SPECIFICATIONS

The scope of services for this project is outlined below. All work on the vessel must be performed within the San Francisco Bay Area. WETA's preference is that work on the vessel will be performed dockside at WETA's facility. If the selected proposer has a shipyard facility on San Francisco Bay, WETA will deliver the vessel to the selected proposer's shipyard at the selected proposer's request. If the selected proposer is outside the Bay Area, all travel expenses must be included in the pricing information on the Cost Proposal Form:

1. Complete a detailed ship check of the starboard ship service diesel generator (S-SSDG) as currently installed on M/V PYXIS (the Vessel).
2. Complete a detailed review of all existing technical information concerning the subject S-SSDG and all of its supporting systems (structural, mechanical, and electrical), selected reference documents are provided in Attachment B. All references require field verification by the Contractor. The RYPOS Owner's Manual that details operations, installation, and maintenance is provided for the Contractor's reference as Attachment D.
3. Using the DPF/DOC Installation Guidance Sketch provided in Attachment B, and after coordination with Pacific Power Group (PPG) and RYPOS regarding additional installation guidance; undertake all marine engineering and design work required to prepare complete and detailed working drawings (structural, mechanical, and electrical) to support the DPF/DOC installation. The design of the exhaust piping shall ensure that seawater from exhaust spray ring at the side shell is prevented from entering the DOC/DPF, or the engine itself. Incorporate exhaust opacity testing ports in the piping both upstream and downstream of the DPF/DOC assemblies. Testing ports shall accommodate SAE J1667, February 1996 testing procedures.
4. Procure the PDF/DOC unit and all other required components and materials from PPG and RYPOS (collectively the OEMs).
5. Procure the services of the OEMs to collaborate on all aspects of the design, engineering, and the shipboard work to ensure that the installation meets all OEM requirements.
6. Obtain United States Coast Guard (USCG), OEM, and WETA approvals of all working drawings (structural, mechanical, and electrical). The Contractor shall submit a working drawing package (mechanical, structural, electrical) to the USCG's Marine Safety Center (MSC) for plan review and approval.
7. Working with the OEM, the Contractor shall prepare a DPF/DOC commissioning and test plan for WETA review and approval.
8. Update all affected PYXIS As-Built drawings to document new installations incident to the new DPF/DOC exhaust system. WETA will supply existing As-Built drawings so that the Contractor can update them appropriately.
9. Upon USCG plan review approval, the Contractor shall mobilize to WETA's North Bay Operations and Maintenance Facility (NBOMF) located on Mare Island, CA for the work; or alternatively to the Contractor's facility located in San Francisco Bay.
10. The Contractor shall perform a welding disconnect on the vessel in coordination with Blue & Gold Fleet personnel (the Operator) prior to any welding. The welding disconnect shall be reversed by the Contractor upon completion of all welding for Operator review and approval.

11. Prior to the work to remove the existing S-SSDG exhaust system, perform two (2) complete dockside vibration surveys, noise surveys, and exhaust backpressure tests of the vessel with the S-SSDG running to support:
 - a. normal vessel underway power electrical loads (combined HVAC mode), and
 - b. at 100% of rated generator power using a WETA-provided load bank

These surveys and tests will serve as a baseline to assess the changes (if any) incident to the Contractor's work. Submit the pre-work survey and test reports to PPG and WETA. As part of the survey use an infrared temperature scanner to document the surface temperature of all equipment and structures near to or adjacent to the existing S-SSDG exhaust system while operating at 100% of rated load.

12. Prior to beginning any removals, the Contractor shall place protective coverings over the S-SSDG and main propulsion engine, and any other equipment identified by the Operator. Coverings shall be maintained for the duration of the work and removed as part of Item 27 below.
13. With vessel dockside at the NBOMF, or other location approved by WETA, coordinate with the Operator and danger tag out the S-SSDG and all of its affiliated systems (electrical and mechanical).
14. Provide the services of a marine chemist to certify and maintain the work spaces safe for entry and hot work for the duration of the project.
15. Perform all removals required to support the installation of the new DPF/DOC on the S-SSDG.
16. Relocate the S-SSDG power panel lower on BHD12 to allow for installation of the DPF/DOC above. Provide structural changes to support the panel in its new location. Adjust cable and wire runs and their supports as necessary to maintain bend radii of all cabling and wiring. Note that the wiring between the S-SSDG and the power panel on BHD12 is heavy gauge cable and will require extra effort and skill to perform as part of this work.
17. Remove existing exhaust silencer and piping support structures and modify as necessary and/or install new supporting structure and vibration isolation mounts to support the DPF/DOC and new exhaust piping. Restore any areas of disturbed structural fire protection insulation and sheet metal linings as necessary (to match existing) on bulkheads and the overhead.
18. Install the DPF/DOC and associated exhaust piping sections, stainless steel guards, flexible joints, vibration isolators, fittings, metallic high temperature exhaust gaskets, et cetera as fully detailed in the approved working drawings. Use special fasteners, washers, and gaskets to provide electrical isolation of the DPF filter housing.
19. Provide new lagging on exhaust system components from the S-SSDG exhaust flange to overboard discharge penetration at the side shell, exhaust lagging shall match existing in terms of materials and construction.
20. Provide foundations and install the RYPOS power supply transformer box and status panel on the inboard bulkhead of the Engine Room, modify existing structural fire protection insulation and sheet metal linings as necessary to match existing.
21. Install all required wiring and cabling between the RYPOS panels and the DPF/DOC unit per OEM requirements.

22. Install an appropriately sized and rated DPF electrical breaker (with enclosure and auxiliary contact) on the S-SSDG's alternator enclosure and wire power from the generator's bus bar to the input side of the breaker. This wiring shall be sized and rated for the full load of the S-SSDG. Wire the auxiliary contact into the S-SSDG controller per PPG's directions.
23. Install all required wiring (208VAC, 1Ø) from the output side of the DPF breaker to power up the RYPOS power supply transformer and provide 72VDC output to the DPF/DOC.
24. Support and band all wiring and cabling in a manner identical to existing.
25. Label all panels, wiring, and cable per existing labeling specifications.
26. Check all wiring and cabling for continuity prior to energization.
27. Thoroughly clean and restore all work and bilge areas to the satisfaction of the Operator after all installation work is complete.
28. Conduct a complete hand-over-hand inspection of the DPF/DOC and S-SSDG systems with OEM, Operator, and WETA personnel prior to any testing. Based on USCG-MSO or USCG local office requirements, the Contractor shall present the work to local USCG inspectors for review and approval. The Contractor shall also arrange for USCG inspector attendance during all testing and trials as required.
29. Working with the Operator and OEM, remove danger tags and prepare the S-SSDG and newly installed DPF/DOC for dockside testing.
30. Execute the Contractor-prepared and WETA-approved commissioning and test plan for the DPF/DOC dockside with OEM, Operator, and WETA witnessing. Start and place the generator online checking for proper sea water flow and exhaust system tightness. Electrically load the generator to the maximum extent possible by running all normal underway electrical loads including HVAC in combined cooling/heating mode.
31. Monitor and record all aspects of DPF/DOC operation per the commissioning and test plan.
32. Perform a series of two (2) dockside vibration and noise surveys, and exhaust backpressure tests with the S-SSDG running and loaded as described in Item 11 above. Provide all reports to PPG and WETA following the surveys and tests. Perform infrared temperature scanner measurements on all equipment and structures near to or adjacent to the new S-SSDG exhaust system including the DPF/DOC components when operating at 100% of rated load. Provide a report summarizing the surface temperature measurements taken prior to and following the scope of work. WETA must accept the report prior to scheduling any sea trial.
33. Perform a full two (2) hour sea trial to prove to WETA's satisfaction that the DPF/DOC units operate per OEM requirements during normal underway ferry operations. The Contractor shall provide a full commissioning report following successful completion of sea trials, see Item 7 above.
34. Upon WETA's acceptance of the work, demobilize from the work site. Final Acceptance will only occur upon successful completion of the sea trials, receipt of all test and trials reports, and completion of all demobilization.

PART C: SAMPLE AGREEMENT

PROFESSIONAL SERVICES AGREEMENT #21-024

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 Shipyard Design/Build Services and has issued a Request for Proposals (RFP) dated October 29, 2021, Part B: Scope of Services of 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; and

WHEREAS, on [Date], WETA's Board of Directors authorized award of the Agreement to the Contractor;

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 the passenger vessel shipbuilding and repairing industry; 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. Contractor will supervise and be solely responsible for the proper performance of the Services in accordance with the Contract, including the means, methods, techniques, and procedures, and for coordination of all parts of the Services.
- 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.

- h. Title. Contractor warrants that any title conveyed under the terms of this Agreement will be good and that all goods, materials, equipment, supplies, or systems, will be delivered free from all security interests or other liens or encumbrances. Contractor also agrees to defend the title against all persons claiming the whole or part of any goods, materials, equipment, supplies, or systems.
- i. Personnel. The Contractor represents that it has or will obtain all personnel and equipment required to perform the Services. The Contractor represents and warrants that it and its Subcontractors will procure and keep current throughout the duration of this Contract any and all license, permits, registrations or certificates which are or may be required by properly constituted authorities for the performance of Services under this Contract.

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"). Services may also be performed on a task order basis, with individual task orders including specific scopes of services and other task-specific terms and conditions. The Contractor is responsible for performing all work necessary to complete, in a manner satisfactory to WETA, the work described in this Agreement, and in any properly approved task orders or amendments.

The Contractor is responsible for arranging and paying for the shipment of all goods to the vessel at WETA's dockside facility. The Contractor will bear the risk of loss or damage to all goods at all times during transportation of the goods and at all times until Final Acceptance.

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, and any task orders issued by WETA
- b. This Agreement
- c. Exhibit A, Scope of Services
- d. Exhibit B, Contractor's Proposal, including all forms, and supporting materials, as accepted by WETA
- e. Exhibit C, Insurance 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 28, must complete the Services by June 30, 2022.

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 (Total Contract Price). 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 payment schedule:

Milestone	Amount (% of Total Contract Price)
Completion of Detailed Working Drawings including WETA and USCG Approvals	10%
Ordering of RYPOS DPF/DOC Components	15%
Mobilization to the Worksite for Installation Work	10%
Completion of S-SSDG Exhaust System Removals	10%
Structural Modifications and Installations Complete	10%
Mechanical Modifications and Installations Complete	10%
Electrical Modifications and Installations Complete	10%
Dock Trials and Sea Trials Complete including USCG Approvals	15%
Final Acceptance, defined to include: As-Built Drawings Completed, Survey Reports Provided, and Demobilization from the Worksite	10%

WETA will retain 5% of each milestone payment to be released upon Final Acceptance.

Upon making a milestone payment, WETA is granted title to all work in progress, materials, equipment, machinery, fittings, items of outfit and furnished goods (hereinafter "property") for which the milestone payment was made. Title to the property must be free of all encumbrances.

WETA's making of milestone payments does not constitute acceptance of any work by WETA, which will only occur as otherwise set forth in the Contract. Nor shall making milestone payments alter the Contractor's responsibility for any damage to the Vessel, which remains with the Contractor at all times until Final Acceptance. Furthermore, the Contractor bears the risk of any loss or damage to property, even though WETA may hold title to property. Nothing in this paragraph undermines any rights that WETA has under any insurance coverage pursuant to the Contract.

As a condition of Final Acceptance, and prior to submission of an invoice for the Final Acceptance Milestone Payment, the Contractor must furnish to WETA satisfactory evidence that all liens, claims and demands of Subcontractors, laborers and materialmen arising out of the Services, are fully satisfied, and that all of the Services are fully released from all liens, claims and demands of whatever kind and nature, whether just or otherwise.

The Contractor's acceptance of the Final Acceptance Milestone Payment, whether such payment be made pursuant to any judgment of any court, or otherwise, will constitute and operate as a release to WETA of any and all claims of the Contractor and liability to the Contractor for anything theretofore done or furnished for or relating to or arising out of this Contract and the Work, and for any prior act, neglect or default on the part of WETA or any of its directors, officers, agents or employees. Contractor will sign release in the form required by WETA as a condition of payment of the Final Acceptance Milestone Payment.

Should the Contractor refuse to accept any payment as tendered by WETA, it will constitute Contractor's waiver of any right to interest on such payment.

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: [Name]
9 Pier, Suite 111
San Francisco, CA 94111
Email: [Email]

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. RISK OF LOSS

The Contractor will bear all risk of loss or damage to the Vessel, and all materials delivered pursuant to the Contract, until Final Acceptance. Responsibility for risk of loss or damage includes during the time any materials are being shipped to WETA, subcontractors or the Contractor's location and Contractor must insure all such materials during any such delivery. The Contractor will not be responsible for any loss or damage arising from the sole negligence or willful misconduct of WETA.

Contractor will bear the risk of loss or damage to any WETA property arising from actions or inactions of Contractor. In addition, Contractor will bear all risk of loss or damage with respect to all materials acquired for the purpose of performing the Work. The foregoing applies to any property of Contractor, Subcontractors, workers, and others performing the work, as well as third parties. Contractor will protect from damage existing property, belonging to WETA or any third parties affected by Contractor's activities and will provide appropriate protection for all such property during progression of the work. Should any of WETA's or third party property be damaged, such property will be repaired or replaced at Contractor's expense to the satisfaction of WETA, and if applicable, to the satisfaction of the affected third party. No extension of time will be allowed for repair or replacement of such damaged items. Should Contractor not repair or replace such damaged items, WETA will have the right to take corrective measures itself and deduct the cost from any sums owed to the Contractor.

10. WARRANTY

Contractor guarantees and warrants that all work, materials, and equipment furnished hereunder will (a) conform to all Contract requirements; (b) fulfill its design functions and be fit for both its ordinary and intended purposes; (c) be free of all patent and latent defects in design, materials and workmanship; (d) conform to the manufacturer's warranties; (e) perform satisfactorily, and (f) is guaranteed by the Contractor against failure, damage, defect, or non-compliance with the Contract, of any kind under normal operating conditions. The warranty will commence on the date of Final Acceptance by WETA.

If the vessel is non-operational due to repairs or replacements required pursuant to this Contract during the warranty period, the warranty period will automatically be extended for a period of time equal to the number of calendar days that the vessel is non-operational due to such repairs or replacements.

If at any time during the warranty period WETA determines that the equipment or its component parts fail to satisfy the terms of the warranty, WETA will notify the Contractor, the Contractor shall promptly repair or replace the equipment or its component parts, and a new warranty will commence for the replaced or repaired component upon the date WETA accepts said replaced or repaired component. WETA's notice to the Contractor to repair, replace or restore any defects or damage pursuant to this warranty will be timely if given no later than ten (10) days after the expiration of the warranty period. The Contractor will assume all costs and expenses associated with such repair, replacement or re-performance work, including any and all costs for shipment and for any and all costs incurred to arrange contractors to evaluate the defect and/or damage and to advise on the proper repair.

If the Contractor fails to repair, replace or restore such defects or damage within five (5) working days after receiving such notice, WETA has the right to have the work done by others and recover the cost from Contractor at the Contractor's sole cost.

If damages or defects arise during the operation of the vessels on the San Francisco Bay and WETA determines that any repair or replacement needs to be accomplished on an emergency basis due to operational requirements of WETA, or the need to protect the integrity of the vessels, WETA may arrange to have such repair or replacement done as speedily as practicable at the yard of WETA's choice or at WETA's own facilities. In either case, the Contractor will reimburse WETA for the reasonable costs of such repair or replacement.

The Contractor will furnish WETA with all manufacturer's warranties, and submit them to WETA as a condition of final acceptance. All warranties will commence upon final acceptance of the vessel by WETA. The warranty for the RYPOS HFPF/C filter must comply with all of the following: (a) conform to all requirements in the California Code of Regulations, (b) be for a minimum 5 years/4000 hours, and (c) at a minimum meet the terms of the warranty specified in the manufacturer's warranty specified as "RH4XXM California Only Manual Rev. D".

11. OWNERSHIP OF WORK

11.1 Ownership of Copies of Written Materials. Any and all copies (whether physical or electronic) of any materials prepared, or in the process of being prepared, for the Work to be performed by Contractor under this Agreement will be and are the property of WETA. WETA will be entitled to access to and copies of any such materials during the progress of the Work under this Agreement. Any copies of such materials as specified in the Technical Specifications and required for performance of training and maintenance under this Agreement must be delivered to WETA. If any copies of such materials which the Contractor is owing WETA under this Agreement particularly under the Technical Specifications are lost, damaged, or destroyed before final delivery to WETA, Contractor will replace them at its own expense and the Contractor assumes all risks of loss, damage, or destruction of or to any such materials

11.2 Intellectual Property Rights. As between WETA and Contractor, Contractor will retain ownership of all intellectual property rights in the materials delivered to WETA under this Agreement. Contractor grants to WETA a perpetual, unlimited, royalty-free, non-exclusive and irrevocable license for WETA (including without limitation its officers, directors, employees, contractors, and agents) to use, copy, distribute, perform, and modify (and create derivative works from) any and all software or any written materials provided under this Agreement for WETA's business purposes, including without limitation operation, maintenance, and repair of WETA's Vessels, as well as for the purposes of future procurements of Vessels.

12. DATA PRIVACY AND SECURITY

Not applicable.

13. 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.

14. 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 Contract, or any materials or equipment incorporated into the Vessel, for an amount **of \$50,000 or higher** without the prior written approval of WETA's Project Manager. Any subcontractors must be engaged under written contract with Contractor with provisions allowing the Contractor to comply with all requirements of this Contract. Without limitation to the generality of the foregoing, each such written subcontract will at a minimum contain the following express provisions:

- Contractor, not WETA, is solely responsible for payment to the Subcontractor for any amounts owing—and the Subcontractor will have no claim, and will take no action against WETA or its officers, directors, employees, or sureties for nonpayment by Contractor.

- Subcontractor agrees that the subcontract is subservient to this Agreement and that it will be bound to the applicable terms and conditions of this Agreement.
- Subcontractor and Contractor must agree that in the event of termination of this Agreement, any subcontract will be assigned to WETA, at WETA's discretion.

Consent by WETA's Project Manager to any subcontracting will not relieve the Contractor of its primary responsibility for performance under this Contract. If subcontracting is approved, the Contractor agrees that all applicable FTA flow down compliance requirements will be included in such subcontracts and the Contractor will obtain all applicable FTA-required certifications before entering into any subcontract.

The Contractor will be fully responsible to WETA for all acts and omissions of its own employees, and of Subcontractors, Suppliers and their employees. The Contractor will also be responsible for coordinating the Work performed by Subcontractors/Suppliers. When a portion of the subcontracted Work is not performed in accordance with the Agreement, or if a Subcontractor/Supplier commits or omits any act that would constitute a breach of the Agreement, the Subcontractor/Supplier will be replaced at the request of WETA and will not again be employed on the project. The Contractor will be responsible for all materials and workmanship in the construction of the Vessel and all accessories used, whether the same are manufactured by the Contractor, subcontracted, assigned, or purchased from a supplier. The Contractor will be solely responsible for reimbursing any subcontractors and WETA will have no obligation to them.

Within ten (10) days of the Effective Date, the Contractor will submit for WETA's approval a preliminary list of Subcontractors. In the event that WETA in the exercise of its reasonable discretion, does not approve a proposed Subcontractor, Contractor will propose a suitable replacement within ten days of notice of WETA's rejection of the initial proposed Subcontractor.

Nothing contained herein nor any course of conduct will be construed to create any contractual relationship between WETA and any Subcontractor. Upon request, Contractor will provide to WETA an executed copy of each subcontract agreement, including any amendments thereto.

15. PERSONNEL

Contractor will assign only competent personnel to perform work hereunder. In the event that at any time WETA, in its sole discretion, desires the removal of any person or persons assigned by Contractor to perform work hereunder, Contractor will remove such person or persons immediately upon receiving written notice from WETA. Key Personnel for this Contract, and the amount of time such Key Personnel will dedicate to the Contract are set forth below.

[TBD]

Any and all persons identified in the above table are deemed by WETA to be Key Personnel whose services were a material inducement to WETA to enter into this Contract, and without whose services WETA may not have entered into this Contract. Contractor may not remove, replace, substitute, or otherwise change any Key Personnel without the prior written consent of WETA.

In the event that any of Contractor's personnel assigned to perform services under this Agreement become unavailable due to resignation, sickness or other factors outside of

Contractor's control, Contractor will be responsible for timely provision of adequately qualified replacements. In no event will a position remain unfilled for more than three months. Unavailability of personnel, even due to factors outside of Contractor's control, will not provide Contractor an excuse from meeting the time requirements under this Contract.

16. COOPERATION WITH OTHER CONTRACTORS

At any time, WETA reserves the right to engage other contractors to perform additional work that is not the subject of this Agreement. Contractor will cooperate with all such contractors and allow them access to the Vessel, provided that such additional work will not interfere with or hinder the Contractor's Work. WETA will require, as a condition of gaining access to the vessel, that additional contractors hired under this section have their own insurance to cover liability associated with their work. These contractors will also be required to indemnify the Contractor from liability associated with their work.

17. PROMPT PAYMENT TO SUBCONTRACTORS

The Contractor will pay any Subcontractor approved by WETA for work that has been satisfactorily performed no later than seven (7) days from the date of the Contractor's receipt of payments by WETA.

In the event WETA holds retainage from the Contractor, it will pay retainage to the Contractor upon Final Acceptances. The Contractor will return all monies withheld from all Subcontractors within 30 days after receiving payment for work satisfactorily completed and accepted including incremental acceptances of portions of the contract work by WETA. Any delay or postponement of payment may take place only for good cause and with WETA's prior written approval. In the event the Contractor does not make progress payments or release retentions to the Subcontractors in accordance with the time periods in this section, the Contractor will be subject to a charge of two percent (2%) per month on the untimely or improperly withheld payment.

Upon WETA's request, the Contractor will make available to WETA evidence that the Contractor has paid Subcontractors all amounts due in accordance with this section. This section applies to both DBE and non-DBE Subcontractors.

18. CHANGES

18.1 General. All changes to the Contract must be accomplished through the procedures set forth in this section. Any plan or method of work, whether suggested by Contractor or WETA, but not specified or required in the Contract, if adopted or followed by Contractor in whole or part without compliance with this section 18, will be adopted at the risk and responsibility of Contractor, and WETA assumes no responsibility. In particular, any approval by WETA's Project Manager of any modification, sample, schedule document, substitution, drawing or other matter not accomplished by the procedures set forth in this section 18 will not impose any liability upon WETA or relieve Contractor of any responsibilities under the Contract, including without limitation, the accuracy of any drawing or any obligation under any warranty provision, or the responsibility to deliver the vessel in compliance with all regulatory requirements, the Technical Specification, and this Contract. There are no verbal modifications to the Contract. The Contractor is responsible to ensure proper interrelation, functioning and systems integration of all aspects of the work related to the Vessel's systems and their relationship with other equipment and systems

of the Vessel. The Contractor is responsible to ensure the suitability of the systems, devices, apparatus, components and parts for the service intended.

18.2 Contractor Changes. Any Contractor-proposed change in this Contract must be submitted to WETA for its prior approval. Oral change orders are not permitted. All Contractor initiated requests for a change must be made within 10 days after Contractor knows, or should have known, of the issues giving rise to the request. At WETA's request, Contractor will provide information giving the basis for the requested change, or will provide a proposal containing the information set forth in Section 18.3. No change in this Contract will be made unless WETA gives prior written approval. The Contractor will be liable for all costs resulting from, and/or for satisfactorily correcting, any specification change not properly ordered by written modification to the Contract and signed by WETA.

18.3 WETA Changes. WETA may obtain changes to the Contract by notifying the Contractor in writing. As soon as reasonably possible but no later than ten (10) calendar days after receipt of the written change order to modify the Contract, the Contractor will submit to WETA's Project Manager a detailed price and schedule proposal for the work to be performed as follows.

18.3.1 The proposal must detail all applicable direct costs, including labor and materials, with the unit price and corresponding quantity, Subcontractor(s) or supplier(s) quote or purchase order, and mark up, etc. which makes up the total proposed cost. The information must be in sufficient detail for WETA to determine if the proposed costs are fair and reasonable.

18.3.2 Contractor agrees that in no event will the combined profit and overhead of the supplier(s)/Subcontractor(s) and Contractor with respect to any change order work exceed 10 percent (10%). Calculation of profit for the change order will be on the costs of Contractor and any subcontracted work without profit and overhead of the Contractor or supplier(s)/subcontractor(s). The Contractor agrees that it will include a provision in each subcontract which conforms to the provisions of the preceding sentence.

18.3.2.1 The Contractor represents that all rates charged by suppliers or Subcontractors contained in the proposal will be equal to or better than rates charged to other transit properties.

18.3.2.2 Equipment costs used for the work will be reimbursable to Contractor. All receipts, vouchers and all other supporting documentation required to substantiate the material costs will be available for WETA's inspection and verification.

18.4 Change Order.

18.4.1 Contractor's price and schedule proposal will be accepted or modified by negotiations between the Contractor and WETA. At that time a detailed modification will be executed in writing by both parties. Modifications that increase the cost to be paid Contractor may need to be approved by WETA's Board of Directors. Disagreements that cannot be resolved within negotiations will be resolved in accordance with the procedures in Section 24 below. In the event of a disagreement over a change order,

WETA reserves the right unilaterally to direct the Contractor to perform work through a change order that does not need to be executed by both parties. The Contractor will perform the work as directed and may exercise its rights to pursue a claim pursuant to 24. Regardless of any disputes, the Contractor will proceed with the Work ordered.

18.4.2 A change order must be issued and executed before any work is started on the items covered by the change order. Any extra work done without a written change order signed by WETA's authorized representative will be considered as unauthorized and at the sole expense of Contractor. In the event Contractor receives direction, instruction, interpretation, or determination from any source which may cause any change in the Work, Contractor will promptly notify WETA. Such written notification will be given to WETA before Contractor acts on said direction, instruction, interpretation, or determination.

18.4.3 Unless specified, no change order will impose any liability upon WETA, nor will any change order relieve Contractor of any responsibilities under the Contract, including without limitation, the accuracy of drawing or any obligation under any warranty provision.

19. RESPONSIBILITY; INDEMNIFICATION

To the fullest extent permitted by law, the Contractor assumes liability for and will save and protect, hold harmless, indemnify, and defend WETA, its directors, officers, agents, employees, representatives, contractors, subcontractors, insurers, attorneys, successors and assigns (all the foregoing, hereinafter collectively, "Indemnitees") from and against all claims, suits, demands, damages, losses, expenses, and liabilities of any kind whatsoever (all the foregoing, hereinafter collectively "Claims") including, without limitation, attorneys' fees, arising out of, resulting from, relating to, or claimed to have arisen out of, resulted from or related to the performance of the Work by the Contractor (including its subcontractors and suppliers), or any allegation that the Services and/or WETA's use of the vessel as contemplated under this Contract infringes or violates any Intellectual Property Rights. It is expressly intended by the parties that Contractor's indemnity and defense obligations will apply, and Indemnitees will be fully indemnified without offset, deduction or contribution, regardless of any negligence or other fault of Indemnitees, or any of them, and whether or not such Indemnitee negligence or other fault caused or contributed to the arising of the Claims provided, however that the indemnity and defense obligation will not apply to the extent a Claim arises from the sole negligence or willful misconduct of any of the Indemnitees.

"Claims" as used in this section includes, without limitation, those for personal injuries, wrongful death, mental or emotional distress, loss of consortium, damage to or loss of use of real, personal or intangible property of any kind, loss of income, loss of earning capacity, and business, financial, commercial or pecuniary losses of any kind whatsoever, and reasonable attorneys' fees, and costs and expenses of any kind whatsoever.

Contractor's indemnity and defense obligations cover the acts or omissions of any of Contractor's subcontractors, suppliers and consultants, and the employees of any of the foregoing.

The Contractor's indemnity and defense obligation under this section includes, without limitation, any claims, suits, demands, damages, losses, expenses, and liabilities arising from allegations of

violations of Contractor's or its Subcontractor's personnel practices or from any allegation of an injury to an employee of the Contractor or subcontractor performing work or labor necessary to carry out the provisions of this Contract.

The indemnification obligations in this section will not be construed to negate, abridge or otherwise reduce any other obligation of indemnity the Contractor may have with respect to WETA which may otherwise exist. If any judgment is rendered against WETA or any of the other individuals enumerated above in any Claim subject to this indemnity, the Contractor will, at its expense, satisfy and discharge the same. This indemnification will survive termination or expiration of this Agreement and the Contractor must procure and maintain insurance coverage with a Contractual Liability endorsement that will insure its indemnity obligations.

If WETA is enjoined either temporarily or permanently from the use of any subject matter or materials as to which Contractor is to defend and indemnify WETA against a claim of infringement or other violation of Intellectual Property Rights, Contractor, at its sole cost and expense, must: (a) secure for WETA the right to continue using the subject matter or materials at issue by suspension of the injunction or procuring a license which imposes no cost on WETA; (b) replace the subject matter or materials at issue with non-infringing alternatives; or (c) modify the subject matter or materials at issue so that they become non-infringing or remove the enjoined subject matter or materials at issue and refund the sums paid for them without prejudice to any other rights of WETA. The option of (a), (b), and (c) in the preceding sentence must be selected in consultation with WETA and with WETA's consent, which will not be unreasonably withheld or delayed. The selected option may not entail an unreasonable or excessive amount of time or cause undue disruption to WETA's operations.

20. 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. 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.

21. 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.

22. 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.

23. WETA WARRANTIES

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

24. 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.

25. 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.

26. LIQUIDATED DAMAGES

Not applicable.

27. 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 Section 19 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 28 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.

28. TERMINATION

28.1 Termination for Default. If Contractor fails to perform any of the provisions of this Contract, WETA may find Contractor to be in partial or complete default. If Contractor does not cure such default within thirty (30) days after receipt of written notification that such failure has occurred, or provide a plan to cure such default which is acceptable to WETA within the time specified by WETA, then WETA may, in its discretion, terminate this Contract, in whole or in part, on the basis of Contractor's default of this Agreement. If the Contractor cures the default within the cure period, but subsequently defaults again, WETA may immediately terminate the Contract or a portion of it without giving the Contractor a right to cure.

The term "default" for purposes of this section includes, but is not limited to: the performance of the work in violation of the terms of the Contract; abandonment, assignment or subletting of the Contract without approval of WETA; filing a petition for bankruptcy by or against the Contractor or appointment of a receiver for Contractor's property; initiation of a federal or state proceeding for relief of debtors by or against Contractor; failure of the Contractor to perform its obligations under the Contract Documents (including but not limited to use of materials, supplies, plant, or equipment of quality or quantity below the requirements in the Contract Documents; failure to use an adequate number of properly skilled workers; failure to provide required Key Personnel; failure to provide proper workmanship); failure to perform its obligations under the Contract Documents within the time specified therein; failure to take effective steps to end a prolonged labor dispute; or the performance of the Contract in bad faith.

If the Contract is terminated in whole or in part for default, WETA may complete the Work, upon such terms and in such manner as WETA may deem appropriate. Without in any way affecting WETA's rights under the Performance Guaranty, the Contractor may be liable to WETA for any excess costs expenses incurred by WETA in completing the Work.

If, after notice of termination of this Contract under the provisions of this clause, it is determined for any reason that the Contractor was not in default under the provisions of this clause, or that the default was excusable under the provisions of this clause, the rights and obligations of the parties will be the same as if the notice of termination had been issued pursuant to termination for convenience of WETA.

All finished or unfinished documents and any goods or materials procured for or produced pursuant to this Contract will become the property of WETA upon the effective date of such termination for default.

28.2 Termination for Convenience. WETA may terminate this Contract for convenience, including for non-availability of funds, in whole or in part, upon 30 calendar days' notice to the Contractor. If WETA terminates this Contract for convenience, the Contractor will:

- Stop Work under the Contract on the date and to the extent specified in the notice of termination.
- Place no further orders or subcontracts for materials, services, or facilities except as may be necessary for completion of such portion of the Work under the Contract as is not terminated.

- Terminate all orders and subcontracts to the extent that they relate to the performance of work terminated by the notice of termination.
- Settle all outstanding liabilities and all claims arising out of such termination or orders and subcontracts, with the approval or ratification of WETA, to the extent that may be required, which approval or ratification will be final for all the purposes of this section.
- Transfer title to WETA and deliver in the manner, at the times, and to the extent, if any, directed by WETA the fabricated or un-fabricated parts, work in process, completed work, supplies, and other material produced as a part of, or acquired in connection with the performance of, the work terminated, and the completed or partially completed plans, drawings, information and other property which, if the Contract had been completed, would have been furnished to WETA.
- Use its best efforts to sell, in the manner, at the times, to the extent, and at the price(s) directed or authorized by WETA, any property of the types referred to above, provided however, that the Contractor will not be required to extend credit to any purchaser, and may acquire any such property under the conditions prescribed by and at a price(s) approved by WETA. The proceeds of any such transfer or disposition will be applied in reduction of any payments to be made by WETA to the Contractor under this Contract or will otherwise be credited to the price or cost of the work covered by this Contract or paid in such other manner as WETA may direct.
- Complete performance of such part of the Work as will not have been terminated by the notice of termination.
- Take such action as may be necessary, or as WETA may direct, for the protection or preservation of the property related to this Contract which is in the possession of the Contractor and in which WETA has or may acquire an interest.

In the event of termination for convenience, the Contractor will be paid all sums actually due and owing for all services performed and all expenses incurred up to the day written notice of termination is given, plus any costs reasonably and necessarily incurred by Contractor to effect such termination. Contractor will not be entitled to payment for any lost profit it might have earned had the Contract not been terminated. Thereafter, Contractor will not be entitled to make any claim against WETA in connection with this Agreement. All finished or unfinished documents and any materials procured for or produced pursuant to this Agreement will become the property of WETA upon the effective date of such termination for convenience.

In the event of termination for convenience, Contractor, and its Subcontractors, will provide reasonable and good faith cooperation in any transition to other vendors or contractors as WETA may determine necessary. Failure to so cooperate is a breach of the agreement and grounds for a termination for convenience to be treated as a termination for breach.

28.3 Contractor Responsibility for Subcontracts. If this Contract is terminated, WETA will have no liability or responsibility for leases or contractual agreements entered into by the Contractor for performance of the Contractor's responsibilities under this Contract, except as provided in this section. In the event of termination for any reason, and at WETA's direction, Contractor must assign any Subcontract to WETA, and must include in any Subcontract the assignability to WETA in the event of any termination.

29. 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.

30. 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.

31. 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 31 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.

32. 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.

33. 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.

34. ENVIRONMENTAL AND SAFETY AND HEALTH STANDARDS COMPLIANCE

The Contractor must comply with all applicable environmental statutes, regulations, and guidelines in performing the Services. The Contractor must also comply with applicable occupational safety and health standards, regulations, and guidelines in performing the Services.

35. HAZARDOUS AND NON-HAZARDOUS CHEMICALS AND WASTES

Contractor will bear full and exclusive responsibility for any release of hazardous or non-hazardous chemicals or substances during the course of performance of this Contract except to the extent that any such releases are caused by the direct negligence of WETA. The Contractor will 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 limit, payment of any fines or penalties levied against WETA by any agency as a result of such release and will hold harmless, indemnify and defend WETA from any claims arising from such release. For purposes of this section only, the term "claims" will include (i) all notices, orders, directives, administrative or judicial proceedings, fines, penalties, fees or charges imposed by any governmental agency with jurisdiction, and (ii) any claim, cause of action, or administrative or judicial proceeding brought against WETA, its member agencies, their directors, or employees, or for any loss, cost (including reasonable attorney's fees), damage or liability, sustained or suffered by any person or entity, including WETA. This indemnification will survive the termination of the Contract.

If the performance of the work outlined by these contract specifications creates any hazardous wastes, those wastes will be properly disposed of according to federal, state, and local laws, at the expense of Contractor. The Contractor will dispose of the wastes under its own EPA Generator Number. In no event will WETA be identified as the generator. The Contractor will notify WETA of any such hazardous wastes. WETA reserves the right to 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 their disposition.

36. 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.

37. 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.

38. 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.

39. 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.

40. NO THIRD PARTY BENEFICIARIES

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

41. 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.

42. APPLICABLE LAW

This Agreement, its interpretation and all work performed under it will be governed by the laws of the State of California. Venue for all legal proceedings arising out of this Contract, or breach of this Contract, will be in the state or federal court with competent jurisdiction in San Francisco, California.

43. 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.

44. 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.

45. 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).*

PART D: FORMS AND ATTACHMENTS

1. **REQUIRED FORMS.** Each Proposer must submit all of the forms listed below. Failure to submit these required forms may result in WETA declaring a proposal non-responsive. All forms should be signed by an authorized individual. Electronic signatures, including digital signatures, are acceptable. WETA may reject as non-responsive forms containing interlineations, alternations, or erasures. Templates for the forms are provided in Attachment C as noted below.
 - Price Proposal Form
 - Schedule of Values

2. **ATTACHMENTS.** The following attachments are made part of this RFP and any contract awarded pursuant to this RFP:
 - A. Attachment A, "Insurance Requirements"

 - B. Attachment B, "Reference Documents"
 - i. DPF/DOC Installation Guidance Sketch
 - ii. RYPOS TOP Assembly RH406-M, Drawing #960-0251-XX-06 Rev. A
 - iii. RYPOS DOC Welded Assembly 10.5 OD, Drawing #500-0131 Rev. B
 - iv. RYPOS XFMR Isln 4.5 KVA 1 PH 240VDC-72VDC, Drawing #175-0032-00-00 Rev. X1
 - v. RYPOS LED Panel Assembly, Drawing #972-0002-00-00 Rev. X1
 - vi. RYPOS Wiring Schematic, Drawing #199-0022-00-00 Rev. XO
 - vii. AC One Line Diagram, Drawing #64-320-1-01
 - viii. Hull Bulkhead 12, Drawing #0433.020.112 Rev. A
 - ix. One Line Circuit Breaker Diagram, Drawing #64-303-1-1/6
 - x. Exhaust System Schematic, Drawing #1623-259-001 Rev. D
 - xi. SSDG Dynagen Wiring Diagram, Drawing #17-6442231-ELGEN Rev. A
 - xii. Seawater Cooling System Schematic, Drawing 1623-256-001 Rev. D

 - C. Attachment C, "Cost Proposal & Schedule of Values Forms"

 - D. Attachment D, "RYPOS Owner's Manual – Operation, Installation, and Maintenance"

END OF RFP

ATTACHMENTS FOLLOW