

**SAN FRANCISCO BAY AREA WATER EMERGENCY TRANSPORTATION AUTHORITY**  
**REQUEST FOR PROPOSALS FOR A REAL-TIME TRANSIT INFORMATION SYSTEM**  
**RFP #21-026**

**ISSUED: OCTOBER 20, 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 a Real-time Transit Information System from qualified individuals or firms (Proposers). Over the past several years transit agencies have been globally transitioning to real-time transit information systems to provide consumers with up-to-date information about disruptions to their transit service, including station/terminal closures, cancelled trips, delay messaging, location of their vehicles, and expected arrival times. WETA's current system was developed over ten years ago and is unable to generate reliable real-time departure and arrival predictions.

The goal of real-time fixed-route transit data is three-fold, in this order of importance:

1. Provide customers with accurate information about when vehicles will arrive and depart.
2. Provide agencies with actionable information about where their vehicles are right now, and historically, and how those vehicles conform to expected service.
3. Provide developers with a single, authoritative source of real-time information that is open and free to use.

While the most important goal is ultimately to deliver quality customer information, this scope does not include customer interfaces. This is because there is a large, diverse market of free apps that transit riders already use and standard data formats defined to provide information to those apps easily. Therefore, by focusing on procuring goal #3, this aspect of goal #1 is advanced.

For detailed information regarding the required Services, please refer to *PART B: SCOPE OF SERVICES/TECHNICAL SPECIFICATIONS (Page 14)*. 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 and state 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 20, 2021	Issuance of RFP
October 28, 2021, at 11:00am PT	Pre-Proposal Conference (virtual)
November 2, 2021 by 5:00pm PT	Emailed requests for clarifications are due
November 5, 2021	Response to requests for clarifications
November 18, 2021, by 5:00pm PT	Proposals due
Week of December 8, 2021 (tentative)	Proposer interviews, if needed
January 6, 2022 (tentative)	Contract Award

**3. PRE-PROPOSAL CONFERENCE**

WETA will conduct a virtual Pre-Proposal Conference on Thursday October 28, 2021, at 11:00am (PT). Attendance is not mandatory but is highly recommended. Log-in instructions for the virtual Pre-Proposal Conference will be posted prior to the meeting on this project's procurement page at <https://weta.sanfranciscobayferry.com/procurement-opportunities>.

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 via email and sent to Michael Gougherty at [gougherty@watertransit.org](mailto:gougherty@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/procurement-opportunities>). Each Proposer has an ongoing 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 the 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 except 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/communication/supplemental material], 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. A Proposer 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 15 pages, excluding cover letter, table of contents, resumes, required forms, and the price proposal. 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 price 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 Price 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 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.
- Detailed implementation schedule including:
  - Key phases of the project, including but not limited to development, final acceptance, go-live, and required WETA approvals.
  - Deliverables associated with each phase, including deliverables provided by WETA.
  - Identification of payment milestones and specific work/task and project completion % for each milestone.
- Description of acceptance process, such as development of acceptance test, monitoring period, and criteria for passage.
- 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.
- Approach or method to providing maintenance and support services, including modifications to accommodate periodic WETA service schedule changes.

- 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, including on-going periodic maintenance and updates following implementation.
- An organization chart that clearly identifies the proposed team composition.
- Discuss workload for all Key Personnel, indicating their expected availability, the percentage of their time that will be devoted to this Project and any other assurances as to their ability to provide the Services in a responsive and timely manner.

**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, having delivered a real-time transit information system to an existing public transit agency with accurate vehicle/vessel tracking, vehicle/vessel arrival predictions, and real-time transit alerts.

**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 three references of clients 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 the RFP, including the Price Proposal Form 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. PRICE PROPOSAL FORM**

Proposers should include a price proposal, as a separate attachment from the Proposer's Proposal, that sets forth an all-inclusive lump-sum amount for developing and launching the Real-Time Transit Information System during a three-month development period following issuance of a Notice to Proceed. The price proposal should also include the annual price of hosting and maintaining/supporting the Real-Time Transit Information system for a five-year period once the System is accepted. The combination of the upfront development cost and annual hosting/maintaining/supporting cost will be used to evaluate the Proposer's Price Proposal.

**16. PROPOSAL SUBMISSION INSTRUCTIONS**

All proposals must be submitted electronically via email to:

Michael Gougherty - [gougherty@watertransit.org](mailto:gougherty@watertransit.org)

One (1) digital copy of each proposal must be received at the above email address no later than the time and dates stated in Section 2. Proposals received after the date and time specified above 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 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; checked its proposal for errors and omissions; 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 an email request for its withdrawal to the name and email address stated below.

Michael Gougherty - [gougherty@watertransit.org](mailto:gougherty@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:

<b>Evaluation Criteria</b>	<b>Maximum Points</b>
<b>Project Understanding and Approach</b> <ul style="list-style-type: none"> <li>• Proposer's understanding of the Services.</li> <li>• Proposer's proposed approach to providing the Services and working with WETA staff.</li> <li>• Organization chart of proposed team.</li> <li>• Staffing plan for the Project.</li> </ul>	40
<b>Proposer's Qualifications and Experience</b> <ul style="list-style-type: none"> <li>• Proposer's qualifications to perform the Services, specifically including its demonstrated ability to satisfy the requirements of Part A, Section 14.C.</li> <li>• 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.</li> <li>• 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.</li> </ul>	20
<b>Qualifications and Experience of Key Personnel</b> <ul style="list-style-type: none"> <li>• Key Personnel's qualifications to perform the Services.</li> </ul>	10

<ul style="list-style-type: none"> <li>• Key Personnel's relevant experience performing work that is the same or similar to the Services.</li> </ul>	
<b>Price Proposal</b> <ul style="list-style-type: none"> <li>• Reasonableness of Proposer's Price Proposal</li> </ul>	30
<b>Total Possible Points</b>	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. WETA may award a contract without conducting negotiations.

**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 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 of 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](mailto: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 following scope of Work is to be used as a general guide and is not intended to be a complete list nor description of all work necessary. Proposers responding to this RFP are expected to be familiar with all aspects of project management. Additional requirements pertaining to this Work are stipulated in the Sample Agreement included as Part C of this RFP. Proposers are encouraged to specifically review requirements relating to ownership of work included in the Sample Agreement and request any desired modifications pursuant to Part A, Section 10 of this RFP.

The Selected Consultant shall provide, host, operate and maintain a Real-time Transit Information System based on the following criteria:

### **1. Real Time Transit Information System Requirements**

A Real-time Transit Information System will be comprised of three parts:

1. Vessel Location Tracking – CAD/AVL technology to track vessel locations which generate GTFS-Realtime vehicle positions.
2. Vessel Arrival Prediction – Algorithm to predict when a vessel will reach its destination which generates GTFS-Realtime trip updates.
3. Service Alerts – A dashboard for WETA staff to create and manage service alerts which generate GTFS-Realtime service alerts.

Any Real-time information system will need to work with the following unique constraints:

- WETA's routes are entirely on water and don't correspond to any road network.
- Most of WETA's trips only have two stops: a start and an end. Trip update prediction algorithms will need to consider previous trips to accurately estimate arrival times for upcoming trips. All WETA's schedules can be found at <https://sanfranciscobayferry.com/routes-and-schedules>.
- Sample WETA schedule and map illustrating how WETA vessels interline with different routes:



including: destination signs, interior signs, automatic annunciators, automatic passenger counters, electronic fare systems.

- The chosen vendor must make final GTFS real-time data URLs available to WETA to post to a publicly accessible web server for use by third parties without restriction.
- All data in any format must be fully owned by WETA or licensed in such a way that the agency has free, unrestricted, transferrable, and irrevocable rights to store and use the data, including its combination with other datasets.
- The chosen vendor must provide open access to APIs and downloadable reports. The API response data should be in the Javascript Object Notation (JSON) format.
- Open access to all API documentation.
- Right to archive and analyze historical data.

#### Desired Specifications:

- WETA dispatchers are able to execute operational changes such as detours and service cancellations through the CAD interface and have alerts immediately sent to GTFS-RT feed.
- The CAD/AVL system be able to import GTFS static feeds, provided by scheduling software or a GTFS editing program for system updates.
- The Proposer commit to updating the GTFS-RT annually as the specification evolves for better app development and rider information.
- WETA seeks to integrate real-time information into Google, Transit, and other free-to-use apps available on the App Store and other public app marketplaces. WETA is interested in a vendor able to perform the communication with these developers necessary to complete those real-time integrations.

## 2. Equipment

There is existing AIS hardware already installed on all WETA vessels, Proposers shall identify and provide any additional onboard hardware or devices required to implement the Real-time Transit Information System. On-vessel installation of any additional hardware or devices will be completed by WETA, pursuant to product installation instructions provided by the Proposer.

## 3. Security

Data security for the Real-time Time Transit Information System applications, system and interfaces shall employ the most current industry and U.S. government techniques to ensure that all data is safeguarded from unauthorized access or use, and programs are protected from any known cyber-attack or computer virus.

## 4. Schedule

Upon receipt of a notice to proceed, WETA desires that the Real Time Transit Information System be fully designed, developed, tested, and accepted within three months.

## 5. Maintenance & Support

Following Final Acceptance, the Proposer shall operate, maintain, support and upgrade (as necessary) the Real Time Transit Information System for a period of 5 years. Support requirements shall include processing periodic schedule changes implemented by WETA (typically 2-4/year).

**PART C: SAMPLE AGREEMENT**

**PROFESSIONAL SERVICES AGREEMENT #21-026**

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 a Real Time Transit Information System and has issued a Request for Proposals (RFP) dated [Date], Part B: Scope of Services/Technical Specifications 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 providing real time transit information systems; that it carries all applicable licenses, certificates, and registrations in current and good standing that may be required to perform the work; and that it will retain all such licenses, certificates, and registrations in active status throughout the duration of this engagement.
- b. Intellectual Property Rights. In the performance of Services, its use of any third party's intellectual property does not and will not infringe or violate the patent, copyright, trade-secret, or other intellectual-property or proprietary rights of any third party. Contractor further represents and warrants that it has or will have all appropriate licenses, agreements, or ownership rights pertaining to all patent, copyright, trade-secret, or other intellectual-property or proprietary rights needed for the performance of its obligations under this Agreement—including without limitation that it will have all necessary rights to use patentable or copyrightable materials, equipment, devices, or processes not furnished by WETA. Contractor

assumes all risks arising from the use of any such patented or copyrighted materials, equipment, devices, or processes.

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

## 2. SCOPE OF SERVICES

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

**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/Technical Specifications
- d. Exhibit B, Contractor's Proposal, including all forms, and supporting materials, as accepted by WETA
- e. Exhibit C, Insurance Requirements

**4. TERM**

The Term of this Agreement will commence on the Effective Date. Contractor will begin work upon WETA issuance of a Notice to Proceed and will proceed according to the Project Schedule set forth in the [TBD]. The Contractor may not alter the Project Schedule without WETA written approval. Contractor must achieve Final Acceptance of the System no later than [XX] days after Notice to Proceed. Unless terminated sooner pursuant to Section 23, the term of this Agreement also includes a 5-year maintenance and support period, commencing upon Final Acceptance, with [XX] optional one-year extension terms to be exercised by WETA in its sole discretion. The one-year extension terms are automatic and WETA will notify Contractor at least 60 days prior to the expiration of the base term, or extension term, if it does not want to exercise the option for the following year.

If WETA issues task orders under this Agreement, performance of services for each task order will commence upon receipt of the notice to proceed issued by WETA for the respective task order and the Contractor will complete the services within the period specified in the task order. In the event that a task order specifies a performance period extending beyond the term of the Agreement, including any options, the Agreement will remain in full force and effect until all outstanding services under all task orders are completed or terminated.

**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**

6.1 Implementation Compensation. For all Work up to and including Final Acceptance, WETA will pay the Contractor the fixed price of \$XXXX ("Implementation Price"). The fixed price is all-inclusive of costs and expenses including but not limited to travel, meals and telephone, and any and all labor, material, software licenses, profit, overhead,

insurance, taxes, and subcontractors costs incurred by the Contractor. WETA will pay the Contractor according to the milestone schedule set forth in Section 7.

6.2 Maintenance and Support Compensation. For the maintenance and support services that commence upon Final Acceptance WETA will pay the Contractor the fixed monthly/quarterly/yearly amount of \$XXXX. This amount is all inclusive of costs and expenses including but not limited to travel, meals and telephone, and any and all labor, material, third-party maintenance and support agreements, profit, overhead, insurance, taxes and all subcontractor costs.

6.3 Title to Goods. Title to all hardware and any other equipment that is part of the system provided by the Contractor (including any spare equipment) passes to WETA upon payment by WETA of the invoice for the milestone that includes delivery of applicable equipment.

**7. MANNER OF PAYMENT**

For implementation of the System, WETA will compensate the Contractor based on the following milestone schedule (additional rows, as necessary):

Milestone	Amount
Describe work/tasks that must be accomplished	XX% of Implementation Price
Describe work/tasks that must be accomplished	XX% of Implementation Price
Describe work/tasks that must be accomplished	XX% of Implementation Price

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

PDF invoices should be emailed to the WETA Project Manager, Michael Gougherty at [gougherty@watertransit.org](mailto:gougherty@watertransit.org) with cc to [payables@watertransit.org](mailto: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, Michael Gougherty at [gougherty@watertransit.org](mailto:gougherty@watertransit.org) and (415) 364-3189, 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: Seamus Murphy  
9 Pier, Suite 111  
San Francisco, CA 94111  
Email: murphy@watertransit.org

If to the Contractor: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
Attention: \_\_\_\_\_  
Email: \_\_\_\_\_

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

**9. OWNERSHIP OF WORK**

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

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

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

**10. DATA PRIVACY AND SECURITY**

Data security for the Real-time Time Transit Information System applications, system and interfaces shall employ the most current industry and U.S. government techniques to ensure that all data is safeguarded from unauthorized access or use and programs are protected from any known cyber-attack or computer virus.

**11. CONFIDENTIALITY**

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

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

**12. USE OF SUBCONTRACTORS**

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

**13. CHANGES**

WETA may, at any time, by written order, make changes to Exhibit A. If such changes cause an increase in the budgeted cost of or the time required for performance of the Services, an equitable adjustment as mutually agreed will be made in the limit on compensation set forth in Section 5 or in the time of required performance as set forth in Section 3, or both.

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

**14. RESPONSIBILITY; INDEMNIFICATION**

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

- a. Any injury to persons or property that may occur, or that may be alleged to have occurred, arising from the performance of this Agreement by the Contractor caused by a negligent act or omission or willful misconduct of the Contractor or its employees, subcontractors or agents, including but not limited to any failure to comply with applicable law as set forth in Section 34; or
- b. Any allegation that materials or services provided by the Contractor under this Agreement infringe or violate any copyright, trademark, patent, trade secret, or any other intellectual-property or proprietary right of any third party.

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

**15. INSURANCE**

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

**16. CONTRACTOR'S STATUS**

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

**17. ASSIGNMENT**

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

**18. WETA WARRANTIES**

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

**19. WETA REPRESENTATIVE**

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

**20. DISPUTE RESOLUTION**

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

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

time for its response if necessary, or may request, in writing, within thirty (30) calendar days of receipt of the claim, any additional documentation supporting the claim or relating to defenses or claims WETA may have against the Contractor.

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

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

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

**21. LIQUIDATED DAMAGES**

N/A

**22. 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 14 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 23 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.

**23. TERMINATION**

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

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

Upon termination for any reason, Contractor must transfer title to WETA (to the extent that title has not already been transferred) and deliver in the manner, at the times, and to the extent directed by WETA the work in process, completed work, and all other material produced as a part of, or acquired in respect of the performance. All data, work in process, completed work, and other material produced as a part of, or acquired in respect of the performance, whether complete or incomplete, must be delivered promptly to WETA in

native format, or other such format as instructed by WETA. Additionally, at WETA's request, for up to ninety (90) calendar days after any expiration or termination of this Agreement, Contractor will provide reasonable transition assistance; and for any such services outside the scope of this Agreement, Contractor may charge its then-prevailing rates for such services, but no more than the rates it charges to other customers for similar or comparable services and no more than reasonable rates.

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

**24. 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.

**25. 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.

**26. 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 26 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.

**27. 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.

**28. 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.

**29. PUBLICITY**

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

**30. ATTORNEYS' FEES**

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

**31. WAIVER**

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

**32. SEVERABILITY**

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

**33. NO THIRD PARTY BENEFICIARIES**

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

**34. COMPLIANCE WITH LAWS, PRACTICES AND POLICIES**

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

**35. APPLICABLE LAW**

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

**36. BINDING ON SUCCESSORS**

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

**37. COUNTERPARTS**

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

**38. ENTIRE AGREEMENT; MODIFICATION**

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

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

**CONTRACTOR\*:**

**WETA:**

NAME

SAN FRANCISCO BAY AREA WATER  
EMERGENCY TRANSPORTATION  
AUTHORITY

By: \_\_\_\_\_

By: \_\_\_\_\_

Date: \_\_\_\_\_

Date: \_\_\_\_\_

Name: \_\_\_\_\_

Name: Seamus Murphy

Title: \_\_\_\_\_

Title: Executive Director

Approved as to form:

By: \_\_\_\_\_

Date: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Legal Counsel to WETA

*\* 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).*

## EXHIBIT C

### INSURANCE REQUIREMENTS FOR CONSULTANT

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

#### 1.01 GENERAL

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

#### 1.02 WORKERS' COMPENSATION COVERAGE

A. CONSULTANT shall at its own cost and expense procure and maintain Workers' Compensation coverage to its employees, as required by the California Labor Code and/or Longshoreman's and Harbor Workers Act Insurance in compliance with the laws of the State of California, and Federal laws where applicable with statutory policy limits. The CONSULTANT shall also maintain Employer's Liability coverage with minimum limits of Five Million Dollars (\$5,000,000) for each disease, with a policy limit of Five Million Dollars (\$5,000,000). Consultant's insurance must be from a carrier with an A M Best rating of A-7 or better, must be statutory in nature, and must include USL&H on an "if any basis". In the event the Consultant is self-insured, it shall furnish Certificate of Permission to Self-Insure signed by Department of Industrial Relations, Administration of Self-Insurance, Sacramento California.

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

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

#### 1.03 BUSINESS AUTOMOBILE LIABILITY

CONSULTANT shall, at its own cost and expense, procure and maintain Business Automobile Liability insurance providing bodily injury and property damage coverage with a combined single limit of at least \$2 million per occurrence for all owned, non-owned and hired automobiles. This insurance shall provide contractual liability covering all motor vehicles and mobile equipment to the extent coverage may be excluded from commercial general liability insurance. Such insurance shall include, as additional insureds, WETA and its respective directors, officers,

employees, volunteers, and agents while acting in such capacity. Said policy shall contain a waiver of subrogation in favor of WETA and its respective directors, officers, employees, volunteers, agents while acting in such capacity. Prior to commencing work or entering onto the Property, CONSULTANT shall provide the Manager, Operations of WETA with a Certificate(s) of Insurance evidencing coverage, and upon request, a certified duplicate original of the policy.

#### **1.04 UMBRELLA COVERAGE**

A. CONSULTANT may provide Umbrella or Excess Liability insurance at its own cost and expense, procure and maintain Umbrella Liability Insurance coverage of at least \$10 million per occurrence and in the annual aggregate in excess of Business Automobile Liability and Employer's Liability.

#### **1.05 GENERAL INSURANCE REQUIREMENTS**

##### **A. Acceptable Insurance**

1. All policies will be issued by insurers acceptable to WETA (generally with a Best's Rating of A 10 or better). Upon evidence of financial capacity satisfactory to WETA, CONSULTANT's obligation hereunder may be satisfied in whole or in part by adequately funded self-insurance. All insurance specified above shall remain in force until all work to be performed is satisfactorily completed, all of CONSULTANT's personnel and equipment have been removed from the property, and the work has been formally accepted. The failure to procure or maintain required insurance and/or an adequately funded self-insurance program will constitute a material breach of this Agreement.

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

##### **B. Claims-Made Insurance**

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

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

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

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

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

C. Failure to Procure or Maintain Insurance

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

D. Regulatory Compliance

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

E. Terms of Policies

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

F. Evidence of Insurance

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

G. Reporting of Incidents, Losses or Claims

1. The CONSULTANT agrees to immediately notify WETA's Project Manager, Michael Gougherty at [gougherty@watertransit.org](mailto:gougherty@watertransit.org) following any accident or injury, which occurs in connection with the Work under this AGREEMENT. In addition, the CONSULTANT shall provide a detailed written report of the accident or injury to WETA within seven (7) days of its occurrence.

**END OF SECTION**