

SAN FRANCISCO BAY AREA WATER EMERGENCY TRANSPORTATION AUTHORITY

REQUEST FOR PROPOSALS FOR INTEGRATED FARE TICKETING SYSTEM RFP #21-027

ISSUED: NOVEMBER 17, 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 an Integrated Fare Ticketing System to support non-Clipper fare payment for its ferry services from qualified individuals or firms (Proposers). Over 70 percent of WETA riders pay fares using the Clipper system, which provides a single payment means for use on all Bay Area transit system and can be automatically replenished with value. The remainder of WETA riders rely upon non-Clipper fare payment options. While the Clipper system continues to improve and evolve as a viable payment option for more riders, WETA will need to continue offering non-Clipper payment options for the foreseeable future. The current non-Clipper payment systems in use by WETA are comprised of a mobile ticketing platform, on-board and dockside paper ticketing systems, and an online reservation portal for riders to reserve and purchase tickets in advance for special event services. These systems are provided by multiple companies through multiple platforms.

WETA's goal is to consolidate the functionality and reporting of its multiple non-Clipper fare systems into a robust Integrated Fare Ticketing System that offers non-Clipper payments for a variety of ticket purchase scenarios. The Integrated Fare Ticketing System (also referred to as "the Services") shall consist of a Mobile Ticketing System and Paper Ticketing System and Special Event Ticketing System that together offer a simple and friendly experience for users, and provide WETA staff with an efficient, reliable, and easy to use product. For detailed information regarding the required Services, please refer to Part B, Scope of Services. Proposers are invited to partner or subcontract with other firms, if necessary, to provide an Integrated Fare Ticketing System that satisfies the required and desired services, as described in Part B Scope of Services.

WETA estimates an upfront budget of up to \$150,000 required to develop and deploy the Integrated Fare Ticketing System, including providing all required equipment. WETA estimates that an average of up to 330,000 non-Clipper transactions will be processed annually through the Integrated Fare Ticketing System, representing an average annual fare value of up to \$830,000. Based on these assumptions, WETA estimates an annual budget of up to \$75,000 required to provide, host, operate and maintain the ticketing system, excluding the cost of equipment replacement or repair.

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:

| | |
|--------------------------------------|---|
| November 17, 2021 | Issuance of RFP |
| November 30, 2021 at 10:00am PT | Pre Proposal Conference (virtual) |
| December 6, 2021 by 5:00pm, PT | Emailed requests for clarifications are due |
| December 9, 2021 | Response to requests for clarifications |
| December 20, 2021, by 5:00pm, PT | Proposals due |
| Week of January 10, 2021 (tentative) | Proposer interviews, if held |
| February 3, 2022 | Contract Award |

3. PRE-PROPOSAL CONFERENCE

WETA will conduct a virtual Pre-Proposal Conference on Tuesday, November 30, 2021 at 10:00am (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. 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 on-going responsibility to check WETA's website for addenda. WETA has no obligation to provide any other notice of addenda being issued. WETA's failure to respond to a request for clarification or modification will be deemed to be a rejection of such request. Any WETA determination on any Proposer request will be final. Addenda issued for this RFP, if any, must be expressly acknowledged in Proposer's cover letter.

5. EX PARTE COMMUNICATIONS

Proposers and Proposers' representatives may not communicate orally with an officer, director, employee, or agent of WETA, outside the procedures set forth in this RFP, until after a final agreement between the Selected Proposer and WETA has been executed. Proposers and their representatives are not prohibited, however, from making oral statements or presentations in

public to one or more representatives of WETA during a public meeting. Any written communication regarding the RFP between a Proposer (or the Proposer's representative) and WETA's Executive Director, Board Member, officer, employee or consultant, regardless of who initiates the communication, other than as part of the procurement process set forth in this RFP, before WETA issues a Notice to Proceed, will be available for disclosure to the general public.

6. CONFIDENTIALITY

The California Public Records Act (CPRA) (Government Code Sections 6250 et seq.) mandates public access to public records not exempt from disclosure under the CPRA. Therefore, unless the information is exempt from disclosure by law, the content of the proposal, as well as any other written communication between WETA and a Proposer, is a public record that must be made available to the public upon request.

A. Confidentiality Index and Waiver of Claims

If the Proposer believes its proposal, any other communications with WETA, or any documents or materials of any kind provided to WETA to supplement or explain its proposal, or in response to any WETA inquiry or request in connection with this RFP ("supplemental materials"), contains information exempt from disclosure under the CPRA, including trade secrets or other proprietary information that the Proposer believes would cause substantial injury to the Proposer's competitive position if disclosed, the Proposer must request that the District 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 except 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; however, expensive binders are neither required nor desired. All descriptions and materials should be clear, concise, and provide sufficient information to minimize questions and assumptions. Proposals should be limited to 15 pages, excluding cover letter, table of contents, resumes, required forms, DBE certifications, 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 all of the following information:

- A discussion demonstrating the Proposer's understanding of the Services and their significance to WETA's day-to-day activities.
- Proposer's proposed approach to providing the Services, including identification of all subconsultants or subcontractors the Proposer intends to use for this Project.
- 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.
- Detailed description of any equipment proposed to be provided.
- A discussion on potential impacts to cost, scope and schedule based on lessons learned performing work similar to the Services, including Proposer's recommendations to lower and/or control costs, if applicable.

- Identification of additional tasks, if any, not identified in the Scope of Services 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.
- Explain how Key Personnel and subcontractors will be managed and address how unanticipated staffing shortfalls will be handled.
- If the work is to be shared among firms and offices at different locations, indicate where each office is located and what work is to be performed in each office.

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 developed and deployed fare ticketing systems for public transit agencies.

D. Proposer's Business and Financial Qualifications

In this section, Proposers must provide pertinent information to allow WETA to reasonably formulate a determination about the financial stability and strength of the Proposer such as financial references, financial statements, or other relevant documentation. Describe any administrative proceedings, claims lawsuits, settlements, or other exposures pending against the Proposer.

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 client 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.

15. PRICE PROPOSAL FORM

Response to this section will not count toward the 15-page limit and must be submitted separately. For purposes of evaluation, proposers should include a price proposal that sets forth an all-inclusive lump sum amount for developing, hosting, and maintaining the Integrated Fare Ticketing System during the development period following issuance of a Notice to Proceed and the subsequent five-year operating term following Final Acceptance. Price for the five-year operating period shall be proposed assuming the estimated annual transaction volume set forth in Section 1 of this RFP. The all-inclusive lump sum price proposal shall separately identify a line item cost to provide Handheld Ticketing Devices, a line item cost to provide the Desktop Point of Sale Devices (Optional), and a line item cost for any additional equipment required, as described in Part B.2 of this RFP. The lump sum amount will serve as the basis for evaluating price proposals.

Actual compensation under any agreement resulting from this RFP will depend on the actual annual transaction volume and the payment methodology negotiated between WETA and the highest ranked proposer. WETA is open to a variety of compensation methodologies, so Proposers should include in their price proposal their proposed methodology for compensation for development, hosting, operation and maintenance of the Integrated Fare Ticketing System for the development period and five-year operating term.

16. PROPOSAL SUBMISSION INSTRUCTIONS

All proposals and must be submitted to:

Michael Gougherty - 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

19. EVALUATION PROCESS

A. WETA Evaluation Committee

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

B. Preliminary Evaluation of Proposals

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

C. Evaluation Criteria

WETA intends to award a contract to the most qualified, responsible firm submitting a responsive proposal. Ranking of Proposers will be based on a maximum of 100 points, allocated as indicated below. To determine the number of points a Proposer will receive in each category, the Evaluation Committee will consider the proposal material submitted, interviews (if applicable), additional information requested by WETA, client references and any other relevant information about a given Proposer.

The following criteria will be used by the WETA's Evaluation Committee in the evaluation of the proposals:

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

| | |
|---|-----|
| <ul style="list-style-type: none"> Proposer's relevant experience performing work that is the same or similar to the Services, including the scope and dollar value of prior projects completed and Proposer's references. Sufficiency of Proposer's financial strength, resources and capabilities to perform the Services, as measured by information provided in response to Part A, Section 14.D. | |
| Qualifications and Experience of Key Personnel <ul style="list-style-type: none"> Key Personnel's qualifications to perform the Services. Key Personnel's relevant experience performing work that is the same or similar to the Services. | 10 |
| Price Proposal <ul style="list-style-type: none"> Reasonableness of Proposed Price Proposal | 30 |
| Total Possible Points | 100 |

D. Revised Proposals, Interviews and Negotiations

After completing the preliminary evaluation, the Evaluation Committee may conduct further discussion or interviews with firms whose proposals the Evaluation Committee considers sufficiently viable to allow for further consideration ("the competitive range"). The Evaluation Committee may also reject any proposals it deems not within the competitive range. The Evaluation Committee may require that some or all Proposers attend an interview (may be in person or conducted via telephone per WETA's request) in order to seek clarification regarding the various proposals. WETA also reserves the right to request additional information and to require any such information in writing. The evaluation committee may also contact any reference listed in the proposal or otherwise seek input about Proposers. WETA reserves the right to complete the evaluation process without any interviews or additional information, so Proposers are encouraged to submit their best Proposal with their initial submission.

Upon completion of the final evaluation process, WETA will rank each firm based on the evaluation criteria above, considering all information, including written submissions and any additional information the Evaluation Committee received during the final evaluation process. WETA may accept the highest-ranked proposal or negotiate terms and conditions of the Agreement with the highest-ranked firm. If negotiations are unsuccessful, WETA will terminate the negotiations with that firm and may open negotiations with the next highest-ranked firm. If negotiations with this firm are also not successful, WETA may repeat the negotiations process with the next-highest-ranked firms, or, at its sole discretion, WETA may reject all remaining proposals. 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 the any part of or the entire RFP
- Negotiate with any, all or none of the Proposers
- Issue subsequent RFPs for the Services
- Accept a proposal that does not offer the lowest price

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

21. PROTEST PROCEDURES

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

A. Protests Based Upon the RFP

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

For timely protests based upon restrictive requirements or alleged improprieties in the RFP procedures, the Executive Director will respond with a written determination prior to the proposal due date. If the Executive Director's determination could affect proposal submission, an appropriate extension of the proposal due date may be granted by WETA via a written addendum. The decision of the Executive Director is final.

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

Protests based upon WETA's notification of intent to award the Contract must be submitted in writing within forty-eight (48) hours of receipt of notice intent to award. The protest must clearly specify in writing the grounds and evidence on which the protest is based and the relief sought. For timely protests based upon the notice of intent to award, the Executive Director will make efforts to notify other Proposers of the protest. The Executive Director will rule on the protest and will respond with a written determination. The decision of the Executive Director is final.

C. Submission of Protests

All Protests should be submitted in writing to WETA's Executive Director at murphy@watertransit.org. Protests that are received outside of the above time periods specified in this section will be rejected. No protests will be considered after contract award, except for compelling reasons whereby the lateness is due to WETA's untimely handling of the protest submission. In no event will WETA consider protests filed after contract award due to the neglect of the protestor. Failure to comply with the time periods for filing protests as set forth in this section will be a basis for rejection of the protest.

22. CONTRACT AWARD AND EXECUTION

WETA reserves the right to not award any contract as a result of this procurement and may terminate the procurement and commence a new procurement for part or all of the Services at any time. Formal contract award will only occur as and when, if at all, the WETA Board takes such action.

If the WETA Board acts to award the Agreement, the Selected Proposer must execute and deliver execution copies of the Agreement within ten (10) working days of receipt, together with all required documents, including but not limited to, the insurance certificates. If the Proposer is an individual, the Agreement must be executed by the individual personally. If the Proposer is a co-partnership, it is desirable that the Agreement be executed by all of the partners, but it may be executed by one (1) of them. If the Proposer is a corporation, this Agreement must be executed by two corporate officers, consisting of: (1) the president, vice president or chair of the board; and (2) the secretary, assistant secretary, chief financial officer or assistant treasurer. In the alternative, this Agreement may be executed by a single officer or a person other than an officer provided that evidence satisfactory to WETA is provided demonstrating that such individual is authorized to bind the corporation (e.g. a copy of a certified resolution from the corporation's board or a copy of the corporation's bylaws). If the Proposer is a joint venture, the Agreement must be executed on behalf of each participating firm by officers or other authorized individuals. If the Proposer is an LLC, the Agreement must be executed by an officer or member who is authorized to bind the LLC.

PART B: SCOPE OF SERVICES

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. All components of the Integrated Fare Ticketing System, including any Contractor-provided website used for customer service purposes, must be compliant with the Americans with Disabilities Act (ADA), as well as Sections 504 and 508 of the Rehabilitation Act of 1973. 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, data privacy, and data security included in the Sample Agreement and request any desired modifications pursuant to Part A, Section 10 of this RFP.

The key capabilities of the Integrated Fare Ticketing System are:

1. Allow purchase of mobile tickets with capabilities comparable to that of the existing mobile system as described in Section 1A below.
2. Allow purchase and validation of physical paper fare media tickets sold on-board and at dockside locations through cash payments, credit card, Apple Pay, and Google Pay
3. Allow purchase of tickets in advance for special event ferry services through the mobile ticketing system and online web portal.
4. Provide web-based admin interface that provides reports and a single point of access for all financial and usage information pertaining to all non-Clipper ticketing systems.

The Selected Consultant(s) shall provide, host, operate and maintain an Integrated Fare Ticketing System based on the following criteria:

1. System Requirements and Specifications

a) Mobile Ticketing System

Required Features:

- A native application that runs on iOS and Android which is available in the iOS App Store and Google Play store as a free download.
- Provides a simple, user-friendly interface for first time users to create accounts.
- Doesn't require by offers users the option to store a payment method.
- Supports purchasing and validating multiple tickets at the same time on a single device.
- Supports multiple fare products (adult, youth, senior, etc).
- Supports different fares for different destinations and different WETA fare policies.
- Supports configurable branding of tickets with logos or route colors by WETA.
- Provides a simple and intuitive interface for first time and infrequent users.
- Visual validation distinguishes between fare classes (adult, youth, senior, disabled) and shows origin and destination.
- Tickets expire in an appropriate time after they are validated and are only valid for the origin and destination selected.
- No hardware required for validation (visual only).
- Visual validation works offline.
- In-app customer support links trigger email to specified email addresses in order to integrate with WETA customer service functions.

- Customizable in-app links to WETA service information include schedules and route information.
- Contains robust security features to combat fraud, including prevention of electronic scanning and screen shots of expired or fraudulent mobile tickets.
- Accepts mobile wallet payment options such as, but not limited to, Apple Pay, Google Pay, Paypal, etc.

Desired Features

- Supports implementation of time- or quantity-limited systemwide or ticket category promotional discounts.
- Ability for third party applications such as Google Maps, Apple Maps, Transit App, Citymapper, TNCs to offer WETA mobile tickets in their app via an API or SDK.
- Doesn't require a user account or sign-in to purchase tickets.
- Supports adaptability of access and use of the ticketing system for non-English speaking ferry riders.

b) Paper Ticketing System

Required Features:

- Allows purchase of physical paper ticket fare media on-board WETA vessels and at dockside locations.
- Ticket branding and format should be configurable to allow branding and brief text instructions configurable by WETA.
- Supports purchase of multiple tickets.
- Supports implementation of time- or quantity-limited systemwide or ticket category promotional discounts.
- Allows validation of multiple tickets on-board at a time.
- Allows offline sale and validation of tickets.
- Allows offline-online synchronization of purchase and validation data.
- Tracks purchase data and usage data by trip (one-way from origin terminal to the destination terminal), by time of day, and by each fare category.
- Supports multiple fare products (Adult, Youth, Senior etc.).
- Supports different fares and fare products for different destinations.
- Contains security features to prevent expired or fraudulent tickets.
- Supports multiple payment types including cash, credit/debit card, Apple Pay, Google Pay, and provides sale receipt with purchased data information.
- Purchased tickets expire in appropriate time after validation.
- Purchased tickets are valid only for selected origin and destination.

Optional Features

- Desktop point of sale device that includes an integrated cash till onboard each vessel to accept and secure cash payments made for paper tickets.

c) Special Event Ticketing

Required Features:

- Allow purchase of tickets in advance for special event ferry services that vary in fare and quantity available by event and by route.

- Ability to limit sales to a specific quantity of tickets per trip (but not use assigned seats).
- Provide capability for WETA to sell special event tickets through both mobile and web portals and integrate special event ticket system with proposed Mobile Ticketing and PaperTicketing Systems on the backend.
- Specific information relating to ticket quantities available, fares, and scheduling of special event services is configurable by WETA.

Optional Features:

- Ability to message users who purchased tickets for a specific event with details.
- Supports adaptability of access and use of the ticketing system for non-English speaking ferry riders.

d) Payment Processing Services

Required Features:

- Proposer provides and maintains payment processing services required for all ticketing transactions.
- Proposer reconciles total processed transactions and transfers collected revenue to WETA on a daily basis.

e) Data Reporting and Query Tools

Required Features:

- Provides a single, consolidated, web-based administrative dashboard with access to all data including ticket sale, usage, ridership, revenue, and refunds for all components of the Integrated Fare Ticketing System.
- Provides the following in one or multiple reports including, but not limited to:
 - All purchase data by each trip, by time of day and by each fare category.
 - Status of purchased tickets (Not Active, Active, Expired).
 - Usage data by each trip, by time of day, and by each fare category.
 - Metrics around ticket counts and fare collected.
- Allows grouping of all reports. Example: Being able to obtain purchase and usage data in one report.
- Support for filtering data by range of dates, daily, weekly, monthly reports, in addition to filters on all attributes such as fare category.
- Allows access of reports at any time without downtime.
- Allows WETA staff with appropriate credentials to export data in CSV format.
- Provide outcomes of refunds or chargeback disputes on the back-end portal.
- Provide back-end WETA access to tools to provide refunds, complimentary tickets and credits to user accounts.
- Provide open access to Application Programming Interfaces (APIs) for downloading extracting usage data that is free for WETA to access, use, and share.
- All usage and payment 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.

- Open access to all API documentation.

2. Equipment

WETA has identified the following equipment requirements for each major component of the Integrated Fare Ticketing System. Proposers will be responsible for providing the necessary equipment listed in this section, together with any additional equipment specifically required to deliver their proposed Integrated Fare Ticketing System. On-vessel installation of any hardware or devices will be completed by WETA, pursuant to product installation instructions provided by the Proposer. To the extent feasible, WETA desires that equipment provided be commercially available off-the-shelf.

- a) **Handheld Ticketing Devices** – Each of WETA’s 17 vessels shall be equipped with 2 sets of handheld equipment for onboard use by WETA crew members to sell, validate, and inspect paper tickets, as well as print tickets and payment receipts. Proposers shall provide 10 sets of similar equipment for spare or dockside use by WETA Guest Assistance Representatives. A total of 44 handheld equipment sets is required.
- b) **Desktop Point of Sale Device (optional)** - Each vessel shall be equipped with a desktop point of sale system, which includes a secure cash till that is integrated with and operated through the Paper Ticketing System. This equipment is desired, but not required by WETA.

WETA shall own all equipment provided and shall bear cost responsibility for non-warranty repair and replacement of equipment following final acceptance.

3. Security

Data security for all applications, system and interfaces of the Integrated Fare Ticketing System 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. The entire Integrated Fare Ticketing System, all applications that process payments, and all communications and computer systems comprising the entire Integrated Fare Ticketing System shall be in full compliance with the Payment Card Industry (PCI) standards. Additionally, the Integrated Fare Ticketing System shall contain a variety of security features to allow for applicable Transit Agency personnel to easily visually identify invalid, expired, or fraudulent mobile tickets.

Proposers should specifically review the form of Agreement included in Part C for specific requirements regarding Data Privacy, Data Security, and Notice of Security Breach.

4. Schedule

The following schedule is desired by WETA:

WETA desires that the Integrated Fare Ticketing System be fully designed, developed, tested, and accepted within four months from Notice to Proceed. WETA’s goal is to launch the Integrated Fare Ticketing System for revenue service by July 1, 2022.

5. Operating Term

Following Final Acceptance, WETA will require the Proposer to operate, maintain, support and upgrade (as necessary) the Fare Ticketing System(s) for a period of five years. Specific operating, maintenance and support responsibilities include, but are not limited to:

- Host and maintain any application or software required to support the Fare Ticketing System.
- Provide all necessary device equipment warranty information and support warranty equipment repair claims by WETA, as applicable.
- Process periodic fare changes and route changes implemented by WETA (typically, once a year).
- Provide a schedule of values for replacement equipment.
- Respond to WETA queries, incident tickets, and feature requests with an acceptable response rate.
- Provide training documentation for all end users.
- Provide virtual user training and recordings to drive reporting tool adoption.
- Provides ability to handle refund requests or charge disputes and to issue refunds and credits.
- Provide Proposer-developed in-app support features to educate and assist users in purchasing, accessing, and activating tickets.
- Provide back-end WETA access to tools to provide refunds, complimentary tickets, and credits to user accounts.

PART C: SAMPLE AGREEMENT

PROFESSIONAL SERVICES AGREEMENT #21-027

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 Integrated Fare Ticketing System Services and has issued a Request for Proposals (RFP) dated [Date], Part B: Scope of Services of which is attached and incorporated into this Agreement as Exhibit A; and

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

[Customize: **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 on-board paper ticketing, mobile ticketing, and special event ticketing 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.
- h. Title. Contractor warrants that it owns or will own, and has or will have, good and marketable title to all goods, materials, equipment, tools, supplies, or systems furnished or to be furnished, by it and its subcontractors that become part of the System, free and clear of all encumbrances. Contractor warrants that any title conveyed under the terms of this Agreement will be good and that all goods, materials, equipment, supplies, or systems, will be delivered free from all security interests or other liens or encumbrances. Contractor also agrees to defend the title against all persons claiming the whole or part of any goods, materials, equipment, supplies, or systems.

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" or the "System"). 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
- 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. The Contractor must commence work upon WETA's 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 Integrated Fare Ticketing 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 five-year operating term, 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**

[To be determined based on Consultant Proposal]

7. **MANNER OF PAYMENT**

[To be determined based on Consultant Proposal]

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 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**

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

B. 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. Passage of title does not constitute acceptance of any hardware or any other equipment.

C. Intellectual Property Provisions. [To be determined based on Consultant Proposal. Note: WETA is prepared to negotiate reasonable and equitable contractual terms regarding intellectual property rights with the highest ranked proposer depending on the nature of the Integrated Fare Ticketing System selected through this RFP. WETA will require all IP rights, but only those IP rights, necessary for the successful operation of the Integrated Fare Ticketing System. At a minimum, WETA will require (a) all rights (i.e. license or the equivalent) if necessary for implementation of the Integrated Fare Ticketing System ; (b) a warranty that any use of the Integrated Fare Ticketing System will not infringe or violate the patent, copyright, trade-secret, or other intellectual-property or proprietary rights of any third party; and (c) a robust indemnity against any third party claim or allegation that the ownership, possession, or use of any software, materials, equipment, devices, processes, or other materials provided by Consultant relating to the Integrated Fare Ticketing System infringe or violate the patent, copyright, trade-secret, or other intellectual-property or proprietary rights of any third party.]

10. DATA PRIVACY

The Consultant may have access to personally identifiable information ("PII") in connection with the performance of the Agreement. PII is any information that identifies or describes a person or can be directly linked to a specific individual, including ridership and usage data. Examples of PII include, but are not limited to, name, address, phone or fax number, signature, date of birth, e-mail address, method of payment, ridership and travel pattern data. WETA Personally Identifiable Information, or WETA PII, means any PII relating to WETA's customers.

The Consultant must ensure and maintain the confidentiality, security, safety, and integrity of all WETA PII, including physical, electronic, and procedural safeguards designed to prevent unauthorized access or use and protect against known or anticipated threats to the security or integrity of such data. This includes, but is not limited to, the secure transport, transmission and storage of WETA PII used or acquired in the performance of this Agreement. Notwithstanding the generality of the foregoing requirements, Consultant will adhere to the following requirements concerning WETA PII:

A. The Consultant may not, except as authorized or required by law, reveal or divulge to any person or entity any WETA PII that becomes known to it during the term of this Agreement. The Consultant may not use or attempt to use any such information in any manner that may injure or cause loss, either directly or indirectly, to WETA.

B. The Consultant must maintain policies and programs that prohibit unauthorized disclosure of WETA PII and promote training and awareness of information security policies and practices. The Consultant must comply, and must cause its employees, representatives, agents, and subcontractors to comply, with such commercially and operationally reasonable directions as WETA may make to promote the safeguarding or confidentiality of WETA PII.

C. The Consultant must conduct background checks for employees or Subcontractors that have access to WETA PII or systems hosting WETA PII.

D. The Consultant must limit access to computers and networks that host WETA PII, including without limitation through user credentials and strong passwords, data encryption both during transmission and at rest, firewall rules, and network-based intrusion detection systems.

E. The Consultant agrees to comply with the information handling and confidentiality requirements outlined in the California Information Practices Act (Civil Code sections 1798 et. seq.) and is subject to the requirements of California Streets and Highways Code Section 31490 by entering into this Agreement. In addition, the Consultant warrants and certifies that in the performance of this Agreement, it will comply with all applicable statutes, rules, regulations and orders of the United States, and the State of California relating to the handling and confidentiality of WETA PII, including the terms and conditions contained in this Section.

F. This Section will survive termination or expiration of this Agreement.

11. DATA SECURITY

The Consultant must provide those administrative, physical, and technical safeguards for protection of the security, confidentiality, integrity, and availability of WETA PII pursuant to the minimum standards of care recommended by the California Attorney General in her February 2016 report (See <https://oag.ca.gov/breachreport2016>). In particular:

A. The Consultant agrees to properly secure and maintain any computer systems (hardware and software applications) or electronic media that it will use in the performance of this Agreement. This includes ensuring all security patches, upgrades, and anti-virus updates are applied to secure WETA PII that may be used, transmitted, or stored on such systems in the performance of this Agreement.

B. The Consultant, its employees, agents, Subcontractors, and consultants may not download or otherwise store any WETA PII onto any Consultant computer, desktop, laptop, thumb drives, disks, or other portable memory device without such data being encrypted.

C. The Consultant represents that its hosting environment is built upon a secure infrastructure, which undergoes examinations from an independent auditor in accordance with the minimum standards of care recommended by the California Attorney General in her February 2016 report (See <https://oag.ca.gov/breachreport2016>). For added security, the Consultant will use multi-factor authentication when accessing the infrastructure. In addition to the independent audit, WETA will have the right at any time, upon reasonable notice, to audit and inspect: (i) Consultant's facilities where WETA PII is stored or maintained; (ii) any computerized systems used to share, disseminate or otherwise exchange WETA PII; and (iii) Consultant's security practices and procedures, data protection, business continuity and recovery facilities, resources, plans and procedures related to systems where WETA PII is shared, disseminated or otherwise exchanged. The audit and inspection rights hereunder shall be for the purpose of verifying Consultant compliance with this Agreement, and all applicable laws.

D. The Consultant must process and store all WETA PII in a single-tenant environment and at no time will WETA PII be commingled with data of other users of Consultant's services.

E. The Consultant must have vulnerability management programs to identify and minimize threats and risks on any systems used to store or transmit WETA PII.

F. The Consultant represents that the Consultant's management access to the hosting infrastructure is limited to authorized support staff. The security architecture has been designed to control appropriate logical access to the infrastructure to meet industry standards that meet or exceed the Trust Services Criteria and Principles for Security, Availability, Integrity, and Confidentiality established by the AICPA.

G. Non-PII information may be collected for the benefit of WETA. If authorized by WETA, the Consultant may collect and use anonymized or aggregated non-PII data only for the improvement of the System, Consultant Software, and Consultant Software Customizations. The Consultant may not sell non-PII data. The Consultant also may not share non-PII data with third parties except as required to provide the services and System for this Agreement, or except with WETA's prior approval.

H. The Consultant agrees to delete WETA PII at the termination or expiration of this Agreement at WEYA's direction. The Consultant agrees to use U.S. Department of Defense ("DoD") –approved method and removal of WETA PII from any files, with said service being included in the total cost of this Agreement. Discarded WETA PII will be unavailable and unrecoverable following the purge on any storage media including, but not limited to, magnetic disk, optical disk, and memory chips ("Storage Media"). The Consultant agrees to destroy hard-copy documents containing WETA PII by means of a cross-cut shredding machine. The Consultant also agrees to use DoD—approved methods, or an alternate WETA-approved method, to sanitize any Storage Media prior to discarding or when useful life has ended, whichever comes first. At WETA's request, the Consultant must submit a certification to WETA that all electronic or hard-copy format WETA PII has been destroyed in accordance with the Agreement.

J. The Consultant must at all times remain in compliance with the Payment Card Industry (PCI) Data Security Standard (DSS) requirements, including remaining aware at all times of changes to the PCI DSS and promptly implementing all procedures and practices as may be necessary to remain in compliance with PCI DSS, in each case, at the Consultant's sole cost and expense.

K. This Section will survive termination or expiration of this Agreement.

12. **NOTICE OF SECURITY BREACH**

The Consultant must immediately notify WETA when it discovers that there may have been a data security incident that has or may have resulted in compromise to WETA PII. For purposes of this Section, immediately is defined as within twenty-four hours of discovery. The Consultant must immediately take such actions as may be necessary to preserve forensic evidence and eliminate the cause of any suspected breach or security vulnerability—and must promptly alert WETA of any such circumstances, including information sufficient for WETA to assess the nature and scope of any suspected data

breach. In the event of an unauthorized disclosure of WETA PII, the Consultant will be liable for paying for the following costs to remediate any such unauthorized disclosure:

- A. The reasonable cost of providing notice of the breach to individuals affected by such breach;
- B. The reasonable cost of providing required notice of the breach to government agencies, credit bureaus, and/or other required entities;
- C. The cost of providing individuals affected by such breach with credit protection services designed to prevent fraud associated with identity theft crimes for a specific period not to exceed 12 months; and
- D. Any other service required by applicable law.

The Consultant must provide any information and/or support to WETA in issuing the actual notification and, at WETA's sole discretion, the Consultant must itself provide actual notification if WETA desires. This Section will survive termination or expiration of this Agreement.

13. CONFIDENTIALITY

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

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

14. USE OF SUBCONTRACTORS

Unless identified in Contractor's proposal as accepted by WETA, the Contractor may not subcontract any services to be performed by it under this 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.

15. 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.

16. 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 36; 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.
- c. Any allegation that the System provided by the Contractor does not comply with the Americans with Disabilities Act.
- d. Any disclosure, or allegation of disclosure of WETA PII.

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.

17. 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.

18. 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.

19. **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.

20. **WETA WARRANTIES**

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

21. **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.

22. **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.

23. LIQUIDATED DAMAGES

N/A

24. SUSPENSION

N/A

25. 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.

26. 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.

27. 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.

28. 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.

29. 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.

30. 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.

31. 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.

32. 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.

33. 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.

34. 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.

35. NO THIRD PARTY BENEFICIARIES

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

36. 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 accessibility, disability, and/or 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.

37. APPLICABLE LAW

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

38. 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.

39. 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.

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

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

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

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

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

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

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

Policy shall include a Waiver of Subrogation and Additional Insured endorsement

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

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

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

- e) CYBER LIABILITY INSURANCE coverage for Cyber Liability risk coverages including network and internet security liability coverage, privacy liability coverage and media coverage. The policy shall provide coverage for all work performed by the CONSULTANT and any work performed or conducted by any subcontractor/consultant working for or performing services on behalf of the CONSULTANT. No contract or agreement between the CONSULTANT and any subcontractor/consultant shall relieve the CONSULTANT of the

responsibility for providing this Errors & Omissions or Professional Liability and Cyber Liability Coverage for all work performed by the CONSULTANT and any subcontractor/consultant working on behalf of the CONSULTANT on the project.

Minimum Coverage and Minimum Limits:

| | |
|-------------|---|
| \$1,000,000 | Per Claim and Policy Aggregate |
| \$1,000,000 | Errors and Omissions and Professional Liability |
| \$1,000,000 | Cyber Liability including Privacy, Confidentiality and Network Security liability |
| \$1,000,000 | Cyber Extortion |
| \$1,000,000 | Regulatory Defense, Awards and Fines |

Signature: _____

Name: _____

Title: _____

Date: _____

END OF SECTION