

**REQUEST FOR PROPOSALS (RFP)
FOR
ON-CALL COMMUNITY OUTREACH SERVICES**

WETA RFP #21-012

The San Francisco Bay Area Water Emergency Transportation Authority (“WETA”) is seeking Proposals from qualified firms in response to this Request for Proposals (“RFP”) for On-Call Community Outreach Services (the “Project” or the “Services”).

A. BACKGROUND

In October 1999, the California State legislature formed the Water Transit Authority (WTA), a regional agency mandated to create a long-term plan for new and expanded water-transit and related services on the San Francisco Bay. The enabling legislation (Senate Bill 428-1999) directed the WTA to prepare an Implementation and Operations Plan (IOP) in order to evaluate ridership demand, cost-effectiveness and environmental impact of expanded water transit. In July of 2003, the state legislature approved this plan and authorized the WTA to operate a comprehensive public water transit system of ferries, feeder buses and terminals.

Effective January 1, 2008, a new state law, SB 976, dissolved the WTA and replaced it with the San Francisco Bay Area Water Emergency Transportation Authority (WETA). WETA is responsible for consolidating and operating public ferry services in the Bay Area, planning new service routes and coordinating ferry transportation response to emergencies or disasters affecting the Bay Area transportation system. Under SB 976, WETA was directed to assume control over publicly operated ferries in the Bay Area, except those owned and operated by the Golden Gate Bridge Highway and Transportation District. SB 1093 was subsequently adopted by the state legislature to clarify the transition of existing Alameda and Vallejo services to WETA and a Transition Plan was developed and adopted by the Board of Directors in 2009. Transition of the Alameda/Oakland and Alameda/Harbor Bay services was completed in April 2011, transforming WETA into a transit operating entity. Transition of the Vallejo Service was completed in July 2012. In addition to operating the three routes transitioned from the cities of Alameda and Vallejo, WETA initiated its first expansion service to South San Francisco in June 2012 and its second to Richmond in January 2019.

WETA’s current work program consists of projects to maintain and expand water transit on the San Francisco Bay. The management of these projects requires a wide range of specialized knowledge and skills that are often needed in uneven and intermittent intervals and on short notice. Contracting with consultants to provide on-call services allows full time WETA staff to access specialized consulting services to effectively manage peak workloads and ensure the continuous development of all active projects in the WETA work program. The provision of these services is intended to complement existing staff resources as additional staffing capacities and specific areas of expertise are needed. Consultants are expected to have expertise as outlined below. Teaming with subconsultants is encouraged only for specialty services that are complementary to primary tasks outlined in this RFP.

WETA plans to select multiple consultants, but may choose only one consultant, to enter into a professional service agreement to provide on-call community outreach services based

on the nature of submittals received in response to this RFP. Actual work will be authorized by negotiated task orders to provide project-specific services based on billing rates set forth in the agreement. It is WETA's expectation that the selected consultant(s) be capable of providing these services on (potentially) short notice and at irregular work intervals.

While it is difficult to determine the frequency and duration of the work that will be required for this Project, WETA staff estimates that multiple task orders for on-call community outreach services will be issued annually. The maximum contract amount within a 12-month period will not exceed \$100,000.

B. SCOPE OF SERVICES

The Selected Consultants shall provide the required staff, resources, and expertise to perform and complete task orders related to community outreach in one or more areas served by San Francisco Bay Ferry, including Alameda, Oakland, Richmond and Vallejo. Task orders will detail specific objectives, which could include:

- Developing and executing targeted outreach at a neighborhood or community level to raise awareness of San Francisco Bay Ferry service and programs
- Advising WETA on raising awareness of its programs based on local expertise and community needs to rebuild ridership
- Advising WETA on enhancing equity and access to the ferry system and WETA's procurement and employment opportunities
- Planning and executing community events highlighting ferry service and WETA's positive impact on the community
- Building awareness of WETA's discount programs, including those benefitting lower-income residents
- Building community relationships and contact lists for WETA to use for outreach purposes

Individual task orders may include work not described above but generally falling under the umbrella of community outreach services. The expected outreach would be conducted between the start of the contract (expected June 2021) and the end of October 2021.

C. DISADVANTAGED BUSINESS ENTERPRISE (DBE) AND SMALL BUSINESS ENTERPRISE (SBE) PROGRAM

WETA's Disadvantaged Business Enterprise (DBE) Program ensures nondiscrimination in the award and administration of federally funded contracts and to create a level playing field on which DBEs can compete fairly for federally funded contracts.

A DBE is a certified, for-profit small business concern (1) that is at least 51 percent owned by one or more individuals who are both socially and economically disadvantaged, or, in the case of a corporation, where 51 percent of the stock is owned by one or more such

individuals; and (2) whose management and daily business operations are controlled by one or more of the socially and economically disadvantaged individuals who own it.

In addition, WETA's Small Business Enterprise (SBE) element is designed to achieve small business participation, including disadvantaged business participation, on particular contracts. This SBE element applies to all federally funded WETA contracts where race-neutral and gender-neutral methods are employed. WETA takes all reasonable steps to eliminate obstacles for SBEs to participate as prime contractors or subcontractors in the WETA's procurement activities. DBEs are by definition considered to be SBEs and are covered in all references to SBEs.

While this solicitation does not use federal funds and thus does not include a DBE or SBE requirement, WETA strongly encourages DBE and SBE firms to apply. DBE and SBE firms submitting statements of qualifications are encouraged to highlight their DBE or SBE status.

D. CONSULTANT CONTRACT ADMINISTRATION

All services will be authorized on a task order basis. Budgets for each task order shall be negotiated based on billing and overhead rates identified in the Agreement entered into with Selected Consultant(s) for the Services (the "Agreement" or "Contract"), a form of which is attached hereto as Attachment B.

E. RFP CONTENT; EXAMINATION OF DOCUMENTS

This RFP sets forth the requirements for the preparation, submission and contents of Offeror's Proposal submitted to WETA. Further, this RFP describes the process and factors under which each Proposal will be evaluated and the Selected Consultant(s) identified.

This RFP includes the following documents:

- (1) Request for Proposals
- (2) Attachment A: Acknowledgment of Insurance Requirements
- (3) Attachment B: Form of Contract, including attachments thereto
- (4) Attachment C: Acknowledgement of Form of Contract
- (5) Attachment D: Cost Proposal Form

Offerors shall be solely responsible for examining, with appropriate care and diligence, all of these documents and fully informing themselves of all relevant aspects of the Services. By submitting a response to this RFP, Offerors represent that they have fully examined this RFP. **All acknowledgement forms (Attachments A and C) require a signature.**

F. REQUIRED CONTENTS OF PROPOSAL

Each Proposal submitted in response to this RFP (the "Submittal" or the "Proposal") shall respond fully to the requirements of this RFP and include the following elements in the sequence listed below. Page limits, where specified, are for single-side print.

Cover Letter – Provide a description of the firm's interest in and commitment to the Project. Additionally, include the name, address, and telephone number of your firm's contact person

and an express acknowledgement of the receipt of a complete set of RFP documents and all Addenda issued for this RFP. The cover letter shall be signed by an official of the firm authorized to solicit business and enter into contracts for the firm. (No more than two pages.)

Firm Profile – Provide a brief description of the firm, including the form of organization, nature of services offered, number of employees, and size and location of offices. Provide information on why the firm is positioned to successfully meet the Scope of Services outlined. Provide a summary description of the firm’s financial condition and identify any conditions, including but not limited to bankruptcy, pending litigation, or merger that may hamper Offeror’s capacity to perform the Services. (No more than one page.)

Proposed Approach – Provide a general explanation of the approach your firm would take for performing and completing task orders to provide the Services for this Project as listed in the Scope of Work. Specify which listed markets your firm would be interested in provide the Services for. (No more than three pages.)

Qualifications and Experience – (No page limit)

- (1) Provide a detailed description of the Offeror’s experience, qualifications, and past performance relating to specific subject areas of the Services. Reference relevant projects by name, project description, client agency, scope of services provided, duration of work, year of completion, and indicate the firm’s staff who worked on the project and their roles. Presentation of qualifications in a tabular format is allowed.
- (2) Include a minimum of three (3) relevant client references, including email and phone contact information of the person at the client organization who is knowledgeable about previous work performed by the firm.

Cost Proposal – Provide hourly rates for personnel intended to be assigned to the Project by submitting a completed Attachment D, Cost Proposal Form. Costs must include, but not be limited to, labor, materials, supplies, taxes, overhead, insurance, and profit. Estimate hours for staff based on your Proposed Approach to meeting the tasks listed in the Scope of Work.

All costs proposed for this Project must meet the standards for reasonable, allowable, and allocable in accordance with the cost principles of Part 31 of the Federal Acquisition Regulations (48 C.F.R., Part 31). WETA's determination on the allowability, allocability, and reasonableness of the proposed costs shall be final and conclusive.

Acknowledgement of Insurance Requirements – Offeror shall submit a signed acknowledgement that it will be able to satisfy the insurance requirements necessary to perform the Services for this Project (Attachment A). WETA reserves the right to modify insurance requirements prior to entering into a contract for this project. Insurance limits could be modified depending on the scope and nature of the work to be performed. The insurance requirements presented in Attachment A represent the maximum level of insurance required for the services outlined in this RFP. The Selected Consultant(s) will be required to verify, to WETA’s satisfaction, that all insurance requirements can be met.

Acknowledgement of Form of Professional Services Agreement - Offeror shall submit a signed acknowledgement (Attachment B) that it will be able to satisfy all requirements in the

Professional Services Agreement form. As part of this acknowledgement, Offerors must identify all potential requirements that cannot be met. These requirements will be considered and negotiated on a case by case basis after contract award.

G. SUBMITTAL PROCEDURES; CLARIFICATIONS

RFP Clarifications. Explanations or clarifications regarding the meaning or interpretation of this RFP may be requested by contacting Thomas Hall, Manager of Public Information and Marketing, at hall@watertransit.org. The deadline to submit requests for explanation or clarifications is **2:00 PM on April 30, 2021**.

Should WETA determine that clarification of a possibly ambiguous or incomplete statement contained in the RFP is in order, WETA will issue a written addendum clarifying the matter, which will be posted on WETA's website. Each Offeror has an ongoing responsibility to check WETA's website for addenda. WETA has no obligation to provide any other notice of addenda being issued. Addenda issued for this RFP, if any, must be expressly acknowledged in Offeror's cover letter.

Contract Clarifications. WETA intends to use the form of contract attached hereto as Attachment B as the Contract resulting from this RFP. Questions or recommendations for modifications to the form of contract may be submitted in writing as set forth above. Offers must also submit the Acknowledgement of Form of Professional Services Contract (Attachment B). Changes to the form of contract may be considered on a case by case basis by WETA in its sole discretion.

Submittal of Proposals. All Proposals should be submitted electronically to Thomas Hall at hall@watertransit.org **no later than 2:00 PM Pacific Standard Time on May 14, 2021**. Submittals received after the date and time specified above will be considered late and will not be accepted. Printed hard copies of proposals will not be accepted. Electronic submissions only. Offerors are encouraged to follow up via email to confirm that the electronic submission was successfully received by WETA. Statements of Qualifications shall be submitted in PDF format with bookmarks and searchable text.

Please use the following title/subject for the electronic transmission of the documents:

[Consultant/Firm Name] - WETA RFP #21-012 - Proposal for On-Call Community Outreach Services

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 Offeror, is a public record that must be made available to the public upon request.

- (1) Confidentiality Index and Waiver of Claims. If the Offeror 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 Offeror believes would cause

substantial injury to the Offeror's competitive position if disclosed, the Offeror must request that the District withhold from disclosure the exempt information by submitting:

- a. An unredacted copy of the Proposal, communication and/or supplemental materials marking each page containing such exempt information as confidential; and
- b. A redacted copy of the Proposal, communication and/or supplemental materials that redacts the purportedly exempt information; and
- c. A "confidentiality index" that complies with the following requirements:
 - i. For Proposal, 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.
- d. A signed letter with the following statement: "By submitting this [Proposal/communication/supplemental material], Offeror 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 Offeror 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 Offeror 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, Offeror: (i) Consents to the release of the redacted version of the Proposal, communication, or supplemental material; (ii) Consents to the release of any portion of its Proposal, communication, or supplemental material not included in the confidentiality index; and (iii) Waives all claims against WETA, its directors, officers, employees and agents, for the disclosure of such information.

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

- (2) 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 Offeror 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.

- (3) Confidentiality Indemnity. Offerors 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 Offeror 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 Offeror 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.

H. CONTRACT AWARD SCHEDULE

WETA shall make best efforts to maintain the Contract Award Schedule contained herein, as may be adjusted and/or modified in WETA's sole discretion, with appropriate written notice to all prospective Offerors. Failure to maintain the following target schedule will not affect WETA's rights hereunder:

RFP release date:	April 23, 2021
Deadline to submit requests for clarifications, corrections or modifications:	2:00 PM PST April 30, 2021
Response to requests for clarifications, corrections or modifications:	2:00 PM PST May 5, 2021
Submittals due:	2:00 PM PST May 14, 2021
Interviews/Negotiations (as needed):	TBD
Release of approved applicants:	May 21, 2021 (tentative)

I. SUBMITTAL EVALUATION

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

Evaluation Criteria. Responses to this RFP will be reviewed by the evaluation committee based on the following criteria:

- (1) **Proposed approach –40%**
Proposer's understanding of and proposed approach to providing the Services. Relevance of the approach to the communities served under this Project. Clarity and creativity of proposed approach as described in the response.
- (2) **Qualifications and experience–40%**
Proposer's qualifications and capabilities to perform the Services, relevant experience performing work similar to the Services, market expertise and relevance of prior work in community outreach in programs similar to the Project described herein.
- (3) **Cost Proposal –20%**
Reasonableness of billing rates based on WETA's cost or price analysis.

Interviews. WETA's evaluation committee may require that some or all Offerors attend an interview (conducted via telephone or Zoom) in order to compare alternative methods for furnishing the Services and seek clarification regarding the various Submittals. WETA also reserves the right to require any such clarifications in writing.

Evaluation Committee Recommendation. The Evaluation Committee will make a recommendation for award of contract(s) to qualified firm(s) based on the above criteria, weighted according to the percentages listed above. WETA reserves the right in its sole discretion to determine which Proposals best suit the requirements of the Project, including price as well as other factors. The lowest priced proposal will not necessarily be the highest ranked.

Negotiations. WETA may reject all Submittals without further discussion or commence negotiations with the most qualified firm(s) to establish the final terms and conditions for the Contract. If WETA is unable to negotiate acceptable Contract terms with a firm determined to be qualified, WETA may formally terminate negotiations with that firm and commence negotiations with the next highest ranked firm. This process shall be followed until negotiations are successfully concluded or WETA, at any time, rejects all Submittals. WETA expressly reserves the right to request changes to the staffing or scope of Services during negotiations.

Notice of Intent to Award. If the Contract is to be awarded, Offerors will be notified of WETA's intent to award the Contract five calendar days before the day WETA's Executive Director awards the Contract. Offerors will be noticed by means of a posting on WETA's website. Each Offeror has an ongoing obligation to check WETA's website (<https://weta.sanfranciscobayferry.com/opportunities>) for WETA's Notice of Intent to Award. WETA has no other obligation to provide any other notice of the intent to award the Contract.

J. CONTRACT AWARD

WETA reserves the right to award multiple contracts, or 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 shall only occur as and when, if at all, WETA takes such action. WETA will not reimburse any firm for costs incurred

as a result of preparing or submitting a Proposal, including negotiating with WETA on any matter related to this RFP.

K. CONTRACT EXECUTION

If WETA acts to award the Contract, the selected Offeror(s) will be required to execute the Contract prior to issuance of any task orders and commencement of actual work. Offerors will be required to deliver execution copies of the Contract within ten (10) working days after receiving notice from WETA staff. Execution copies must include all required documents, including but not limited to, the insurance certificates.

L. 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.

(1) 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.

(2) 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.

(3) 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.

M. NON-COLLUSION

By submitting a Proposal in response to this RFP, each Offeror certifies that its Submittal 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 Offeror has not, directly or indirectly, induced or solicited any other person to submit a sham submittal or any other person to refrain from responding to this RFP; and that the Offeror has not in any manner sought collusion to secure any improper advantage over any other person submitting a response to this RFP.

-END OF REQUEST-

ATTACHMENT A

PROFESSIONAL SERVICES INSURANCE REQUIREMENTS

These requirements will be included in any executed contract under this RFP as Exhibit C.

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, Additional Insured, Separation of Interests Clause and Primary and Non-contributory language endorsement.

- 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, Additional Insured, Separation of Interests Clause and Primary and Non-contributory language 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 million 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 endorsement.

Signature: _____

Name: _____

Title: _____

Date: _____

ATTACHMENT B

FORM OF PROFESSIONAL SERVICES AGREEMENT #[XX-XXX]

between

SAN FRANCISCO BAY AREA WATER EMERGENCY TRANSPORTATION AUTHORITY

and

[CONSULTANT]

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

RECITALS

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

WHEREAS, the Consultant desires to provide such services and has represented that it is experienced and qualified to perform such services. It has submitted a written proposal, dated _____, a copy of which is attached and incorporated as Exhibit B.

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

NOW THEREFORE, THE PARTIES AGREE AS FOLLOWS:

1. CONSULTANT’S REPRESENTATIONS AND WARRANTIES

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

- a. Professional Expertise. It has and will exercise the degree of professional care, skill, efficiency, and judgment of Consultants with special expertise in community outreach services; 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. Consultant 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. Consultant assumes all risks arising from the use of any such patented or copyrighted materials, equipment, devices, or processes.

- c. Existence and Powers. Consultant 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. Consultant 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 Consultant and constitutes a legal, valid and binding obligation of Consultant, enforceable against Consultant 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 Consultant have authority to do so.
- e. No Conflict. Neither the execution and delivery by Consultant of this Agreement nor the performance by Consultant 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 Consultant; or (b) conflicts with, violates or results in a breach of any order, judgment or decree, or any contract, agreement or instrument, to which Consultant is a party or by which Consultant 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 Consultant's knowledge, overtly threatened or publicly announced against Consultant, or any of its affiliates or its parent or subsidiary corporations, or otherwise affecting Consultant, 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 Consultant or on the validity or enforceability of this Agreement against Consultant.
- 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 Consultant, or any of its affiliates or its parent or subsidiary corporations, with respect to any project similar to the one that is the subject of this Agreement.

2. **SCOPE OF SERVICES**

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

or inconsistency between a task order and this Agreement, including Exhibits A and B, this Agreement, including Exhibits A and B, will control.

3. COMPONENT PARTS OF THE AGREEMENT

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

- (a) Amendments to the Agreement
- (b) This Agreement(c) Exhibit A, WETA's RFP
- (d) Exhibit B, Consultant's Proposal
- (e) Task Orders
- (e) Exhibit C, Insurance Requirements

4. TERM

The term of this Agreement will be for one year commencing upon WETA's issuance of a written notice to proceed.

5. KEY PERSONNEL

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

6. COMPENSATION

There is no guaranteed compensation under this Agreement. However, the maximum aggregate compensation authorized to be expended for services provided under this Agreement may not exceed \$100,000. Compensation for each Task Order will be as set forth in each Task Order and will be on a time and materials basis with a not-to-exceed maximum. The hourly rate by personnel category that applies to all Task Orders will be as set forth in Exhibit B.

7. MANNER OF PAYMENT

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

Invoices must describe in detail the services rendered by Consultant during the billing period and must state the number of hours, and applicable hourly rate of each person. All invoices must include the contract number and task order number and must include the full name, phone number, and email of the person to contact with invoice questions.

PDF invoices should be emailed to the WETA project manager, with cc to payables@watertransit.org. No hard copy invoices are required if WETA acknowledges receipt of the email invoice.

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

8. NOTICES

All communications relating to the day-to-day activities of the project will be exchanged between WETA's Public Information and Marketing Manager and the Consultant's Designated Representative.

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

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

If to the Consultant: _____

Attention: _____
Email: _____

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

9. OWNERSHIP OF WORK

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

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

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

10. CONFIDENTIALITY

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

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

11. USE OF SUBCONTRACTORS

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

12. CHANGES

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

13. RESPONSIBILITY; INDEMNIFICATION

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

- A. Any injury to persons or property that may occur, or that may be alleged to have occurred, arising from the performance of this Agreement by the Consultant caused by a negligent act or omission or willful misconduct of the Consultant or its employees, subcontractors or agents, including but not limited to any failure to comply with applicable law as set forth in Section 31; or
- B. Any allegation that materials or services provided by the Consultant under this Agreement infringe or violate any copyright, trademark, patent, trade secret, or any other intellectual-property or proprietary right of any third party.

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

14. INSURANCE

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

15. CONSULTANT'S STATUS

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

16. ASSIGNMENT

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

17. WETA WARRANTIES

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

18. WETA REPRESENTATIVE

Except when approval or other action is required to be given or taken by the WETA Board of Directors, the WETA Executive Director or such person or persons as she may designate in writing from time to time, will represent and act for WETA.

19. DISPUTE RESOLUTION

The Consultant 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 Consultant claims before the Consultant has performed any disputed work. Therefore, Consultant's failure to provide timely notice will constitute a waiver of Consultant's claims for additional compensation and/or time.

Claims by the Consultant 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 Consultant 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 Consultant 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 Consultant in writing with a decision within thirty (30) calendar days following receipt of the Consultant'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 Consultant.

If there is a dispute over any claim, the Consultant 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 Consultant 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. Consultant 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 Consultant'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 Consultant, 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, Consultant must file a government claim, pursuant to California Government Code Section 910 et seq., in order to initiate a civil action.

20. TERMINATION

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

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

Upon termination for any reason, Consultant must transfer title to WETA (to the extent that title has not already been transferred) and deliver in the manner, at the times, and to the extent directed by WETA the work in process, completed work, and all other material produced as a part of, or acquired in respect of the performance. All data, work in process, completed work, and other material produced as a part of, or acquired in respect of the performance, whether complete or incomplete, must be delivered promptly to WETA in native format, or other such format as instructed by WETA. Additionally, at WETA's request, for up to ninety (90) calendar days after any expiration or termination of this Agreement, Consultant will provide reasonable transition assistance; and for any such services outside the scope of this Agreement, Consultant 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 Consultant's actual or projected lost profits had the Consultant completed the services required by this Agreement or any Task Order.

21. MAINTENANCE, AUDIT AND INSPECTION OF RECORDS

All Consultant and subconsultant costs incurred in the performance of this Agreement will be subject to audit. The Consultant and its subconsultants must permit WETA and the State Auditor to inspect, examine, make excerpts from, transcribe, and copy the Consultant's books, work, documents, papers, materials, payrolls records, accounts and any and all data relevant to the Agreement at any reasonable time, and to audit and verify statements, invoices or bills submitted by the Consultant pursuant to this Agreement. The Consultant must also provide such assistance as may be required in

the course of such audit. The Consultant must retain these records and make them available for inspection hereunder for a period of four (4) years after expiration or termination of the Agreement.

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

22. WORKERS' COMPENSATION COMPLIANCE

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

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

23. EQUAL EMPLOYMENT OPPORTUNITY

In connection with the performance of this Agreement, the Consultant 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 Consultant 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 Consultant 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 Consultant further agrees to insert a similar provision in all subcontracts, except subcontracts for standard commercial supplies or raw materials.

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

The Consultant will not discharge or in any other manner discriminate against any employee or applicant for employment because such employee or applicant has inquired about, discussed, or disclosed the compensation of the employee or applicant 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 Consultant's legal duty to furnish information.

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

24. NON-DISCRIMINATION ASSURANCE

The Consultant may not discriminate on the basis of race, color, national origin, or sex in the performance of this Agreement. The Consultant 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 Consultant agrees to comply with all provisions prohibiting discrimination on the basis of race, color, or national origin of Title VI of the Civil Rights Act of 1964, as amended, 42 U.S.C. §§ 2000d et seq., and 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 Consultant 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 Consultant 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.

25. CONFLICT OF INTEREST

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

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

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

No person previously in the position of director, officer, employee or agent of WETA may act as an agent or attorney for, or otherwise represent, the Consultant by making any formal or informal appearance, or any oral or written communication, before WETA, or any officer or employee of WETA, for a period of twelve (12) months after leaving office or employment with WETA if the appearance or communication is made for the purpose of influencing any action involving the issuance, amendment, award or revocation of a permit, license, grant or contract.

The Consultant must take all reasonable measures to preclude the existence or development of an organizational conflict of interest in connection with work performed under this Agreement and other solicitations. An organizational conflict of interest occurs when, due to other activities, relationships, or contracts, a firm or person is unable, or potentially unable, to render impartial assistance or advice to WETA; a firm or person's objectivity in performing the contract work is or might be impaired; or a firm or person has an unfair competitive advantage in proposing for award of a contract as a result of information gained in performance of this or some other Agreement.

The Consultant may not engage the services of any subcontractor or independent Consultant on any work related to this Agreement if the subcontractor or independent Consultant, or any employee of the subcontractor or independent Consultant, has an actual or apparent organizational conflict of interest related to work or services contemplated under this Agreement.

If at any time during the term of this Agreement, the Consultant becomes aware of an organizational conflict of interest in connection with the work performed hereunder, the Consultant immediately must provide WETA with written notice of the facts and circumstances giving rise to this organizational conflict of interest. The Consultant's

written notice will also propose alternatives for addressing or eliminating the organizational conflict of interest. If at any time during the term of this Agreement, WETA becomes aware of an organizational conflict of interest in connection with the Consultant's performance of the work hereunder, WETA will similarly notify the Consultant. In the event a conflict is presented, whether disclosed by the Consultant or discovered by WETA, WETA will consider the conflict presented and any alternatives proposed and meet with the Consultant to determine an appropriate course of action. WETA's determination as to the manner in which to address the conflict will be final.

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

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

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

26. PUBLICITY

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

27. ATTORNEYS' FEES

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

28. WAIVER

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

29. SEVERABILITY

If any provision of this Agreement is deemed invalid or unenforceable, that provision may be reformed and/or construed consistently with applicable law as nearly as

possible to reflect the original intentions of this Agreement, and in any event, the remaining provisions of this Agreement will remain in full force and effect.

30. NO THIRD PARTY BENEFICIARIES

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

31. COMPLIANCE WITH LAWS, PRACTICES AND POLICIES

Consultant and its employees, agents, and subconsultants performing the Services under this Agreement must at all times comply with all applicable local, state, federal laws, ordinances, statutes, and regulations (including without limitation any applicable health and safety standards) in effect at the time Services under this Agreement are performed. Consultant, 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.

32. APPLICABLE LAW

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

33. BINDING ON SUCCESSORS

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

34. 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.

35. ENTIRE AGREEMENT; MODIFICATION

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

IN WITNESS WHEREOF, the parties hereto have executed this Agreement by their duly authorized officers as of the day and year first above written.

CONSULTANT*:

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

ATTACHMENT C

ACKNOWLEDGMENT OF FORM OF PROFESSIONAL SERVICES

CONSULTANT, acknowledges that it will be able to satisfy all requirements in the Form of Professional Services Agreement (Attachment B). As part of this acknowledgement, CONSULTANT must identify all potential requirements that cannot be met. These requirements will be considered and negotiated on a case by case basis after contract award. Changes to the form of contract may be considered on a case by case basis by WETA in its sole discretion.

Can the CONSULTANT satisfy all requirements in the Form of Professional Services Agreement (Attachment B)?

_____ YES _____ NO

If no, please identify all requirements that potentially cannot be met (attach additional sheets as necessary):

Signature: _____

Name: _____

Title: _____

Date: _____

ATTACHMENT D

COST PROPOSAL FORM

In the table below, please list the names and titles of staff proposed to work on the Project, their hourly rates and their expected number of hours worked on the Project for the term described in the RFP and the tasks listed in your firm's Proposed Approach. Include all additional expenses including travel, hard costs, physical materials and other overhead costs in the line indicated.

Staff Costs

Name	Title	Hourly Rate	Estimated Total Hours	Estimated Total Cost

Additional Expenses

Description of Expenses	Estimated Total Cost

Total Proposed Cost: _____