



**REQUEST FOR QUALIFICATIONS (RFQ)
FOR
DESIGN AND ENGINEERING SERVICES
FOR
ANTIOCH, MARTINEZ, RICHMOND, AND REDWOOD CITY FERRY TERMINALS**

The San Francisco Bay Area Water Emergency Transportation Authority (“WETA”) is seeking Statements of Qualifications from qualified firms in response to this Request for Qualifications (“RFQ”) for Design and Engineering Services for Antioch, Martinez, Richmond, and Redwood City Ferry Terminals (the “Project”).

A. BACKGROUND

The San Francisco Bay Area Water Emergency Transportation Authority, a local agency with multi-county jurisdiction, was established by the California State Legislature to expand regional ferry service and coordinate waterborne emergency response activities on San Francisco Bay. WETA’s comprehensive plan to establish ferry service on seven new routes was approved by the Legislature in 2003 (the “Plan”). WETA is also working to assume operation of existing ferry services in the Bay Area (with the exception of those that are operated by the Golden Gate Bridge District), as directed by the Legislature through SB 976 and SB 1093. The Plan was prepared with input from existing private operators, public transit providers, governmental agencies, environmental groups, business organizations and local representatives. WETA’s goal is to design, build and operate a seamless transit system that responds to the region’s congestion management needs as well as serves in an emergency response capacity, develops innovative environmental solutions for ferry vessels, contributes to economic viability and improves quality of life.

The Project consists of four standalone projects to provide new ferry service between Downtown San Francisco and respective waterfront locations in the cities of Antioch, Martinez, Richmond, and Redwood City, as set forth in the Plan. WETA has hired four environmental review consultant teams to prepare environmental impact assessments for each of the four project locations and desires to contract with qualified firms to provide design and engineering services in support of these efforts. WETA intends to award contracts to multiple firms to provide these services. No more than one firm will be selected for each project; however, individual firms may be selected for multiple projects.

Firms that respond to this RFQ (“Offerors”) must note that a contract awarded in connection with this RFQ may be financed in part with federal funds. The consultant selected based on the procurement process detailed herein (the “Selected Consultant”) will be expected to provide any and all services in compliance with applicable federal laws, rules and regulations. Please also note the Disadvantaged Business Enterprise (“DBE”) participation requirements associated with this RFQ.

B. SCOPE OF SERVICES

The Selected Consultant for each project (Antioch, Martinez, Richmond, and Redwood City) shall provide WETA with the required staff, resources, and expertise to effectively perform and complete the scope of Services detailed in this Section B (the “Services”).

**REQUEST FOR QUALIFICATIONS
SAN FRANCISCO BAY AREA WATER EMERGENCY TRANSPORTATION AUTHORITY
DESIGN AND ENGINEERING SERVICES FOR NEW FERRY TERMINALS**

The design and engineering work required for each project will be undertaken in two broad phases. Phase 1 will involve conceptual level engineering and design services and will include outreach efforts to secure public support for the design of the terminals and related facilities. The Selected Consultant will be expected to work closely with WETA's environmental review consultant to develop a conceptual program that would have enough detail to support environmental clearance of the project. Phase 2 would begin after the environmental review is completed (once the Final EIR/S is filed) and would involve preliminary and final design services. Please note that WETA intends to award contracts for each project that include Phase 2 as optional services; however, WETA retains the right to discontinue working with the Consultant at the conclusion of Phase 1 and select another consultant for Phase 2 services.

For Phase 1, the Selected Consultant will be expected to provide the full range of design and engineering services required for all aspects of ferry terminal design work, including both marine and shoreside improvements, as directed by WETA staff. Respondents should be qualified to provide the following services, including, but not limited to:

- Terminal Design: Planning, preliminary design, detailed design, and construction of new ferry terminals, including both marine and shoreside facilities. The marine components include: harbor, breakwater, float, berth and gangway. Shoreside components include: passenger waiting areas, connections to intermodal transit facilities, streetscape improvements and other elements necessary to support effective ferry transit.
- Marine Engineering: Analysis of marine and coastal conditions in support of terminal design and environmental clearance of new ferry terminals.
- Structural/Civil Engineering: Analysis of geotechnical site conditions with special attention to essential structure design standards for new terminal and related facilities.
- Vessel Design and Operations: Assist WETA with evaluation of vessel types and operational considerations specific to particular project.
- Public Outreach: Assist WETA with formulation and implementation of a public outreach strategy to solicit public input and secure public support for the design of the terminals and the surrounding facilities.
- Permitting: Knowledge of permits required and familiarity with needs of permitting agencies specific to particular project.

Respondents should note that WETA has developed existing design standards for float, gangway, and shoreside facilities in conjunction with the South San Francisco Ferry Terminal project. The Selected Consultant for each of the four projects will be expected to adapt existing facility design standards to meet the particular nuances of each project in the most cost-effective manner possible.

Phase 2 would begin once the Final EIR/S is filed and would involve preliminary (60%) and final (100%) design, engineering plans, specifications, and drawings.

C. CONSULTANT CONTRACT ADMINISTRATION

All Services will be authorized on a task order basis. In general, the first item of work will be a scoping task, which will identify the critical steps necessary and how the Services will be coordinated. Budgets for each task order shall be negotiated based on rates and overheads identified in the Agreement entered into with Selected Consultant for the Services (the "Agreement" or "Contract"), a form of which is attached hereto as Attachment D.

D. RFQ CONTENT; EXAMINATION OF DOCUMENTS

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

This RFQ includes the following documents:

- (1) Request for Qualifications
- (2) Attachment A: Acknowledgment of Insurance Requirements
- (3) Attachment B: DBE Forms
- (4) Attachment C: Certification Forms
- (5) Attachment D: Form of Contract, including attachments thereto

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 and Project. By submitting a response to this RFQ, Offerors represent that they have examined this RFQ and are familiar with the scope of Services.

E. REQUIRED CONTENTS OF STATEMENT OF QUALIFICATIONS

Each Statement of Qualifications submitted in response to this RFQ (the "Submittal" or the "Statement of Qualifications") shall respond fully to the requirements of this RFQ and include the following elements in the sequence listed below. Page limits, where specified, are for single-sided print. Offeror is encouraged to print double-sided copies to save paper.

Cover Letter – Include a description of the firm's interest in and commitment to the Project. Provide the name, address, and telephone number the prime firm's contact person; an indication that, except as permitted by applicable law, the Submittal is a firm offer (for a period of 180 calendar days from the date the Submittals are due) to enter into a contract and perform the Services; and an express acknowledgement of the receipt of a complete set of RFQ documents and all Addenda issued for this RFQ, if any. 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 – Briefly describe the prime firm, including the form of organization, nature of services offered, number of employees, size and location of offices. Provide a summary description of the prime 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 the firm would take for completing the Services. Additionally, address the tasks detailed in the scope of Services and discuss the issues, challenges, and potential solutions your firm would employ in performance of the Services and provide a general list of additional tasks necessary to complete the Services. (No more than four pages.)

Qualifications and Experience – Provide the following information for each project (Antioch, Martinez, Richmond, or Redwood City) that Offeror is submitting qualifications for in a distinct and separate section within the Statement of Qualifications: (No more than ten pages per project.)

**REQUEST FOR QUALIFICATIONS
SAN FRANCISCO BAY AREA WATER EMERGENCY TRANSPORTATION AUTHORITY
DESIGN AND ENGINEERING SERVICES FOR NEW FERRY TERMINALS**

- (1) **Previous Experience** – Provide information concerning relevant projects that your firm has undertaken, including: project name, project description and the firm’s scope of services, duration of the project and year of completion, client agency, and names of the staff proposed for this project who worked on the project and their roles.
- (2) **Staffing Plan** – Include an organizational chart that lists all team members including subcontractors/subconsultants. Designate the Principal and Project Manager in charge of the Project from the prime consulting firm. These individuals are expected to serve as WETA’s primary contacts throughout the duration of the Contract.

Additionally, identify key personnel and provide a brief resume describing similar relevant projects on which they have been involved, their availability over the duration of the Project, a description of their qualifications and the specific benefits that the person brings to the team. (Full resumes should be included in appendices.)

- (3) **Project Schedule** – Provide a proposed schedule with tasks, key milestones, decision points, and project deliverables necessary to complete the Services (the “Proposed Schedule”). This preliminary schedule should assume that WETA issues a “notice to proceed” approximately one month from award of the Contract by the WETA Board of Directors.
- (4) **References** – Provide a minimum of three (3) client references including email and phone contact information of the person(s) at the client organization who is most knowledgeable about the work performed by key staff.

Acknowledgement of Insurance Requirements – Offeror shall submit a signed acknowledgement that its team will be able to satisfy the insurance requirements necessary to perform the Services (Attachment A). WETA reserves the right to modify insurance requirements prior to entering into a contract for this project. The Selected Consultant will be required to verify, to WETA’s satisfaction, that all insurance requirements can be met.

DBE Compliance and Documentation Forms – The Agreement awarded pursuant to this RFQ, if any, will be assisted by funds from the U.S. Department of Transportation (U.S. DOT). The Authority’s proposed annual overall Disadvantaged Business Enterprise (DBE) goal for Fiscal Year 2010/2011 is 22% for FTA-assisted contracts. The Authority proposes to meet 100% of its goals using race-neutral methods.

Consultants are strongly encouraged to obtain DBE participation on this project, although there is no contract-specific DBE goal. Please document the process used to solicit and select subcontractors/sub-consultants/suppliers. Documentation must be submitted on the forms contained in Attachment B: (1) Prime Consultant and Subcontractors/Sub-consultants/Suppliers Report; and (2) Description of the Selection Process of Subcontractors/Sub-consultants/Suppliers. In addition, please be sure to submit proof of DBE certification for your firm, if applicable, and for any DBE subcontractors/subconsultants/suppliers proposed to perform the Services. Submittals that fail to document the solicitation of DBE participation will not be considered. For DBE questions or assistance, refer to the DBE Program, available at www.watertransit.org, and/or contact Leamon Abrams, DBE Program Administrator at (415) 364-3191 or by email at abrams@watertransit.org.

Levine Act Disclosure – Disclose any Levine Act-related information, as described in Section L of this RFQ, below.

**REQUEST FOR QUALIFICATIONS
SAN FRANCISCO BAY AREA WATER EMERGENCY TRANSPORTATION AUTHORITY
DESIGN AND ENGINEERING SERVICES FOR NEW FERRY TERMINALS**

Lobbying Certification – Provide the required certification described more fully in Section Q and in the form contained in Attachment C of this RFQ.

Equal Opportunity Certification – Provide the required certification described more fully in Section Q and in the form contained in Attachment C of this RFQ.

Conflict of Interest Disclosure – Disclose any conflict of interest, as more fully described in Section H of the Form of Contract attached hereto as Attachment D.

F. SUBMITTAL PROCEDURES; CLARIFICATIONS

Pre-Submittal Conference. WETA will hold a pre-submittal conference to review this RFQ with Offerors. Attendance by all Offerors is strongly encouraged. The Pre-Submittal Conference is scheduled for 10:30 A.M. August 24, 2010 at WETA Administration Offices, Pier 9, Suite 111, The Embarcadero, San Francisco, CA.

RFQ Clarifications. Explanations or clarifications regarding the meaning or interpretation of this RFQ may be requested at the pre-submittal conference or in written form by contacting Michael Gougherty, Staff Planner/Analyst at (415) 364-3189 or gougherty@watertransit.org.

WETA specifically requests that any questions concerning this RFQ, except those concerning the DBE requirements, be directed to Michael Gougherty only. Please do not contact other WETA staff. Leamon Abrams is the contact person for questions regarding WETA's DBE program.

Should WETA determine that clarification of a possibly ambiguous or incomplete statement contained in the RFQ is in order, WETA will issue a written addendum clarifying the matter, which will be posted on WETA's website (www.watertransit.org). 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 RFQ, 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 D as the Contract resulting from this RFQ. Questions or recommendations for modifications to the form of contract may be submitted in writing as set forth above. Changes to the form of contract may be considered and made by WETA in its sole discretion.

Submittal of Statements of Qualifications. All Statements of Qualifications should be submitted to:

Michael Gougherty
San Francisco Bay Area
Water Emergency Transportation Authority
Pier 9, Suite 111, The Embarcadero
San Francisco, CA, 94111

Three (3) hard copies and one (1) digital copy on CD/DVD of Offeror's Submittal must be received at the above address **no later than 2:00 PM Pacific Time on September 3, 2010**. Submittals received after the date and time specified above will be considered late and will not be accepted. Responses to this RFQ should be submitted in a sealed envelope indicating the project as addressed in the RFQ.

**REQUEST FOR QUALIFICATIONS
SAN FRANCISCO BAY AREA WATER EMERGENCY TRANSPORTATION AUTHORITY
DESIGN AND ENGINEERING SERVICES FOR NEW FERRY TERMINALS**

Submittal Disclosure. All responses to this RFQ become the property of WETA and may be returned only at WETA's option. WETA reserves the right to release the Submittals, received as public information, upon request after Contract award.

G. 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:

RFQ release date:	August 13, 2010
Pre-submittal conference:	10:30 A.M. August 24, 2010 WETA Administration Offices Pier 9, Suite 111, The Embarcadero San Francisco, CA
Deadline to submit requests for clarifications, corrections or modifications:	2:00 P.M. August 26, 2010
Submittals due:	2:00 P.M. September 3, 2010
Interviews/Negotiations:	September 15-16, 2010 (tentative)
Board approval:	October 7, 2010 (tentative)

H. SUBMITTAL EVALUATION

WETA Evaluation Committee. WETA will establish an evaluation committee with responsibility for (1) reviewing all Statements of Qualifications submitted by Offerors and (2) conducting the evaluation and interviews described in this RFQ. 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 RFQ will be reviewed by the evaluation committee based on the following criteria, listed in descending order of importance:

- (1) Proposed approach
- (2) Previous experience and expertise managing all processes, procedures and paperwork for similar projects
- (3) Qualifications of team members, including education and experience of key personnel
- (4) DBE participation

Interviews. WETA's evaluation committee may require that some or all Offerors attend an interview (may be in person or conducted via telephone per WETA's request) 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.

**REQUEST FOR QUALIFICATIONS
SAN FRANCISCO BAY AREA WATER EMERGENCY TRANSPORTATION AUTHORITY
DESIGN AND ENGINEERING SERVICES FOR NEW FERRY TERMINALS**

Evaluation Committee Recommendation. The Evaluation Committee will make a recommendation of the most qualified firm(s) based on the above criteria. WETA reserves the right in its sole discretion to determine which of Offeror's qualifications, experience, available resources and ability to perform the Services best suit the requirements of the Project.

Negotiations. WETA may reject all Submittals without further discussion or commence negotiations with the most qualified firm to establish the final terms and conditions for the Contract. If WETA is unable to negotiate acceptable Contract terms with the firm determined to be most qualified, WETA may formally terminate negotiations with that firm and commence negotiations with the next most qualified 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.

Pre-award Conference. If deemed necessary, in WETA's sole discretion, the Offeror determined to be the most qualified firm shall participate in a pre-award conference conducted by WETA to clarify and discuss issues of concern and interest to both parties.

Pre-award Audit. Offerors acknowledge and agree that, to the extent that federal and California Department of Transportation requirements apply, Contract award may be contingent upon the completion and approval of a pre-award audit. WETA or its representatives, upon reasonable advance written notice, shall have the right to examine any books, records, accounts and other documents of any Offeror to determine the reasonableness, allowability, and allocability of the Submittal. Offerors shall maintain files in a manner to facilitate such review.

Notice of Intent to Award. If the Contract is to be awarded, Offerors will be notified of WETA's intent to award the Contract on or before the day WETA's Board acts to award the Contract. Offerors will be notified by means of a posting on WETA's website. Each Offeror has an ongoing obligation to check WETA's website (www.watertransit.org) 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.

Debriefing. Any Offeror not awarded the Contract may request a post-award debriefing with WETA by submitting such request in writing (U.S. mail, fax or electronic mail) to WETA's Project Manager within five (5) working days of WETA's issuance of the Notice of Intent to Award. Post-award debriefings will be conducted within a reasonable time, at WETA's sole discretion, after the Contract has been awarded.

I. CONTRACT AWARD

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 shall only occur as and when, if at all, the WETA Board takes such action. WETA will not reimburse any firm for costs incurred as a result of preparing or submitting a Statement of Qualifications, including negotiating with WETA on any matter related to this RFQ.

J. CONTRACT EXECUTION

If the WETA Board acts to award the Contract, the selected Offeror shall execute and deliver execution copies of the Contract within ten (10) working days of receipt, together with all required documents, including but not limited to, the insurance certificates.

**REQUEST FOR QUALIFICATIONS
SAN FRANCISCO BAY AREA WATER EMERGENCY TRANSPORTATION AUTHORITY
DESIGN AND ENGINEERING SERVICES FOR NEW FERRY TERMINALS**

K. PROTEST PROCEDURES

Protests shall be governed by the provisions of Chapter 5, Article XII, of the San Francisco Bay Area Water Emergency Transportation Authority Administrative Code.

L. LEVINE ACT

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

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

M. NON-COLLUSION

By submitting a Statement of Qualifications in response to this RFQ, 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 RFQ; 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 RFQ.

N. LABOR LAWS

All labor performed under the Contract shall conform to the laws of the State of California, as more specifically set forth in the Labor Code, including, without limitation, Labor Code Section 1775. In addition to statutory requirements, the Selected Consultant must comply with applicable nondiscrimination and compliance requirements.

Each Offeror is responsible for ensuring that services subject to prevailing wage requirements are priced appropriately. Copies of the Prevailing Rate of Per Diem Wages may be obtained directly from the Department of Labor's website at <http://www.dir.ca.gov>, and will also be available for review at WETA's office upon request and reasonable notice.

**REQUEST FOR QUALIFICATIONS
SAN FRANCISCO BAY AREA WATER EMERGENCY TRANSPORTATION AUTHORITY
DESIGN AND ENGINEERING SERVICES FOR NEW FERRY TERMINALS**

O. DISADVANTAGED BUSINESS ENTERPRISE (DBE) PROGRAM

WETA is committed to and has adopted a DBE Program for the participation of DBEs in WETA contracting opportunities in accordance with Federal Regulation 49 CFR, Part 26, effective March 4, 1999 as may be amended (the "DBE Program"), the terms and conditions of which are incorporated by this reference. It is the policy of WETA to ensure nondiscrimination on the basis of race, color, sex, or national origin in the award and administration of US DOT assisted contracts.

It is the intention of WETA to create a level playing field on which DBEs can compete fairly for contracts and subcontracts relating to WETA's construction, procurement and professional services activities. To this end, WETA has developed procedures to remove barriers to DBE participation in the bidding and award process and to assist DBEs to develop and compete successfully outside the DBE Program.

In connection with the performance of the Contract, the consultant will cooperate with WETA in meeting these commitments and objectives. WETA reserves the right to require that the consultant provide additional DBE information. Pursuant to 49 CFR § 26.13 and as a material term of any agreement with the Authority, the consultant hereby makes the following assurance and agrees to include this assurance in any agreements it makes with subconsultants in the performance of the Contract.

The consultant or subconsultant shall not discriminate on the basis of race, color, national origin, or sex in the performance of the contract. The consultant shall carry out applicable requirements of 49 CFR Part 26 in the award and administration of U.S. DOT-assisted contracts. Failure by the consultant or subcontractor/subconsultant to carry out these requirements is a material breach of the contract that may result in the termination of contract or such other remedy as the Authority deems appropriate. By submitting a Statement of Qualifications, the Offeror is deemed to have made the foregoing assurance and to be bound by its terms. For DBE questions or assistance, contact Leamon Abrams, DBE Program Administrator at (415) 364-3191 or by email at abrams@watertransit.org.

P. SUSPENSION AND DEBARMENT

The Contract is a covered transaction for purposes of 49 CFR Part 29. As such, the Offeror is required to verify that none of the Offeror, its principals, as defined at 49 CFR 29.995, or affiliates, as defined at 49 CFR 29.905, are excluded or disqualified as defined at 49 CFR 29.940 and 29.945.

The Offeror is required to comply with 49 CFR 29, Subpart C and must include the requirement to comply with 49 CFR 29, Subpart C in any lower tier covered transaction it enters into. By signing and submitting its Statement of Qualifications, the Offeror certifies as follows:

The certification in this clause is a material representation of fact relied upon by WETA. If it is later determined that the Offeror knowingly rendered an erroneous certification, in addition to remedies available to WETA, the Federal Government may pursue available remedies, including but not limited to suspension and/or debarment. The Offeror agrees to comply with the requirements of 49 CFR 29, Subpart C while this offer is valid and throughout the period of any Contract that may arise from this offer. The Offeror further agrees to include a provision requiring such compliance in its lower tier covered transactions.

Q. RESTRICTIONS ON LOBBYING

**REQUEST FOR QUALIFICATIONS
SAN FRANCISCO BAY AREA WATER EMERGENCY TRANSPORTATION AUTHORITY
DESIGN AND ENGINEERING SERVICES FOR NEW FERRY TERMINALS**

Offerors who apply or bid for an award of \$100,000 or more shall file the certification required by 49 CFR Part 20, "New Restrictions on Lobbying" attached hereto as part of Attachment C, Certification Forms. Each tier certifies to the tier above that it will not and has not used Federal appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee of any agency, a member of Congress, officer or employee of Congress, or an employee of a member of Congress in connection with obtaining any Federal contract, grant or any other award covered by 31 U.S.C. 1352. Each tier shall also disclose the name of any registrant under the Lobbying Disclosure Act of 1995 who has made lobbying contracts on its behalf with non-Federal funds with respect to that Federal contract, grant or award covered by 31 U.S.C. 1352. Such disclosures are forwarded from tier to tier up to the recipient.

-END OF REQUEST-

**DESIGN AND ENGINEERING SERVICES
FOR
ANTIOCH, MARTINEZ, RICHMOND, AND REDWOOD CITY FERRY TERMINALS**

ATTACHMENT A

ACKNOWLEDGMENT OF INSURANCE REQUIREMENTS – PROFESSIONAL SERVICES

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:

Two Million Dollars (\$2,000,000) 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:

Two Million Dollars (\$2,000,000) 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 \$2,000,000 per occurrence and aggregate with a deductible not to exceed \$100,000.

- d) WORKERS COMPENSATION INSURANCE coverage of not less than:

One Million Dollars (\$1,000,000) per occurrence for injuries incurred while providing Services under this AGREEMENT.

Policy shall include a Waiver of Subrogation.

**REQUEST FOR QUALIFICATIONS
SAN FRANCISCO BAY AREA WATER EMERGENCY TRANSPORTATION AUTHORITY
DESIGN AND ENGINEERING SERVICES FOR NEW FERRY TERMINALS**

- e) PROTECTION AND INDEMNITY INSURANCE coverage, as applicable, for work performed using floating platforms, skiffs, boats, vessels, or any other equipment that floats in an amount not less than \$2,000,000 per occurrence and aggregate.

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

Name: _____

Title: _____ Date: _____

NOTE: If you were unable to provide any of the required minimum insurance coverages listed above, a request for exception to the appropriate insurance requirement(s) must be brought to WETA's attention no later than the deadline set forth in the RFQ to submit requests for clarifications, corrections or modifications.

**DESIGN AND ENGINEERING SERVICES
FOR
ANTIOCH, MARTINEZ, RICHMOND, AND REDWOOD CITY FERRY TERMINALS**

ATTACHMENT B

DBE FORMS

Submittals may not be considered if the following documents contained in this Attachment B are not completely filled out and submitted as set forth in the RFQ:

- DBE Prime Consultant and Subcontractors/Subconsultants/Suppliers Report
- Description of the Selection Process of Subcontractors/Subconsultants/Suppliers

**REQUEST FOR QUALIFICATIONS
 SAN FRANCISCO BAY AREA WATER EMERGENCY TRANSPORTATION AUTHORITY
 DESIGN AND ENGINEERING SERVICES FOR NEW FERRY TERMINALS**

PRIME CONSULTANT AND SUBCONTRACTOR/SUBCONSULTANT/SUPPLIER REPORT

RFQ # and Name: _____
 Offeror's Name: _____
 Address: _____
 Phone: _____ Fax: _____
 Owner or Contact Person: _____ Title: _____
 Is your firm a Disadvantaged Business Enterprise: Yes ___ No ___

Offerors MUST provide the following information on ALL subcontractors/subconsultants/suppliers that provided Offeror a bid, quote, or proposal for work, services or supplies associated with this RFQ pursuant to the Authority's sub-proposal reporting requirements. This information shall be provided for all sub-proposers regardless of tier for both DBEs and non-DBEs alike. Include all sub-proposal acceptance(s) AND rejection(s). Signature is required on page two of this form.

Subcontractor/Subconsultant/Supplier Firm Name/Address/Contact Information		Contractor's License No. (if applicable)	DBE (Yes*/No)	Portion of Work or Type of Materials/Supplies	Dollar Amount of Work/ Materials/Supplies	Proposal Accepted (Yes**/No)	DBE Amount***
1	Name:						
	Address:						
	Contact Person:						
	Phone & Fax:						
2	Name:						
	Address:						
	Contact Person:						
	Phone & Fax:						
3	Name:						
	Address:						
	Contact Person:						
	Phone & Fax:						

**REQUEST FOR QUALIFICATIONS
 SAN FRANCISCO BAY AREA WATER EMERGENCY TRANSPORTATION AUTHORITY
 DESIGN AND ENGINEERING SERVICES FOR NEW FERRY TERMINALS**

Subcontractor/Subconsultant/Supplier Firm Name/Address/Contact Information		Contractor's License No. (if applicable)	DBE (Yes*/No)	Portion of Work or Type of Materials/Supplies	Dollar Amount of Work/ Materials/Supplies	Proposal Accepted (Yes**/No)	DBE Amount***
4	Address:						
	Contact Person:						
	Phone & Fax:						
5	Name:						
	Address:						
	Contact Person:						
	Phone & Fax:						
6	Name:						
	Address:						
	Contact Person:						
	Phone & Fax:						

Attach additional sheets as necessary.

* If Yes, please also provide Unified Certification Program certification number in box. Proposers need to be aware that state and local governments may have other types of certifications with different requirements.

** Do not indicate more than one "Yes" for alternative subcontractors/subconsultants for the same work.

*** DBE participation includes that portion of the work actually performed by a certified DBE with its own forces. For example, for DBE supplier, count 60% of the costs of materials and supplies.

The undersigned will enter into a formal agreement with the subcontractor(s), subconsultant(s) and/or supplier(s) whose sub-proposal was accepted conditioned upon execution of a contract with the San Francisco Bay Area Water Transit Authority. I certify under penalty of perjury that the information included on this form is accurate and true.

 Name: _____

Title: _____

Date: _____

**DESCRIPTION OF THE SELECTION PROCESS FOR
SUBCONTRACTORS/SUBCONSULTANTS/SUPPLIERS**

RFQ # and Name: _____
Offeror's Name: _____
Address: _____
Phone: _____ Fax: _____
Owner or Contact Person: _____ Title: _____
Is your firm a Disadvantaged Business Enterprise: Yes ____ No ____

Provide a narrative description of how the proposer selected its subcontractors/subconsultants/suppliers, including the following elements: (Please attach additional sheets as necessary.)

1. Soliciting small businesses, including DBEs, to participate through all reasonable and available means.

Example: Include attendance at pre-bid meeting, advertisements, written notices and agencies, organizations or groups contacted to provide assistance in contacting, recruiting and using small business concerns.

2. Selecting portions of the work that are economically feasible for small businesses, including DBEs.

Example: List items of work which the Offeror made available to small business concerns, including, where appropriate, any breaking down of the scope of Services (including those items normally performed by the Offeror with its own forces) into economically feasible units to facilitate DBE participation.

3. Providing adequate information about the scope of Services in a timely manner to DBEs.

Example: List dates of written notices soliciting bids from DBEs and the dates and methods used for following up initial solicitations to determine with certainty whether the DBEs were interested.

**DESIGN AND ENGINEERING SERVICES
FOR
ANTIOCH, MARTINEZ, RICHMOND, AND REDWOOD CITY FERRY TERMINALS**

ATTACHMENT C

CERTIFICATION FORMS

Submittals will not be considered if the following documents contained in this Attachment C are not completely filled out and submitted as set forth in the RFQ:

- Lobbying Restrictions Certification
- Equal Opportunity Certification

LOBBYING RESTRICTIONS

CERTIFICATION (Pursuant to 49 CFR Part 20)

The Offeror certifies, by signing and submitting this Submittal to the best of his or her knowledge and belief that:

- (1) No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of an agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.
- (2) If any funds other than Federal appropriated funds have been paid or will be paid to any person for making lobbying contacts to an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form--LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions and as amended by "Government wide Guidance for New Restrictions on Lobbying," 61 Fed. Reg. 1413 (1/19/96).
- (3) The undersigned shall require that the language of this certification be included in the award documents for all subawards at all tiers (including subcontracts, subgrants, and contracts under grants, loans, and cooperative agreements) and that all subrecipients shall certify and disclose accordingly.

This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by 31 U.S.C. § 1352 (as amended by the Lobbying Disclosure Act of 1995). Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

The Offeror also agrees by submitting this Submittal, that the language of this certification shall be included in all lower-tier subcontracts which exceed \$100,000 and that all such subrecipients shall certify and disclose accordingly.

INSTRUCTIONS FOR COMPLETION OF SF-LLL, DISCLOSURE OF LOBBYING ACTIVITIES

This disclosure form shall be completed by the reporting entity, whether subawardee or prime Federal recipient, at the initiation or receipt of a covered Federal action, or a material change to a previous filing pursuant to title 31 U.S.C. Section 1352. The filing of a form is required for each payment or agreement to make payment to any lobbying entity for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with a covered Federal action. Complete all items that apply for both the initial filing and material change report. Refer to the implementing guidance published by the Office of Management and Budget for additional information.

1. Identify the type of covered Federal action for which lobbying activity is and/or has been secured to influence the outcome of a covered Federal action.
2. Identify the status of the covered Federal action.
3. Identify the appropriate classification of this report. If this is a follow-up report caused by a material change to the information previously reported, enter the year and quarter in which the change occurred. Enter the date of the last previously submitted report by this reporting entity for this covered Federal action.
4. Enter the full name, address, city, state and zip code of the reporting entity. Include Congressional District, if known. Check the appropriate classification of the reporting entity that designates if it is, or expects to be a prime or subaward recipient. Identify the tier of the subawardee, e.g., the first subawardee of the prime is the 1st tier. Subawards include but are not limited to subcontracts, subgrants and contract awards under grants.
5. If the organization filing the report in item 4 checks "Subawardee", then enter the full name, address, city, state and zip code of the prime Federal recipient. Include Congressional District, if known.
6. Enter the name of the Federal agency making the award or loan commitment. Include at least one organizational level below agency name, if known. For example, Department of Transportation, United States Coast Guard.
7. Enter the Federal program name or description for the covered Federal action (item 1). If known, enter the full Catalog of Federal Domestic Assistance (CFDA) number for grants, cooperative agreements, loans, and loan commitments.
8. Enter the most appropriate Federal identifying number available for the Federal action identified in item 1 (e.g., Request for Proposal (RFP) number; Invitation for Bid (IFB) number; grant announcement number; the contract, grant, or loan award number; the application/proposal control number assigned by the Federal agency). Include prefixes, e.g., "RFP-DE-90-001."

**REQUEST FOR QUALIFICATIONS
SAN FRANCISCO BAY AREA WATER EMERGENCY TRANSPORTATION AUTHORITY
DESIGN AND ENGINEERING SERVICES FOR NEW FERRY TERMINALS**

9. For a covered Federal action where there has been an award or loan commitment by the Federal agency, enter the Federal amount of the award/loan commitment for the prime entity identified in item 4 or 5.
10. (a) Enter the full name, address, city, state and zip code of the registrant under the Lobbying Disclosure Act of 1995 engaged by the reporting entity identified in item 4 to influence the covered Federal action.
(b) Enter the full names of the individual(s) performing services, and include full address if different from 10 (a). Enter Last Name, First Name, and Middle Initial(MI).
11. The certifying official shall sign and date the form, print his/her name, title, and telephone number.

According to the Paperwork Reduction Act, as amended, no persons are required to respond to a collection of information unless it displays a valid OMB Control Number. The valid OMB control number for this information collection is OMB No. 0348-0046. Public reporting burden for this collection of information is estimated to average 10 minutes per response, including time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding the burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the Office of Management and Budget, Paperwork Reduction Project (0348-0046), Washington, DC 20503.

END OF INSTRUCTIONS

**REQUEST FOR QUALIFICATIONS
 SAN FRANCISCO BAY AREA WATER EMERGENCY TRANSPORTATION AUTHORITY
 DESIGN AND ENGINEERING SERVICES FOR NEW FERRY TERMINALS**

DISCLOSURE OF LOBBYING ACTIVITIES Complete this form to disclose lobbying activities pursuant to 31 U.S.C. 1352		
1. Type of Federal Action: a. contract b. grant c. cooperative agreement d. loan e. loan guarantee f. loan insurance	2. Status of Federal Action: a. bid/offer/application b. initial award c. post-award	3. Report Type: a. initial filing b. material change For Material Change Only: Year _____ Quarter _____ Date of last report: _____
4. Name and Address of Reporting Entity: <input type="checkbox"/> Prime <input type="checkbox"/> Subawardee Tier _____, <i>if known</i> : Congressional District, <i>if known</i> : _____	5. If Reporting Entity in No. 4 is Subawardee, Enter Name and Address of Prime: Congressional District, <i>if known</i> : _____	
6. Federal Department/Agency:	7. Federal Program Name/Description: CFDA Number, if applicable: _____	
8. Federal Action Number, <i>if known</i> : _____	9. Award Amount, <i>if known</i> : \$ _____	
10. a. Name and Address of Lobbying Registrant (<i>if individual, last name, first name, MI</i>):	10. b. Individuals Performing Services (<i>including address if different from No. 10a</i>) (<i>last name, first name, MI</i>):	
11. Information requested through this form is authorized by title 31 U.S.C. section 1352. This disclosure of lobbying activities is a material representation of fact upon which reference was placed by the user above when this transaction was made or entered into. This disclosure is required pursuant to 31 U.S.C. 1352. This information will be reported to the Congress semi-annually and will be available for public inspection. Any person who fails to file the required disclosure shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each failure.	Signature: Print Name: _____ Title: _____ Telephone No. _____ Date: _____	
Reporting Entity: _____ Page _____ of _____		
Authorized for Local Reproduction Standard Form – LLL (Rev. 7-97)		

EQUAL OPPORTUNITY CERTIFICATION

The undersigned _____ certifies that he/she/it (i) has _____ has not _____ developed and has on file an at each establishment affirmative action programs pursuant to 41 CFR Part 60-2; (ii) has _____ has not _____ participated in a previous contract or subcontract subject to the equal opportunity clause, as required by Executive Orders 10925, 11114, or 11246, and that, where required, (iii) has _____ has not _____ filed with the Joint Reporting Committee, the Director of the Office of Federal Contract Compliance, a Federal Government contracting or administering agency, or the former President's Committee on Equal Employment Opportunity, all reports due under the applicable filing requirements.

Note: The above certification is required by the Equal Employment Opportunity Regulations of the Secretary of Labor (41 CFR 60-1.7(b)(1)), and must be submitted by Offerors and proposed subcontractors only in connection with contracts and subcontracts which are subject to the equal opportunity clause. Contracts and subcontracts which are exempt from the equal opportunity clause are set forth in 41 CFR 60-1.5. (Generally only contracts or subcontracts of \$10,000 or under are exempt.)

Currently, Standard Form 100 (EEO-1) is the only report required by the Executive Orders or their implementing regulations.

Proposed prime contractors and subcontractors who have participated in a previous contract or subcontract subject to the Executive Orders and have not filed the required reports should note that 41 CFR 60-1.7(b)(1) prevents the award of contracts and subcontracts unless such contractor submits a report covering the delinquent period or such other period specified by the Federal Highway Administration or by the Director, Office of Federal Contract Compliance, U.S. Department of Labor.

Name: _____

Title: _____

Date: _____

**REQUEST FOR QUALIFICATIONS
SAN FRANCISCO BAY AREA WATER EMERGENCY TRANSPORTATION AUTHORITY
DESIGN AND ENGINEERING SERVICES FOR NEW FERRY TERMINALS**

**DESIGN AND ENGINEERING SERVICES
FOR
ANTIOCH, MARTINEZ, RICHMOND, AND REDWOOD CITY FERRY TERMINALS**

**ATTACHMENT D
FORM OF CONTRACT**

PROFESSIONAL SERVICES AGREEMENT [#XX-XXX]
between the
SAN FRANCISCO BAY AREA WATER EMERGENCY TRANSIT AUTHORITY
and
[FIRM]

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

RECITALS

WHEREAS, the AUTHORITY was created to investigate and to implement expansion of ferry service within the San Francisco Bay Area; and
WHEREAS, the AUTHORITY [NAME OF PROJECT] (the "PROJECT"); and
WHEREAS, the AUTHORITY desires to secure professional services in the nature of [DESCRIPTION OF SERVICES] (generally, the "Services") with respect to the PROJECT; and
WHEREAS, the CONSULTANT provided a submittal in response to the AUTHORITY's solicitation and represents that it possesses the professional qualifications and expertise to perform such Services; and
WHEREAS, the CONSULTANT has been selected to provide such Services.

AGREEMENT

NOW, THEREFORE, in consideration of the mutual covenants contained herein, the Parties agree as follows:

AUTHORITY hereby contracts with CONSULTANT and CONSULTANT hereby contracts with AUTHORITY to perform the services contemplated herein, on the terms and subject to the conditions and in consideration of the payments set forth in this AGREEMENT. CONSULTANT promises, covenants and agrees to diligently pursue the Services to completion in accordance with the schedule and under the terms and conditions set forth below.

ARTICLE I - GENERAL PROVISIONS

A. GENERAL CONDITIONS

1. **The “Services”**, which are the subject of this AGREEMENT, are described in Appendix A, Scope of Services, and Appendix D, Compensation, which are both attached hereto and incorporated herein by reference.
2. **Scope of Services.** CONSULTANT shall furnish all technical, professional and administrative services and responsibilities, including but not limited to, labor, material, equipment, transportation, supervision and expertise, necessary to perform all operations required to satisfactorily complete the Services as specified, stated, indicated or implied in this AGREEMENT.
3. **Term.** The term of the AGREEMENT shall commence on [DATE 1] and shall expire, unless earlier terminated or extended in accordance with this AGREEMENT, on [DATE 2] (the “Term”). AUTHORITY, at its sole discretion, may elect to extend the Term of this AGREEMENT up to an additional twelve (12) months, commencing on [day after DATE 2].
4. **AUTHORITY's Representative.** AUTHORITY hereby designates its Executive Director, or his/her designee, to be its representative in administering all matters relative to the AGREEMENT.
5. **CONSULTANT's Representative.** CONSULTANT hereby designates [NAME] to represent CONSULTANT with full authority under the AGREEMENT.
6. **CONSULTANT's Key Personnel.** CONSULTANT represents that it has the professional and technical personnel required to perform the Services under this AGREEMENT. The key personnel designated in Appendix B will be CONSULTANT's key personnel for the performance of the Services. CONSULTANT shall give AUTHORITY prior written notice of any proposed change in key personnel. Any such change may be made only upon AUTHORITY's prior written approval, not to be unreasonably withheld. AUTHORITY shall have the right to request the removal or replacement of any of the key personnel listed on Appendix B or any other CONSULTANT staff who, in AUTHORITY's sole and reasonable opinion, are for any reason unsuitable or unsatisfactory. CONSULTANT shall promptly remove the person(s) specified in AUTHORITY's request and, at CONSULTANT's sole cost and expense, shall promptly appoint satisfactory replacement(s) upon AUTHORITY's approval of such replacement(s). CONSULTANT shall make available to AUTHORITY any information AUTHORITY may need to decide whether to approve such replacement(s). AUTHORITY retains the sole right to terminate this AGREEMENT in the event of a change of ownership or fundamental structure in CONSULTANT's firm. CONSULTANT shall give AUTHORITY prior written notice of any such proposed change. Within 30 calendar days of receipt of

CONSULTANT's notice, AUTHORITY shall notify CONSULTANT in writing of its decision to continue to perform under, or to terminate, this AGREEMENT, effective on the date contained therein. Nothing in this provision shall be construed to limit AUTHORITY's right to terminate this AGREEMENT as set forth in ARTICLE I, Section B of this AGREEMENT.

7. **Preliminary Review of Services.** Where the CONSULTANT is required to prepare and submit reports, working papers, and other documents to AUTHORITY as products of the Services, CONSULTANT shall submit such documents in draft form, and AUTHORITY shall have the opportunity to direct revisions prior to formal submission by CONSULTANT.

8. **Appearance at Hearings.** If and when required by AUTHORITY, CONSULTANT shall attend and render assistance at hearings related to performance of the Services, as may be deemed necessary by the AUTHORITY. CONSULTANT shall be compensated as set forth in Appendix D, Compensation.

9. **Responsibility of CONSULTANT.** CONSULTANT shall be solely responsible for the professional quality, technical accuracy and the coordination of the Services. Neither the AUTHORITY's review, inspection, acceptance, nor payment for any of the Services shall be construed to waive any of AUTHORITY's rights and remedies under the AGREEMENT, or any cause of action arising out of CONSULTANT's performance of the AGREEMENT. CONSULTANT shall be and remain liable to AUTHORITY or any third party, in accordance with applicable law, for all damages caused by CONSULTANT's negligence, recklessness or willful misconduct in the performance of, or failure to perform, this AGREEMENT.

10. **Inspection of Services.** AUTHORITY may inspect or review CONSULTANT's Services in progress at AUTHORITY's convenience. Any inspection or review by AUTHORITY shall be performed in a manner not to unreasonably interfere with CONSULTANT.

11. **No Third Party Beneficiaries.** This AGREEMENT gives no rights or benefits to anyone other than AUTHORITY and CONSULTANT and has no third-party beneficiaries.

12. **Legal Action.** All legal actions by either Party against the other arising from this AGREEMENT, or for the failure to perform in accordance with the applicable standard of care, or any other cause of action, will be subject to the applicable statutes of limitation of the State of California.

13. **Survival.** The rights and obligations of the Parties, which by their nature survive termination of this AGREEMENT, breach of contract or warranty, fault, tort (including but not limited to torts based on negligence, statute, or strict liability) or completion of the Services covered by this AGREEMENT, shall remain in full force and effect after termination or completion. Such rights and obligations include, but are not limited to, those set forth in: (a) ARTICLE I, General; and (b) ARTICLE I, Section F, Indemnity and any releases, limitations on indemnity, and any and all limitations on any remedies herein.

14. **Order of Interpretation.** ARTICLE I, Section A, paragraph 9 and ARTICLE I, Section F of this AGREEMENT shall take precedence over any conflicting provision of this AGREEMENT or any document incorporated into it or referenced by it.

15. **No Waiver.** Failure of AUTHORITY to insist upon strict performance of any terms or conditions of this AGREEMENT, or failure or delay in exercising any rights or remedies provided herein or by law, or failure to properly notify CONSULTANT in the event of breach, or the acceptance of or payment for any Services hereunder shall not release CONSULTANT from the terms, conditions, representations or obligations of this AGREEMENT applicable to it, and shall not be deemed a waiver of any right of AUTHORITY to insist upon strict performance hereof or upon any of its rights or remedies as to any prior or subsequent default hereunder.

16. **Governing Law.** The laws of the State of California govern the validity of this AGREEMENT, its interpretation and performance, and any other claims related to it.

17. **Severability.** If any of the provisions contained in this AGREEMENT are held for any reason to be invalid, illegal, or unenforceable in any respect, such invalidity, illegality, or unenforceability will not affect any other provision, and this AGREEMENT will be construed as if such invalid, illegal, or unenforceable provision had never been contained herein.

18. **Dispute Resolution.** Any claims, controversy or dispute arising out of, or relating to, this AGREEMENT or the breach or alleged breach thereof shall be resolved in accordance with this Section.

(a) Initial Actions. The Parties shall first attempt to resolve the dispute informally in meetings or communications between representatives of the CONSULTANT and the AUTHORITY. If the dispute remains unresolved ten (10) working days after it first arises, CONSULTANT may present the dispute to the AUTHORITY's Executive Director or his/her duly authorized representative (the "Executive Director") for resolution. The Executive Director shall issue a written decision on the matter in dispute within ten (10) working days after receipt of notice from CONSULTANT identifying the issues in dispute. The Executive Director may also provide a written decision on his/her own initiative. The written decision shall become final unless, within ten (10) working days after the issuance of said determination, CONSULTANT delivers written notice stating, in general terms, the factual or legal objections to the written decision,

(b) Further Resolution. If the CONSULTANT timely objects to the written decision, either party may seek resolution through referral to mediation. If such mediation is unsuccessful, either Party may seek judicial resolution of the dispute in an appropriate court of the Superior Court in the State of California in San Francisco, CA.; provided, however, mediation is a prerequisite as a condition precedent to the initiation of litigation.

(c) Alternatives. If, agreed upon by the Parties, disputes may be resolved by an

alternative disputes resolution process, including binding arbitration.

(d) **Diligent Performance.** The existence of any such claim shall not excuse CONSULTANT or AUTHORITY from continued full and timely performance as required by this AGREEMENT.

19. **Attorney's Fees.** Subject to the provisions of ARTICLE I, Section 18, Dispute Resolution, if any Party shall bring an action or proceeding (including, without limitation, any cross-complaint, counter-claim, third-party claim or arbitration proceeding) against another Party by reason of the alleged breach or violation of any provision hereof, or for the enforcement of any provision hereof, or to interpret any provision hereof, or otherwise arising out of this AGREEMENT, the prevailing party in such action or proceeding shall be entitled to its costs and expenses of such action or proceeding, including but not limited to its actual reasonable attorneys' fees, which shall be payable by the non-prevailing party whether or not such action or proceeding is prosecuted to judgment or award.

B. TERMINATION

1. **By Authority For Convenience.** AUTHORITY may terminate the AGREEMENT, in whole or in part, for AUTHORITY's convenience by giving the CONSULTANT not less than thirty (30) calendar days prior written notice of such termination for convenience. CONSULTANT shall be compensated for Services performed up to and including the date of termination, including, if applicable, a pro-rated amount of profits; provided, however, that CONSULTANT shall not be paid any amount of profit anticipated for Services not performed by CONSULTANT as of the termination date.

In addition to payment for Services performed by CONSULTANT, AUTHORITY shall pay CONSULTANT an amount equal to the allowable costs incurred by CONSULTANT prior to termination, and other costs reasonably incurred by CONSULTANT for implementing the termination, including but not limited to, subcontract termination costs and related closeout costs, if any.

2. **By Authority For Cause.** AUTHORITY may terminate the AGREEMENT, in whole or in part, upon occurrence of any of the following: (a) CONSULTANT makes a general assignment for the benefit of creditors; (b) a petition in bankruptcy is filed by or against CONSULTANT; (c) a receiver is appointed on account of CONSULTANT's insolvency; (d) CONSULTANT violates any law, ordinance, rule, regulation or order of a public authority in performance of the Services; or (e) any material breach on the part of CONSULTANT, of any term, covenant or agreement contained in the AGREEMENT, or for failure of CONSULTANT to substantially perform its duties and obligations under the AGREEMENT, in the manner provided herein. AUTHORITY shall give CONSULTANT seven (7) calendar days prior written notice of its intent to terminate the AGREEMENT for cause. If, at the end of the seven (7) day notice period, CONSULTANT has not commenced correction of its performance

to the reasonable satisfaction of the AUTHORITY, AUTHORITY may immediately thereafter exercise its right of termination and such termination shall be effective immediately. If CONSULTANT commences correction within the seven (7) day notice period and diligently pursues such correction to completion within thirty (30) calendar days of the date of commencement, to the reasonable satisfaction of AUTHORITY, the AGREEMENT shall continue in full force and effect.

3. **Return of Work Product.** Immediately upon CONSULTANT's receipt of notice of termination of the AGREEMENT by AUTHORITY, whether for cause or convenience, CONSULTANT shall deliver to AUTHORITY all data, estimates, graphs, summaries, reports, plans, information, work product and any other such materials as may have been collected or created by CONSULTANT in any form or media, in the performance of the Services under the AGREEMENT, whether completed or in progress.

4. **Damages/Compensation.** If termination by AUTHORITY is due to the failure of CONSULTANT to fulfill its obligations under the AGREEMENT, CONSULTANT will be compensated for that portion of the Services which has been completed and accepted by the AUTHORITY, and for Services performed up to and including the date of termination, including a pro-rated amount of profit, if applicable; provided, however, that CONSULTANT shall not be paid any amount for profit anticipated on unperformed Services. In the event of unperformed Services, under Article 1B.2, CONSULTANT shall be liable to AUTHORITY for the reasonable costs incurred by AUTHORITY in completing such work, whether by WETA or by others, costs of reprocurring contracts for such Services.

5. **Adjustments.** If, after delivery by AUTHORITY and receipt by CONSULTANT of notice of termination for cause, AUTHORITY determines that CONSULTANT had not so breached the AGREEMENT or failed to perform, termination shall be deemed to have been effected for the convenience of AUTHORITY. In such case, CONSULTANT's compensation shall be adjusted as set forth in ARTICLE I, Section B, paragraph 1, above.

6. **Remedies, Cumulative.** Unless and except as otherwise provided in this AGREEMENT, the rights and remedies of the Parties provided in this Section B, Termination, are cumulative and not exclusive, and are in addition to any and all other rights and remedies provided by law or this AGREEMENT.

7. **Waiver of Claims.** By executing the AGREEMENT, CONSULTANT shall be deemed to have waived any and all claims for damages in the event of AUTHORITY's termination for convenience as provided in ARTICLE I, Section B, paragraph 1, except for reasonable costs incurred by CONSULTANT for the implementation of termination, including, but not limited to, subcontract termination costs as mutually agreed by the AUTHORITY and CONSULTANT.

8. **Right to Cure.** In addition to the right to correct performance as set forth in the above

Paragraphs 2 and 3 of this Section B. regarding termination for cause, AUTHORITY shall provide CONSULTANT with an opportunity to cure, at CONSULTANT's sole expense, all errors and omissions that may be disclosed during review of the Services performed by CONSULTANT. Should CONSULTANT fail to make such corrections in a timely manner, such corrections shall be made by AUTHORITY and CONSULTANT shall pay all costs thereof. The opportunity to cure provision shall in no way limit any other right of AUTHORITY under this AGREEMENT, including but not limited to the right to terminate the AGREEMENT.

C. REVISION IN SCOPE OF SERVICES

1. **Changes.** When changes in the Services are required by AUTHORITY or requested by CONSULTANT, CONSULTANT shall promptly estimate their effect on the cost of the Services, and on the Schedule of Services, and so notify AUTHORITY. No change shall be implemented by CONSULTANT unless it is approved by AUTHORITY in writing and CONSULTANT has received notification from AUTHORITY to proceed. Unless otherwise agreed to in writing, all provisions of this AGREEMENT shall apply to all changes in the Services.

2. **Equitable Adjustment.** If AUTHORITY determines that a change materially affects the total value or time of performance of this AGREEMENT, CONSULTANT and AUTHORITY will mutually agree in writing to an equitable adjustment.

3. **Extra Services.** AUTHORITY may request Extra Services to be performed by CONSULTANT. "Extra Services" is defined as services not authorized in the original AGREEMENT, and is, subsequent to the execution of this AGREEMENT by the Parties, determined by AUTHORITY to be necessary for the Project. Upon receipt of an Extra Services authorization from AUTHORITY, CONSULTANT shall continue performance of the Services as revised by the authorization. Adjustments to CONSULTANT's compensation due to authorized Extra Services shall be made only within the Total Contract Amount, as defined in Article III below, of the AGREEMENT.

4. **Necessary Revisions.** If AUTHORITY determines that revisions to the Scope of Services, Schedule of Services, Compensation, or other parts of the AGREEMENT are necessary, they shall be mutually agreed upon and incorporated herein through the execution of written amendments to this AGREEMENT.

D. OWNERSHIP OF WORK PRODUCT/CONFIDENTIALITY

1. **Ownership.** All work product which CONSULTANT is required to prepare or develop in the performance and completion of the Services hereunder, including without limitation any drawings, specifications, documents, calculations, maps, sketches, notes, reports, data, models and samples, and any and all inventions and copyrightable material contained therein, shall become the sole and exclusive property of AUTHORITY when made or prepared whether delivered to

AUTHORITY or not, subject to CONSULTANT's right to use the same to perform the Services under this AGREEMENT. Such work product shall, together with any materials furnished to CONSULTANT by AUTHORITY hereunder, be delivered to AUTHORITY upon request and in any event upon completion or termination of this AGREEMENT, as specified in Section B.3, above. AUTHORITY and its authorized representatives may use any such work product delivered by CONSULTANT without CONSULTANT's permission. CONSULTANT agrees to execute all documents and to take all steps requested by AUTHORITY at AUTHORITY's expense which AUTHORITY deems necessary or desirable to complete and perfect in AUTHORITY ownership of such property rights.

2. **Confidentiality.** All ideas, memoranda, specifications, plans, manufacturing procedures, drawings, descriptions, and all other written information submitted to the CONSULTANT in connection with the performance of the AGREEMENT shall be held confidential by the CONSULTANT and shall not, without the prior written consent of the AUTHORITY, be used for any purposes other than the performance of the Services under this AGREEMENT. Nothing furnished to the CONSULTANT, which is otherwise known to the CONSULTANT or becomes generally known in the relevant industry, shall be deemed confidential. The CONSULTANT shall not use the AUTHORITY's name or insignia, photographs, or any other publicity pertaining to the Services in any magazine, trade paper newspaper, or other news medium without the prior written consent of the AUTHORITY. CONSULTANT may, with AUTHORITY's prior written consent, use PROJECT technical information in the demonstration of expertise for purposes of describing PROJECT experience to others in the routine conduct of CONSULTANT's business.

E. CONSULTANT STATUS/SUBCONSULTANTS:

1. **Independent Contractor.** CONSULTANT shall be an agent of AUTHORITY in performance of the Services. Notwithstanding such relationship between AUTHORITY and CONSULTANT, CONSULTANT shall be an independent contractor, and CONSULTANT's personnel performing Services under this AGREEMENT shall at all times be under the CONSULTANT's exclusive direction and control and shall be employees of the CONSULTANT and not employees of AUTHORITY. CONSULTANT shall pay all wages, salaries and other amounts due its employees in connection with this AGREEMENT and shall be responsible for all reports and obligations respecting them, including but not limited to Social Security tax, income tax withholding, unemployment compensation, Workers' Compensation, employee benefits and similar matters. No liability or benefits, such as worker's compensation, pension rights or liabilities, insurance rights or liabilities, or other provisions or liabilities, arising out of or related to a contract for hire or employer/employee relationship, shall arise or accrue to CONSULTANT's agents or employees with respect to AUTHORITY as a result of the performance of this AGREEMENT. No relationship other than that of

independent contractor shall be implied between the parties or either party's agent, employee or subcontractor, and CONSULTANT hereby agrees to protect, indemnify, defend and hold AUTHORITY harmless from any such claim and any costs or expenses related thereto.

2. **Assignment, Transfer and Subcontracts.** Services to be performed and furnished to AUTHORITY under this AGREEMENT shall be deemed to be professional services and, except as herein provided, CONSULTANT has neither the right nor the power to assign, subcontract, transfer or otherwise substitute, in whole or in part, its interest in the AGREEMENT or its obligations hereunder without the prior written consent of AUTHORITY. An assignment or subcontract shall not obligate AUTHORITY beyond the obligations and liabilities set forth in this AGREEMENT nor shall it relieve CONSULTANT from any obligation or liability under this AGREEMENT. CONSULTANT shall include in all subcontracts under this AGREEMENT all relevant provisions of the AGREEMENT that are necessary to fulfill CONSULTANT's obligations hereunder. If so requested by AUTHORITY, copies of all reimbursable subcontracts shall be provided to AUTHORITY in a timely manner. Subject to the foregoing, the provisions of this AGREEMENT shall be binding upon and inure to the benefit of the successors and assigns of AUTHORITY and the permitted assigns of CONSULTANT.

3. **Subcontracts; Timely Payment.** CONSULTANT is required to pay its subconsultants for satisfactory performance of Services under this AGREEMENT no later than thirty (30) days after the CONSULTANT's receipt of payment for those Services from AUTHORITY.

F. **INDEMNIFICATION**

1. **Representations of CONSULTANT.** CONSULTANT represents and maintains that it is skilled in the practices necessary to perform all services necessary to complete the Services, its duties and obligations, expressed and implied, contained herein, and the AUTHORITY expressly relies upon CONSULTANT's representations regarding its skills and knowledge. The CONSULTANT shall perform all Services and duties in conformance to and consistent with the standards generally recognized as being employed by professionals in the same discipline in the State of California.

2. **Responsibilities of CONSULTANT.** CONSULTANT agrees to indemnify, hold harmless and defend the AUTHORITY, its officers and employees, from and against any and all liability, claims, demands, suits, judgments, loss, damages, costs and expenses, including reasonable attorneys' fees (collectively "CLAIMS"), of any and every kind to the extent arising out of or resulting from negligence, recklessness or willful misconduct of the CONSULTANT, and/or its officers, employees, agents or subconsultants in the performance of this AGREEMENT. CONSULTANT shall defend AUTHORITY and its employees, agents, officers, and directors with separate counsel of AUTHORITY's choosing, and shall promptly pay all costs and attorneys' fees in connection therewith. In the event AUTHORITY is determined, by a court or arbitrator, to be partially liable for a CLAIM,

AUTHORITY shall reimburse the CONSULTANT for its proportionate share of the reasonable costs of defense actually expended, based on its share of liability.

G. INSURANCE

The insurance requirements specified in this Section shall cover CONSULTANT's own liability and any liability arising out of work or services performed under this AGREEMENT by any subcontractors, subconsultants, suppliers, temporary workers, independent contractors, leased employees, or any other persons, firms or corporations (hereinafter collectively referred to as "Agents") that CONSULTANT authorizes to work under this AGREEMENT. CONSULTANT and all Agents are required to procure and maintain at their sole cost and expense the insurance coverages subject to all of the requirements set forth below and, in the case of Commercial General Liability Insurance and Professional Liability Insurance, for a period of five (5) years following the expiration or earlier termination of the AGREEMENT:

Such insurance shall remain in full force and effect throughout the term of this AGREEMENT. To the extent that any Agent does not procure and maintain such insurance coverage, CONSULTANT shall be responsible for said coverage and assume any and all costs and expenses that may be incurred in securing said coverage or in fulfilling CONSULTANT's indemnity obligation as to itself or any of its Agents in the absence of coverage. In the event CONSULTANT or its Agents procure excess or umbrella coverage to maintain certain requirements outlined below, these policies shall also satisfy all specified endorsements and stipulations, including provisions that CONSULTANT's insurance be primary without any right of contribution from the AUTHORITY. Prior to beginning work under this AGREEMENT, CONSULTANT shall provide AUTHORITY with satisfactory evidence of compliance with the insurance requirements of this section.

1. **Commercial General Liability.** CONSULTANT shall carry Commercial or Comprehensive General Liability Insurance covering premises and operations, and completed operations and products liability and maintain \$2,000,000 combined single limit per occurrence for bodily injury and property damage with annual aggregate limits of liability of not less than \$2,000,000. This policy shall conform to or include all of the following:

- (a) Personal Injury and Advertising Injury,
- (b) Use of non-owned watercraft,
- (c) No exclusion for explosion, underground or collapse,
- (d) Blanket contractual liability on written contracts, including this AGREEMENT,
- (e) And the following Endorsements:
 - i. Additional Insured - Such insurance shall add as additional insured, the AUTHORITY, its officers, employees, agents, volunteers, or other permitting

agencies as identified by the AUTHORITY, while acting within the scope of this AGREEMENT.

- ii. Waiver of Subrogation clause
- iii. Separation of Interests Clause stating that insurance shall apply separately to each insured against whom claim is made or suit is brought, subject to the limits of the insurer's liability.
- iv. Primary and Non-contributory language

2. **Automobile Liability.** CONSULTANT shall carry Automobile Liability Insurance with limits not less than \$2,000,000.00 per occurrence and aggregate for bodily injury and property damage. This policy shall include the following:

(a) Such insurance shall add as additional insured, the AUTHORITY, its officers, employees, agents, volunteers, or other permitting agencies as identified by the AUTHORITY, while acting within the scope of this AGREEMENT.

(b) Use of all vehicles, including owned, non-owned, uninsured motorists, leased and hired vehicles.

(c) Such insurance shall include a Waiver of Subrogation in favor of the Authority

3. **Professional Liability, Errors and Omissions.** CONSULTANT shall carry Professional Liability Insurance covering Errors and Omissions in an amount not less than \$2,000,000 per occurrence and aggregate with a deductible not to exceed \$100,000. This policy shall include coverage for all work performed under this contract and for economic damages to the AUTHORITY.

4. **Workers Compensation.** CONSULTANT shall carry Worker's Compensation Insurance as required by California Law and Federal Longshoremen's and Harborworkers (USL&H) Workers' Compensation Act coverage when applicable, covering all Work performed by CONSULTANT under the AGREEMENT, and all CONSULTANT's employees performing services under the AGREEMENT, and Employer's Liability Insurance in the amount of \$1,000,000 per occurrence for injuries incurred in providing services under this AGREEMENT. WC and any USL&H coverage will contain a Waiver of Subrogation clause in favor of the AUTHORITY.

5. **Protection & Indemnity.** CONSULTANT shall carry Protection & Indemnity Insurance, as applicable, in the amount of \$2,000,000 per occurrence and aggregate covering all work performed using floating platforms, skiffs, boats, vessels, or any other equipment that floats.

(a) The following Endorsements shall be attached to the policy:

- i. Additional Insured - Such insurance shall add as additional insured, the AUTHORITY, its officers, employees, agents, volunteers, or other permitting agencies as identified by the AUTHORITY, while acting within the scope of this AGREEMENT.

- ii. Waiver of Subrogation clause
- iii. Primary and Non-contributory language

6. **Coverage as Primary.** CONSULTANT's insurance coverage shall be primary insurance as respects the AUTHORITY, its officers, employees, and volunteers. Any insurance or self-insurance maintained by the AUTHORITY, its officers, officials, employees, or volunteers shall be excess of the CONSULTANT's insurance and shall not contribute with it.

7. **Deductibles and Self-Insured Retentions.** Any deductibles or self-insured retentions in connection with any of the policies described in this Section G, must be declared and approved by AUTHORITY. CONSULTANT shall be solely responsible for any and all applicable deductibles or self-insured-retentions.

8. **Rating.** All policies shall be issued by insurance companies which are licensed carriers in the State of California and maintain a Secure Best's Rating of A- or higher unless otherwise approved by AUTHORITY.

9. **Certificates.** Prior to a Notice to Proceed being issued, CONSULTANT shall furnish to AUTHORITY certificates of insurance evidencing and, upon request, a copy of each policy of insurance required by this AGREEMENT. Such policies shall provide that not less than thirty (30) calendar days prior written notice will be given to AUTHORITY in advance of any cancellation, termination, or material alteration of said policies of insurance, except ten (10) calendar days in the event of non-payment of premium.

10. **No Limitation of Liability.** The requirements contained herein as to the types and limits of insurance to be maintained by CONSULTANT are not intended and shall not in any manner limit or qualify the liabilities or obligations assumed by CONSULTANT under this AGREEMENT.

H. PROHIBITED INTEREST

1. **Disclosure.** CONSULTANT shall disclose any financial, business, or other relationship with AUTHORITY that may have an impact upon the outcome of this AGREEMENT, or any ensuring AUTHORITY project. CONSULTANT shall also list current clients who may have a financial interest in the outcome of this AGREEMENT.

2. **Solicitation.** CONSULTANT warrants that it has not employed or retained any company or person, other than an employee working solely for the CONSULTANT, to solicit or secure the AGREEMENT and that it has not paid or agreed to pay any company or person, other than an employee working solely for the CONSULTANT, any fee, commission, percentage, brokerage fee, gift or any other consideration, contingent upon or resulting from the award or making of the AGREEMENT. For breach of violation of this warranty, the AUTHORITY shall have the right to rescind the AGREEMENT without liability, or at its discretion, to deduct from the AGREEMENT price

or consideration, or otherwise recover the full amount of such fee, commission, percentage, brokerage fee, gift or contingent fee.

3. **Conflict of Interest.** CONSULTANT agrees that, for the term of this AGREEMENT and until the final payment has been made to the CONSULTANT, CONSULTANT shall not permit any member, officer or employee of the AUTHORITY, during his/her tenure and for one (1) year thereafter, to have any financial interest in the AGREEMENT prohibited by California Government Code Section 87100 *et seq.* and/or 49 CFR § 18.36(b)(3). In addition, neither CONSULTANT nor any of its employees shall enter into any contract involving services or property with a person or business prohibited from transacting such business with AUTHORITY pursuant to Government Code Section 87100 *et seq.* and/or 49 CFR § 18.36(b)(3). CONSULTANT agrees that it has an ongoing obligation, during the term hereof, to provide written disclosure of any such prohibited conflicts to AUTHORITY.

4. **Conflict of Employment.** Employment by the CONSULTANT of any current officer, chief executive officer or other employee, authorized representative or agent of the AUTHORITY shall not be permitted even though such employment may be outside of the employee's regular working hours or on weekends, holidays or vacation time. Further, for a period of one (1) year after leaving office or employment, no officer, chief executive officer or other employee of the AUTHORITY shall, for compensation, be permitted by CONSULTANT to act as agent or attorney for or otherwise represent the CONSULTANT by making any formal or informal appearance, or by making any oral or written communication before the AUTHORITY, if the appearance or communication is made for the purpose of influencing administrative or legislative action, or influencing any action or proceeding involving the issuance, amendment, awarding or revocation of a permit, license, grant, entitlement or contract, or the sale or purchase of goods, services or property.

I. NOTIFICATION

All notices hereunder and communications regarding interpretation of the terms of the AGREEMENT or changes thereto shall be effected by the mailing thereof by registered or certified mail, return receipt requested, postage prepaid and addressed as follows:

CONSULTANT:

[FIRM]

ATTN: [PERSON]

[POSITION]

[ADDRESS 1]

AUTHORITY:

SAN FRANCISCO BAY WATER EMERGENCY
TRANSPORTATION AUTHORITY

ATTN: Nina Rannells

Executive Director

Pier 9, Suite 111

[ADDRESS 2]

San Francisco, CA 94111

J. AUDIT OF BOOKS AND RECORDS

During the Term of this AGREEMENT, CONSULTANT and subconsultants shall make available to the AUTHORITY, its authorized agents, officers and employees, the State, the California State Auditor, and any other duly authorized representative of the Federal or State Government, for examination and audit, any and all ledgers and books of account, invoices, vouchers, canceled checks, and other records or documents evidencing or related to the expenditures and disbursements charged to the AUTHORITY, and shall furnish such other evidence or information as AUTHORITY may require with respect to any such expense or disbursement charged by the CONSULTANT. The records described in this Section J shall be retained by CONSULTANT and subconsultants and made available for inspection by AUTHORITY or its designee at all reasonable times for a period of three (3) years after the expiration or earlier termination of this AGREEMENT. AUTHORITY may, in its sole discretion, conduct a periodic audit of costs, not more frequently than once every twelve (12) months.

K. COMPLIANCE WITH LAWS.

1. **Laws and Regulations.** CONSULTANT and its employees, agents and subconsultants performing the Services hereunder shall at all times comply with all applicable local, state, federal and governmental laws, ordinances, statutes and regulations in effect at the time Services under this AGREEMENT is performed. CONSULTANT shall indemnify and hold harmless AUTHORITY from and against any and all claims or expenses caused or occasioned directly or indirectly by its failure to so comply.

2. **Disadvantaged Business Enterprise (DBE) Program.** AUTHORITY, a recipient of federal financial assistance derived from the U.S. Department of Transportation ("U.S. DOT"), is committed to and has adopted a DBE Program in accordance with 49 CFR Part 26 (the "DBE Program"), which is available on AUTHORITY's website at www.watertransit.org. All terms and conditions of the DBE Program are incorporated by this reference.

(a) CONSULTANT and subconsultants shall not discriminate on the basis of race, color, national origin, or sex in the performance of this AGREEMENT. CONSULTANT shall carry out applicable requirements of 49 CFR Part 26 in the award and performance of this AGREEMENT. Failure by CONSUTLANT or subconsultant to carry out these requirements is a material breach of this AGREEMENT that may result in termination or such other remedy as the Authority deems appropriate. Each subcontract the CONSULTANT signs with a subconsultant must include the assurance in this paragraph.

(b) CONSULTANT is required to pay its subconsultants performing work related to this AGREEMENT for satisfactory performance of Services no later than thirty (30) days after the CONSULTANT's receipt of payment for those Services from AUTHORITY.

(c) CONSULTANT must request AUTHORITY's prior written approval to substitute a DBE firm. The request must include the names and addresses of the firms, the dollar amounts, and the reasons for the proposed substitution. If AUTHORITY approves the substitution, AUTHORITY will notify both CONSULTANT and the DBE firm being substituted.

(d) CONSULTANT is encouraged to use the services of financial institutions owned and controlled by socially and economically disadvantaged individuals in the community, as more fully described in Section IV, Administrative Requirements, of the DBE Program.

(e) CONSULTANT shall refer to the DBE directory identifying all firms eligible to participate as DBEs, which can be found at www.dot.ca.gov/hq/bep/. Only DBE firms currently certified on the Caltrans' directory may participate as DBEs in AUTHORITY's program.

(f) DBE participation is only counted toward AUTHORITY's annual overall goal in accordance with the DBE Program. Credit toward overall goals will only be given upon satisfactory evidence that payments were actually made to DBEs.

(g) AUTHORITY may impose such remedies as are available under federal, state and local law and regulations for non-compliance. Such remedies may include, but are not limited to, withholding of progress payments and contract retentions, and termination of this AGREEMENT in whole or in part.

3. **Equal Employment Opportunity/Nondiscrimination**. CONSULTANT confirms that it has an equal employment opportunity policy ensuring equal employment opportunity without regard to race, color, national origin, sex, age, religion or handicap; and that it maintains no employee facilities segregated on the basis of race, color, religion or national origin. During the performance of this AGREEMENT, CONSULTANT and its subconsultants shall not unlawfully discriminate, harass or allow harassment against any employee or applicant for employment because of sex, race, color, ancestry, religious creed, national origin, or disability. CONSULTANT shall include the provisions of this clause in all subcontracts to perform Services under this AGREEMENT.

4. **Americans with Disabilities Act (ADA)**. CONSULTANT acknowledges that, pursuant to the ADA (42 U.S.C. §§ 12101-12213, as amended), programs, services and other activities provided by a public entity to the public, whether directly or through a grantee or contractor, must be accessible to the disabled public. AUTHORITY will not discriminate against any person protected under the ADA in connection with all or any portion of the PROJECT and will comply at all times with the applicable provisions of the ADA.

5. **Drug-Free Workplace Policy.** CONSULTANT acknowledges that pursuant to the Federal Drug-Free Workplace Act of 1989, the unlawful manufacture, distribution, dispensation, possession, or use of a controlled substance is prohibited on AUTHORITY premises. CONSULTANT and its employees, agents or assigns will comply with all terms and provisions of such Act and the rules and regulations promulgated under such Act.

6. **Energy Conservation.** CONSULTANT agrees to comply with mandatory standards and policies relating to energy efficiency which are contained in the state energy conservation plan issued in compliance with the federal Energy Policy and Conservation Act.

7. **Clean Water.** CONSULTANT agrees to comply with all applicable standards, orders or regulations issued pursuant to the federal Water Pollution Control Act, as amended, 33 U.S.C. 1251 et seq. CONSULTANT agrees to report each violation to the AUTHORITY and understands and agrees that the AUTHORITY will, in turn, report each violation as required to assure notification to the Federal Transit Authority ("FTA") and the appropriate Environmental Protection Agency ("EPA") regional office. CONSULTANT also agrees to include these requirements in each subcontract exceeding \$100,000 financed in whole or in part with federal assistance provided by the FTA.

8. **Federal Requirements.** CONSULTANT shall at all times comply with all applicable federal regulations, policies, procedures and directives, including without limitation, those listed directly or by reference in this AGREEMENT, as they may be amended or promulgated from time to time during the Term of this AGREEMENT. CONSULTANT's failure to so comply shall constitute a material breach of this AGREEMENT.

9. **Clean Air.** CONSULTANT agrees to comply with all applicable standards, orders or regulations issued pursuant to the federal Clean Air Act, as amended, 42 U.S.C. §§7401 et seq. CONSULTANT agrees to report each violation to the AUTHORITY and understands and agrees that the AUTHORITY will, in turn, report each violation as required to assure notification to FTA and the appropriate EPA regional office. CONSULTANT also agrees to include these requirements in each subcontract exceeding \$100,000 financed in whole or in part with federal assistance provided by the FTA.

10. **No Government Obligation to Third Parties.** CONSULTANT acknowledges and agrees that, notwithstanding any concurrence by the federal government in or approval of the solicitation or award of the underlying contract, absent the express written consent by the Federal Government, the Federal Government is not a party to this AGREEMENT and shall not be subject to any obligations or liabilities to the CONSULTANT, or any other party pertaining to any matter resulting from this AGREEMENT. CONSULTANT agrees to include this language in each subcontract financed in whole or in part with federal assistance provided by the FTA.

11. **Program Fraud and False Statements.** CONSULTANT acknowledges that the provisions of the Program Fraud Civil Remedies Act of 1986, as amended, 31 U.S.C. § § 3801 *et seq.* and U.S. DOT regulations, "Program Fraud Civil Remedies," 49 C.F.R. Part 31, apply to this AGREEMENT. Upon execution of this AGREEMENT, the Contractor certifies or affirms the truthfulness and accuracy of any statement it has made, it makes, it may make, or causes to be made, pertaining to this AGREEMENT. In addition to other penalties that may be applicable, the Contractor further acknowledges that if it makes, or causes to be made, a false, fictitious, or fraudulent claim, statement, submission, or certification, the Federal Government reserves the right to impose the penalties of the Program Fraud Civil Remedies Act of 1986 on the CONSULTANT to the extent the Federal Government deems appropriate. CONSULTANT also acknowledges that if it makes, or causes to be made, a false, fictitious, or fraudulent claim, statement, submission, or certification to the federal government under a contract connected with a project that is financed in whole or in part with federal assistance originally awarded by FTA under the authority of 49 U.S.C. § 5307, the federal government may impose penalties under 18 U.S.C. § 1001 and 49 U.S.C. § 5307(n)(1). CONSULTANT agrees to include this clauses in each subcontract financed in whole or in part with federal assistance provided by FTA. It is further agreed that the clauses shall not be modified, except to identify the subcontractor who will be subject to the provisions.

12. **MacBride Principles--Northern Ireland.** Pursuant to San Francisco (City) Administrative Code Section 12F.5, City urges companies doing business in Northern Ireland to move towards resolving employment inequities, and encourages such companies to abide by the MacBride Principles. City urges San Francisco companies to do business with corporations that abide by the MacBride Principles. By signing below, the person executing this AGREEMENT on behalf of CONSULTANT acknowledges and agrees that he or she has read and understood this Section 11.

13. **Tropical Hardwood and Virgin Redwood Ban.** Pursuant to Section 804(b) of the San Francisco Environment Code, City urges all grantees not to import, purchase, obtain, or use for any purpose, any tropical hardwood, tropical hardwood wood product, virgin redwood or virgin redwood wood product.

14. **Resource Conservation.** Chapter 5 of the San Francisco Environment Code (Resource Conservation) is incorporated herein by reference. The requirements of Chapter 5 applicable to this AGREEMENT are the requirements under Section 506(h) that any bid, report, proposal, quotation or other document prepared in connection with this AGREEMENT must be submitted on recycled paper and printed on double sided pages to the maximum extent possible.

L. ENTIRE AGREEMENT

This AGREEMENT constitutes the entire AGREEMENT between the Parties relating to the

PROJECT and supersedes any previous agreement or understanding.

M. AMENDMENT

This AGREEMENT may be amended or modified only by a written amendment duly executed by both Parties.

N. AVAILABILITY OF FUNDS

This AGREEMENT is awarded on the contingency of available funds. The obligation of AUTHORITY is conditioned upon the availability of funds allocated and available to carry out the provisions of the AGREEMENT in full.

ARTICLE II - SCHEDULE

A. SCHEDULE OF SERVICES

CONSULTANT shall conform to the schedule set forth in Appendix C, Schedule of Services (the "Schedule") which is attached hereto and incorporated herein by reference, except as otherwise modified by the AGREEMENT. In the event it becomes necessary to modify the Schedule of Services, modifications shall be mutually agreed upon and incorporated herein through the execution of written amendments to this AGREEMENT.

B. REPORTING

Monthly progress reports in a form acceptable to AUTHORITY, which describe any portion of the Services performed or completed by CONSULTANT, shall be submitted to AUTHORITY with CONSULTANT's monthly billings. Costs for Services and actual costs shall be itemized in accordance with Appendix D, Compensation.

C. SUSPENSION, DELAY, OR INTERRUPTION OF SERVICES; FORCE MAJEURE

1. AUTHORITY may suspend, delay, or interrupt the services of the CONSULTANT for the convenience of the AUTHORITY.

2. Neither Party shall be considered in the default in the performance of its duties and obligations under this AGREEMENT with respect to Appendix C, Schedule of Services, to the extent that the performance of any obligation is prevented or delayed by an event of Force Majeure (as defined herein) or for suspension, delay, or interruption for AUTHORITY's convenience. In either event, AUTHORITY shall make an equitable adjustment of the Schedule of Services, commitment and cost of CONSULTANT's personnel and subconsultants, and CONSULTANT's compensation. Force Majeure shall mean any of the following: (a) an act of God, fire, earthquake, flood, explosion, action of the elements, war, invasion, riot, sabotage, or inability to procure or general shortage of labor,

equipment, facilities, materials or supplies in the ordinary course on the open market; (b) strike, lockout, or action of labor unions; (c) condemnation, requisition or order of governmental or civil or military authorities; (iv) any other similar cause not within the reasonable control of CONSULTANT (financial ability or negligence excepted); or other causes as approved in writing in the sole discretion of AUTHORITY.

3. CONSULTANT shall take all reasonable actions to minimize any Schedule extensions or additional costs to AUTHORITY resulting from any such delay.

4. As a condition precedent to the approval of an extension of time to complete the established Schedule of Services, CONSULTANT shall give written notice to AUTHORITY within seven (7) calendar days after CONSULTANT knows or should know of any cause or conditions that might, under reasonably foreseeable circumstances, result in delay for which CONSULTANT may claim an extension of time or adjustment of cost.

ARTICLE III - COMPENSATION/PAYMENT

A. COMPENSATION AND TOTAL CONTRACT AMOUNT

As full consideration for the satisfactory performance and completion by CONSULTANT of this AGREEMENT, AUTHORITY shall pay to CONSULTANT compensation as set forth in Appendix D, Compensation. Total compensation for Services performed under the AGREEMENT shall not exceed [DOLLAR AMOUNT] including direct expenses (the "Total Contract Amount"). CONSULTANT shall not perform any Services or incur any costs beyond the Total Contract Amount, without prior written approval of the AUTHORITY Board of Directors, and no additional compensation will be paid without a written amendment to the AGREEMENT, executed by both Parties. Mark-ups on subconsultant charges are not permitted and all expenses must be reasonable and verifiable in AUTHORITY's sole discretion. All Services must be performed, and payments made, in accordance with duly executed task orders.

B. INVOICES AND TIME OF PAYMENT

1. CONSULTANT shall prepare invoices on a monthly basis for each complete calendar month. Invoices shall be submitted to AUTHORITY as soon as possible, but no later than sixty (60) calendar days after month's end.

2. The invoice should bear the following certification signed by an officer of CONSULTANT:

"I hereby certify that the hours and salary rates charged in this invoice are the actual hours and rates worked and paid to the employees listed."

Signed:

Title _____

Date _____

Invoice No. _____

3. Payment by AUTHORITY shall be due within thirty (30) calendar days after receipt of CONSULTANT's correct original invoice (except as provided in paragraph 8 of this Section B, below) in the amount due for all Services performed during the month, pursuant to this ARTICLE III. Payment for Services will represent the value of the completed Scope of Services as measured by expended costs to date.

4. After receipt of the final payment for Services under this AGREEMENT, CONSULTANT shall sign a Release and Certificate of Final Payment in the form set forth in Appendix E hereto.

5. If AUTHORITY disputes any portion of the invoiced amount, AUTHORITY may, in its sole discretion, withhold payment up to one hundred percent (100%) of the disputed amount.

6. If any disputed amount is determined by a court or arbitrator (as set forth in Article I, Sections 18 and 19) to have been wrongfully withheld, or if CONSULTANT is not paid timely paid as set forth in this Article III, Section B., paragraph 3, AUTHORITY shall pay to CONSULTANT one and one-half percent (1.5%) per month of the wrongfully withheld or untimely amount for each month that payment is wrongfully withheld or not timely paid. In any action for the collection of amount withheld in violation of this provision, the prevailing party shall be entitled to reasonable attorney's fees and costs.

7. The form of CONSULTANT's monthly invoice shall be as mutually agreed upon by CONSULTANT and AUTHORITY.

8. AUTHORITY may request reasonable documentation for certain expense items. In the case of a request for documentation, AUTHORITY shall timely pay all invoiced amounts not subject to such request. AUTHORITY shall pay all undisputed invoiced amounts for which AUTHORITY requested documentation within thirty (30) calendar days of receipt of the requested documentation.

9. The existence of a dispute shall not excuse CONSULTANT or AUTHORITY from continued full and timely performance as required by this AGREEMENT.

C. SUSPENSION OF SERVICES FOR NONPAYMENT

In the event payment for completed Services has not been made within forty-five (45) calendar days from the receipt of the invoice for any undisputed billing, CONSULTANT may, after giving AUTHORITY fifteen (15) calendar days written notice, suspend performance of all Services without penalty or liability of any nature for such suspension. Upon receipt of payment in full for services rendered, CONSULTANT shall recommence performance of the Services.

ARTICLE IV - OBLIGATIONS OF THE CONSULTANT

A. AUTHORIZATION TO PROCEED

CONSULTANT shall not commence any part of the Services until AUTHORITY directs CONSULTANT, by applicable task order, to proceed.

ARTICLE V - OBLIGATIONS OF THE AUTHORITY

A. AUTHORITY-FURNISHED DATA

AUTHORITY will provide CONSULTANT with all technical data in AUTHORITY's possession that it considers relevant to the PROJECT, including, but not limited to, previous reports, maps, surveys, borings, and all other information relating to the Services. CONSULTANT may reasonably rely upon the accuracy, timeliness, and completeness of the information provided by AUTHORITY.

B. ACCESS TO FACILITIES

AUTHORITY will make its facilities reasonably accessible to CONSULTANT as required for CONSULTANT's performance of the Services.

C. TIMELY REVIEW

AUTHORITY will examine the studies, reports, sketches, drawings, specifications, proposals, and other documents; obtain advice of an attorney, insurance counselor, accountant, auditor, and other consultants as the AUTHORITY deems appropriate; and render, in writing, decisions required of AUTHORITY in a timely manner.

D. PROMPT NOTICE

The AUTHORITY will give prompt written notice to CONSULTANT whenever AUTHORITY observes or becomes aware of any development that affects the scope or timing of CONSULTANT's Services, or any defect in the performance of CONSULTANT.

ARTICLE VI - RESERVED

ARTICLE VII - APPENDICES, SCHEDULES, AND SIGNATURES

This AGREEMENT, including its Appendices, constitutes the entire AGREEMENT, supersedes all prior written or oral understandings, and may only be changed by a written amendment executed by both parties.

The following Appendices are hereby made a part of this AGREEMENT:

Appendix A: SCOPE OF SERVICES

Appendix B: KEY PERSONNEL

Appendix C: SCHEDULE OF SERVICES

Appendix D: COMPENSATION

Appendix E: RELEASE AND CERTIFICATE OF FULL PAYMENT

IN WITNESS WHEREOF, AUTHORITY has by order caused the AGREEMENT to be subscribed by the binding authority of the AUTHORITY and CONSULTANT has caused the AGREEMENT to be subscribed on its behalf by duly authorized signees.

CONSULTANT:

[FIRM]
a [STATE of FIRM] professional services corporation

By: _____

Name: _____

Title: _____

AUTHORITY:

SAN FRANCISCO BAY AREA WATER
EMERGENCY TRANSPORTATION
AUTHORITY

By: _____

Recommended:

By: _____

Name: _____

Title: _____

Approved as to form:

Legal Counsel to Authority

**SAN FRANCISCO BAY AREA
WATER EMERGENCY TRANSPORTATION AUTHORITY**

APPENDIX A

SCOPE OF SERVICES

[PENDING CONTRACT AWARD]

**SAN FRANCISCO BAY AREA
WATER EMERGENCY TRANSPORTATION AUTHORITY**

APPENDIX B

KEY PERSONNEL

[PENDING CONTRACT AWARD]

**SAN FRANCISCO BAY AREA
WATER EMERGENCY TRANSPORTATION AUTHORITY**

APPENDIX C

SCHEDULE OF SERVICES

[PENDING CONTRACT AWARD]

**SAN FRANCISCO BAY AREA
WATER EMERGENCY TRANSPORTATION AUTHORITY**

APPENDIX D

COMPENSATION

[PENDING CONTRACT AWARD]

**SAN FRANCISCO BAY AREA
WATER EMERGENCY TRANSPORTATION AUTHORITY**

APPENDIX E

FORM OF RELEASE AND CERTIFICATE OF FINAL PAYMENT

CONSULTANT: [FIRM]

With reference to the AGREEMENT dated _____, 20__ (“AGREEMENT”), and each and every amendment thereto, between [FIRM], (“CONSULTANT”) and SAN FRANCISCO BAY AREA WATER EMERGENCY TRANSPORTATION AUTHORITY (“AUTHORITY”) for [DESCRIPTION OF SERVICES] for [NAME OF PROJECT]. CONSULTANT hereby certifies and represents that it has made full payment to all persons and entities of all costs, charges and expenses incurred by it or on its behalf for labor, services, equipment and materials supplied to CONSULTANT by such persons and entities in connection with its performance of services under said AGREEMENT.

CONSULTANT further certifies that to its best knowledge and belief, each of its subconsultants and suppliers has made full payment of all costs, charges and expenses incurred by it or on its behalf of work labor, services, materials and equipment supplied and/or used by it in connection with CONSULTANT's performance of services under said AGREEMENT.

In consideration of the receipt, which receipt is hereby acknowledged, of an aggregate amount of \$ _____ for all Services performed pursuant to the AGREEMENT, including the adjusting payment, CONSULTANT hereby unconditionally and fully releases and forever discharges AUTHORITY and its officers, employees, agents, premises and property from all claims, liens and obligations of every nature, presently known or unknown, arising out of or in connection with the performance of said AGREEMENT and all amendments thereto. CONSULTANT expressly waives all rights or benefits which it now has, or in the future may have, under the terms of Section 1542 of the Civil Code of the State of California, which provides as follows:

A general release does not extend to claims which the creditor does not know or suspect to exist in his favor at the time of executing the release, which if known to him must have materially affected his settlement with the debtor.

As additional consideration for all payments mentioned above, including the final adjusting payment, if any, CONSULTANT agrees to indemnify and hold harmless AUTHORITY from and against all costs, losses, damages, claims, causes of action, judgments and expense, including attorneys' fees, arising out of or in connection with claims against AUTHORITY which arise out of the performance of the work under the AGREEMENT and which may be asserted by CONSULTANT or any of its suppliers, subconsultants of any tier, or any of their representatives, officers, agents or employees.

Nothing contained in this Release and Certificate of Final Payment shall have any effect upon, nor be construed in any way to relieve CONSULTANT of its obligations under the provisions of the above AGREEMENT, as amended, which by their nature survive completion of the Services including, without limitation, warranties, guaranties and indemnities.

Executed this ____ day of _____, 20__.

[FIRM]

By _____

Name _____

Title _____

**REQUEST FOR QUALIFICATIONS
SAN FRANCISCO BAY AREA WATER EMERGENCY TRANSPORTATION AUTHORITY
DESIGN AND ENGINEERING SERVICES FOR NEW FERRY TERMINALS**

-END OF ATTACHMENT D-

-END OF RFQ ATTACHMENTS-