

**SOLANO Propulsion Train Subcomponent  
Replacement Project & Upgrades  
(Project 160005)  
RFP 17-021**

Request for Proposals  
and Proposal Notices

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**General Provisions**

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31 July 2017

SAN FRANCISCO BAY AREA

**WATER EMERGENCY  
TRANSPORTATION AUTHORITY**

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General Provisions Attachment 1: Design-Build and Deliver Contract (Form WETA-10)

General Provisions Attachment 2: Standard Terms and Conditions

## SECTION 101 DEFINITIONS AND TERMS

### 101-1.01 GENERAL

5 Wherever in the Contract Documents the following abbreviations and terms, or pronouns in place of them, are used, the intent and meaning shall be interpreted as set forth below.

Terms not defined below shall have their ordinary accepted meanings within the context in which they are used. Words which have a well-known technical or trade meaning when used to describe work or materials shall be interpreted in accordance with such meaning. However, in the event of conflict between  
10 a meaning conferred by a usage of trade or ordinary understanding, and an interpretation of a term by any public agency charged with interpreting a term for purposes of any law or regulation, the Water Emergency Transportation Authority's interpretation shall control.

The titles and headings of the sections, subsections and subparts herein are intended for convenience of reference and shall not be considered as having bearing on their interpretation. Working titles that have a  
15 masculine gender, such as "workman" and "flagman" and the pronouns and adjectives "he," "his," and "him" are utilized in the Contract Documents for the sake of brevity, and are intended to refer to persons of either sex.

When a publication is referred to in the Contract, it shall refer to the most recent date of issue prior to the date of solicitation for the Project unless the issue as of a specific date or year is specified.

20 In order to avoid cumbersome and confusing repetition of expressions in the Contract Documents, it is provided that whenever anything is, or is to be, done, if, as, or, when, or where "contemplated, required, determined, directed, specified, authorized, ordered, given, designated, indicated, considered necessary, permitted, reserved, suspended, established, approved, disapproved, acceptable, unacceptable, suitable, unsuitable, accepted, satisfactory, unsatisfactory, sufficient, insufficient, rejected, or condemned," it shall  
25 be understood as if the expression were followed by the words "by the Owner's Representative" or "to the Owner's Representative."

### 101-1.02 ABBREVIATIONS

Wherever the following abbreviations are used in the Contract Documents, they are to be construed the same as the respective expression represented:

30	ABS	American Bureau of Shipping
	ADA	Americans with Disabilities Act
	AISI	American Iron & Steel Institute
	AMCA	Air Movement and Control Association
	ANSI	American National Standard Institute
35	ASHRAE	American Society of Heating, Refrigeration and Air Conditioning Engineers
	ASME	American Society of Mechanical Engineers
	ASTM	American Society for Testing & Materials

	AWS	American Welding Society
	BAFO	Best and Final Offer
40	CFR	Code of Federal Regulations
	COI	USCG Certificate of Inspection
	CPCC	California Public Contract Code
	DBA	Doing Business As
	DBE	Disadvantaged Business Enterprise
45	DNV	DNV-GL
	DOT	United States Department of Transportation
	DR	Discrepancy Report
	FCC	Federal Communication Commission
	FTA	Federal Transit Administration
50	IEEE	Institute of Electrical and Electronic Engineers
	IMO	International Maritime Organization (also IMCO)
	ISO	International Standards Organization
	ITO	Instructions to Offerers
	LOC	Letter of Credit
55	MSC	Marine Safety Center, USCG Headquarters
	MSS	Manufacturers' Standardization Society of the Valves and Fittings Industry
	NEC	National Electrical Code
	NEMA	National Electrical Manufacturers' Association
	NFPA	National Fire Protection Agency
60	NMEA	National Marine Electrical Association
	NTP	Notice to Proceed
	NVIC	Navigation and Vessel Inspection Circular, USCG
	ODR	Owner's Designated Representative
	OFE	Owner Furnished Equipment
65	OEM	Original Equipment Manufacturer
	OSHA	Occupational Safety and Health Administration
	PEC	Proposal Evaluation Committee
	POF	Passenger Only Ferry
	QA	Quality Assurance
70	ROM	Rough Order of Magnitude
	SSPC	Steel Structures Painting Council
	UL	Underwriters Laboratory
	USC	United States Code

	USCG/MSC	United States Coast Guard/Marine Safety Center
75	USPHS	United States Public Health Service
	WETA	San Francisco Bay Area Water Emergency Transportation Authority

References to “§” numbers in the General Provisions shall refer to the sections or subsections of the General Provisions unless otherwise noted.

## 80 **101-1.03 DEFINITIONS**

As used in the Contract Documents, the following terms, whether lower-cased or capitalized, shall have the following meanings unless otherwise specified.

85 **Acceptance.** The written acceptance by WETA of the Vessel from the Contractor, with attendant transfer of custody of the Vessel from the Contractor to WETA. See Subsection 105-1.12. Also referred to as Delivery Acceptance or Operational Acceptance.

**Acceptance Survey.** The survey required prior written acceptance by WETA of the Vessel from the Contractor, with attendant transfer of custody of the Vessel from the Contractor to WETA. See Subsection 105-1.12 and Owner’s Requirements § 10.10.

90 **Acceptance Trials.** Prerequisite for the Vessel prior to Owner taking Delivery of Vessel. See Subsection 105-1.11 and Owner’s Requirements § 10.9.

**Addendum/Addenda.** Clarifications, corrections or changes to the Contract Documents issued graphically or in writing by WETA after the advertisement.

**Advertisement.** The public announcement, as required by law, inviting Proposals for Work to be performed or materials to be furnished.

95 **Approval.** See Subsection 105-1.02

**Approval of Contract.** The execution of the required Contract Documents by both parties.

**At the Contractor’s Expense.** “At the Contractor’s expense” means that the Contractor shall receive no amounts in addition to the Contract Price and shall not be entitled to adjustment of the Contract Price.

**Authorized Representative.** See Owner’s Representative.

100 **Award.** The acceptance by WETA of the successful Proposal. The Award is effective upon action being taken by the WETA Board of Directors approving award of the Contract.

**Bid.** Although the term “bid” may appear for convenience in some Contract provisions, it is to be understood that this is not a conventional procurement where evaluation to Award the Contract is based solely on price. Where the term is used it shall be considered synonymous with “Proposal.”

105 **Bid Bond** The security furnished with a Proposal to guarantee that the Offerer shall enter into the Contract if his Proposal is accepted. Also known as Proposal Guarantee.



**Bidder.** Although the term “bidder” may appear for convenience in some Contract provisions, it is to be understood that this is not a conventional procurement where evaluation to Award the Contract is based solely on price. Where the term is used it shall be considered synonymous with “Offerer” or “Proposer.”

110 **Board.** The Board of Directors of WETA.

**Builder.** The Contractor.

**Builder’s Trials.** On-water trials conducted by Contractor in order to establish readiness for Acceptance Trials for the Vessel. See Owner’s Requirements §10.8.

**Calendar Day.** Every day shown on the calendar beginning and ending at midnight.

115 **Change Order.** A written order by WETA covering changes to the Contract, within its general scope, and establishing the basis of payment and time adjustment, if any, for the Work affected. For further definition, see Subsection 104-1.02.

**Classification Society(ies).** Ship classification societies such as The American Bureau of Shipping, Lloyd’s Register of Shipping, and DNV-GL.

120 **Complete Technical Proposal.** The final Technical Proposal to be submitted with the Price Proposal.

**Composite Straight Time Hourly Rate.** The current hourly rate established, based on direct salary cost, fringe benefits, general overhead and profits. Fringe benefits include, but are not limited to, FICA, employment security, life insurance, medical and dental insurance, and pension and profit sharing.

**Construction Time.** See Subsection 108-1.05.

125 **Contingent Sum Pay Item.** When the price schedule contains a Contingent Sum Pay Item, the Work covered shall be performed upon written order of the Owner’s Representative and payment shall be made as provided for in the order.

130 **Contract.** The written agreement between WETA and the Contractor setting forth the obligations of the parties there under, including, but not limited to, the performance of the Work, furnishing of labor, provision of materials, and the basis of payment. For further definition, see Subsection 104-1.01.

**Contract Award Schedule.** See Appendix A

**Contract Bond[s].** The Bidder’s Bond, Performance Bond, Payment Bond and Warranty Bond or other form of security acceptable to WETA.

135 **Contract Completion Date.** The date on which all conditions of the Contract are satisfied, including expiration of the guarantee/warranty period. See also Final Acceptance.

140 **Contract Design Package.** A term used to describe all deliverables, taken together, that are required or otherwise scheduled to be submitted by the Contractor to WETA with its Proposal as per the Instructions to Offerers. Contract Design Package deliverables include all documentation (reports, drawings, technical specifications, analyses, model test results, calculations, information, etc.), material samples and other information required by the Contract and submitted with the Proposal per the Instructions to Offerers.

**Contract Documents.** The Contract Documents include Addenda and Change Orders, Supplemental Agreements, the Design-Build and Deliver Contract and Contract Forms, the General Provisions and any Special Provisions, the Owner’s Requirements, Instructions to Offerers and Appendices thereto, Technical Specifications, Drawings, and the Contract Design Package.

145 **Contract Drawings.** Contract Plans. Those drawings or plans developed by the Contractor and provided with the Contractor's Proposal. Such drawings illustrate some, but not necessarily all, features and arrangements of the POF to be implemented by the Contractor. Any departure from these drawings, and every revision thereof, must be specifically approved in writing by WETA.

150 **Contract Guidance Drawings.** Those drawings or plans developed by the Owner. Such drawings illustrate some, but not necessarily all, features and arrangements of the POF to be implemented by the Contractor. Any departure from these drawings, and every revision thereof, must be specifically approved in writing by WETA. The contract guidance drawings have been submitted to the USCG Marine Safety Center for its review. Review comments when received will be incorporated as revisions to the plans affected.

155 **Contract Item (Pay Item).** A specially described item of Work for which a price is provided in the Contract.

**Contract Performance Allowance.** That part of the Contract Price allocated to the final execution and fulfillment of the warranty period and performance obligations of the Contract.

160 **Contract Plans.** Those plans developed by the Contractor and provided with the Contractor's Proposal. Such plans illustrate some, but not necessarily all, features and arrangements of the POF to be implemented by the Contractor. Any departure from these plans, and every revision thereof, must be specifically approved in writing by WETA.

**Contract Price.** As per form WETA FORM 8 Price Proposal including revisions as submitted prior to Contract execution.

165 **Contract Time.** See § 108-1.05A.

**Contracting Officer.** The WETA officer with authority to execute the Contract.

**Contractor or Design Builder.** The individual, partnership, firm, corporation, or any acceptable combination thereof, contracting with WETA for performance of prescribed Work, acting directly or through Subcontractors, agents and employees.

170 **Contractor/Supplier/Vendor.** Contractors, suppliers and vendors contracted for directly by WETA to perform other and additional Work on the Vessel once Contractor has billed 80% of the Contract Price.

**Critical Path.** Line on Project Schedule which drives the Project. Resources and manpower are allocated by the Contractor for specific items listed on the critical path portion of the Project Schedule in order to keep the Project moving forward for on time delivery of the Vessel.

175 **Days.** Unless otherwise noted, any reference to "days" shall be interpreted as "calendar days."

**Defect.** Another term for deficiency.

**Deficiency.** Any characteristic of the Work that is not in accordance with the requirements of the Contract, or failure of the Vessel to operate or perform in accordance with the requirements of the Contract.

180 **Delivery.** The physical delivery of the Vessel by the OWNER'S Operator to the Contractor's facility so that the work can be undertaken.

**Design.** The graphic depictions, specifications, calculations, and studies necessary to plan and construct all forms and functions of the subject Vessel. Design includes, but is not limited to, all necessary engineering.

185 **Design Builder.** See Contractor or Design Builder.

**Detail Design:** The primary phases of engineering and detail design include Conceptual, Basic, and Detail Engineering. The Conceptual and Basic phases culminate in the Contract Design Package submitted with the Proposers Proposal. Detail Design commences after the Letter of Intent to Award is released.

190 **Disadvantaged Business Enterprise.** A certified disadvantaged business enterprise.

**Discrepancy Report.** Report within a monthly QA status report noting all discrepancies and their disposition.

**Directive.** A written communication to the Contractor from the Owner's Representative enforcing or interpreting a Contract requirement or ordering commencement or suspension of an item of Work.

195 **Dispose.** Scrap or throw away off the Vessel, in a manner conforming to applicable law, as unwanted material.

**Dock Trials.** Verification that equipment and systems perform satisfactory and establish readiness for Builder's Trials for the Vessel. See Owner's Requirements § 10.7.

**Equal Employment Opportunity Officer.** See subsection 108-1.03.

200 **Equipment.** All machinery together with the necessary supplies for upkeep and maintenance, and also tools and any apparatus necessary for the proper construction and acceptable completion of the Work.

**Extra Work.** An item of Work not provided for in the Contract as Awarded but found essential by the Owner's Representative for the satisfactory completion of the Contract within its intended scope.

**Final Acceptance.** See Subsection 105-1.13.

205 **Final Payment.** Payment to Contractor following Acceptance. See Subsection 105-.13.

**Final Price Proposal.** Contract Price as per WETA FORM 8.

**Fit.** Item installed by the Contractor in space allocated and/or templated from the Vessel.

**Furnish.** To supply or produce and deliver to the construction site and to unload and unpack ready for assembly, installation, testing, and start-up.

210 **General Provisions.** General Provisions Sections 101 – 110, including attachments, which contain contractual language and guidance for the Vessel construction Contract.

215 **Good Shipbuilding Practice.** The term "good shipbuilding practice" refers to those soundly conceived and engineered details, plans, and practices which have proven to be effective and reliable in the maritime industry for a seaworthy Vessel of the type ordered under this Contract, which shall meet the details and performance requirements of the Contract, and/or which are required to obtain and/or maintain USCG Code certifications or Classification Society certifications. However, approval by USCG does not imply acceptance by WETA, nor does it necessarily mean "good shipbuilding practice."

220 **Guarantee Survey.** Survey to be conducted at end of Guarantee/Warranty Period and prior to Final Acceptance for the purpose of determining remaining deficiencies to be corrected in compliance with requirements of the guarantee.

**Guarantee/Warranty Period.** The period as defined in the Contract during which the Contractor, supplier, manufacturer or other person or entity providing the warranty shall be obligated to perform warranty repairs.

**Inspector.** WETA authorized representative assigned to make inspections of Contract performance.

225 **Install.** To make ready on board the Vessel for WETA to use, including assembly, erection, placing, anchoring, applying, shaping to dimension, finishing, curing, and cleaning.

**Installation Drawings.** As-built drawings.

230 **Machinery.** All electrical, mechanical, hydraulic, or air or gas powered mechanisms on the Vessel, with or without moving parts, which convert or use energy to perform any function or convey any information, sound, image or control.

**Major Participants.** See Appendix B, Step 1 Technical Proposal Requirements

**Management Reviews.** Reviews conducted by Contractor for Owner at least monthly, updating the status of the Project. See Subsection 102-1.02.

**Manager, Operations.** WETA's managerial staff position of Manager, Marine Operations.

235 **Material.** All physical substances, components, or instrumentalities of whatever composition necessary to fully construct the subject Vessel, whether or not incorporated into the final form of the Vessel.

**Minimum Requirements.** The requirements of WETA in the Owner's Requirements and the Contract.

**M/V SOLANO.** The WETA ferry vessel M/V SOLANO, Official Number 1155022.

240 **Notice of Intent to Award.** The written notice by WETA announcing the apparent successful Offerer and establishing WETA's intent to Award and to execute the Contract when all required conditions are met.

**Notice of Termination for Convenience.** Notice given by Owner's Representative exercising Owner's right to terminate the Contract in whole or part without default by the Contractor. See Section 108-1.08.

**Notice to Proceed.** Written notice to the Contractor to begin the Work and establishing the date on which the count of time begins.

245 **Offerer.** An individual, firm, corporation or other legal entity, or any acceptable combination thereof, or joint venture submitting a Proposal for the advertised Work.

**Operational Acceptance Survey.** Prerequisite survey for the Vessel prior to departing from Contractor's facilities to Owner's location on the San Francisco Bay.

**Operator.** The firm under contract to WETA to operate WETA's vessels and provide the ferry services.

250 **Or Equal (or equivalent).** An item of material approved in accordance with Subsection 106-1.07 for substitution in place of a brand name item specified in the Owner's Requirements, Technical Specifications, and/or Contractor's Proposal drawings.

255 **Outfitting.** All fittings joinerwork, cabinetry, storage bins, seating, floor coverings, insulation, systems, spare parts, tools, lifesaving appliance, etc., either fixed or movable, that do not convert or use energy, and are necessary to complete the POF under this Contract.

**Owner.** The San Francisco Bay Area Water Emergency Transportation Authority (WETA).

**Owner Furnished Equipment.** Equipment furnished by Owner.

260 **Owner's Designated Representative (ODR).** Except where WETA unambiguously delegates representation to a specific person or entity, which delegation may be limited in scope, in a writing that is addressed to and conveyed to the Contractor by WETA, reference to the Owner's Representative shall mean WETA's Authorized Representative.

265 **Owner's (or Owner) Requirements.** The foreshortened title of WETA-furnished "Owner's Requirements for the Design and Construction of a Passenger Only Ferry." This document delineates minimum functional, performance, and technical requirements of the Work, and separately priced, optional items. The Owner's Requirements shall be provided to qualified marine repair firms for development of the Contract Design Package.

**Payment Bond or LOC.** The security furnished by the Contractor and his surety to guarantee payment of the debts covered by the security. The Payment Bond or LOC may be in the form of a bond or letter of credit.

270 **Performance Bond or LOC.** The security furnished by the Contractor and his surety to guarantee performance and completion of the Work in accordance with the Contract. The Payment Bond or LOC may be in the form of a bond or letter of credit.

275 **Plans or Drawings.** The plans, drawings and supplemental drawings or reproductions thereof, which show the location, character, dimensions, and details of the Work to be done. "Plans" or "drawings" are developed by the Contractor.

**Preliminary Schedule.** See Appendix B, Technical Proposal Requirements.

**Price Proposal.** Offerer's Price Proposal.

**Progress Estimate.** The Contractor's periodic itemized estimate of progress for actual Work completed, which shall be the basis for progress payments.

280 **Progress Payment.** Payments by Owner of expenses and labor of Contractor and Subcontractors, vendors and others based on satisfactory progress of the Work.

**Project.** The Refurbishment of the Vessel SOLANO, together with all appurtenances, the design to be provided therefore, and construction to be performed thereon under the Contract.

**Project Manager.** See Superintendent/Project Manager.

285 **Project Schedule.** The Contractor-produced and WETA-approved cost and resource loaded schedule for the entire Project inclusive of the original baseline schedule and all approved updates. All other schedules for the Project are subdivisions of the Project Schedule. The Project Schedule is the Contractor's committed plan to complete all Work within the Contract Time. The completed Project Schedule shall define the operations required to bring the entire Work to final acceptance by the Contract  
290 Completion Date.

**Proposal.** The offer of a prospective Contractor (Offerer), on the prescribed form, to perform and complete the Work at the prices quoted.

**Proposal Documents.** All documentary information generated in preparing the Technical and Price Proposals for the Project.

295 **Proposal Evaluation Committee.** WETA representative(s) and Construction Management Services Contractor representatives(s) designated to review the Technical and Price Proposals.

**Proposal Guaranty (Guarantee).** The security furnished with a Proposal to guarantee that the Offerer shall enter into a contract if its Proposal is accepted by WETA. Also referred to as the Bid Bond.

300 **Provide.** When used with reference to the Contractor's duty, "provide" means to design (see definition), to purchase, to manufacture, to produce, as appropriate, and to install in an acceptable and satisfactory working manner, and to supply all materials, equipment, tools and labor to perform specified Work.

**Quality Assurance.** A program that assures that all aspects of design, construction and completion of the Work comply with the requirements of the Contract.

305 **Redelivery.** The physical act of sailing the vessel from the Contractor's facility back to WETA's operating facilities in San Francisco Bay.

**Refurbishment or Refurbish.** Means the complete repair and reconstruction of the Vessel SOLANO in accordance with the Owner's Requirements and the other Contract Documents.

310 **Regulatory Body.** Any international, federal, state, local or other governmental agency, organization, or convention having regulatory jurisdiction over any element of the contracted Work. For purposes of this Contract, the American Bureau of Shipping or other Classification Society and various organizations which promulgate standards which are incorporated by reference in the Contract shall also be considered Regulatory Bodies.

**RFP Documents.** Has the meaning set forth in the Technical Proposal Form

315 **Release of Claims Certification.** Release provided by Contractor with each Progress Payment, releasing WETA from all claims (including Subcontractor claims) for additional Contract Time or Contract Price.

**Request for Proposals (RFP).** The written invitation requesting Proposals for all materials and Work encompassed in the Project, identifying the process to be followed, and stating requirements for Proposers and for the submittal of Proposals.

320 **Schedule of Values.** An itemized breakdown of Contract costs, with summary activities corresponding to the summary activities in the Project Schedule. See Form WETA-26.

**Special Provisions.** Additions and revisions to the General Provisions. No special provisions exist with respect to the RFP, although special provisions may be added by Addendum, Change Order or by Supplemental Agreement.

325 **Specifications.** "Specifications" is a general term applied to all directions, provisions, and requirements pertaining to performance of the Work. Where the term "Technical Specifications" is used, it shall mean the particular set of specifications required to be developed by the Contractor and submitted with its Proposal in accordance with the Owner's Requirements and other provisions of the Contract. The revised Owner's Requirements included in the documents at Contract Award are the Specifications.

330 **Structure.** All material forming the hull, superstructure, deckhouses, fixed masts, integral tanks and foundations.

**Subcontractor.** An individual, partnership, firm, corporation, or other legal entity, or any acceptable combination thereof to which the Contractor subcontracts any part of the Work.

335 **Superintendent/Project Manager.** The Contractor's authorized representative in responsible charge of the Work, who shall receive and execute orders and directions of the Owner's Representative. The Contractor shall at all times have a Superintendent, designated in writing by the Contractor to WETA, or person acting as a Superintendent in the absence of a regular Superintendent, which person shall be available during each working day to communicate with the Owner's Representative.

340 **Supplemental Agreement.** A negotiated written agreement between the Contractor and WETA authorizing the performance of Work beyond the general scope of the Contract, or any change in terms of the Contract. May also be referred to as an amendment to the Contract. See Subsection 104-1.02.

**Supplier/Vendor.** An individual or organization furnishing supplies, materials, machinery or services to the Contractor or any Subcontractor necessary to accomplish Work ordered under the Contract.

345 **Surety.** A corporation, partnership or individual, other than the Contractor, issuing a bond, LOC or providing Warranty Insurance furnished by the Contractor as required herein.

**Technical Proposal or Complete Technical Proposal.** The Technical Proposal consists of all documents required to be submitted pursuant to Section 5 of the Instructions to Offerers. An initial Technical Proposal and an updated or Complete Technical Proposal may be required.

350 **Ton.** Where the term "ton" is used without further definition as to "short" or "long" ton, it shall be construed to mean the "long ton" unit of weight in the U.S. Customary System equal to 2,240 pounds.

**Unbalanced Price Proposal.** Price Proposal that does not include a reasonable proportionate allocation of indirect costs and profit to each item in the Price Proposal.

**Vessel.** Ferry M/V SOLANO.

355 **Vessel Documentation.** All documents required by law, regulation or classification to be onboard in order to operate in its intended service including any additional documentation required to be onboard as described in the Owner's Requirements.

360 **Waiver.** A dispensation, obtained from a Regulatory Body, which exempts or releases the Contractor from its obligation to conform to the standard written requirements of the Regulatory Body. The scope of the term "waiver" does not prohibit acceptance of Regulatory Body-approved alternative or equivalency compliance methods allowed by the rules or regulations enforced by the Regulatory Body. No waivers shall be permitted unless agreed to by the Owner.

**Warranty LOC, Bond or Insurance.** Per form WETA FORM-13. The security furnished by the Contractor and his surety to guarantee Vessel and Vessel components during Warranty Period as defined in the Contract and guarantee/warranty repairs of the Work in accordance with the Contract.

365 **Water Emergency Transportation Authority.** The San Francisco Bay Water Emergency Transportation Authority (Owner or WETA).

**WETA Inspector.** WETA's Authorized Representative or any specific person or entity to whom WETA unambiguously delegates representation to in a writing that is addressed to and conveyed to the Contractor by WETA and which delegation may be limited in scope.

370 **Work.** Work shall mean the furnishing of all design (including engineering), labor, materials, equipment, and other incidentals necessary or convenient to the successful completion of the Project and the carrying out of all the duties and obligations imposed by the Contract.

**Work Order.** A written order issued by the Owner's Representative effecting a minor change in the Work not involving an adjustment to the Contract Price or an extension of the Contract Time.



## SECTION 102 STATUS REVIEWS

### 102-1.01 MANAGEMENT REVIEW

- 5 The Contractor shall present Management Reviews to the Owner. The reviews shall be scheduled at least weekly in or near the site of the Work and shall be coordinated so that they are held concurrently with the progress meetings. The first review is to be held within thirty (30) calendar days following Notice to Proceed. These reviews shall, at a minimum, address the following topics:
- 10 A. Status of the design and outstanding design issues. Actions taken to resolve issues and schedules for same shall be included. Owner-responsible actions shall also be included that affect the Contractor.
- B. Material status, certification, delivery schedule and other outstanding issues. Actions taken to resolve issues and schedules for same shall be included. Owner-responsible actions that affect the Contractor shall also be included.
- 15 C. Construction schedule, issues and status. Actions taken to resolve any issues shall be addressed. Owner-responsible actions that affect the Contractor shall be included.
- D. Regulatory Body approval and certification; status and outstanding issues; actions underway to resolve any outstanding issue(s).
- E. Quality Assurance.
- 20 F. Schedule of Values and payment.
- G. Change Order status and any contractual issues.

The Contractor shall address any Owner actions that are requested or required to resolve any issue and/or support the Contractor's efforts.

- 25 The Contractor shall prepare an agenda and submit the agenda to the Owner for review, input and comment. The Owner may comment and provide input for the agenda. Owner's input shall be provided within one week of receipt of the proposed agenda from the Contractor. The Owner may also request additional topics for the Management Review and the Contractor shall address those topics as part of the Management Review. Minutes of the Management Review meetings shall be prepared by the Contractor and signed by the Owner and the Contractor.

## SECTION 103 EXECUTION OF CONTRACT

### 103-1.01 PERFORMANCE, PAYMENT AND WARRANTY BONDS OR LOCS

- 5 The Contractor shall furnish Performance, Payment and Warranty Bonds, or letters of credit, or warranty insurance, if acceptable to WETA, for the Project on forms provided by WETA. The Performance and Payment Bonds shall be furnished before a Notice to Proceed shall be issued. The Warranty Bond or other warranty security shall be furnished upon Acceptance of the Vessel and release of the Performance Bond. WETA may, at its sole discretion, refuse to execute the Contract, or if executed, terminate the
- 10 Contract for default if the Contractor fails to submit the required bonds or other performance and payment guarantees in a timely manner. WETA may require additional performance protection when a Contract Price is increased by 10 percent. The increase in protection shall generally equal 25 percent of the increase in Contract Price. WETA may secure additional protection by directing the Contractor to increase the penal amount of the existing bond or to obtain an additional bond.
- 15 The surety of each bond must be listed under the provisions of the California Insurance Code Section 12070, as an admitted insurer having a Certificate of Authority to transact business in California.

Bonds: The amount of the Performance Bond shall be 25% of the Contract Price. The amount of the Payment Bond shall be 10% of the Contract Price. Thirty (30) calendar days after Delivery Acceptance by WETA of Refurbishment of Ferry Vessel SOLANO, the Performance Bond shall be released, less any

20 offsets for corrections of any deficiencies that have been identified. The Payment Bond and security assets for Refurbishment of Ferry Vessel SOLANO shall be released when all liens and obligations for Refurbishment of Ferry Vessel SOLANO are satisfied and no earlier than 30 calendar days after Delivery Acceptance of Refurbishment of Ferry Vessel SOLANO. A Warranty Bond for Refurbishment of Ferry Vessel SOLANO in the amount of 10% of the Contract Price shall be in effect from Delivery Acceptance

25 until all guarantee and warranty obligations under this Contract shall have been satisfied or Final Payment, whichever is later.

Letter of Credit: In the alternative, the Contractor may submit as security an irrevocable standby letter of credit from a United States bank acceptable to WETA. The form and terms and conditions of the irrevocable standby letter of credit must be acceptable to WETA, and must include terms usual and

30 customary for instruments when used as a substitute for bonds. The irrevocable standby letter of credit must provide the same protections to WETA as the bond for which it is substituted.

WETA may notify the surety of any potential default or liability.

If the surety on any bond or LOC furnished in connection with this Contract is declared bankrupt or becomes insolvent or its right to do business is terminated in any state where any part of the project is

35 located or it ceases to meet the requirements above or otherwise becomes unacceptable to WETA, or if any such surety fails to furnish reports as to his financial condition as requested by WETA, the Contractor shall within thirty days thereafter substitute another bond or LOC and surety, both of which must be acceptable to WETA. An individual surety may be replaced by a corporate surety during the course of the performance of the Project. WETA may in its sole discretion allow surety in the form of a foreign institution, minimum A or equivalent rating by a recognized rating agency or similar entity, provided that

40 that foreign institution provides surety in a form acceptable to WETA. If the surety desires to dispose of the collateral posted, WETA may, at its option, accept substitute collateral as a condition to release of the original collateral.

**103-1.02 ORAL STATEMENTS**

45 No oral statements of any person shall in any manner or degree amend or modify or otherwise affect the terms of this Contract.

**103-1.03 MATERIAL GUARANTEE**

The Contractor shall guarantee that the materials shall conform to the contract specifications set forth in the Contract Documents.

50 **103-1.04 GOVERNING LAW; VENUE**

The parties hereby agree that:

- (a) This Contract was made and entered into in California and requires the Vessel to be Redelivered in California.
- 55 (b) The laws of the State of California shall govern the resolution of any issue arising in connection with this Contract, including all questions concerning the validity of this Contract; the capacity of the parties to enter therein; any modification or amendment thereto; and the rights and obligations of the parties hereunder.
- (c) Venue for any action relating to this Contract shall be in the Superior Court of the State of California for the County of San Francisco.

## SECTION 104 SCOPE OF WORK

### 104-1.01 SCOPE AND INTENT OF CONTRACT

5 This Contract includes all items contained or referenced in the Request for Proposals as well as the Contractor's Price Proposal as revised during negotiations in conjunction with Contract Award, the Notice to Proceed, all statutes, rules, regulations, codes, and/or standards incorporated by reference and all Addenda, Attachments, Work Orders, Change Orders, and Supplemental Agreements that are required to complete the design and construction of the Work in an acceptable manner, all of which constitute one  
10 instrument.

The Contractor is to provide the design, construction and completion of every detail of the Work described and reasonably inferred from the Contract Documents for a complete and functional USCG certified Sub-Chapter K Small Passenger Vessel. The Contractor shall furnish all facilities, labor, materials, equipment, tools, services, power, transportation, and supplies required to complete the Work in accordance with the  
15 terms of the Contract.

This is a design-and-build Contract and, as such, engineering details, design efforts, and the identification and selection of materials needed to carry out all Work on the Vessel, which conforms in every respect to the Contract Documents, are the sole responsibility of the Contractor. The Contract Guidance Documents and drawings will be submitted to the USCG Marine Safety Center for its review. Review comments when  
20 received will be incorporated as revisions to the plans affected. After Contract award, it is the responsibility of the Contractor to submit all relevant drawings to USCG/MSC, to address comments received from USCG/MSC, and to obtain drawing approvals from USCG/MSC.

WETA shall retain the right to make use of the Contract Drawings for the purpose of Vessel repairs and modifications only.

25 The requirements cited in Regulatory Body publications must be met in order to obtain the Regulatory Body approvals and certifications required by the Contract. These requirements are not in general repeated in the Contract. The Contract does not address peculiar requirements that may be imposed by the Regulatory bodies relative to the design and construction details and methods selected by the Contractor for this particular Vessel, though conformance with all such requirements is required within the  
30 scope of this Contract.

The Contractor is required to design and develop a Contract Design Package in accordance with the requirements of the Contract.

35 The Contractor agrees and warrants, by entering into this Contract, that every aspect of the Work associated with the design and construction of this Work, including, but not limited to, attendant detail design, construction, materials and deliverables, shall conform in every material respect to the Contract Design Package, as amended pursuant to this Contract, and to applicable Regulatory requirements, and that any deficiency shall be corrected in a timely fashion at the Contractor's expense.

40 The Contractor agrees and warrants that any information relied upon by the Contractor, including, but not limited to, information originating or received from WETA and/or consultants, agents or representatives of WETA, has been independently confirmed by the Contractor as both accurate and appropriate for whatever use the Contractor makes of the information. Receipt by the Contractor of information from any source shall not relieve the Contractor of the duty of furnishing complete design and construction

conforming in every respect to the requirements of the General Provisions, Owner's Requirements or any other pertinent Contract document.

45 The Contractor is required to notify WETA within two calendar days of any material deviations in the Contract Design Package from the Owner's Requirements on a form that is acceptable to WETA. The scope of the Work associated with the term "design," as used throughout the Contract documents, shall be broadly interpreted to be inclusive of the associated engineering, calculations, studies, and other related Work necessary to affect a thorough design. The scope of the term "Material" shall be broadly  
50 interpreted to include the Vessel's "Equipment," except where a clear distinction is made between "Material" and "Equipment" in a particular clause, or group of clauses, for purposes of clarity of intent. Refer to § 101-1.03 for general definitions.

Work and Materials shall not be deemed to have been called for under the Contract simply because they were included in a submission for a progress payment or were included in a progress payment.

## 55 **104-1.02 CHANGE ORDERS**

There are three types of changes in scope of Work; WETA proposed changes, Contractor proposed changes, and Regulatory Body driven changes. Changes can increase, decrease or have no impact to the Contract Price and delivery date. All Changes Orders shall be recorded on a Contractor Change Order form. Payment terms shall be according to the terms negotiated on each Change Order form. The  
60 composite straight time hourly rate and composite overtime hourly rates provided on the Price Proposal shall be utilized to price all negotiated Change Orders throughout the performance of the Project.

### WETA Proposed Change Order

WETA reserves the right to make, at any time, changes in the requirements, specifications, drawings, character, or quantities of Work as may be necessary or desirable for completion of the Project. Such  
65 increases or decreases and alterations shall not invalidate the Contract nor release the surety, and the Contractor agrees to accept and perform the Work as altered, under the conditions stated in the Change Order procedures.

WETA shall state in writing the desired addition, Extra Work or change to the Vessel. Within seven  
70 Calendar Days after receipt of the written proposed order, Contractor shall furnish a written quoted price, or a ROM if actual price cannot be established in the time period provided, for the change and shall advise of any costs, delay, disruption or performance impact. Contractor is under no obligation to begin Work on a proposed Change Order until the actual Change Order is signed by WETA following Contractors' cost/impact advice. Contract Work on the Vessel shall not be stopped or altered until the final Change Order has been executed. In the event a proposed change is not approved within fourteen  
75 calendar days of submittal by Contractor to WETA, or other time as specified in the Change Order, Contractor shall proceed as though the Change Order has been denied. If the Change Order must be resubmitted, costs, delay, disruption and performance impact shall be recalculated accordingly.

This section shall not apply to determine amounts of money or time due to resolve requests for compensation or extension of Contract Time initiated pursuant to the provisions of § 105-1.14, Claims for  
80 Adjustments and Disputes.

### Contractor Proposed Change Order

Contractor may propose alterations or modifications on the detail specified in the Owner's Requirements. Such proposals shall be clearly set forth in writing with sketches as appropriate, together with a written quoted price or ROM and approved in writing by WETA before Contractor makes any such alterations or  
85 modifications. WETA is under no obligation to accept such proposals, except when specified under

regulatory body-driven changes. In the event a proposed Change Order is not approved with fourteen calendar days of submittal, or any lesser time specified in the proposed Change Order, the proposed Change Order shall be deemed rejected and the Contractor shall proceed as though the Change Order has been denied.

90 Regulatory Driven Change Order

Any and all Work required to meet changes in regulatory requirements that are different than as called out in the Contract Documents shall be the subject of a Regulatory Body Driven Change Order. Where substitutions or changes are required by regulatory body action, WETA shall not unreasonably withhold consent as long as Contractor attempts in good faith to minimize results found undesirable by WETA.

- 95 The Contractor shall certify that the data submitted are, to his best knowledge and belief, accurate, complete, and current as of the time of its submission and that such data shall continue to be accurate and complete during the performance of the Work covered under the proposed change document.

100 The composite straight time hourly rate and composite overtime hourly rates provided on the Price Proposal shall be utilized to price all negotiated Change Orders throughout the performance of the Project. These rates shall not control determinations of entitlement or quantum regarding disputes resolved under § 105-1.14.

Delay and disruption cost and time for Work on the Critical Path shall be calculated on the Contractor Change Order form and Project Schedule.

**104-1.03 FINAL CLEAN-UP**

105 Before the Operational Acceptance Survey (see § 105-1.11), all rubbish, excess materials, temporary structures, and Contractor's equipment shall be removed from the Vessel and, as applicable to the item, disposed of. All interior and exterior surfaces of the Vessel shall be washed, dusted, polished, vacuumed, and/or disinfected, as applicable to the surface, so as to be thoroughly clean, new, undamaged, and fit for customer service.

110 Immediately prior to the Delivery Acceptance Survey (see §105-1.12) of Vessel, all surfaces that require re-cleaning as a result of use during the Acceptance Trials or other cause shall be washed, dusted, polished, vacuumed, and/or disinfected, as applicable to the surface, so as to be thoroughly clean, new, undamaged, and fit for customer service, throughout the Vessel.

## SECTION 105 CONTROL OF WORK

### 105-1.01 AUTHORITY OF THE ODR OR OWNER

5 The Owner's Designated Representative shall decide all questions that may arise as to the quality and acceptability of materials furnished and Work performed, and as to the rate of progress of the Work; all questions which may arise as to the interpretation of the Contract Documents; and all questions as to the acceptable fulfillment of the Contract on the part of the Contractor.

10 The ODR's inspection during work on the Vessel shall not relieve Contractor of its obligation to perform all Work in full accordance with the Contract. The ODR shall have the authority to suspend the Work wholly or in part due to the failure of the Contractor to carry out provisions of the Contract; for failure to carry out orders; for conditions considered unsuitable for the prosecution of the Work; or for any other condition or reason deemed to be detrimental to the fulfillment of the Contract. The WETA shall notify the Contractor in writing at least five calendar days before suspending Work and shall cite the reason(s) for the  
15 impending suspension in the notice.

The ODR may, at reasonable times, inspect that part of place of business of the Contractor or Subcontractor that is related to the performance of the Contract.

The ODR may request Contractor support during an audit in accordance with § 105-1.15.

### 105-1.02 SCHEDULES OF DELIVERABLES AND REVIEW AND APPROVAL OF WORK

#### 20 A. Schedule of Deliverables

25 Within ten (10) days after Contract Award and prior to Notice to Proceed, the Contractor shall submit a schedule of dates for deliverables for the Work on a spreadsheet. This Project Schedule is the Contractor's committed plan to complete the Work within the Contract Time. The Project Schedule shall list all drawings, analyses, reports, Technical Specifications, purchase technical specifications, technical publications, and other deliverables that must be developed pursuant to the Owner's Requirements and other Contract Documents. The Project Schedule shall include, but not be limited to, the various deliverables cited in the Technical Specifications and other Contract documents.

30 The Project Schedule shall provide for various interim submittals, revisions, and a final submittal of each deliverable, and shall include columns giving the intended dates of all submittals. The quantity and timing of submittals for each deliverable shall be proposed by the Contractor in the Project Schedule, and should appropriately consider the need for Owner endorsement of intended arrangements and other salient characteristics of the design.

35 The Project Schedule shall include columns for the following entries for each listed deliverable: scheduled dates of submittals, actual dates of submittals, latest revision (by letter), drawing size, outstanding reservations, and expected release date. The Project Schedule shall also identify deliverables that are required to be submitted to each Regulatory Body for approval, review and/or information, and the expected and actual dates of such approvals.

40 The schedule of deliverables shall, to the extent practicable, evenly distribute the submission of deliverables.

Contractor shall provide electronic copies of all drawings and data to Owner for at least a seven (7) calendar day review and comment period. All drawings prepared for submittal to the U.S. Coast Guard shall be reviewed by Owner prior to submittal to U.S. Coast Guard. Owner shall receive all drawings approved by the U.S. Coast Guard.

45 The Project Schedule shall allow at least seven (7) calendar days for WETA review of each submitted deliverable, unless a longer review time for a particular submittal or deliverable is specified in the Owner's Requirements, in which case the longer review time shall be used.

50 The Project Schedule shall be revised to show all changes, progress and delays, and shall be submitted monthly in time to be received by WETA not later than the 10th of each month, beginning with the month following the initial submittal. Each Project Schedule revision shall be clearly identified in color.

B. Regulatory Body Review, Approval and Certification of Work

55 The Contractor shall plan, coordinate and obtain in a timely manner all Regulatory Body inspections (see § 105-1.08 and §106-1.03) of the Work, and reviews and approvals of the related drawings, specifications and other documentation, as required to obtain the required regulatory classifications and certifications of the Vessel. A schedule of inspections, tests and trials requiring Regulatory Body observance shall be maintained in accordance with the provisions of the Technical Specifications.

60 The Contract Design Package shall be submitted to the USCG for compliance review with respect to USCG and applicable regulations, including but limited to 46 CFR Subchapter K.

All deliverables shall be revised to address comments provided by the Regulatory Bodies in conjunction with their reviews. This Work shall be accomplished to the satisfaction of the ODR.

65 All fees associated with inspections, witness of material and equipment tests and certifications, reviews and approval of Work, and classification and certification of the Vessel by Regulatory Bodies shall be included within the Contract Price. Costs of travel and per diem for visits to Contractor's and manufacturers' facilities by Regulatory Body agents shall be considered included in the Contract Price.

70 A copy of all written communications, which includes electronic transmissions of information or letters, between the Contractor or its agents and the Regulatory Bodies, and any attached drawings or other technical documentation included with each written communication, shall be provided to the ODR if requested. A copy of each item of written communication, plus any attached technical documentation, from the Contractor or its agents to a Regulatory Body shall be forwarded to the ODR if requested, on the day the communication is mailed or otherwise transmitted to the Regulatory Body. A copy of each item of written communication, plus any  
75 attached technical documentation, from a Regulatory Body to the Contractor or its agents shall be provided to the ODR within two days of receipt by the Contractor or its agents.



C. WETA Approval of Work

Where the words "approved" or "for approval" are used without reference to the approving authority, they shall mean "approved by the Owner" and "for WETA's approval."

80 Issuance by WETA of a Notice to Proceed, after the Contract execution where each Contract  
page shall be initialed by the Contractor and WETA, shall give effect to the documents comprising  
the Contract Design Package (i.e., drawings, technical specifications, Owner's Requirements,  
General Provisions, forms, and others) as Contract Documents, shall constitute WETA approval  
85 of the Package, and shall oblige the Contractor to perform the Work contained in the Contract  
Design Package.

The Technical Specifications (revised Owner's Requirements) negotiated and prepared by WETA  
and Contractor as well as contractual language within the General Provisions shall clearly  
indicate which deliverables, drawings, plans and documents shall be submitted to WETA for  
approval.

90 Approval of submitted Work by WETA shall be solely for the purpose of conveying WETA's  
determination that WETA does not object to continuing with the Project based on the submitted  
Work. In no event and under no circumstances shall approval of WETA of any aspect of the  
Contractor's Work be a warranty that the Work is complete, accurate or of sound design, or that  
95 the completed Vessel, subject to inclusion of the approved Work, shall necessarily conform to the  
minimum functional, performance or technical requirements of the Contract, or that the Work  
complies with Regulatory Body requirements. Such characteristics of the Work are the  
Contractor's responsibility, and any subsequent discovery of omissions or deficiencies with  
regard to the completeness, accuracy or soundness of the Work, and/or conformance with the  
Contract, and/or compliance with Regulatory Body requirements, shall be remedied by the  
100 Contractor to the ODR's satisfaction through correction of the omissions or deficiencies at the  
Contractor's expense, irrespective of prior approval of the Work by WETA.

In conjunction with approvals, WETA, by virtue of such approvals, agrees that design aspects  
not addressed by the Contract, such as the placement of doors, and similar matters, are  
105 acceptable to WETA. Agreement by WETA to these design aspects does not abrogate or modify  
the Contractor's responsibility for ensuring the constructability of these design aspects and in  
no way reduces the Contractor's obligation as to technical, regulatory, major functionality,  
and performance requirements as described in the Owner's Requirements and the Contract  
Design Package.

110 "Approved" status cannot be conferred by anyone but an authorized employee or other  
representative of WETA, and except where explicitly prescribed by WETA otherwise in writing,  
shall be conferred by the ODR. WETA approval does not relieve the Contractor of securing  
Regulatory Body approvals as required herein.

115 Any submittal that is found to be substantially deficient upon review shall be rejected and returned  
to the Contractor for resolution of deficiencies and resubmitted. A "rejected" determination shall  
void any credit which may otherwise be due the Contractor with regard to meeting a deadline for  
submission of the material in question.

When determined to be in the best interests of WETA, the ODR may accept deliverables not  
involving life or safety issues that have not been certified by a registered professional engineer.

### 105-1.03 CONFORMITY WITH CONTRACT

120 All Work performed and all materials furnished shall be in conformity with the Design-Build and Deliver  
Contract (GP ATTACHMENT 1 Form WETA-10). In the event the ODR finds any materials furnished,  
Work performed or finished products that are not in conformity with any aspect of the Contract, but that  
reasonably acceptable Work has been produced and is in accordance with Regulatory Body  
125 requirements, he shall then make a determination if such non-conforming Work shall be accepted and  
remain in place. In this event, the ODR shall document the basis of acceptance by an agreed upon  
Change Order which may provide for an appropriate adjustment in the Contract Price for such Work or  
materials as agreed in the Change Order. The ODR shall not be obliged by this or any other portion of the  
Contract to accept non-conforming Work.

130 The failure of WETA in any one or more instances to insist upon strict performance of any of the terms of  
this Contract or to exercise any option herein conferred shall not be construed as a waiver or  
relinquishment to any extent of the right to assert or rely upon any terms or option on any future occasion.

In the event the ODR or WETA or Regulatory Body Inspectors find the materials or the finished product in  
which the materials are used or the Work performed are not in conformity with the Contract, or with  
related Regulatory Body requirements, and have resulted in an unacceptable or unsatisfactory product,  
135 the Work or materials shall be removed and replaced or otherwise corrected by and at the expense of the  
Contractor with no time deduction to correct the mistake.

Conformity, as used in this section, means compliance with the Contract requirements, Regulatory Body  
requirements, standard maritime practices, good shipbuilding practices, and reasonable and customary  
manufacturing and construction tolerances where working tolerances are not specified. Conformity means  
140 compliance with working tolerances where working tolerances are specified. Without detracting from the  
complete and absolute discretion of the ODR to insist upon such tolerances as establishing conformity,  
the ODR may accept variations beyond such tolerances as conformity where they shall not materially  
affect the value or utility of the Work and the interests of WETA.

145 The Contractor shall take no advantage of any apparent error or omission in the Contract Documents. In  
the event the Contractor discovers any such errors or omissions, he shall immediately notify the ODR.  
The ODR shall then make such corrections and interpretations as may be deemed necessary for fulfilling  
the intent of the Contract. Any action taken by the Contractor without this determination shall be at his risk  
and expense.

150 In certain respects, the requirements of the approved design for the Vessel may exceed the requirements  
of pertinent Regulatory Bodies. Such approved design requirements shall not be changed except on  
written approval of the ODR.

### 105-1.04 COORDINATION AND ORDER OF PRECEDENCE OF CONTRACT DOCUMENTS

155 The Contractor's Proposal, Contract Drawings and Technical Specifications, and all supplementary  
documents comprising the Contract as delineated in § 104-1.01, are essential parts of the Contract, and a  
requirement occurring in one is as binding as though occurring in all. They are intended to be  
complementary and to describe and provide for complete Work.

In case of conflict or discrepancy, the order of precedence of Contract Documents (highest precedence to lowest) shall be as follows:

- 160 A. Addenda and Change Orders (Prepared by WETA)
- B. Supplemental Agreements
- C. Design-Build and Deliver Contract and Contract Forms (Prepared by WETA)
- D. General Provisions (Prepared by WETA)
- E. Owner's Requirements (Prepared by WETA)
- 165 F. Instructions to Offerers (Prepared by WETA)
- G. Technical Specifications (Prepared by WETA)
- H. Drawings (Prepared by Contractor)
- I. Contract Design Package Other Than Technical Specifications and Drawings  
(Prepared by Contractor)
- 170 J. Except as provided above, any other Contract Documents
- K. Drawings in Contract Documents

In case of discrepancies involving Contract Documents not listed above, the precedence of the documents shall be decided by the ODR. Directives and written correspondence from the ODR may be used to clarify Contract terms, suspend and resume Work, document directions or instructions given to the Contractor, reject non-specification materials or Work and initiate Work on contingent items. The precedence of these directions shall be decided by the ODR and in general shall have precedence over the Contract Document addressed by the correspondence.

Nothing in the Contractor's Proposal, Technical Specifications, Contract Drawings or any other Contract Document prepared by the Contractor shall cancel or modify any requirement of WETA delineated in the General Provisions or any other Contract document prepared by WETA, unless agreed in writing by both parties.

Notwithstanding the foregoing, a Technical Specification or Contract Drawing shall control over an Owner's Requirement in the event of inconsistency if WETA has approved in writing the Technical Specification or Contract Drawing after full written disclosure by the Contractor specifically noting and explaining the variation causing the inconsistency between an Owner's Requirement and a Technical Specification or Contract Drawing.

In the case of dimensions, calculated dimensions shall govern over scaled dimensions. Dimensions that are scaled from or explicitly shown in CAD/CADD (e.g. AutoCAD, CATIA, Intercon, CADAM, etc.), shall be treated as scaled dimensions (not calculated) unless they are dimensions explicitly shown on a manufacturer's certified drawing.

### **105-1.05 COOPERATION BY CONTRACTOR**

The Contractor shall maintain a minimum of two full size sets of approved plans and Contract Documents, one set of which the Contractor shall keep available on the Work site at all times.

195 The Contractor shall give the Work the constant attention necessary to facilitate the progress thereof in accordance with the Project Schedule, and shall cooperate with the ODR, his Inspectors and other Contractors in every way possible.

200 The Contractor shall have on the Work site at all times, as his agent, a competent Superintendent or Project Manager, thoroughly experienced in the type of Work being performed and capable of reading and thoroughly understanding the plans and specifications, who shall receive instructions from the ODR or his authorized representatives to the extent provided elsewhere in the Contract Documents. The Superintendent or Project Manager shall have full authority to supply such materials, equipment, tools, labor and incidentals as may be required. Such Superintendent or Project Manager shall be furnished irrespective of the amount of Work subcontracted.

205 The Contractor shall bear the sole risk and the obligation to rebuild, repair, restore, replace and to otherwise make good all damage, loss or injury to all or any portion of the Vessel, and to any Work or material for the Contract, including Change Order Work, on or incorporated into the Vessel until the entire Work for both Vessel has been finally accepted by WETA.

### **105-1.06 COOPERATION WITH OTHER CONTRACTORS, SUPPLIERS, VENDORS AND WETA FORCES**

210 At any time, WETA reserves the right to Contract for and perform other or additional Work on the Vessel that is Work not the subject of the Contract between WETA and the Contractor, without terminating the Contract between WETA and the Contractor.

215 When separate contracts are let within the limits of the Project, Contractor shall ultimately control the Project Schedule; however Contractor shall coordinate and provide a reasonable opportunity for other Contractors/Suppliers/Vendors to perform Work not subject of the Contract. Each Contractor/Supplier/Vendor shall conduct his Work so as not to interfere with or hinder the Work being performed by others. Contractors working on the same Vessel shall cooperate with each other. Each Contractor/Supplier/Vendor shall join his Work with that of the others in an acceptable manner and shall perform it in proper sequence to that of the others.

220 Each Contractor/Supplier/Vendor involved shall assume all liability, financial or otherwise, in connection with his Contract and shall protect and save harmless WETA and Contractor from any and all damages or claims that may arise because of inconvenience, delay or loss experienced by him because of the presence and operations of other contractors.

225 WETA will request, as a condition of gaining access to the Vessel, the contractors/Suppliers/Vendors performing Work on the Vessel under the terms of this subsection shall be required to have their own insurance to cover liability associated with their Work. These contractors shall also be requested to indemnify the Contractor of liability associated with their Work.

All Contractor's Subcontractors must comply with the Contractor's Standard Terms and Conditions for Subcontractors. (Attachment #2 to the General Provisions.)

230 **105-1.07 DUTIES OF WETA'S INSPECTORS**

Inspectors employed by WETA are authorized to inspect all Work done and materials furnished. The Inspector is not authorized to issue instructions contrary to the terms of the Contract documents, or to act as foreman for the Contractor; however, the Inspector shall have the authority to reject Work and materials, which rejection the Contractor may request to be decided by the ODR. WETA personnel are not to be considered as part of Contractor's Quality Assurance personnel.

**105-1.08 QUALITY ASSURANCE AND INSPECTION OF WORK AT CONTRACTOR'S SITE**

Nothing contained in this subsection shall in any way restrict or impair WETA's rights under any warranty or guarantee.

240 The Contractor shall utilize a Quality Assurance (QA) program that assures that all aspects of design, construction, and completion of the Work comply with the requirements of the Contract. The program shall ensure that the latest applicable drawings, requirements, specifications and instructions defined in the Contract, as well as authorized changes, are communicated to workers and used in the Work. The program shall also include sequential and well-documented inspections and tests of completed elements of Work by the Contractor. The intent of these inspections and tests shall be to identify and resolve all deficiencies prior to presentation of the Work to WETA for acceptance. The QA program and its implementation plan (described below) shall be coordinated with the inspection and test requirements of the Contract; as well as the weight control program, noise and vibration control program, and other programs required by the Contract or otherwise developed by the Contractor to control the Work.

250 The personnel assigned to the development and administration of the QA program shall have independent authority and organizational freedom to identify and evaluate quality problems and initiate and recommend timely and positive solutions.

The implementation of QA procedures by a Subcontractor or Vendor does not relieve the Contractor of his responsibility to assure that the supplied items fully comply with the requirements of the Contract.

255 At a minimum, the Quality Assurance program shall make provision for the following or similar:

A. A status report shall be provided monthly, on a mutually pre-established date, by the Contractor, listing any and all discrepancies in a Discrepancy Report (hereinafter "DR") and their disposition(s). Outstanding issues shall be highlighted.

260 B. A process utilizing a Contractor-developed standard DR form, through which WETA can communicate potential issues and problems to the Contractor. The form shall include, at a minimum:

- i. Independent tracking number suitable to WETA;
- ii. Date of issue initiated or identified by WETA;
- iii. Reference drawings/materials and revisions;
- iv. Subject;
- v. Requirement references;

265

- vi. Issue or problem description;
- vii. Signature column by ODR and date, if corrected;
- viii. Response area for Contractor, sign off and date.

270 The Contractor shall be responsible for tracking and providing a disposition for all issues raised by WETA.  
The Contractor shall maintain and comply with its internal QA program as reviewed by WETA.

### **105-1.09 REMOVAL OF UNACCEPTABLE AND UNAUTHORIZED WORK**

All Work that does not conform to the Contract shall be considered as unacceptable Work, unless determined acceptable under the provisions of § 105-1.03.

275 Unacceptable Work, whether the result of poor workmanship, use of defective, unsuitable, or unauthorized materials or equipment, or damage through carelessness or any other cause, found to exist prior to the final acceptance of the Work, shall be remedied or removed immediately and replaced in an acceptable manner at the Contractor's expense.

280 Except as otherwise provided in this Section 105, no Work shall be done on the Vessel except as required by the Contract and by any directive. Work done contrary to directives, except as herein provided, or any Work done without authority, shall be considered as unauthorized and shall not be paid for under the provisions of the Contract. Work so done may be ordered removed or replaced at the Contractor's expense.

285 Upon failure on the part of the Contractor to comply forthwith with any order of the ODR made under the provisions of this section, the ODR shall have authority to cause unacceptable Work to be remedied, or removed and replaced, unless determined acceptable under §105-1.03. No change in the Contract Price will be allowed in respect to any costs incurred by Contractor for such remedial work.

### **105-1.10 PARTIAL ACCEPTANCE**

290 If at any time during the prosecution of the Work the Contractor completes a usable unit or portion of the Work, the use of which shall benefit WETA, he may request the ODR to make an inspection of that portion or unit. In the alternative, the ODR may at his own discretion inspect and accept a unit or portion of the Work. If the ODR finds upon inspection that the unit has been satisfactorily completed in compliance with the Contract, he may accept it as being completed. Such acceptance by the ODR, in order to be valid, must be in writing and signed by the ODR. Such partial acceptance and beneficial use  
295 by WETA shall not void or alter any provisions of the Contract, shall not constitute the commencement of any applicable Guarantee/Warranty Period, and shall be made only at the discretion of WETA. The WETA shall in no circumstances be obliged to accept a portion of the Work, even if that portion of the Work is completed.

### 105-1.11 ACCEPTANCE TRIALS

300 Acceptance Trials shall occur at or near the Contractor's facilities and Operational Acceptance shall be contingent upon the following:

- 305 A. Excepting an allowance for a small quantity of minor deficiencies (see below), all physical Work shall be completed, with all requisite regulatory approvals, certifications and letters of compliance obtained, and with the Vessel ready for service in full compliance with the Contract to the satisfaction of WETA.
- B. The Vessel shall be thoroughly cleaned in accordance with § 104-1.03 of these provisions to the satisfaction of WETA.
- C. All shop and installation tests and inspections shall be completed, with results demonstrating compliance with the Contract to the satisfaction of WETA.
- 310 D. The Operational Acceptance Survey described herein shall have been completed, with the results supporting a conclusion by the ODR that the Vessel is complete, clean, free of deficiencies, and ready for redelivery to WETA in compliance with the Contract to the satisfaction of WETA.
- E. Builder's Trials and prerequisite tests shall have been completed, with results demonstrating compliance with the Contract, and approved by WETA.
- 315 F. Any prerequisite tests to Acceptance Trials and/or Operational Acceptance shall have been completed, with results demonstrating compliance with the Contract, and approved by WETA.
- G. Correction of all known deficiencies including deficiencies that develop or are identified after Acceptance Trials.
- H. Completion of shipboard Contractor-responsible training.
- 320 I. USCG Sector approval, except for all items noted on the 835 form that are not the responsibility of the Owners.

The survey, tests, inspections and trials referred to in subparagraphs "C" through "I" above shall serve to assist WETA in making the determination as to whether the requirements of subparagraphs "A" and "B" above are fulfilled.

325 The conduct of the Operational Acceptance Survey shall be contingent upon receipt by WETA of written notice from the Contractor of presumptive completion of all physical Work, testing and clean-up provided for under the Contract. The Operational Acceptance Survey shall precede Acceptance Trials for each of the Vessel.

330 The Operational Acceptance Survey shall be solely for the purpose of relating WETA's determination that, if the Contractor delivers the Vessel (see § 105-1.12) in like condition in material, operation and performance, and corrects deficiencies which are authorized in writing by WETA to be corrected following Operational Acceptance but before the Vessel delivery (see below), the Vessel as constructed and presented is acceptable to WETA.

335 Operational Acceptance by WETA shall not constitute acceptance by WETA of any latent defects or other deficiencies which may develop or be identified subsequent to Operational Acceptance, but prior to completion of the warranty period. Such defects and deficiencies are the responsibility of the Contractor to correct. In addition, Operational Acceptance shall not stop the count of construction time, nor shall such acceptance be the basis for starting the count of time for the warranty/guarantee period.

340 An Operational Acceptance Survey for each Vessel shall be a prerequisite to the delivery of the Vessel to the Owner's location.

345 The Contractor shall retain full responsibility, including risk of loss of the Vessel until WETA accepts and takes possession of the Vessel. Such responsibility shall include the insurance, security, safety, maintenance and operation of the Vessel and any other obligations under the Contract. The Contractor must procure and maintain and provide proof of insurance against any loss of or damage to the Vessel or personal injury (including death) or damage to or loss of property caused during the redelivery voyage, including without limitation Full Form Hull and Machinery Insurance (American Institute Hull Clauses or equivalent) in an amount equal to the value of the Vessel, and Full Form Protection and Indemnity Insurance (SP-38 or equivalent) which insurance and proof of insurance must be satisfactory to the ODR. 350 Such insurance and proof shall be at the Contractor's expense, including all deductibles. The WETA and Blue and Gold Fleet must be named as additional insured under any such insurance. It is intended that WETA shall take custody of the Vessel upon acceptance of delivery of the Vessel in accordance with § 105-1.12.

355 An Operational Acceptance Survey shall be conducted after all physical Work, testing and clean-up provided for under the Contract is completed. The intent of the Operational Acceptance Survey shall be to affirm that the refurbishment of the Vessel is complete; the form, fit and function of installed materials are satisfactory, and the Vessel is clean and clear of rubbish, excess material, etc., in accordance with § 104-1.03. In conjunction with the survey, the status of the compartment close-outs required by the Contract (see Section 10 of the Owner's Requirements) shall be presented for review, with any remaining close-outs performed prior to completion of the Operational Acceptance Survey.

360 The existence of any uncorrected deficiency affecting the safety, operation, performance or immediate efficient use of the Vessel for its intended service shall be sufficient cause to reject Operational Acceptance of the Vessel pending correction of the deficiency by the Contractor. The existence of uncorrected deficiencies shall likewise be a cause for rejection of the Vessel until their number has been reduced to a level acceptable to WETA.

365 Upon completion of the Operational Acceptance Survey for the Vessel, a letter relating WETA's determination regarding Operational Acceptance of the Vessel shall be issued by the ODR. The letter shall provide notice as to the extent of unsatisfactory or incomplete Work which must be corrected or completed prior to Acceptance Trials of the Vessel, and which discrepancies, if any, may be deferred for accomplishment after Acceptance Trials, but before Delivery Acceptance Survey of the Vessel. In 370 connection with this notice, it must be recognized that under the terms of the Contract, the Contractor is required to deliver a complete Vessel that is free of all deficiencies, and that deferral of corrective Work is not a waiver by WETA of its entitlement to a complete Vessel that is free of deficiencies.

375 The Contractor shall immediately take appropriate action to correct and complete any Work that is determined to be unsatisfactory or incomplete, and shall be responsible for any delay in the Project associated with correcting deficiencies. The cost of such delay shall be at the Contractor's expense.

Any Work or operation of the Vessel called for by the ODR in the course of inspection of previously unsatisfactory or incomplete Work shall be performed at the Contractor's expense in advance of Operational Acceptance.



### 105-1.12 REDELIVERY ACCEPTANCE SURVEY & REDELIVERY ACCEPTANCE

380 Prior to accepting the Vessel for Redelivery, the ODR and the Contractor shall perform a joint survey of the Vessel to determine its readiness for sea and return to normal passenger ferry service.

Following Operational Acceptance and the Redelivery Acceptance Survey, the completed Vessel shall be turned over to WETA's Operator for redelivery to the WETA facilities in the San Francisco Bay Area.

385 At the time of turnover the Vessel's fuel tank levels shall match the levels recorded at initial Delivery to the Contractor's facility. Any discrepancy in the fuel tank levels will be adjudicated based on the current pricing for diesel fuel at that locale.

Final Payment against the Contract shall be made by WETA within 14 calendar days of the ODR's issuance of a letter of Acceptance.

### 105-1.13 FINAL ACCEPTANCE AND CONTRACT COMPLETION

390 Following completion of the Guarantee/Warranty Period required by § 105-1.16 and all provisions stated therein and upon receipt of the executed final estimate, Contractor's Release, settlement of all claims and proof of payment of both payroll and revenue taxes, the ODR shall issue the letter of Final Acceptance releasing the Contractor from further performance under the Contract subject to rights and remedies reserved in § 107-1.10. Final Acceptance of the Work shall be withheld until the Contractor  
395 furnishes all certificates, guarantees, releases, affidavits, and other documentation required by the Contract.

### 105-1.14 CLAIMS FOR ADJUSTMENTS AND DISPUTES

#### A. Notice of Act or Occurrence that May Form Basis for Claim

400 If the Contractor becomes aware of any act or occurrence which may form the basis of a claim by the Contractor for additional compensation or an extension of time for performance, or if any dispute arises regarding a question of fact or interpretation of the Contract, the Contractor shall, within seven (7) calendar days, provide written notice to the ODR.

405 If the Contractor believes additional compensation is warranted, the Contractor shall immediately begin to keep and maintain complete, accurate, and specific daily records concerning every detail of the potential claim including actual costs incurred. The Contractor shall give the ODR access to any such record and, when so requested, shall forthwith furnish the ODR copies thereof at the Contractor's expense. Equipment costs for owned equipment for ownership, depreciation, and operating expense shall be the lowest of either the actual cost, internal rates, or published rental rates.

410 If the issue is not resolved within seven days of the notice, the ODR shall provide the Contractor with a written decision concerning the dispute. The decision of the ODR is conclusive except as discussed below.

#### B. Protests

415 If the Contractor disagrees with any written order, direction, instruction, interpretation or determination by the ODR, the Contractor shall provide a written protest to the ODR within seven (7) calendar days of the same.

420 The protest shall include (1) the date of the protested action; (2) a statement of the nature of and basis for the protest; (3) the relevant Contract provisions; and (4) a statement of any costs claimed by the Contractor. The ODR may request additional information from the Contractor necessary to evaluate the protest. If the matter cannot be resolved by agreement within seven (7) calendar days of the date the protest is provided to the ODR, the ODR shall issue a written decision responding to the protest.

425 This decision shall be final and conclusive unless the Contractor disagrees with the ODR decision and demands that the dispute be referred to negotiation/nonbinding arbitration as set forth below. Unless otherwise directed by the ODR, the Contractor shall continue performance under this Contract while matters in dispute are being resolved.

#### C. Negotiation

In the event the Contractor disagrees with ODR, then within seventy-two (72) hours, Contractor shall meet at Owner's location in San Francisco in an attempt to resolve the dispute.

#### 430 D. Non-Binding Arbitration

435 In the event the parties are unable to resolve the dispute, and as a prerequisite to filing a claim under the provisions of the California Government Code § 900 et seq., the Contractor must, within five calendar days of failed negotiations performed per paragraph C above, submit notice of the dispute for non-binding arbitration by providing a written demand for non-binding arbitration to the ODR. The parties shall use an experienced construction arbitrator selected by agreement of the parties. If WETA and the Contractor cannot agree on an arbitrator, then one shall be selected by the American Arbitration Association.

440 The intent of this provision is that once appointed, the same person serves as arbitrator throughout the Contract. In the event the designated arbitrator is not available to timely arbitrate a matter, an alternate arbitrator may be used. The parties shall each designate a representative with full settlement authority to attend the arbitration. The costs and fees of the arbitrator shall be shared equally by the parties. No rules of evidence or procedure shall apply, either party is free to submit any information or material desired; and the arbitration shall continue each successive business day without recess until completed unless the parties mutually agree to recess the arbitrator. The arbitrator shall render a summary decision at the close of the arbitration and shall promptly express in writing signed by the arbitrator the decision on all points within the permissible scope of the arbitration.

445 The venue for any arbitration shall be the City and County of San Francisco, California unless the parties agree otherwise.

450 The intent of this provision is that in the event the parties cannot resolve an issue, they participate in good faith non-binding arbitration by a third-party in an effort to efficiently resolve disputes.

#### E. Claims for Adjustments and Disputes

455 If the parties are unable to resolve the dispute by non-binding arbitration within thirty (30) calendar days after (i) the date of selection or appointment (if the parties are unable to agree on the selection of an arbitrator) of an arbitrator in the case of the initial demand for arbitration, or (ii) the date the Contractor provides WETA a demand for arbitration in the case of any subsequent demand for arbitration at which a previously selected or appointed arbitrator serves, the Contractor may file a claim as set forth below.

The Contractor agrees that unless the written notices addressed in this section are provided, the Contractor shall have no entitlement to additional time or compensation for any act, event or condition

460 claimed by the Contractor to give rise to additional time or compensation. The Contractor shall in any case continue diligent performance of the Contract.

465 The claim shall be presented by the Contractor to the ODR within thirty (30) calendar days after the written decision by the arbitrator, and if no written decision is issued within sixty (60) calendar days after date of selection or appointment of the arbitrator in the case of the initial demand or in the case of any subsequent demand, the date the Contractor provides WETA a demand for arbitration, within thirty (30) calendar days after the expiration of such sixty (60) day period. The claim shall contain the (a) the date, place and other circumstances of the occurrence which gave rise to the claim asserted;(b) the Contract provision(s) which applies to the claim; (c) the item(s) of Contract Work affected; (d) a statement of the time extension or costs claimed and the basis upon which it is calculated and (e) the name or names of the public employee or employees causing the damage or loss, if known. The claim shall be signed by the Contractor and shall certify that the claim is made in good faith and that the claim and supporting data are accurate and complete to the best of the Contractor's knowledge.

475 The ODR shall issue a written decision on the claim within thirty (30) calendar days after the claim is deemed compliant. The ODR has the right to make a written request to the Contractor at any time for additional information or documents which the Contractor may possess relating to the Project. The Contractor agrees to provide the ODR with such additional information or documents within thirty (30) calendar days of receipt of such a request. Failure to furnish such additional information constitutes a waiver of the Claim. The 30 calendar day period for the ODR to issue the written decision shall be extended as is reasonably necessary should the ODR request additional information or documents. The written decision of the ODR shall follow California Government Code § 912.6, provided that the ODR shall serve as the designee of the board for purposes of acting upon the claim. Provided that the Contractor has followed all of the foregoing procedures, the Contractor has six months from the date that the ODR's written decision on the claim is provided to file a lawsuit in accordance with Government Code § 945.6. Jurisdiction and venue of any such action shall be in the Superior Court of the State of California for the County of San Francisco. By entering into this Contract, Contractor warrants and agrees that jurisdiction over disputes arising under this Contract properly lies within that court and that the substantive law of California shall govern all Contract disputes.

480 The ODR shall notify the appropriate funding agencies of any claim. The duties and obligations imposed by the Contract documents and the rights and remedies available there under shall be in addition to and not a limitation of any duties, obligations, rights and remedies otherwise imposed or available by law. No action or failure to act by WETA or Contractor shall constitute a waiver of any right or duty afforded any of them under the Contract, nor shall any such action or failure to act constitute an approval of or acquiescence in any breach there under, except as may be specifically agreed in writing.

### **105-1.15 CONTRACTOR AND SUBCONTRACTOR BOOKS AND RECORDS; AUDIT**

495 The Contractor, and all Subcontractors, shall maintain accurate books, records, accounts and reports required under this Contract, including management and financial records and UCC1 filings during the course of the Project from receipt of the RFP through execution of the Final Acceptance. The Contractor, and all Subcontractors, will, with reasonable notice, allow WETA, the FTA Administrator, the Comptroller General of the United States, or any of their authorized representatives, to review and copy any such financial or other records kept by the Contractor and all Subcontractors including those relating to the cost or pricing data submitted under § 104-1.02, relevant records for claims submitted under § 105-1.14 and certified payroll. The Contractor shall also comply with applicable provisions of 49 CFR 633.17. One copy of every document selected by WETA for review will be at the Contractor's and/or Subcontractor's expense.

505 The WETA, the FTA Administrator, the Comptroller General of the United States, or any of their authorized representatives, including the ODR or the ODR's designee may, with reasonable notice, audit

510 the books, records, accounts and reports of the Contractor or any Subcontractor. This right to audit shall exist at all times, including, but not limited to, any period while resolution of a dispute between WETA and Contractor is pending, and as long as any Contractor or Subcontractor is required to maintain books, records, accounts and reports. Such books, records, accounts and reports include, but are not limited to, records of the method used and accounting performed regarding the allocation of indirect and direct costs relating to the cost or pricing data submitted under § 104-1.02, relevant records for claims submitted under § 105-1.14, and certified payroll.

515 Books, records, accounts and reports that relate to performance of the Contract or subcontract shall be maintained by the Contractor for a period of not less than three years after the date of final payment under the Contract and by any Subcontractor for a period of not less than three years after date of Final Payment under the subcontract or purchase order. If, however, any claims remain unresolved the period shall be extended until such time as all claims are settled including any final judicial appeals.

520 For purposes of this section, "Subcontractors" include, but are not limited to, Suppliers of any design services, and Vendors who provide any products which are customized for use or installation on the Vessel, or for which the Vendor provides any installation services, whether or not the Contractor considers such a Supplier or Vendor or Subcontractor.

Notwithstanding any other provision of this Contract to the contrary, the audit rights of WETA shall be limited as set forth in this § 105-1.15.

525 **105-1.16 GUARANTEE/WARRANTY**

Neither Delivery Acceptance or Final Payment, nor any provision in the Contract Documents, nor partial or entire use of the Vessel by WETA shall constitute an acceptance of Work not done in accordance with the Contract Documents or relieve the Contractor of liability for faulty materials or Workmanship.

530 The Contractor shall furnish WETA with all warranties, including manufacturer's warranties, specified in the Owner's Requirements and General Provisions, and submit them to WETA prior to Delivery Acceptance of the Vessel. All warranties shall be provided by and processed through the Contractor. All warranties shall commence after Delivery Acceptance of the Vessel by WETA.

535 It is understood and agreed that WETA does not waive any warranty, either express or implied, in Sections 2312 through 2317, inclusive, of the California Commercial Code, or any liability of the manufacturer or contractor as may be determined by a decision of the court of the State of California or of the United States.

WETA shall give notice to Contractor of deficiencies. Contractor guarantees and warrants that all equipment and components in the Vessel shall conform to the requirements of the Contract.

540 The Contractor shall also guarantee all material and workmanship furnished to or installed in the Vessel by the Contractor, or any Subcontractors, Suppliers or Vendors on the Contractor's account, against defects in material or workmanship, or latent defects which may develop within 365 calendar days following the date of Delivery Acceptance of the Vessel by WETA. Any items of material or workmanship found defective, or found not to operate in accordance with the requirements of the Contract, shall be repaired or replaced at Contractor's option by the Contractor at the Contractor's expense. The Contractor shall pass through any warranty on equipment, machinery or materials to WETA. The Contractor does not have any additional warranty responsibility after the warranty period expires, except to assist WETA with OEM warranty issues.

If, in the opinion of WETA, immediate repairs or replacements are essential to keep the Vessel on its scheduled operations, these repairs may be made by WETA and back-charged to the Contractor. The

550 WETA shall give prompt notice to the Contractor that the immediate corrective action is being taken and provide clear documentation of the deficiency, the action taken and the cost attributable to the deficiency.

Where WETA's action results in the betterment of material, the Contractor shall not be responsible for the reimbursement for the betterment. If immediate repairs are not necessary, the Contractor shall be notified and given seven calendar days to examine and provide a written plan of rectification complete with a detailed time schedule, subject to the approval of the ODR. If the defects are not addressed sufficiently or a detailed rectification plan is not provided by the Contractor and approved by the ODR within this period, WETA may correct the defects and back-charge the correction costs, including labor, to the Contractor.

560 Immediately prior to expiration of the Guarantee/Warranty Period set forth in this subsection and prior to Final Acceptance and payment on the Contract, a Guarantee Survey shall be conducted for the purpose of determining remaining deficiencies to be corrected in compliance with the requirements of the guarantee. The Survey shall be made by WETA, Contractor's representative(s), and applicable Regulatory Body representatives. The time and place for the Guarantee Survey shall be at the convenience of WETA, having due consideration for the Vessel's operational schedule and commitments.

565 Upon expiration of the 365-calendar day Guarantee/Warranty Period, all remaining product guarantees or warranties as originally obtained by the Contractor for machinery, materials and equipment from Vendors and Suppliers shall be assigned or reassigned to WETA.

If any machinery, materials or equipment from Vendors or Suppliers fails after the 365-calendar day Guarantee/Warranty Period, but before the expiration of remaining Vendor, Supplier, or manufacturer product guarantees or warranties, Contractor shall cooperate with WETA to assist in enforcing the remaining product guarantees and warranties from Vendors, Suppliers, and manufacturers.

575 For determination of underwater deficiencies, WETA, at its expense, may drydock the Vessel or carry out an underwater survey, during the Guarantee/Warranty Period. WETA shall pay for the haul day, re-float day and any days required to accomplish the Vessel' normal drydocking maintenance; provided, however, that if a warranty deficiency is discovered which requires additional drydocking time, the Contractor, in addition to the cost of the correction of the warranty deficiency, shall pay for each additional drydocking lay day due to correcting the warranty deficiency. If it becomes necessary to drydock the Vessel solely for the correction of a warranty deficiency, the Contractor shall be liable for the entire drydocking charge required for correction of the warranty deficiency as well as the cost of remedying the warranty deficiency.

580 Should any disagreement arise in connection with warranty deficiencies, the Contractor may dispute any action taken by WETA in the manner set forth in, and subject to the terms of General Provisions §105-1.14.

585 In addition, Contractor warrants that, for a period of 365 days after the Delivery Acceptance of the Vessel, the Vessel shall be free from Defects. As used herein "Defect" means (a) a material variance between the Vessel as delivered and the Vessel as required in this Contract or any other Contract Document, modified by mutually approved change orders, (b) an instance in which the Contractor's design of or workmanship in the Vessel is not equal to or better than the general standard of design or workmanship that prevails in the commercial POV industry, or (c) a defect in workmanship or materials under normal use and service provided, however the following are not defects, and the Contractor's warranty does not apply to or include defects, damages or claims to the extent caused by:

- a) failure of Owner to perform required maintenance and servicing;
- b) normal expected wear and tear during warranty period, also abuse, misuse, accident, vandalism, neglect, and improper operation by Owner;

- 595 c) repairs or replacements not authorized by Contractor in violation of warranty terms;
- d) any Owner Furnished Equipment, except that the Contractor warrants its workmanlike installation of Owner Furnished Equipment in accordance with the manufacturer's specifications, good shipbuilding practices and approved marine construction practices.

600 The Contractor shall also guarantee all material and Workmanship furnished or installed on the Vessel by him during the warranty period. If the Vessel is not operational due to warranty repairs, replacements or other Work required, by a fault of the Contractor's workmanship, the warranty period for the Contractor's workmanship shall automatically be extended for a period of time equal to the number of calendar days that the Vessel is non-operational as a result of warranty Work.

605 If during the warranty period WETA determines that equipment or component parts fail to satisfy the terms of the warranty, the Contractor must promptly repair or replace the failed equipment or component part to the satisfaction of WETA.

610 WETA, by determining that Delivery Acceptance has been achieved, does not waive any warranty, express or implied, under Sections 2312 to 2317 of the California Code with respect to any materials, equipment or supplies manufactured, supplied Commercial or assembled by the Contractor pursuant to this Contract.

Contractor shall be responsible for consequential damages due to a warranty Defect as described herein, to the extent not disclaimed in this Section 105-1.06.

#### **105-1.17 WORKMANSHIP**

615 All workmanship shall be performed to the standards of the commercial passenger Vessel shipbuilding industry, the applicable requirements of Regulatory Bodies, and as further set forth in the Owner's Requirements and other Contract Documents.

#### **105-1.18 PROGRESS MEETINGS**

620 The Contractor shall schedule and conduct with WETA progress meetings at a minimum on a monthly basis starting on the date of Notice to Proceed. At the option of the ODR, the progress meeting may be arranged as a telephone conference.

The Contractor shall prepare an agenda for each progress meeting, complete with current progress summaries. A copy of the agenda shall be provided to WETA not less than 24 hours prior to each scheduled meeting date.

625 During these progress meetings, the Contractor shall be prepared to discuss the status of the Work to date, current and potential problem areas that could affect the Project Schedule and cost, and activities including inspections scheduled for the following two weeks.

630 The Contractor shall provide a written record of the minutes of the progress meetings, provide copies to WETA and maintain a file of minutes. The ODR shall sign the minutes acknowledging receipt of the minutes and may, at his discretion, provide comments or additional information to the Contractor to be appended to the minutes to resolve questions of accuracy. The acknowledgement of the accuracy of the minutes by ODR shall not constitute acceptance of any item of equipment or component parts.

## SECTION 106 CONTROL OF MATERIAL

### 106-1.01 MATERIAL SPECIFICATION, SOURCE OF SUPPLY, QUALITY REQUIREMENTS AND WAIVER PROVISIONS

The materials used on the work shall meet all requirements of the Contract.

Materials to be supplied shall be identified in the Contractor-developed Specifications and/or on drawing schedules of material and/or on drawing equipment lists. Detailed purchase technical specifications shall be provided for particular items of equipment. Materials shall be described to the extent required for ordering from suppliers, including brand name, model, type, size and similar information as applicable to the item.

Where necessary to provide flexibility and competition in the purchasing process, alternative manufacturers may be suggested by Contractor and are subject to approval by WETA as per §106-1.07.

No materials shall be ordered until after Notice to Proceed has been authorized by WETA in accordance with §108-1.02. Any materials ordered prior to such notice to proceed are at the Contractor's sole risk.

All materials incorporated in the Work covered by this Contract are to be new, of current production, of the specified or most suitable grade of their respective kinds for the purpose and, except where otherwise specifically provided for in the Contract for particular items, currently supported by spare parts in the United States of America and as required by the Contract. All material items used shall be suitable for use in a marine environment and for their intended use.

All materials shall be free from imperfections of manufacture and from defects that adversely affect appearance or serviceability.

Banned materials that may be hazardous to human health or the environment shall not be used under this Contract. Special attention shall be paid to ensure that paints and coatings containing lead, PCB's, and other banned toxic substances, and asbestos-containing products, are not used. Contractor shall handle all hazardous materials according to the applicable Federal, State and Local regulations.

Structural plates, shapes, bars, castings, forgings and all other material used throughout the Vessel which are subject to Regulatory Body approval shall meet the requirements of the Regulatory Bodies.

The Contractor agrees to comply with the Buy America requirements of the Surface Transportation Act of 1982 as amended and 49 CFR Part 661, which provide that federal funding may not be obligated unless steel, iron and manufactured products used in FTA-funded projects are produced in the United States. The Vessel is considered to be "rolling stock" as defined by 49 CFR 661.3. Separate requirements for rolling stock are set out at 49 CFR 661.11.

With its bid, the Offeror must submit to WETA the Buy America certification. A false certification is a criminal act in violation of 18 U.S.C. 1001. Whether or not an Offeror certifies that it will comply with the applicable requirement, such Offeror is bound by its original certification and is not permitted to change its certification after bid opening. An Offeror that certifies that it will comply with the applicable Buy America requirements is not eligible for a waiver of those requirements.

40 If a successful Offeror fails to demonstrate that it is in compliance with its certification, it will be required to take the necessary steps in order to achieve compliance. If an Offeror takes these necessary steps, it will not be allowed to change its original bid price. If an Offeror does not take the necessary steps, it will not be awarded the Contract if the Contract has not yet been awarded, and it is in breach of Contract if a Contract has been awarded.

### 106-1.02 SAMPLES

45 Samples of materials shall be submitted for approval when so directed by the Owner's Representative or indicated in the Contract Documents. The Owner's Representative may order such sampling at his sole discretion. Any work in which untested materials are used after such direction from the Owner's Representative, and which the Owner's Representative has not approved in writing, is subject to removal at the Owner's Representative's direction and at the Contractor's expense.

50 Material samples may, at the option of the Owner's Representative or Regulatory Bodies, be subjected to laboratory testing beyond that normally performed by the manufacturer, to verify compliance with quality requirements. The results of the tests may be the basis for acceptance of quality of manufactured lots. Except where such testing is expressly required by the Contract, the costs of laboratory testing that is requested by the Owner's Representative and beyond that normally performed by the manufacturer shall  
55 be paid for by WETA as Extra Work at the laboratory facility's invoiced price and without Contractor mark-up.

### 106-1.03 TESTS AND INSPECTIONS AT PLACE OF MANUFACTURE, PRODUCTION OR SHIPMENT

60 In addition to material tests and inspections that occur at the Contractor's facilities (see §105-1.08), certain items of equipment and other materials shall be inspected and/or tested at the source (place of manufacture, production or shipment) as required by the Regulatory Bodies and the Contract. During the monthly Progress Meetings Contractor shall apprise WETA of anticipated tests that may occur in the following month that WETA may desire to witness including similar propulsion component testing.

65 Where inspections and tests at the place of manufacture, production or shipment are made, the following conditions shall be met. The conditions in subparagraphs 'A' and 'B' below shall be requirements of any Contract or agreement between the Contractor and the producer, manufacturer, fabricator or supplier:

- A. WETA and Regulatory Body representatives shall have the cooperation of the Contractor and the producer, manufacturer, fabricator or supplier with whom the Contractor has contracted for the materials.
- 70 B. WETA and Regulatory Body representatives shall have full entry at all times to such parts of the plant as may concern the production, manufacture, assembly, cleaning, painting and packaging of similar materials being furnished.
- C. In the case of plant facilities located within the continental United States, the Owner's Representative shall be advised of the production and/or fabrication schedule a minimum of 4  
75 calendar days prior to beginning work on any similar item requiring test or inspection. In the case of plant facilities located outside the continental United States, the Owner's Representative shall be advised of the production and/or fabrication schedule a minimum of 10 calendar days prior to beginning work on any similar item requiring test or inspection. Such notifications shall include the recommended dates that WETA representative(s) be on site to witness or perform tests and  
80 inspections.



- D. Planning and coordinating the conducting and witnessing of tests and inspections at sources of supply by Regulatory Body representatives shall be the responsibility of the Contractor.

85 All materials that are fabricated or installed without having received the required inspections and tests witness thereof by Regulatory Body representatives, shall be considered unacceptable and may, at the Owner's Representative's discretion, be subject to removal and correction at the Contractor's expense.

WETA reserves the right to retest materials that have been tested at the source of supply, after they have been delivered and prior to incorporation into the work where, damage warrants such retest. The WETA reserves the right to reject all materials which, when retested, do not meet the requirements of the Contract.

90 **106-1.04 MATERIAL CERTIFICATION**

Where materials are required by the Contract to conform to certain standards and requirements, such as those of the USCG, ASTM, AISI, ANSI, FCC, USPHS, or UL, the following provisions shall apply:

- These requirements shall be clearly indicated on the Contractor's purchase order.
- 95 • All items requiring U.S. Coast Guard approval shall be listed in COMDTINST M16714.3 (old CG-190), "Equipment Lists," or a USCG approval letter or certificate shall be furnished to the Owner's Representative upon request.
- Copies of materials certifications, test reports, metal analyses, welding inspections, non-destructive test data, welding procedures and test schedules shall be provided to the Owner's Representative as requested.
- 100 • The Owner's Representative may permit the use, prior to or without sampling and testing, of certain materials or assemblies when accompanied by the manufacturer's certificate of compliance stating that such materials or assemblies fully comply with the requirements of the Contract. The certificate shall be signed by the manufacturer. Each lot of such materials or  
105 assemblies delivered to the work must be accompanied by a certificate of compliance in which the lot is clearly identified.
- Provision of invoices, certificates of compliance or other documentation contending that furnished materials comply with standards and other requirements applicable to the materials shall not relieve the Contractor of his responsibility to perform inspections, tests, research or other validation work necessary to ensure that the materials do in fact comply with the requirements.
- 110 All items requiring Classification Society approval shall have an approval affidavit furnished to the Owner's Representative prior to installation of the item.

A certification of materials origin and cost invoices, attesting to compliance with the United States steel and iron products provisions of Subsection 106-1.01, shall be furnished to the Owner's Representative prior to incorporating any steel or iron products into the project.

115 **106-1.05 PROTECTION AND STORAGE OF MATERIAL**

The Contractor shall be responsible for the protection from the elements, weather, and abuse, of all material intended for use and installed on board the Vessel until Delivery Acceptance of the Vessel by WETA.

120 Due consideration shall be given to the nature of the item during handling and storage. Materials shall be stored out of the weather in a manner that assures the preservation of material quality and fitness for the work, except structural steel products that are not susceptible to loss of quality and fitness for the work when exposed to the weather.

All finished surfaces shall be protected by appropriate means. Surfaces damaged or marred shall be replaced or repaired by the Contractor to the satisfaction of WETA at the Contractor's expense.

125 WETA may reject any material improperly stored or handled.

The Owner's Representative may require that stored materials, even though inspected before storage, again be inspected prior to their use in the work. Stored materials shall be located so as to facilitate their prompt inspection.

**106-1.06 OWNER FURNISHED EQUIPMENT & MATERIAL**

130 Owner Furnished Equipment (OFE) is as follows:

- A. See the Owner's Requirements – Vessel Technical Specifications for a listing of OFE.

135 The Contractor shall furnish all other parts, materials, equipment, tools, or any other items as necessary to complete the full installation of the items listed above. There is no intent to utilize any other Owner Furnished Equipment as part of the Project. Should it become necessary for Owner Furnished Equipment to be utilized, the provisions for such use shall be the subject of a Change Order.

**106-1.07 "OR EQUAL" MATERIAL**

140 Where a specific brand name and/or model is required by the Contract Design Package, followed by the term "or equal," the indicated brand name shall be provided unless WETA approval of an "or equal" product is obtained. To request WETA approval of an "or equal" product, the Contractor must submit a written request to WETA and shall be obligated to include the following in the request:

- A. All relevant data establishing equality or superiority of the proposed product as it relates to:

1. Performance, reliability, maintainability, durability, size, and weight characteristics
2. Requisite Regulatory Body approvals
3. Availability of parts and service
- 145 4. Service history/records of the proposed item

- B. Identification of any material variations of the proposed "or equal" product from the Contract Design Package otherwise addressed by item 'A' above.

- C. The warranty of the proposed item.
- D. Drawings and sketches of the proposed item, if available.
- 150 E. Names, addresses and telephone numbers of firms that have the item in similar service.
- F. An analysis of the effect on Vessel's weight, center-of-gravity and stability, if equivalent to the weight of 1 passenger (185 pounds).
- G. A statement that no increase in the Contract Price or time to complete the Work shall result from  
155 use of the "or equal" item. Written quotes from the "specified" and proposed "or equal" vendors shall be provided.
- H. Other salient technical data germane to a comparative analysis.

The Contractor shall make arrangements for WETA to view the proposed "or equal" item in use at the Contractor's site or deliver a sample to WETA if requested.

160 The Owner's Representative shall provide a written determination regarding the request for use of the "or equal" item. The Owner's Representative's determination shall be considered final. For use of an "or equal" item to be considered approved, it must have the unambiguous written approval of the Owner's Representative. The Owner's Representative's approval of an "or equal" item allows the Contractor the option of procuring that item. In each case where the request is disapproved by the Owner's Representative, the Contractor shall provide the specified material at no extra cost to WETA.

165 Use of "or equal" items and material substitution shall not be considered without a written request for same, nor shall it be allowed without WETA written approval.

170 It shall be the Contractor's responsibility to design, integrate, test and incorporate the "or equal" item in the work. All costs to the Contractor as a result of the use of the "or equal" item, over and above the cost of the originally specified brand name item, shall be at the Contractor's expense. The Contractor shall be entitled to no extension of time associated with the use of an "or equal" product. WETA shall not be responsible for any delay resulting from a substitution request.

In cases where material items are explicitly called out by brand name in the Owner's Requirements without the use of the "or equal" phrase; the items so specified must be provided.

## SECTION 107

### LEGAL RELATIONS AND RESPONSIBILITY TO PUBLIC

#### 107-1.01 LAWS TO BE OBSERVED

5 The Contractor shall keep fully informed of all federal, state and local laws, ordinances, codes and regulations, and all orders and decrees of bodies or tribunals having any jurisdiction or authority, which in any manner affect those engaged or employed on the Work, or which in any way affect the conduct or content of the Work including without limitation, United States Coast Guard regulations. The Contractor warrants that it shall at all times observe and comply with all such laws, ordinances, regulations, orders and decrees; and shall protect and indemnify WETA and its representatives against any claim or liability arising from or based on the violation of any such law, ordinance, regulation, order or decree, whether such violation is committed by itself, its agents, employees, Subcontractors or Supplier/Vendors.

15 The Contractor warrants that all operational practices of the Contractor, and all workmanship and material, equipment and articles used in the performance of the Work hereunder shall be in accordance with all applicable federal, state and local laws and regulations, including but not limited to all safety orders, rules and recommendations of the state as applicable to the Work to be done under this Contract and they shall be obeyed and enforced by the Contractor

20 The Contractor shall comply with all applicable air pollution control rules, regulations, ordinances and statutes that apply to any Work performed pursuant to the Contract, including any air pollution control rules, regulations, ordinances and statutes, or other applicable rules, regulations, ordinances and statutes, depending on location of the Work. Material to be disposed of shall be disposed of per applicable federal, state and local laws and regulations.

25 The Contractor shall also comply with all water pollution control rules, regulations, ordinances and statutes that apply to any Work performed pursuant to this Contract. The Contractor shall exercise every reasonable precaution to protect streams, lakes, reservoirs, bays, coastal waters and other bodies of water from pollution with fuels, oils, bitumens, calcium chloride and other harmful materials, and shall conduct and schedule its operation so as to avoid or minimize mudding and silting of said waters.

30 In the event that the Contract confers on WETA a right or entitlement that is broader than that provided by any statute incorporated into the Contract addressing the same subject, the broader right or entitlement conferred by the Contract shall control over the incorporated statute.

The following civil rights requirements apply to this Contract:

- 35 1. Nondiscrimination. In accordance with Title VI of the Civil Rights Act, as amended, 42 U.S.C. §2000d, Section 303 of the Age Discrimination Act of 1975, as amended, 42 U.S.C. §6102, Section 202 of the Americans with Disabilities Act of 1990, 42 U.S.C. §12132, and Federal transit law at 49 U.S.C. §5332, the Contractor agrees that it shall not discriminate against any employee or applicant for employment because of race, color, creed, national origin, sex, age or disability. In addition, the Contractor agrees to comply with applicable Federal implementing regulations and other implementing requirements FTA may issue.
- 40 2. Equal Employment Opportunity. The following equal employment opportunity requirements apply to the underlying Contract:

- 45 a. Race, Color, Creed, National Origin, Sex, Sexual Orientation. In accordance with Title VII  
of the Civil Rights Act, as amended, 42 U.S.C. §2000e, and Federal transit laws at 49  
U.S.C. §5332, the Contractor agrees to comply with all applicable equal employment  
opportunity requirements of U.S. Department of Labor (U.S. DOL) regulations, "Office of  
Federal Contract Compliance Programs, Equal Employment Opportunity, Department of  
Labor," 41 C.F.R. Parts 60 et seq., (which implement Executive Order No. 11246, "Equal  
Employment Opportunity," as amended by Executive Order No. 11375, "Amending Executive  
Order 11246 Relating to Equal Employment Opportunity," 42 U.S.C. §2000e note), and with  
50 any applicable Federal statutes, executive orders, regulations, and Federal policies that may  
in the future affect construction activities undertaken in the course of the Project. The  
Contractor agrees to take affirmative action to ensure that applicants are employed, and that  
employees are treated during employment, without regard to their race, color, creed, national  
origin, sex or age. Such action shall include, but not be limited to, the following: employment,  
55 upgrading, demotion or transfer, recruitment or recruitment advertising, layoff or termination;  
rates of pay or other forms of compensation; and selection for training, including  
apprenticeship. In addition, the Contractor agrees to comply with any implementing  
requirements FTA may issue.
- 60 b. Age. In accordance with §4 of the Age Discrimination in Employment Act of 1967, as  
amended, 29 U.S.C. §623 and Federal transit law at 49 U.S.C. §5332, the Contractor  
agrees to refrain from discrimination against present and prospective employees for reason  
of age. In addition, the Contractor agrees to comply with any implementing requirements FTA  
may issue.
- 65 c. Disabilities. In accordance with Section 102 of the Americans with Disabilities Act, as  
amended, 42 U.S.C. §12112, the Contractor agrees that it will comply with the requirements  
of U.S. Equal Employment Opportunity Commission, "Regulations to Implement the Equal  
Employment Provisions of the Americans with Disabilities Act," 29 CFR Part 1630, pertaining  
to employment of persons with disabilities. In addition, the Contractor agrees to comply with  
any implementing requirements FTA may issue.
- 70 3. The Contractor also agrees to include these requirements in each subcontract financed in whole  
or in part with Federal assistance provided by FTA, modified only if necessary to identify the  
affected parties.

75 All Work that is performed in the State of California if applicable shall require a California Business  
license, participation in California Workers' Compensation Program, and compliance with applicable  
federal, state and local laws and regulations. Work performed in another jurisdiction requires an  
applicable business license, participation in any applicable workers' compensation or similar program and  
compliance with all applicable federal, state and local laws and regulations.

80 No bid submitted shall be invalidated by the failure of the Offeror to be licensed in every state in which  
the Work or any portion thereof, is to be performed. However, at the time the Contract is awarded, the  
Contractor shall be properly licensed in accordance with the applicable state licensing laws. The first  
payment for Work or material under any Contract shall not be made unless and until the Contractor  
provides evidence satisfactory to WETA that the records of the applicable Contractors' State License  
Board indicate that the Contractor was properly licensed at the time the Contract was Awarded. Failure of  
the Offeror to obtain proper and adequate licensing for an Award of the Contract shall constitute a failure  
to execute the Contract and shall result in the forfeiture of the security of the Offeror. The applicable  
85 contractor licensing law must in any event be determined by the Contractor and complied with as a  
condition to award of the Contract.

Contractor's attention is directed to the following requirements in California Government Code Sections  
4552, 4553 and 4554, to the extent applicable to Contractor and Subcontractors:

**California Government Code Section 4552.**

90 In submitting a bid to a public purchasing body, the bidder offers and agrees that if the bid is accepted, it  
will assign to the purchasing body all rights, title, and interest in and to all causes of action it may have  
under Section 4 of the Clayton Act (15 U.S.C. Sec. 15) or under the Cartwright Act (Chapter 2  
(commencing with Section 16700) of Part 2 of Division 7 of the Business and Professions Code), arising  
95 from purchases of goods, materials, or services by the bidder for sale to the purchasing body pursuant to  
the bid. Such assignment shall be made and become effective at the time the purchasing body tenders  
final payment to the bidder.

The preceding provisions of this section shall be included in full in any specifications for the public  
purchase and shall be included in full in the bid agreement or general provisions incorporated into the  
bid agreement.

100 *(Added by Stats. 1978, Ch. 414.)*

**California Government Code Section 4553.**

If an awarding body or public purchasing body receives, either through judgment or settlement, a  
monetary recovery for a cause of action assigned under this chapter, the assignor shall be entitled to  
receive reimbursement for actual legal costs incurred and may, upon demand, recover from the public  
105 body any portion of the recovery, including treble damages, attributable to overcharges that were paid by  
the assignor but were not paid by the public body as part of the bid price, less the expenses incurred in  
obtaining that portion of the recovery.

In state contracts, the preceding provisions of this section shall be included in full in any specifications for  
the public purchase and shall be included in full in the bid agreement or general provisions incorporated  
110 into the bid agreement.

*(Amended by Stats. 1984, Ch. 740, Sec. 1.)*

**California Government Code Section 4554.**

Upon demand in writing by the assignor, the assignee shall, within one year from such demand, reassign  
the cause of action assigned under this part if the assignor has been or may have been injured by the  
115 violation of law for which the cause of action arose and (a) the assignee has not been injured thereby, or  
(b) the assignee declines to file a court action for the cause of action.

In state contracts, the preceding provisions of this section shall be included in full in any specifications for  
the public purchase and shall be included in full in the bid agreement or general provisions incorporated  
into the bid agreement.

120 *(Amended by Stats. 1984, Ch. 740, Sec. 2.)*

To the extent Contractor performs Work in California, Contractor shall comply with the provisions of  
Section 3700 of the Labor Code which require every employer to be insured against liability for workers'  
compensation or to undertake self-insurance in accordance with the provisions of that Code. To the  
extent that the Work is performed in another state, it is Contractor's obligation to determine and comply  
125 with applicable workers' compensation requirements.

To the extent Contractor performs Work in a state other than California, it is Contractor's obligation to  
determine and comply with applicable state and local requirements in respect to wage rates, hours of

work and related requirements. If the Work is performed in California, Contractor's attention is directed to the following requirements of the California Labor Code related to hours of work. California's Labor Code prevailing wage requirements do not apply to the extent that the Work is performed in California. A copy of applicable Code sections shall be included in each applicable subcontract hereunder to the extent required:

**California Working Hours Requirements (Labor Code Sections 1810 – 1815)**

**1810.**

Eight hours labor constitutes a legal day's work in all cases where the same is performed under the authority of any law of this State, or under the direction, or control, or by the authority of any officer of this State acting in his official capacity, or under the direction, or control or by the authority of any municipal corporation, or of any officer thereof. A stipulation to that effect shall be made a part of all contracts to which the State or any municipal corporation therein is a party.

*(Enacted by Stats. 1937, Ch. 90.)*

**1811.**

The time of service of any workman employed upon public work is limited and restricted to 8 hours during any one calendar day, and 40 hours during any one calendar week, except as hereinafter provided for under Section 1815.

*(Amended by Stats. 1963, Ch. 964.)*

**1812.**

Every contractor and subcontractor shall keep an accurate record showing the name of and actual hours worked each calendar day and each calendar week by each worker employed by him or her in connection with the public work. The record shall be kept open at all reasonable hours to the inspection of the awarding body and to the Division of Labor Standards Enforcement.

*(Amended by Stats. 1988, Ch. 160, Sec. 123.)*

**1813.**

The contractor or subcontractor shall, as a penalty to the state or political subdivision on whose behalf the contract is made or awarded, forfeit twenty-five dollars (\$25) for each worker employed in the execution of the contract by the respective contractor or subcontractor for each calendar day during which the worker is required or permitted to work more than 8 hours in any one calendar day and 40 hours in any one calendar week in violation of the provisions of this article. In awarding any contract for public work, the awarding body shall cause to be inserted in the contract a stipulation to this effect. The awarding body shall take cognizance of all violations of this article committed in the course of the execution of the contract, and shall report them to the Division of Labor Standards Enforcement.

*(Amended (as added by Stats. 1997, Ch. 757, Sec. 6) by Stats. 2002, Ch. 28, Sec. 3. Effective January 1, 2003.)*

**1814.**

Any officer, agent, or representative of the State or any political subdivision who violates any provision of this article and any contractor or subcontractor or agent or representative thereof doing public work who neglects to comply with any provision of Section 1812 is guilty of a misdemeanor.

*(Added by renumbering Section 1816 by Stats. 1961, Ch. 238.)*

**1815.**

170 Notwithstanding the provisions of Sections 1810 to 1814, inclusive, of this code, and notwithstanding any stipulation inserted in any contract pursuant to the requirements of said sections, work performed by employees of contractors in excess of 8 hours per day, and 40 hours during any one week, shall be permitted upon public work upon compensation for all hours worked in excess of 8 hours per day at not less than 1<sup>1</sup>/<sub>2</sub> times the basic rate of pay.

*(Amended by Stats. 1963, Ch. 964.)*

175 **California Labor Code Section 1735/Nondiscrimination**

To the extent that any Work is performed in California, Contractor's attention is directed to Section 1735 of the California Labor Code, which reads as follows:

180 A contractor shall not discriminate in the employment of persons upon public works on any basis listed in subdivision (a) of Section 12940 of the Government Code, as those bases are defined in Sections 12926 and 12926.1 of the Government Code, except as otherwise provided in Section 12940 of the Government Code. Every contractor for public works who violates this section is subject to all the penalties imposed for a violation of this chapter.

*(Amended by Stats. 2004, Ch. 788, Sec. 14. Effective January 1, 2005.)*

185 To the extent that any Work is performed in California, Contractor's attention is directed to the following "Nondiscrimination Clause" that is set forth in Article 1 of Subchapter 5 of Chapter 5 of Division 4.1 of Title 2, California Code of Regulations. Clause (a) is the applicable Nondiscrimination Clause for this Contract.

**Title 2, California Code of Regulations §11105. Nondiscrimination Clause**

190 Each state contract shall contain a nondiscrimination clause unless specifically exempted pursuant to section 11111. The governmental body awarding the contract may use either clause (a) or clause (b) below. Clause (a) will satisfy the requirements of section 12990 of the Government Code only; clause (b) contains language that will satisfy the requirements of both the Fair Employment and Housing Act and Article 9.5, Chapter 1, Part 1, Division 3, Title 2 of the Government Code (adopted pursuant to Government Code sections 11135-11139.5). Standardized state form OCP-1, containing clause (a), and OCP-2, containing clause (b), will be available through the OCP. These forms may be incorporated into a contract by reference and will fulfill the requirement of this section. The contracting parties may, in lieu of incorporating form OCP-1 or OCP-2, include the required clause in the written contract directly.

Clause (a)

200 1. During the performance of this contract, contractor and its subcontractors shall not unlawfully discriminate against any employee or applicant for employment because of race, religion, color, national origin, ancestry, physical handicap, medical condition, marital status, age (over 40) or sex. Contractors and subcontractors shall insure that the evaluation and treatment of their employees and applicants for employment are free of such discrimination. Contractors and subcontractors shall comply with the provisions of the Fair Employment and Housing Act (Gov. Code, §12900 et seq.) and the applicable regulations promulgated thereunder (Cal. Code Regs., tit. 2, §11000 et seq.). The applicable regulations

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of the Fair Employment and Housing Council implementing Government Code section 12990, set forth in Subchapter 5 of Division 4.1 of Title 2 of the California Code of Regulations are incorporated into this contract by reference and made a part hereof as if set forth in full. Contractor and its subcontractors shall give written notice of their obligations under this clause to labor organizations with which they have a collective bargaining or other agreement.

2. This Contractor shall include the nondiscrimination and compliance provisions of this clause in all subcontracts to perform work under the contract.

Clause (b)

1. During the performance of this contract, the recipient, contractor and its subcontractors shall not deny the contract's benefits to any person on the basis of religion, color, ethnic group identification, sex, age, physical or mental disability, nor shall they discriminate unlawfully against any employee or applicant for employment because of race, religion, color, national origin, ancestry, physical handicap, mental disability, medical condition, marital status, age (over 40) or sex. Contractor shall insure that the evaluation and treatment of employees and applicants for employment are free of such discrimination.

2. Contractor shall comply with the provisions of the Fair Employment and Housing Act (Gov. Code, §12900 et seq.), the regulations promulgated thereunder (Cal. Code Regs., tit. 2, §11000 et seq.), the provisions of Article 9.5, Chapter 1, Part 1, Division 3, Title 2 of the Government Code (Gov. Code, §§11135-11139.5), and the regulations or standards adopted by the awarding state agency to implement such article.

3. Contractor or recipient shall permit access by representatives of the Department of Fair Employment and Housing and the awarding state agency upon reasonable notice at any time during the normal business hours, but in no case less than 24 hours' notice, to such of its books, records, accounts, other sources of information and its facilities as said Department or Agency shall require to ascertain compliance with this clause.

4. Recipient, contractor and its subcontractors shall give written notice of their obligations under this clause to labor organizations with which they have a collective bargaining or other agreement.

5. The contractor shall include the nondiscrimination and compliance provisions of this clause in all subcontracts to perform work under the contract.

Note: Authority cited: Sections 12935(a) and 12990(d), Government Code. Reference: Section 12990, Government Code.

### **107-1.02 PERMITS, LICENSES, TAXES AND ENCUMBRANCES**

The Contractor shall procure all permits and licenses, pay all charges, fees and taxes, and give all notices necessary and incidental to the due and lawful prosecution of the Work. As a condition of performance of this Contract, the Contractor shall pay all federal, state and local taxes incurred by the Contractor in the performance of this Contract. Proof of payment of these taxes is a condition precedent to Final Payment by WETA under this Contract.

If any Work under the Contract is performed in such a manner or place as to cause imposition of any lien, sales tax or duty assessment, foreign or domestic, against the Vessel, the Contractor shall be responsible for payment of same at the Contractor's expense.

### **107-1.03 PATENTED DEVICES, MATERIALS AND PROCESSES**

If the Contractor employs any design, device, material, or process covered by letters of patent, trademark or copyright, he shall provide for such use by suitable legal agreement with the patentee or owner. Contractor represents and warrants that the Project, and any components of the Project, shall not infringe

250 on any third party's intellectual property rights, including patent, copyright, trade secret and trademark. In  
addition to the warranties and indemnities provided in the Contract, Contractor shall indemnify, defend  
and hold harmless WETA and its directors, officers, agents and employees from and against any and all  
claims, liabilities, losses, damages or expenses (including reasonable attorney's fees), including claims of  
255 patent, copyright, trademark, trade secret and other intellectual property infringement, arising out of or  
relating to WETA's ownership, possession or use of the Vessel or any components of the Vessel,  
including but not limited to the software or the design of the Vessel. If any third party files a claim or  
lawsuit against WETA that relates to or impacts WETA's ownership or use of the Vessel or any  
component of the Vessel, including the design of the Vessel, WETA shall notify Contractor and Contractor  
260 shall at its sole option take one or more of the following actions at no additional cost to Owner: (a) procure  
the right to continue the use of the same without material interruption for Owner or (b) take back the  
infringing material and refund Owner an amount equal to the amount paid by Owner in respect of the  
infringing material and replace it with non-infringing material that provides the equivalent or better  
functionality and that is acceptable to Owner.

#### **107-1.04 FEDERAL AID PROVISIONS**

265 The United States Government is paying a portion of the cost of this Project, therefore, the Federal laws  
and rules and regulations made pursuant to such laws must be observed by the Contractor, and the Work  
shall be subject to the inspection of the appropriate Federal agency. Such inspection shall in no sense  
make the Federal Government a party to this Contract and will in no way interfere with the rights of either  
party hereunder.

270 See Appendices C and F to the ITO for a complete statement of federal requirements and required Forms  
applicable to the Contract.

#### **107-1.05 HEALTH AND SAFETY PROVISIONS**

275 The Contractor shall provide and maintain in a neat and sanitary condition all areas of Work and space  
occupied by his employees and WETA employees, and accommodations used by his employees and  
WETA employees. Conditions and accommodations shall comply with the requirements of the state and  
local boards of health, or other bodies or tribunals having jurisdiction.

Attention is directed to federal, state and local laws, rules and regulations concerning construction safety  
and health standards. The Contractor shall not require any workers to work in surroundings or under  
conditions that are unsanitary, hazardous or dangerous to health or safety.

280 The Contractor shall provide and be solely responsible for all firefighting protection on board the Vessel  
as may be required by various Regulatory Bodies, including the local fire department and port authority,  
prior to Delivery Acceptance of the Vessel by WETA.

The Contractor shall provide three copies of its fire plan to WETA. The Plan shall not rely on the  
availability or proper operation of the Vessel's firefighting systems and equipment.

285 All fire watch personnel and equipment shall be provided by the Contractor. The Vessel's firefighting  
equipment shall not be used as fire watch equipment.

### 107-1.06 PROTECTION AND RESTORATION OF PROPERTY

290 The Contractor shall be responsible for all damage or injury to property of any character, resulting from any act, omission, neglect, or misconduct in his manner or method of executing the Work, or at any time due to defective Work or materials, during the prosecution of the Work, and said responsibility shall not be released until the Project shall have been completed and accepted.

The Contractor shall safeguard the Vessel's machinery and electrical equipment, the use of which shall be made only upon the express written approval of the Owner's Representative, and under supervision of competent, trained personnel.

295 The Contractor shall at all times, insofar as conditions of the Work permit, keep the openings of the Vessel closed against the weather. Deck openings, permanent and/or temporary shall be protected by a watertight coaming with a securely fastened cover.

During the course of the Work, the Contractor shall maintain adequate heating and ventilation throughout the Vessel to preclude the formation of molds and/or other deleterious substances.

### 300 107-1.07 RESPONSIBILITY FOR DAMAGE CLAIMS AND INSURANCE

#### A. WETA Saved Harmless

305 The Contractor shall indemnify, save harmless, and defend WETA, and its directors, officers, agents and employees from any and all claims, actions, or liability for personal injuries or death, or damage to or loss of property arising directly or indirectly from the Contractor's performance of this Contract including without limitation those arising from acts for which the Contractor is strictly liable; except to the extent of WETA's comparative or sole negligence causing injury or damages. The Contractor specifically and expressly waives any immunity that may be granted it under any applicable workers' compensation statute or regulation. Further, the indemnification obligation under this contract shall not be limited in any way by any limitation on the amount or type of damages, compensation or benefits payable to or for any third party under workers' compensation acts, disability benefit acts, or other employee benefit acts; provided Contractor's waiver of immunity by the provisions of this paragraph extends only to claims against Contractor by WETA, and does not include, or extend to, any claims by Contractor's employees directly against the Contractor.

315 Contractor's duty to defend, indemnify and hold WETA harmless shall include, as to all claims, demands, losses and liabilities to which it applies, WETA's personnel-related costs, reasonable attorneys' fees, court costs, and all other claim-related expenses, including but not limited to judgments rendered against WETA.

#### B. Responsibility for WETA Property.

320 The Contractor shall assume full responsibility for and shall indemnify WETA against any and all loss or damage of whatsoever kind and nature to any and all WETA property, including but not limited to the Vessel and any equipment, supplies, accessories, or parts furnished, while in the Contractor's custody and care for storage, repairs, or services to be performed under the terms of this contract, resulting in whole or in part from the negligent acts or omissions of Contractor, any Subcontractor, or any employee, agent or representative of Contractor or Subcontractor.

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C. Insurance.

Without limiting Contractor's indemnification obligations, it is agreed that Contractor shall purchase at its own expense and maintain in force at all times during the performance of services under this contract the following policies of insurance. Where specific limits are shown, it is understood that they shall be the minimum acceptable limits. If the Contractor's policy contains higher limits, WETA shall be entitled to coverage to the extent of such higher limits.

Evidence of insurance must be furnished to the WETA prior to Contract execution. Such evidence, executed by the carrier's representative and issued to WETA, shall consist of a certificate of insurance or the policy declaration page with required endorsements attached thereto and must provide for a 30 calendar day prior notice of cancellation, nonrenewal or material change, except in the event of nonpayment of premiums, then 10 calendar days' notice shall be provided. The Contractor assumes FULL responsibility for notifying WETA of cancellation, non-renewal or material change in their insurance policies. Acceptance by WETA of deficient evidence does not constitute a waiver of contract requirements. When a certificate of insurance is furnished, it shall contain the following:

"This is to certify that the policies described herein comply with all aspects of the insurance requirements of the Project."

Failure to furnish satisfactory evidence of insurance is grounds for termination of this Contract for default. The following coverage and evidence thereof is required:

1. Worker's Compensation Insurance. The Contractor shall provide and maintain, for all employees of the Contractor engaged in Work under this contract, Worker's Compensation Insurance required by the law of the state where an employee engages in Work and Longshoreman Harbor Workers' Compensation Insurance (U.S. L&H). The Contractor shall be responsible for Worker's Compensation Insurance and U.S. L&H for any Subcontractor who directly or indirectly provides services under this contract. This coverage must include statutory coverage for states in which employees are engaging in Work and employer's / maritime employer's liability protection of not less than \$1,000,000 per occurrence. An endorsement providing a waiver of subrogation in favor of WETA is required.
2. Marine General Liability Insurance / Ship Repairer's Legal Liability Insurance The Contractor shall provide and maintain coverage limits not less than \$30,000,000 limit per occurrence and annual aggregates where generally applicable and shall include premises-operations, independent contractors, products/completed operations, broad form property damage, blanket contractual, personal injury and sudden & accidental pollution endorsements. The Marine General Liability Insurance Policy shall not contain a contractual liability exclusion provision.
3. Comprehensive Automobile Liability Insurance; covering all owned, hired and non-owned vehicles with coverage limits not less than \$1,000,000 combined single limit.
4. Ship Repairer's Legal Liability Insurance This coverage shall be included with the Marine General Liability policy.
5. All Risk Marine Builders Risk Insurance with coverage limits by the terms of the policy equal to the Contract Price plus the value of WETA furnished equipment or materials. Coverage to include Protection & Indemnity and vessel pollution while vessels are undergoing Builder's Trials, Acceptance Trials through Delivery Acceptance of the Vessel

370 by WETA. Applicable policy deductibles shall be the responsibility of the contractor. Loss shall be payable to Contractor and WETA as their interests may appear.

375 All of the insurance described above shall be considered primary to any other liability or property insurance carried by WETA through self-insurance or otherwise, and shall contain a "Cross Liability" or "Severability of Interest" clause or endorsement. The WETA and the Blue and Gold Fleet shall be named "Additional Insured" on all insurance policies (other than Worker's Compensation Insurance) required under this contract.

### **107-1.08 CONTRACTOR'S RESPONSIBILITY FOR WORK/ CONTRACTOR REPRESENTATIONS**

The Contractor makes the following representations to the Owner:

- 380 • The Contract Price is reasonable compensation for the Work and the Contract Time is adequate for the performance of the Work as represented by the Contract;
- The Contractor is financially solvent, able to pay its debts as they mature, and possesses sufficient working capital to complete the Work, and perform the Contractor's obligations required by the Contract and in accordance with the Contract Time;
- 385 • Contractor is able to furnish plant, tools, material, supplies, equipment and labor required to complete the Work and perform the obligation required by the Contract and has sufficient experience and competence to do so; and
- Contractor shall perform with its own forces work equivalent to at least seventy percent (70%) excluding taxes, insurance and bonding, of the Contract Price.

390 The Contractor will give sufficient supervision of the Work, using its best skills and attention. The Contractor is hereby given notice that the Owner will be relying on the accuracy, completeness and competence of the Contractor's work. The Contractor will supervise and be solely responsible for the proper performance of the Work in accordance with the Contract, including the construction means, methods, techniques, sequences, and procedures and for coordination of all parts of the Work.

395 Unless specified elsewhere in the Contract, the Contractor will provide and pay for all labor, materials, equipment, tools, construction machinery, utilities, transportation, and other facilities and services (including any and all applicable local, state and federal taxes, social security and other liability) necessary for the proper execution and completion of the Work in accordance with the Contract requirements.

400 The Contractor will take into consideration and make due allowance foreseeable delays and interruptions to the Work such as weather, equipment breakdowns, shipping and regulatory inspections and approvals. Receipt and acceptance of a schedule submitted by the Contractor will not be construed to assign responsibility for performance or contingencies to the Owner, or relieve the Contractor of its responsibility to adjust its forces, equipment and work schedules as may be necessary to insure completion of the Work  
405 within the Contract Time.

410 Until Delivery Acceptance of the Vessel by WETA, the Contractor shall have the charge and care thereof and shall take every precaution against injury or damage to any part thereof by the action of the elements, grounding, collision or from any other cause, whether or not arising from the execution of the Work. The Contractor shall rebuild, repair, restore and make good all injuries or damages to any portion of the Vessel occasioned by any cause before Delivery Acceptance of the Vessel by WETA.

The Contractor shall provide and maintain adequate security for the entire Vessel until delivery so as to protect the Vessel from damage, fire, and pilferage.

415 In case of suspension of Work from any cause, the Contractor shall be responsible for the Vessel and shall take such precautions as may be necessary to prevent damage to the Vessel from the elements at his expense.

#### **107-1.09 PERSONAL LIABILITY OF PUBLIC OFFICIALS**

420 In carrying out any of the provisions of the Contract or their duties to WETA, or in exercising any power or authority granted to them by or within the scope of the Contract, there shall be no liability upon the Owner's Representative or WETA's Authorized Representatives, either personally or as officials of WETA, it being understood that in all such matters they act solely as agents and representatives of WETA.

#### **107-1.10 NO WAIVER OF LEGAL RIGHTS**

425 The WETA shall not be precluded or estopped by any measurement, estimate or certificate made either before or after the completion and acceptance of the Work and payment therefore, from showing the true amount and character of the Work performed and materials furnished by the Contractor, or from showing that any measurement, estimate or certificate is untrue or is incorrectly made, or that the Work or materials do not in fact conform to the Contract, or are not, in fact, required by the Contract. WETA shall not be precluded or estopped, notwithstanding any such measurement, estimate, or certificate and/or payment in accordance therewith, from recovering from the Contractor or any of his sureties, from either  
430 or both, such damages or remedies that WETA may be entitled to recover by reason of Contractor's failure to comply with the terms of the Contract. Neither the acceptance by WETA, or any representative of WETA, nor any payment for or acceptance of the whole or any part of the Work, nor any extension of time, nor any possession taken by WETA, shall operate as a waiver of any portion of the Contract or of any power herein reserved, or of any right to damages. A waiver by WETA of any breach of the Contract  
435 shall not be held to be a waiver of any other subsequent breach.

#### **107-1.11 GRATUITY AND CONFLICT OF INTEREST**

440 The Contractor agrees that he shall not extend any loan, gratuity or gift of money of any form whatsoever to any employee or other representative of WETA, nor shall he rent or purchase any equipment or materials from any employee or other representative of WETA or to the best of his knowledge from any agent of an employee or other representative of WETA. Before payment of the Final Payment, the Contractor shall execute and furnish WETA an affidavit certifying that he has complied with the above provisions of the Contract.

#### **107-1.12 JOINT VENTURES**

445 Where the Contractor is a joint venture, all provisions of this Contract are binding on each entity comprising the joint venture. Each entity comprising the joint venture agrees to sign the Contract and all required bonds.

## SECTION 108 PROSECUTION AND PROGRESS

### 108-1.01 SUBCONTRACTING, ASSIGNMENT OF CONTRACT

5 The Contractor shall not subcontract, sell, transfer, assign or otherwise dispose of the Contract or  
contracts, or any portion thereof, or of his right, title, or interest therein, without written consent of the  
Owner's Representative. In case such consent is given, the Contractor shall be permitted to subcontract a  
portion thereof, but shall perform with his own organization, Work amounting to not less than 70 percent  
10 of the original Contract Price. In case such Contractor intends to subcontract a portion of Work amounting  
to more than 30 percent of the original Contract Price, Contractor shall provide, at Contract execution, a  
letter, signed by both the Contractor and Subcontractor(s), detailing the percentage of Work to be  
performed by the Subcontractor[s] and written consent of the Owner shall be required. Consent to  
subcontract, assign or otherwise dispose of any portion of the Contract shall not be construed to relieve  
15 the Contractor of any responsibility for the fulfillment of the Contract. No subcontracts, or transfer of  
Contract, shall in any case release the Contractor of his liability under the Contract and bonds. For all  
Work performed by Subcontractor on Subcontractor's site or otherwise is subject to General Provision  
103-1.03.

All subcontracts submitted for approval must contain provisions for payment for Work done by the  
Subcontractor within seven days of receipt of payment by the prime Contractor.

20 The Contractor or an approved Subcontractor shall not be required to obtain an approved subcontract for  
owner-operators of hauling equipment provided they are listed on the payroll of either the Contractor or  
an approved Subcontractor.

The Contractor shall furnish WETA with one (1) copy of any and all contracts entered by himself and a  
Subcontractor for Work to be performed in connection with the Contract. Prices of subcontracted Work  
25 shall be furnished by the Contractor. For purposes of computing subcontract percentages, the Owner's  
Representative shall determine the value of the subcontracts, based on contract unit prices, or upon  
reasonable value, if entire items are not subcontracted.

The purchase of equipment and materials produced at and furnished from established and recognized  
commercial plants, together with the delivery of such materials to the site of Work by means of vehicles  
30 owned and operated by such plants or by recognized commercial hauling companies, shall not be  
considered as subcontracting under these provisions, but may be considered as subcontracting for  
purposes of the exercise of any rights to review records or conduct audits by WETA.

### 108-1.02 NOTICE TO PROCEED

Work under this Contract shall require a Notice to Proceed (NTP) issued by WETA.

35 The date of signature of the Notice to Proceed shall be the date on which the Contractor is allowed and  
expected to begin the design and construction. NTP shall be issued when all contingencies for, and  
conditions precedent to, Contract Award have been met.

The date of signature of the Notice to Proceed shall be the date on which the Contractor is allowed and  
expected to begin and from which date Contract Time shall accrue (See §108-1.05). The NTP may be

40 issued by WETA after all WETA reviews of all required documents listed on the Required Documents (ITO Appendix C) are satisfactorily completed and submitted.

### 108-1.03 PROSECUTION AND PROGRESS

After posting of the Notice of Intent to Award and prior to Notice to Proceed the Contractor shall submit the following to the Owner's Representative (also see Subsection 105-1.02):

45 A. A detailed schedule for Engineering, Design and Construction.

B. Project Schedule (hard copy as well as on MS compatible software).

50 The schedule must show the order in which the Contractor proposes to carry out the Work and the contemplated dates on which he and his Subcontractors shall start and finish each of the salient features of the Work, including any scheduled periods of shutdown. The schedule shall also indicate any anticipated periods of multiple-shift Work.

The schedule must represent all Work beginning at date of receipt of Notice to Proceed. The schedule shall also include proposed begin and end construction dates for each major structure unit or task and all subcontract/vendor/supplier activities.

55 C. A list showing anticipated dates for procurement of materials and equipment, or the ordering of articles of special manufacture; a list showing proposed begin and end fabrication and installation dates for vessel systems, tests and trials, maintenance items, and other items of scheduled Work; and proposed shipment dates for material other than stocked items.

D. Submittals schedule and procedures.

60 E. A list showing all proposed Subcontractors, Vendors, and Suppliers to be used, their addresses and applicable purchase order number.

F. A letter designating the Contractor's Project Manager, defining that person's responsibility and authority, and providing a specimen of his signature.

G. A letter designating the Equal Employment Opportunity Officer and that person's responsibilities and authority.

65 The Contractor shall provide adequate materials, labor and equipment to ensure the completion of the Project in accordance with all Contract requirements. The Work shall be performed as vigorously and as continuously as conditions may permit. The Contractor shall take into consideration and make due allowances for foreseeable delays and interruptions to the Work such as weather, equipment breakdowns, shipping, Regulatory agency inspections and approvals. Receipt and acceptance of a schedule submitted by the Contractor shall not be construed to assign responsibility for performance or contingencies to WETA or relieve the Contractor of his responsibility to adjust his forces, equipment, and Work schedules as may be necessary to insure completion of the Work within prescribed time (See §108-1.05).

75 The Contractor must take delivery of the vessel at WETA's Mare Island facility where the Work shall be performed. Upon completion of the work, including the inspection and testing WETA will accept re-delivery of the vessel at the Mare Island facility.



The Contractor must redeliver the vessel to WETA's Mare Island facility as a condition of completion of the work. All costs associated with the redelivery of the vessel to WETA's Mare Island facility are the sole responsibility of the Contractor.

80 Upon substantial changes to the approved Project Schedule or on request of the Owner's Representative, the Contractor shall submit revised progress schedules and date lists in the form required. Such revised schedules or lists shall conform to the Contract Time allocated by the Contract and take into account delays that may have been encountered in the performance of the Work. In submitting a revised  
85 his schedule or methods of operation to ensure completion of all Work within the prescribed time.

Should the prosecution of the Work during normal Work days be discontinued for any reason, for more than two calendar days, the Contractor shall notify the Owner's Representative at least twenty-four (24) hours in advance of resuming operations.

90 The Contractor shall have a Superintendent or Project Manager on-site at all times with the authority to act on the Contractor's behalf.

#### **108-1.04 CHARACTER OF WORKERS, METHODS AND EQUIPMENT**

The Contractor shall at all time employ sufficient labor and equipment for prosecuting the several classes of Work to full completion in the manner and time required by this Contract.

95 All workers and management personnel shall have sufficient skill and experience to perform properly the Work assigned to them. Workers engaged in special Work or skilled Work shall have sufficient experience in such Work and in the operation of the equipment required to perform all Work properly and satisfactorily.

100 Any person, whether worker or superintendent, employed by the Contractor or by any Subcontractor whom the Owner's Representative deems incompetent, careless, insubordinate, or otherwise objectionable, or whose continued employment on the Work is deemed to be contrary to the public interest shall, at the written request of the Owner's Representative, be removed forthwith by the Contractor or Subcontractor employing such person, and shall not be employed again in any portion of the Work without the approval of the Owner's Representative. The Owner's Representative shall notify  
105 the Contractor in writing at least five days before submitting a written request to remove any worker and shall cite the reason for the impending removal in the notice.

Should the Contractor fail to remove such person or persons as required above, or fail to furnish suitable and sufficient personnel for the proper prosecution of the Work, the Owner's Representative may suspend the Work by written notice until such orders are complied with.

110 No convict labor shall be employed and no materials manufactured or produced by convict labor shall be used in connection with the Work. This provision shall not be construed as applying to convicts on parole or probation.

The Contractor shall not discriminate against any person because of sex, race, creed, color, sexual orientation, or national origin.

115 All equipment which is proposed to be used shall be of appropriate size and in such mechanical condition as to meet the requirements of the Work and to produce a satisfactory quality of Work.

When the methods and equipment to be used by the Contractor in accomplishing the construction are not prescribed in the Contract, the Contractor is free to use any methods or equipment that he demonstrates

to the satisfaction of the Owner's Representative shall accomplish the Work in conformance with the requirements of the Contract, except as provided above.

120 When the Contract or manufacturer's instruction specifies that the construction be performed by the use of certain methods and equipment, such methods and equipment shall be used unless others are authorized.

## 108-1.05 TIME

### A. Time.

125 Contract Time shall be the period of time, measured in calendar days, that is allocated to the Contractor to complete the design and construction Work required by the Contract and to redeliver the Vessel to WETA in full compliance with the Contract requirements and for Final Acceptance by WETA. Contract Time equals the number of days of time stipulated in the Contract at the time of Contract Award as proposed by the Contractor and agreed to by WETA  
130 (See Form WETA-10), plus any additional days of time allocated during the course of the Contract by approved extensions of time, minus any days of time reclaimed by WETA based upon reductions in the scope or character of the Work during the course of the Contract.

The count of Contract Time expended shall begin on the date of the Notice to Proceed. The count of Contract Time, in conjunction with approved modifications or suspensions of the count of  
135 Contract Time, shall be the basis for establishing the approved scheduled date of Acceptance and for assessing liquidated damages associated with untimely Vessel delivery as described in §108-1.06. Failure to complete the Work, submit all deliverables, and deliver the Vessel to WETA within the Contract Time may also be an event of default authorizing WETA to take any steps permitted by §108-1.07. See §105-1.02 for schedule of deliverables requirements.

### 140 B. Extension of Contract Time.

The Owner's Representative may consider requests for extension of Contract Time and, if deemed warranted, approve extensions of Contract Time equal to the number of additional days considered by the Owner's Representative to be necessary to accomplish approved change Work or Work associated with WETA-issued directives other than Work orders. Work associated with  
145 changes and directives, or any portion of such Work, which could reasonably be accomplished within the Contract Time, as determined by the approved Contractor's schedule, shall be completed within the established Contract Time.

The Contractor shall be responsible for promptly requesting extensions of Contract Time and for furnishing any and all information necessary to justify each proposed extension to the satisfaction of the Owner's Representative. For changes to the Work, a request for extension of Contract Time shall be considered timely only if the request is included with the Contractor's originally submitted Change Order.

Under no circumstances shall Contract Time be extended due to inclement weather or the results of inclement weather. However, extraordinary weather conditions for the pertinent geographical area may, but not necessarily shall, provide a basis for an extension of Contract Time. Severe weather, including hurricanes, with historical precedent in the pertinent geographical area is not  
155 extraordinary weather.

Approved change documents and WETA-issued directives which reduce the scope of the Contract or change the character of the Work so as to justify a reduction in the amount of

160 Contract Time allotted, may result in an agreement between the parties to the Contract, to reduce the number of days of design time or construction time, as applicable.

Extensions to Contract Time must be approved in writing by the Owner's Representative.

A claim that insufficient Contract Time was originally specified or otherwise required by the Contract shall not constitute a valid reason for extension of Contract Time.

165 C. Suspension of Contract Time.

170 The Owner's Representative may, by written order, suspend Work on the Project, in whole or in part, for such periods as he determines to be necessary. WETA shall discuss impact of suspension with Contractor to determine impact on schedule. Unless an item of Work is suspended which is agreed by WETA to be on the Critical Path of the Project Schedule, no consideration shall be given to extending the Contract Time or stopping the count of Contract Time during the period of suspension of the Work until an item lands on the Critical Path.

In those instances where the Owner's Representative orders suspension of the Work for failure by the Contractor to carry out contractual provisions, the count of Contract Time shall continue throughout the suspension period.

175 Suspension of the count of Contract Time may be allowed by the Owner's Representative because of delays in the completion of the Work due to unforeseeable causes beyond the control of and without the fault or negligence of the Contractor, including but not restricted to acts of God or the public enemy, fires, floods, epidemics, quarantine restrictions, strikes, freight embargoes, and extraordinary weather or delays of Subcontractors due to such causes provided that the Contractor shall, within 10 calendar days of the beginning of any such delay, notify WETA in writing of the cause of delay and request suspension of the count of Contract Time. WETA shall ascertain the facts and the extent of the delay and the parties shall agree upon the number of days that justify such suspension.

180  
185 Suspension of Work by the Owner's Representative or delays in the completion of the Work shall not constitute grounds for any claims by the Contractor for damages or extra compensation unless otherwise provided for in the Contract.

For any suspension in the count of Contract Time to be allowable, such suspension must be approved in writing by the Owner's Representative.

D. Suspensions of Work Ordered by the Owner's Representative.

190 If the performance of all or any portion of the Work is suspended or delayed by the Owner's Representative in writing for an unreasonable period of time (not originally anticipated, customary, or inherent to the shipbuilding industry) and the Contractor believes that additional compensation and/or Contract Time is due as a result of such suspension or delay, the Contractor shall submit to the Owner's Representative in writing a request for adjustment within 7  
195 calendar days of receipt of the notice to resume Work. The request shall set forth the reasons and support for such adjustment.

200 Upon receipt, the Owner's Representative shall evaluate the Contractor's request. If the Owner's Representative agrees that the cost and/or time required for the performance of the Contract has increased as a result of such suspension and the suspension was caused by conditions beyond the control of and not the fault of the Contractor, its suppliers, or Subcontractors at any approved tier, and not caused by weather, the Owner's Representative shall make an adjustment including reasonable profit and modify the Contract in writing accordingly. The Owner's Representative

shall notify the Contractor of his determination whether or not an adjustment of the Contract is warranted.

205 No Contract Time adjustment shall be allowed unless the Contractor has submitted the request for adjustment within the time prescribed.

No Contract Time adjustment shall be allowed under this clause to the extent that performance would have been suspended or delayed by any other cause, or for which an adjustment is provided for or excluded under any other term or condition of this Contract.

210 **108-1.06 FAILURE TO DELIVER ON TIME**

Liquidated damages associated with untimely delivery of the Vessel shall be charged against the Contractor's account by WETA beginning the day after the scheduled Acceptance date of the Vessel and ending on the Operational Acceptance date of the Vessel. The day of Operational acceptance of a Vessel shall stop the accrual of liquidated damages associated with untimely delivery and shall not be included in the count of days chargeable to liquidated damages. Liquidated damages shall not apply if both parties agree that delivery is not viable due to weather or other circumstances.

215 Notwithstanding any other provision of this Contract to the contrary, the liquidated damages provided for in this subsection shall be WETA's sole and exclusive remedy for all damages incurred by reason of the Contractor's failure to complete the Vessel on time.

220 The scheduled Acceptance date of the Vessel shall be the date by which all contracted Work is scheduled to be completed, excluding any Work that may be necessary to correct deficiencies arising during the Warranty/Guarantee Period subsequent to actual Acceptance (see below). The scheduled Acceptance date of the Vessel shall determine the number of days of construction time allocated and calculated in accordance with §108-1.05, subject to any days of approved suspension of construction time, after Notice to Proceed.

225 The Operational Acceptance date shall be the date on which WETA signs the letter of Acceptance of the Vessel (see §105-1.12) and takes custody of the Vessel from the Contractor. The actual Acceptance Date for the Vessel shall be the start date for the count of time for the warranty/guarantee period (see §105-1.16) for the Vessel.

230 For each calendar day that the Vessel remains undelivered after the scheduled Acceptance date of the Vessel, the sum of \$2,000 per day shall be deducted from any moneys due the Contractor. If no money is due the Contractor, WETA shall have the right to recover said sum from the Contractor, the surety or both. The Amounts of these deductions are to cover estimated expenses to WETA as a result of the Contractor's failure to complete the Work within the time specified. Such deductions are liquidated damages and are not to be considered as penalties.

235 Permitting the Contractor to continue and finish the Work, or any part of it, after the scheduled Acceptance date of a Vessel, as approved by WETA, shall in no way operate as a waiver on the part of WETA of any of its rights under this Contract.

### 108-1.07 DEFAULT OF THE CONTRACTOR

- 240 The Owner's Representative shall give notice in writing to the Contractor and his surety of default if the Contractor:
- A. Fails to begin the Work under the Contract within the time specified in a Notice to Proceed; or
  - B. Fails to prosecute Work in a sufficiently timely fashion per the Contractor's furnished schedule or Contractor fails to demonstrate how they intend on making up time; or
  - 245 C. Fails to perform the Work with sufficient workers and equipment or with sufficient materials to assure the prompt completion of said Work per the Contractor's furnished schedule or Contractor fails to demonstrate how he intends on making up time; or
  - D. Performs the Work unsuitably or neglects or refuses to remove materials or to perform anew such Work as may be rejected as unacceptable and unsuitable by Regulatory Body; or
  - 250 E. Discontinues the prosecution of the Work or fails to prosecute Work in a timely fashion; or
  - F. Fails to resume Work which has been discontinued within a reasonable time after notice to do so; or
  - G. Makes an assignment for the benefit of creditors; or
  - H. Hinders any audit to which WETA or FTA is entitled; or
  - 255 I. Becomes insolvent, except that if the Contractor declares bankruptcy, termination shall be in accordance with 11 U.S.C. 362 and/or 11 U.S.C. 365. In the event that the Contractor declares bankruptcy, the Contractor agrees that the Contract will be assumed or rejected in a timely manner so that the Contract will be completed by the date specified in the Contract.

260 If the Contractor or surety, within the time specified in the notice, shall not proceed in accordance therewith, then WETA may, upon written notification from the Owner's Representative of the fact of such delay, neglect or default and the Contractor's failure to comply with such notice, have full power and authority without violating the Contract, to take the prosecution of the Work out of the hands of the Contractor. All completed or partially completed plans, drawings, information, or other property including the design of the Vessel for the purpose of completing the vessel, shall be available to WETA upon the giving by WETA of a written notice of delay, neglect, or default and the Contractor's failure to comply with such a notice, and Contractor and any design Subconsultants grant to WETA license to use such plans, drawings, information, or other property for the completion of the Work. WETA may appropriate or use any or all materials and equipment on the ground or in the water as may be suitable and acceptable and may enter into an agreement for the completion of said Contract according to the terms and provisions thereof, or use such other methods that in the opinion of the Owner's Representative are required for the completion of said Contract in an acceptable manner.

275 The Owner's Representative may, by written notice to the Contractor and his surety or his representative, transfer the prosecution of the Work from the Contractor to the surety, or if the Contractor abandons the Work undertaken under the Contract, the Owner's Representative may, at his option with written notice to the surety and without any written notice to the Contractor, transfer the prosecution of said Work directly to the surety. The surety shall submit its plan for completion of the Work, including any contracts or agreements with third parties for such completion, to WETA for approval prior to beginning completion of the Work. Approval of such contracts shall be in accordance with all applicable WETA requirements and procedures for approval of subcontracts, except that the 70 per cent limitation set forth in §108-1.01 shall not apply.

280

285 Upon receipt of such notice the surety shall enter upon the premises and take possession of all materials, tools, and appliances thereon for the purpose of completing the Work included under the Contract and employ by contract or otherwise any person or persons to finish the Work and provide the materials therefore, without termination of the continuing full force and effect of this agreement, which shall be binding on the Contractor and any surety. In case of such transfer of employment to the surety, the surety shall be paid in its own name on estimates covering Work subsequently performed under the terms of the Contract and according to the terms thereof without any right of the Contractor to make any claim for the same or any part thereof.

290 In case of discontinuance of the Contractor's prosecution of Work by the Owner's Representative as aforesaid, the Contractor shall not be entitled to receive any further balance of the amount to be paid under the contract until the Work shall be fully finished, at which time, if the unpaid balance of the amount to be paid under this Contract shall exceed the expenses incurred by the Owner's Representative in finishing the Work and all damages sustained, or which may be sustained by WETA by reason of such refusal, neglect, failure or discontinuance of prosecution of Work, such excess shall be paid by WETA to the Contractor, but if such expense and damage shall exceed the unpaid balance, the Contractor and his surety and each thereof shall be jointly and severally liable therefore to WETA, and shall pay the difference to WETA up to the full amount of the bonds implicated. The Contractor shall be liable to WETA for all amounts that exceed the value of the bonds.

300 In the event of a termination for default, and in the event that the surety completes and/or WETA completes the Work by employing another contractor or by some other means, any amount due the Contractor or WETA under this section shall be determined at the Final Acceptance by WETA of the constructed Vessel (as opposed to Delivery Acceptance), unless the Owner's Representative, at his sole discretion, determines that an earlier final accounting with the defaulting Contractor is in the best interests of WETA. For purposes of calculating any amount due to or from a defaulting Contractor, all of WETA's damages and expenses attributable to the Contractor's default of completing the entirety of the Work, not just damages and expenses relating to the costs of completing a suitable design, shall be considered in determining whether any moneys are due to the defaulting Contractor from WETA or from the defaulting Contractor to WETA. Even if the Owner's Representative determines in favor of a final accounting with a defaulting Contractor before final completion of all Contract Work, the surety shall in no event be released from any liability, be it joint and several or otherwise. The surety's responsibility is limited to the amount of the bonds furnished for this Contract.

315 If, after notice of termination of the Contractor's right to proceed under the provisions of this clause, it is determined for any reason that the Contractor was not in default under the provisions of this clause, or that the delay was excusable under the provisions of this clause, the rights and obligations of the parties shall be the same as if the notice of termination had been issued pursuant to §108-1.08 as a termination for convenience of WETA.

In the event that WETA elects to waive its remedies for any breach by Contractor of any covenant, term or condition of this Contract, such waiver by WETA shall not limit WETA's remedies for any succeeding breach of that or of any other term, covenant, or condition of this Contract.

320 Each Subcontract shall provide that, pursuant to terms in form and substance satisfactory to Owner, (a) Owner is a third party beneficiary of the Subcontract and shall have the right to enforce all of the terms of the Subcontract for its own benefit, (b) all guarantees and warranties, express or implied, shall inure to the benefit of Owner, and its respective successors and assigns; and (c) the rights of Contractor under such instrument are assigned to Owner contingent only upon delivery of written request from Owner following default by Contractor or termination or expiration of this Contract, allowing Owner to assume the benefit of Contractor's rights with liability only for those remaining obligations of Contractor accruing after the date of assumption by Owner.

### 108-1.08 TERMINATION OF WORK FOR WETA'S CONVENIENCE

330 The performance of the Work under the Contract may be terminated by WETA in accordance with this Section in whole or in part, whenever, for any reason, the Owner's Representative, in his sole discretion, shall determine that such termination is in the best interest of WETA. Any such termination shall be effected by delivery of a Notice of Termination for Convenience to the Contractor specifying termination is for the convenience of WETA, the extent to which performance of Work under the Contract is terminated, and the date upon which such termination becomes effective.

335 In the event of termination for convenience, the basis of the Contractor's recovery shall as set forth in this Subsection but in no event may Contractor's recovery exceed the Contract amount.

After receipt of a Notice of Termination for Convenience unless otherwise directed by the Owner's Representative, the Contractor shall:

- 340 A. Stop Work under the Contract on the date and to the extent specified in the Notice of Termination for Convenience;
- B. Place no further orders or subcontracts for materials, services, or facilities except as may be necessary for completion of such portion of the Work under the Contract that is not terminated;
- C. Terminate all orders and subcontracts to the extent that they relate to the performance of Work terminated by the Notice of Termination for Convenience;
- 345 D. With the approval or ratification of the Owner's Representative, to the extent he may require, settle all outstanding liabilities and all claims arising out of such termination of orders and subcontracts, the cost of which would be reimbursable, in whole, or in part, in accordance with the provisions of the Contract;
- 350 E. Submit to the Owner's Representative a list, certified as to quantity and quality, of all items of Contract materials exclusive of items the disposition of which had been directed or authorized by the Owner's Representative;
- 355 F. Transfer to the Owner's Representative the completed or partially completed plans, drawings, information, and other property, including the design of the Vessel, which, if the Contract had been completed, would be required to be furnished to WETA; Contractor and design licensor shall be fully paid for these drawings, information and other property, including the design of the Vessel prior to WETA receiving same;
- G. Take such action as may be necessary, or as the Owner's Representative may direct, for the protection and preservation of the property related to the Contract which is in the possession of the Contractor and in which WETA has or may acquire any interest.

360 The Contractor shall proceed immediately with the performance of the above obligations. All plans, drawings, information, or other property listed in paragraph "F" above shall become the property of WETA upon issuance of a Notice of Termination for Convenience, and Contractor shall execute all documentation necessary to assign ownership of those documents to WETA provided Contractor and design licensor is fully paid for design drawings.

365 When WETA issues the Notice of Termination for Convenience, the Contractor shall, as of the effective date of the Notice, maintain a daily record of all labor, materials and equipment utilized by the Contractor in conjunction with the Project after the effective date of the Notice. The Contractor shall prepare and transmit to the Owner's Representative itemized statements of the costs of such personnel, labor, services, including overhead expenses, materials and summary of equipment usage, on a weekly basis.

370 The itemized statements shall be referenced to payrolls, invoices, bills of lading and storage. The Owner's Representative shall be given the opportunity to review and check the keeping of such records.

375 Within 30 calendar days of the effective date of the Notice of Termination for Convenience, the Contractor shall submit to the Owner's Representative a summary of all personnel, labor and services costs, with references to payrolls, salary agreements, and labor charge invoices; a summary of all material costs including shipping and storage, with references to invoices, bills of lading and storage; and a summary of equipment usage.

380 These summaries shall contain only those costs or portions of costs, including overhead, and actual duration of equipment usage directly allocable to the Project from the date the Contractor received the Notice to Proceed until the effective date of the Notice of Termination for Convenience. The Contractor shall append to these summaries a tabulation of costs associated with items contained in paragraph "D" above.

385 The Owner's Representative shall review the submittals and within 30 days after their receipt, shall meet with the Contractors' representatives to review, and if necessary, correct, the submittals and negotiate an equitable amount for the Contractor's reasonably incurred actual costs and, unless the Owner's Representative can determine that the Contractor would have incurred a loss by completing the Contract, a reasonable profit. The intent of the negotiation is to arrive at an equitable final settlement.

390 The basis of the Contractor's recovery for convenience termination shall be reasonably incurred costs plus a reasonable profit. The only exception to a cost-based recovery shall be completed units of Work that have a defined unit price in the Contract. To the extent that unit prices are used as a basis for recovery, the Contractor shall have no additional entitlement to profit. The Owner's Representative shall have sole discretion regarding when unit prices may substitute for a cost-based recovery, notwithstanding any other provision of the Contract including §105-1.14.

395 The Contractor shall not be entitled to a settlement, or an award under §105-1.14 or any other provision of the Contract, which is based in whole or in part on Contractor's expectancy of profit had the Contractor been permitted to perform more of the Contract than the Contractor was in fact permitted to perform. Contractor's recovery of profit for convenience termination shall be a reasonable profit based on actual costs reasonably incurred by the Contractor. Contractor shall be denied a profit if completion of the Contract would have resulted in a net loss to the Contractor.

400 Once the settlement figure has been arrived at for the terminated Project, that amount shall have deducted from it:

- A. All previous payments made to the Contractor; and
- B. The agreed price for, or the proceeds of sale of, any materials, supplies, or other things acquired by the Contractor or sold pursuant to the provisions of this Section and not otherwise recovered by or credited to WETA; and
- 405 C. All partial payments made to the Contractor under the provisions of this section to arrive at the amount due the Contractor.

A change document shall then be issued creating a new pay item under the Contract, which provides for compensation in the amount due as determined above.

410 WETA shall from time to time, under such terms and conditions as it may prescribe, make partial payments on account against costs incurred by the Contractor in connection with the terminated Contract or portion thereof whenever in the opinion of the Owner's Representative the aggregate of such payments



shall be within the amount to which the Contractor shall be entitled hereunder. Otherwise the Contractor shall not be entitled to receive further payments until the final settlement is reached.

415 Where the Work has been terminated by WETA, said termination shall not affect or terminate any of the rights of WETA against the Contractor or his surety.

420 Unless otherwise provided for in the Contract, or by applicable statute, the Contractor, from the effective date of termination and for a period of three (3) years after final settlement under this Contract, shall preserve and make available to WETA at all reasonable times at the office of the Contractor, all its books, records, documents, and other evidence bearing on the cost and expenses of the Contractor under this Contract and relating to the Work terminated hereunder including the applicable records of Subcontractors, vendors and suppliers. For purposes of this provision, the definition of "books, records, documents, and other evidence" which are "under his Contract" or "relating to the Work" shall be construed to require disclosure in case of doubt.

425 Each Subcontract shall provide that, pursuant to terms in form and substance satisfactory to Owner, (a) Owner is a third party beneficiary of the Subcontract and shall have the right to enforce all of the terms of the Subcontract for its own benefit, (b) all guarantees and warranties, express or implied, shall inure to the benefit of Owner, and its respective successors and assigns; and (c) the rights of Contractor under such instrument are assigned to Owner contingent only upon delivery of written request from Owner following default by Contractor or termination, whether for cause or convenience, or expiration of this  
430 Contract, allowing Owner to assume the benefit of Contractor's rights with liability only for those remaining obligations of Contractor accruing after the date of assumption by Owner.

#### **108-1.09 TERMINATION FOR NATIONAL EMERGENCIES**

435 WETA shall terminate the Contract or portion thereof by written notice when the Contractor is prevented from proceeding with the Contract as a direct result of an Executive Order of the President with respect to the prosecution of war or in the interest of national defense. Such a termination shall be treated as a termination for convenience.

## SECTION 109 MEASUREMENT AND PAYMENT

### 109-1.01 GENERAL

- 5 Wherever it is provided in the Contract that certain Work is a subsidiary obligation or it is stated that certain provisions or Work is without extra compensation or at the Contractor's expense; it is understood in those cases that the Contractor's compensation for such Work is included in the payment provided for in the Contract prices as set forth in the Price Proposal.

### 109-1.02 MEASUREMENT OF QUANTITIES

- 10 All Work completed under the Contract will be measured according to the United States standard measure.

Lump sum items shall not be measured as quantities for payment. Payment shall be made as described in the procedures of this section for Extra Work, progress, material and final payment.

### 109-1.03 SCOPE OF PAYMENT

- 15 The Contractor shall receive and accept compensation provided for in the Contract Price as full payment for providing the engineering and design; furnishing all materials, installed equipment, labor, and construction equipment; and for performing all Work under the Contract in a complete and acceptable manner and for all risk, loss, damage, or expense of whatever character arising out of the nature of the Work or the prosecution thereof, subject to the provisions of §107-1.10.

- 20 In the event that any item of Work is to be done for a unit price, the unit price will be the sole compensation due the Contractor for all labor, services and material required to produce the item of Work, and payment for such labor, services or material will not be duplicated by payment pursuant to any other provision of the Contract.

- 25 The term "lump sum," when used as a basis for payment, shall mean full payment in US Dollars for the Work described in the Contract, including all necessary fittings and accessories. The procedures described in this section for extra Work, material, progress and final payment apply to the lump sum items in this Contract.

- 30 In the event the Vessel is damaged prior to Acceptance by the Owner, if the repair of such damage will require more than 40 man hours or more than \$2,000 for Subcontractor or materials, the repair of the damage shall be accomplished only in accordance with a repair specification that is agreed upon in advance of such repair by Owner and Contractor.

#### 109-1.04 COMPENSATION FOR EXTRA WORK

Extra Work shall be paid as set forth in Section 104-1.02.

#### 109-1.05 PROGRESS PAYMENT

35 The Contractor shall receive Progress Payments based on the following procedures for measurement and payment.

The Contractor shall prepare a Schedule of Values [Form WETA-26] containing an itemized breakdown of Contract costs, with summary activities corresponding to the summary activities in the Project Schedule described in §110, Schedule Specification, of all Work to be performed. The Schedule of Values will include the total cost for each summary activity with and without overhead and profit and contain a breakdown for Contractor equipment, labor, materials, installed equipment, Subcontractors and other costs totaling 100% of the Contract value. The cost of overhead, profit, bonds, insurance or any indirect cost shall be prorated evenly among items in the Schedule of Values and their breakdown.

45 This document shall be submitted to the Owner's Representative for approval within thirty (30) days following Contract execution, or the time period specified by the Owner's Representative. The Schedule of Values should not deviate significantly from the preliminary Schedule of Values submitted with the Contractor's proposal (see Instructions to Bidders). If the Owner's Representative determines that the Contractor's submitted Schedule of Values may result in unbalanced payments wherein the Contractor would collect payments disproportionate to the value of the Work provided, or be detrimental to the interests of WETA for other reasons, the Owner's Representative may prepare an acceptable Schedule of Values or require the Contractor to submit another Schedule of Values until the Owner's Representative is satisfied with the form and content of the Schedule of Values.

55 All activities in the Project Schedule are to be broken down and cost loaded according to Section 110, Schedule Specifications. Items in the Schedule of Values [Form WETA 26] are to correspond to "rollup" or summary activities from the Project Schedule. The number of summary activities shall be no less than 50 per Vessel, with no single summary activity having a cost greater than \$50,000, except main propulsion purchase, or having a duration of more than 30 days. Exceptions to these requirements will be allowed provided the intent of a fair and effective means of payment for completed Work is preserved.

60 The Owner's Representative will make the final determination as to whether the intent is preserved in the Contractor's proposed approach. If no other agreement is reached, the requirements will stand as written. In any proposed alternative, the basis of payment will be the physical progress as indicated in the Project Schedule. The Schedule of Values should include separate pay items for required deliverables such as spare parts, technical documentation and as-built drawings.

65 The maximum allowable scheduled value for mobilization for Engineering and Design shall be no greater than 10% of the Engineering/Design subtotal, which amount may be paid only after Notice to Proceed. The maximum allowable scheduled value for mobilization for Construction shall be no greater than 1/2% of the total, which amount may be paid only after Notice to Proceed.

70 The Owner's Representative may allow a minor redistribution of costs in the Schedule of Values to more accurately reflect the costs. Any redistribution of costs is at the discretion of the Owner's Representative and will not be allowed without backup documentation from the Contractor demonstrating a clear and rational necessity for the redistribution. A redistribution of costs will not result in an acceleration of the payments made to the Contractor beyond the originally submitted Schedule of Values unless specifically permitted in writing by the Owner's Representative.

75 The Contractor shall, for each Progress Payment requested, submit a Progress Estimate reflecting physical progress, by item.

Contractor shall submit an invoice upon milestone completion to Owner and Owner shall pay the invoice as adjusted by approved Change Orders. The Owner's Representative shall notify Contractor within five calendar days of receipt of the invoice if it determines that the milestone has not been achieved, along with an explanation. Failure to notify Contractor of any discrepancy shall constitute Owner's acceptance that the payment milestone is complete. All invoices shall be paid by WETA within 14 calendar days of receipt of approved invoice.

85 If an installment date is extended because specified milestones were not met, the installment shall be payable by Owner to Contractor when the installment milestones are in fact met. Owner agrees that his representative shall make an inspection within five calendar days to determine stage completion upon Contractor's claim of completion and request for an installment payment. Any dispute that the parties cannot themselves promptly resolve about whether progress has been made for a given stage payment shall immediately be referred to the claims process in accordance with §105-1.14.

90 Except for Owner Furnished Equipment, the Contractor agrees to promptly pay all expenses for labor and materials throughout all stages of construction, and to pay its vendors and Subcontractors for equipment and materials when legally due under Vendor and Subcontractor agreements. Contractor shall indemnify the Owner from all claims, damages, labor liens or other attachments against the Vessel or the Owner during construction, except if Owner defaults in paying installments when undisputed installments are due or otherwise defaults on this Contract.

95 Upon written Acceptance of Vessel delivery by WETA, the final Progress Payment shall be paid by WETA as adjusted by approved Change Orders.

As a precondition to each Progress Payment, the Contractor shall also submit a Release of Claims Certification, in a format approved by WETA, releasing WETA from all claims (including Subcontractor claims) for additional Contract Time or Contract Price which have previously been timely identified in writing pursuant to the procedures of the Contract.

100 Any claim or potential claim, including any claims for Change Orders and Supplemental Agreements, shall be deemed released and waived by the Contractor unless the claim is specifically and timely identified by the Contractor and explicitly excluded from the Release of Claims Certification. Once a claim or potential claim has been released pursuant to the terms of this section, it cannot later be revived by inclusion in a new claim or by an exclusion to a later Release of Claims Certification. This Release of  
105 Claims Certification procedure is not intended to relieve the Contractor of any other obligations under this Contract to comply in a timely manner with any notice or claim or Change Order requirement in the Contract, including, but not limited to, §104-1.02 and 105-1.14.

The Contractor's acceptance of the last payment, however, preserves any claims timely filed in accordance with the terms of the Contract.

#### 110 **109-1.06 RETENTION ON PROGRESS PAYMENTS**

From each Progress Payment estimate, five percent (5) will be deducted and held in retention by Owner, the remainder less any deductions described above will be paid to Contractor as Progress Payments.

115 Within 60 days after Delivery Acceptance of the entire Work, or 30 days after receipt of an approved final application for payment, whichever is later, Owner shall release all retained amounts relating the entire Work, less any amounts Owner is entitled to withhold pursuant to Section 12.03C above, and less any

amounts retained in the Escrow Account to serve as security for the Contractor's Warranty obligations in lieu of a Warranty Bond. See Volume 1, Section 2.17.

Pursuant to California Public Contract Code Section 22300, Contractor may submit securities in lieu of retention payments by Owner. Upon Contractor's request, Owner will make payment of funds withheld from Progress Payments, pursuant to the requirements of California Public Contract Code Section 22300, if Contractor deposits in escrow with Owner or with a bank acceptable to Owner, securities eligible for investment under California Government Code Section 16430, bank or savings and loan certificates of deposit, interest bearing demand deposit accounts, standby letters of credit, or any other security mutually agreed to by Contractor and Owner, upon the following conditions:

1. Contractor shall bear the expenses of Owner and the escrow agent in connection with the escrow deposit made.
2. Securities or certificates of deposit to be placed in escrow shall be of a value at least equivalent to the amounts of retention to be paid to Contractor pursuant to this section.
3. Contractor shall enter into an escrow agreement satisfactory to Owner, which agreement shall be substantially similar to the form provided in California Public Contract Code Section 22300.
4. Contractor shall obtain the written consent of the surety to such agreement.

If Contractor has substituted securities for any of the retention, then Owner may request that such securities be revalued from time to time, but not more often than monthly. Such revaluation would be made by the person designated by Owner and approved by Contractor. If such revaluation results in a determination that such securities have a market value which is less than the amount of retention for which they were substituted, then notwithstanding anything to the contrary contained herein, the amount of the retention required under this Contract shall be increased by such difference in market value. Such increased retention shall be withheld from the next Progress Payment due Contractor hereunder.

#### **109-1.07 PAYMENT FOR MATERIAL ON HAND**

Upon making payment for material on hand, WETA is granted title to such material. Title must be free and clear of all encumbrances. Contractor bears the risk of loss or damage to the material, even though WETA holds title, until Delivery Acceptance of each of the Vessel by WETA.

Payment for materials on hand shall not constitute Final Acceptance. It shall be the Contractor's responsibility to protect the material from damage or loss while in storage. Title transfer shall not initiate any Guarantee/Warranty Period.

#### **109-1.08 FINAL ACCEPTANCE AND FINAL PAYMENT**

Final Acceptance of the Work shall be withheld until completion of the 365 day Guarantee/Warranty Period.

#### **109-1.09 LIQUIDATED DAMAGES FOR OTHER THAN FAILURE TO DELIVER ON TIME**

The following provisions shall apply individually to each Vessel.

The parties agree that certain deficiencies identified as a result of tests or trials provided for in the General Provisions, Owner's Requirements and Technical Specifications shall result in the payment by the Contractor to WETA liquidated damages (and not as a penalty) as provided in the specific schedules appearing below:

155        1. Noise and Vibration:

160                The Refurbished Vessel shall operate at noise and vibration levels equivalent or below existing. Prior to the Refurbishment, the Vessel shall be surveyed by the Contractor with WETA in attendance; and a noise and vibration map shall be produced to document these tests. The ABS COMF+ rules as set forth in the ABS *Guide for Passenger Comfort on Ships* chart of acceptable noise and vibration shall be included for reference. After the Work is completed, and during Sea Trials, the Vessel shall be surveyed again for noise using the pre-Refurbishment map measured with the same equipment. A two (2) dBA increase in noise levels will be considered acceptable for each point measured. For every dBA above the plus two (+2 dBA) level (fractions of one (1) dBA to be prorated), the Contractor shall pay \$10,000 per dBA test point.

165                The foregoing liquidated damages are in addition to and not in lieu of any other damages, including any other liquidated damages provided for herein.

## SECTION 110 SCHEDULE SPECIFICATION

### 110-1.01 GENERAL

5 Within seven (7) calendar days after Notice to Proceed the Contractor shall prepare and submit to WETA  
for review and comment a manpower resource loaded schedule as described below. WETA to review and  
comment within seven (7) calendar days. Contractor then has seven (7) calendar days to modify or  
comment on WETA's review and resubmit the schedule. After WETA's comments are addressed to the  
satisfaction of the Owner's Representative, the schedule at that time shall become the Project Schedule.  
10 The Project Schedule is to be developed to the Contractor's normal detail and as agreed in this document  
to produce WETA specific information, and shall be prepared by the Contractor's "in-house" supervisory  
personnel. The Project Schedule should not deviate significantly from the preliminary schedule submitted  
with the Contractor's Proposal (see Instructions to Offerors). The completed Project Schedule shall define  
the operations required to bring the entire work to Acceptance by the scheduled Acceptance date and  
within the allotted time. The Project Schedule may be modified to incorporate the most efficient use of  
15 Contractor resources provided no additional costs or time delays are incurred on the Project.

The Contractor warrants that the Project Schedule is the Contractor's committed plan to complete all  
Work within the allotted Contract Time and assumes responsibility for prosecution of the work as shown.  
The Contractor shall utilize the Project Schedule in planning, scheduling, coordinating, and performing the  
Work under this Contract (including major activities of subcontractors, equipment vendors, and suppliers).

20 The purpose of the Project Schedule shall be to:

- A. Assure adequate planning, scheduling and reporting during execution of the work by the Contractor;
- B. Assure coordination of the work and material procurement of the Contractor and all subcontractors;
- 25 C. Assist the Contractor and WETA in monitoring the progress of the work and evaluating proposed changes to the Contract and the Project Schedule; and

**NOTE:** The Project Schedule shall be developed to connect and drive the work from Contract Award. The Project Schedule shall be developed to the contractors normal detail of major tasks by trade and job cost numbers.

30 The Contractor shall provide the Project Schedule to the WETA in both electronic and hard copy format.

### 110-1.02 SCHEDULE REQUIREMENTS

The Project Schedule shall incorporate labor and major equipment resource data as described below. The Project Schedule shall cover the time from Notice to Proceed to Delivery Acceptance, which period of time constitutes the Contract Time. The Project Schedule shall be itemized in sufficient detail to cover at a  
35 minimum the following tasks:

- A. Major milestones from Contractor
- B. Procurement, including the following long lead-time items.

C. Construction broken down into modules

40 D. Major Inspection and testing. Final testing as defined for Regulatory Body approval, Owner's approval or for Acceptance Trial approval. Intermediate testing shall be updated as construction progresses and added to the schedule as known

E. Trials and acceptance tests

Failure by the Contractor to include any element of work required for performance of the Contract shall not excuse the Contractor from completing all work by the scheduled Delivery Acceptance date.

#### 45 **110-1.03 SCHEDULE UPDATES**

The Project Schedule shall be updated whenever a Progress Payment request is submitted for payment. The updated Project Schedule shall include the dates activities were actually started and when they were completed, the physical percentage of work complete, and the estimated remaining duration for each activity in progress.

50 The Contractor shall also prepare a written narrative report that shall include a description of the amount of progress during the last reporting period in terms of completed activities, a description of problem areas, current and anticipated delaying factors and their estimated impact on performance of other activities and completion dates and an explanation of corrective action taken or proposed. The report shall include a forecast of key activities to be completed, started and worked during the next 15 calendar days.  
55

The Contractor shall submit a corresponding schedule update with the Progress Payment request and will only be entitled to payments only upon Owner approval of the Progress Payment request. The electronic and hard files provided shall be a complete copy of all information contained in the schedule.

60 Updating the Project Schedule to reflect actual progress made shall not be considered a revision to the Project Schedule.

#### **110-1.04 SCHEDULE REVISIONS**

If, as a result of the schedule updates, the schedule no longer represents the planned prosecution or progress of the remaining work, the Owner's Representative may request, and the Contractor shall submit, a revision to the Project Schedule.

65 The Contractor may also request revisions to the Project Schedule in the event the Contractor's planning for the remaining work is revised. If the Contractor desires to make changes in the Project Schedule to reflect revisions in its method of operating and scheduling of the work, the Contractor shall notify the Owner's Representative in writing, stating the reason for the proposed revision.

#### **110-1.05 TIME IMPACT ANALYSIS**

70 When Contract modifications are initiated by either the Contractor or WETA these changes shall be dealt with using standard Change Order document.



**110-1.06 SEQUENCE OF EVENTS LEADING TO FINAL ACCEPTANCE OF VESSEL:**

<b>Sequence of Events</b>	<b>Location of Events</b>	<b>Function (description includes but is not limited to the following functions)</b>
Shop Inspections & Tests	Contractor's Facility	Early detection of potential problems
Construction Inspections & Tests	Contractor's Facility	Static demonstrations that precede operational testing
Operation & Performance Tests / Dock Trials	Contractor's Facility	Verification equipment / systems perform satisfactory / establish readiness for builder's trials
Builder's Trials Operational Acceptance Acceptance Trials	San Francisco Bay	Establish readiness for Acceptance Trials Contractor states readiness for Acceptance Trials.
Acceptance Survey  Acceptance  Final Payment	San Francisco Bay	Acceptance Survey prior to Acceptance by WETA.  Acceptance whereby WETA takes custody from Contractor. WETA accepts the Vessel as satisfying all the requirements of the Contract, except the warranty, and signals start of warranty period.
Final Acceptance	San Francisco Bay	Follows completion of Guarantee/Warranty period, etc., releases Contractor from further performance under the Contract if all conditions of the Contract are satisfied, triggers Final Payment

**SOLANO 17-021**

**ATTACHMENT 1 (FORM WETA-10)  
DESIGN-BUILD AND DELIVER CONTRACT**

This CONTRACT, between the San Francisco Bay Area Water Emergency Transportation Authority, herein called WETA and

\_\_\_\_\_

\_\_\_\_\_

An  Individual,  Partnership,  Joint Venture,  Sole Proprietorship,  Corporation,

Incorporated or otherwise organized under the laws of the State of \_\_\_\_\_, its successors and assigns, hereinafter called the Contractor, is effective the date of the signature of the Manager, Operations on this document.

WITNESSETH: That the Contractor, for and in consideration of the payment or payments herein specified and agreed to by WETA, hereby covenants and agrees to furnish and deliver all the materials and to do and perform all the Work and labor required in the design-build and deliver of the Project.

**SOLANO 17-021**

\_\_\_\_\_

at the prices proposed by the Contractor for the respective estimated quantities aggregating the sum of \_\_\_\_\_ Dollars (\$ \_\_\_\_\_), and such other items as are mentioned in the original Proposal, which Proposal and prices named, together with the Contract Documents (Addenda and Change Orders, any Supplemental Agreements or amendments to the Contract, the Contract, General Provisions, Owner's Requirements, Technical Specifications, Drawings, the Instructions to Offerors and Appendices thereto, Contract Design Package Other Than Technical Specifications and Drawings, Words vs. Drawings) are made a part of this Contract and accepted as such, the Project being described as follows:

**SOLANO 17-021**

\_\_\_\_\_

It is understood and agreed that no claim for additional Work or materials, done or furnished by the Contractor and not specifically herein provided for, will be allowed by WETA, nor shall the Contractor do any Work or furnish any material not covered by this Contract, unless such Work is ordered in writing by WETA. In no event shall WETA be liable for any materials furnished or used, or for any Work or labor done, unless the materials, Work, or labor are required by the Contract or on written order furnished by WETA. Any such Work or materials which may be done or furnished by the Contractor without written order first being given shall be at the Contractor's own risk, cost, and expense, and the Contractor hereby covenants and agrees to make no claim for compensation for Work or materials done or furnished without such written order.

The Contractor further covenants and agrees that all materials shall be furnished and delivered and all labor shall be done and performed, in every respect, to the satisfaction of WETA, using no more than \_\_\_\_\_ calendar days for the work on the ferry vessel SOLANO (see General Provisions 108-1.02 and 108-1.06). It is expressly understood and agreed that in case of the failure on the part of the Contractor, for any reason, except with the written consent of WETA, to complete the furnishing and delivery of materials and the doing and performance of the Work before the aforesaid date, WETA shall have the right to deduct from any money due or which may become due the Contractor, or if no money shall be due, WETA shall

have the right to recover (\$2,000) per day (see General Provisions 108-1.06) for each calendar day elapsing between the time stipulated for the completion and the actual date of completion in accordance with the terms hereof; such deduction to be made, or sum to be recovered, not as a penalty but as liquidated damages. See General Provisions subsection 108-1.05 for allowable extensions of time. Capitalized terms used shall have the definition set forth in General Provisions Section 101, unless otherwise expressly provided herein.

IN WITNESS WHEREOF, the parties hereto have executed this Contract and hereby agree to its terms and conditions.

**CONTRACTOR**

\_\_\_\_\_  
Name of Contractor

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Date

\_\_\_\_\_  
Name and Title

\_\_\_\_\_  
Signature\*

\_\_\_\_\_  
Name and Title

\*If Contractor is a Corporation, then two corporate officers with full authority to execute contracts on behalf of corporation must execute this contract.

(Corporate Seal)

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

\_\_\_\_\_  
Nina Rannells, Executive Director

\_\_\_\_\_  
Keith Stahnke, Operations Manager

\_\_\_\_\_  
Approved as to form

Hanson Bridgett LLP

\_\_\_\_\_  
Legal Counsel to Authority

## ATTACHMENT 2 SUBCONTRACTOR STANDARD TERMS & CONDITIONS

CONTRACTOR \_\_\_\_\_

SUBCONTRACTOR \_\_\_\_\_

Scope of Work: The Subcontractor shall furnish all supervision, labor and materials, and perform all Work as described in the attached subcontract in accordance with the conditions of the Main Contract between the Owner and the Contractor, \_\_\_\_\_ and in accordance with the drawings and specifications, addenda and modifications pertaining to the Contract, all of which have been made available for the Subcontractor to study, and are considered and referred to herein as the "Main Contract."

Work Product: The Subcontractor shall start the Work immediately when notified by the Contractor, and complete the several portions and the whole of the Work, at such times as will enable the Contractor to fully comply with the Contract. The Subcontractor shall be responsible for submitting drawings, manuals, operating procedures, instructions, warning information or other technical data in a timely manner for approval by Owner, so as not to delay the project, and shall supply sufficient copies of said data to satisfy requirements of Owner and Contractor.

Prime Contractual Flow Down Clauses: The Subcontractor shall assume, so far as the subcontract Work is concerned, all the obligations and responsibilities that the Contractor assumed toward the Owner by the Main Contract. The Subcontractor further agrees not to assign or sublet the Work or any portion thereof without the written consent of the Contractor. The Subcontractor further agrees that any warranty which Contractor owes Owner by virtue of the Main Contract (or which arises by operation of law) and that pertains to the Work, shall be owed to both Owner and Contractor by Subcontractor. Further, the Subcontractor will be bound by any provisions in the Main Contract for liquidated damages as set forth in the subcontract, and shall pay such damages for any delay to the extent caused by, or arising out of the acts or omissions of the Subcontractor.

Binding Decisions: If the Main Contract permits a contracting officer, architect or arbitrator to make factual decisions binding the Contractor, the Subcontractor shall also be bound unless the subcontract specifically addresses such matter.

Compliance: The Subcontractor shall be bound by and comply with all government regulations and orders and all terms and provisions of the Main Contract in any way applicable to this subcontract or Subcontractor's Work, and comply with all laws, rules and regulations and assume all duties, obligations and responsibilities relating to the health, safety and welfare of persons performing the Work for or at the direction of the Subcontractor. In its performance of the Work, Subcontractor shall fully comply with all applicable federal, state and local environmental laws, safety and health acts and laws and all standards, rules and regulations promulgated pursuant thereto. Subcontractor agrees if the Main Contract provides for a subcontractor to be bound by certain conditions (such as but not limited to Equal Employment, Affirmative Action, Non-Discrimination conditions, etc.), Subcontractor shall be so bound and such clause or conditions are hereby incorporated and made a part of the subcontract.

Violation: The Subcontractor shall notify the contractor in writing within 24 hours of any violation of law or regulation and any accident involving personal injury or property damage experienced by or observed by Subcontractor, its employees or agents.

Price: This is a firm fixed price order. The Subcontractor's Work authorization shall come from Contractor. Subcontractor shall not be paid if Work is performed without the proper authorization. No Work above the authorized budget shall be paid without proper written authorization to proceed.

Payment: The time period allowed for payment shall be as set forth in the subcontract. The Subcontractor shall submit to the Contractor applications for payment at such reasonable times and accompanied by such documentation as the Contractor shall require so as to enable the Contractor to apply for and obtain payment from the Owner. Until the Contractor has paid the Final Payment for Subcontractor's Work under this subcontract, Contractor shall have the right to and be entitled to set off against any payments to be made for Subcontractor's Work under this subcontract amounts for claims and/or disputes which the Contractor has against Subcontractor which arise out of or in connection with or incident to Subcontractor's Work.

Payment Retention: The Contractor may withhold five percent (5%) Retainage from Subcontractor's total contract price until the Vessel is accepted by the Owner, at which time one hundred percent (100%) of all payments due to Subcontractor shall be paid to Subcontractor within 60 days.

Statement of No Claim: All applications for payment shall be submitted with a Statement of No Claim with the signature of the Subcontractor's authorized representative indicating that there are no pending claims against Contractor on this Work. If the Subcontractor intends to make a claim, it shall provide detailed claim information. Failure to specifically identify a claim, the basis therefore, the amount claimed or to provide supporting documentation shall be deemed to be a waiver of any claim for additional costs or damages sustained prior to the date of submission of the application for payment.

Subcontractor's Vendors, Suppliers or Subcontractors: Subcontractor shall pay all material claims and all labor claims (including labor fringe benefits payments due) and pay all lienable claims for labor, materials, equipment, and supplies in connection with the Work and pay all federal, state and municipal taxes and licenses, including sales taxes, if any, for which the Subcontractor or any of its Suppliers or any subcontractor of the Subcontractor may be liable in connection with this subcontract, and including any obligations incurred by the Subcontractor in carrying out the subcontract and the Subcontractor shall furnish the Contractor with evidence that the same has been paid upon request.

Lien Rights: The lien of any mortgage placed for the purpose of financing any portion of the Main Contract, shall be and at all times remain, superior to the statutory lien rights of the Subcontractor.

Insurance and Risk of Loss: Subcontractor shall maintain all insurance required under the subcontract during the period of its performance and certificates of insurance shall be provided to CONTRACTOR prior to commencement of the subcontract. The Contractor assumes FULL responsibility for notifying WETA of cancellation, non-renewal or material change in their insurance policies. Risk of loss shall remain with Subcontractor until the Work is delivered and accepted by Contractor.

Special Clause Insurance Rider: Subcontractor shall provide the following minimum limits:

1. Bodily Injury and Property Damage:

\$1,000,000	General Aggregate
\$1,000,000	Products and Completed Operations Aggregate
\$1,000,000	Personal and Advertising Injury
\$1,000,000	Each Occurrence
\$ 50,000	Fire Damage

2. Commercial Automobile Liability as specified by Insurance Services Office, form number CA 0001, Symbol 1 (any auto), with an MCS 90 endorsement and a CA 9948 endorsement attached if "pollutants" as defined in exclusion 11 of the commercial auto policy are to be transported. Bodily Injury and Property Damage \$1,000,000 combined single limit.
3. Excess or Umbrella Liability: \$1,000,000 per occurrence and aggregate.
4. Workers Compensation, Employers' Liability and USL&H:
  - (i) U.S. Longshore and Harbor Workers (USL&H) Compensation Act coverage with Maritime Employer's Liability (MEL) endorsement. *Note: Under Federal Law, employers of personnel working for the marine repair firm during the Work must be insured for their liability under the United States Longshore and Harbor Workers Compensation Act. Failure to comply can result in large fines, imprisonment, and employer liability for employee injury.*
5. WETA shall be named as an Additional insured on all policies of insurance except Worker's Compensation. Subcontractors policies will be primary to any other liability or property insurance carried by WETA through self-insurance or otherwise, and shall contain a 'Cross Liability' or 'Severability of Interest' clause or endorsement.

**Indemnification:** SUBCONTRACTOR SPECIFICALLY AND EXPRESSLY agrees to indemnify and save harmless Contractor, its officers, agents and employees, from and against any and all suits, claims, liens, actions, losses, costs, penalties, and damages of whatsoever kind or nature, including attorneys' fees and claims by employees of Subcontractor, arising out of or in connection with or incident to the Subcontractor's performance of this subcontract, and/or the Subcontractor's failure to comply with any of the terms and provisions of this subcontract except to the extent caused by the sole negligence of the Contractor. IN AGREEING TO SO INDEMNIFY AND SAVE HARMLESS CONTRACTOR, SUBCONTRACTOR SPECIFICALLY AND EXPRESSLY WAIVES ANY IMMUNITY IT MIGHT OTHERWISE HAVE PURSUANT TO OR [UNDER APPLICABLE LAW OR REGULATION] AND ASSUMES LIABILITY ON ACCOUNT OF ANY CLAIM, SUIT OR ACTION MADE OR BROUGHT AGAINST CONTRACTOR, ITS OFFICERS, AGENTS OR EMPLOYEES, FOR THE DEATH OF OR INJURY TO PERSONS OR PROPERTY INVOLVING SUBCONTRACTOR, ITS EMPLOYEES, AGENTS AND REPRESENTATIVES, ARISING FROM ANY CAUSE WHATSOEVER EXCEPT TO THE EXTENT CAUSED BY THE SOLE NEGLIGENCE OF THE CONTRACTOR.

**Insurance and Taxes:** The Subcontractor shall have the status of an employer as defined by the United States Longshore and Harbor Workers Compensation Act, Industrial Insurance or Workers' Compensation Act, the Employment Security Act, Social Security and other similar acts of the federal, state and local government (hereinafter collectively referred to as the "Acts"). Subcontractor shall withhold from its payroll the applicable Federal Income Tax withholding, Social Security taxes, Industrial Insurance and Unemployment Compensation contributions and reserves, pay the same timely and upon request furnish Contractor with evidence that the same have been paid. Contractor shall in no way be liable as an employer to or on account of any of the employees of Subcontractor. Subcontractor will, as an employer, with respect to all of its employees, conform to all the rules and regulations promulgated pursuant to said Acts, and will furnish satisfactory evidence to Contractor that Subcontractor is conforming to said Acts, rules and regulations, upon request.

**Equal Employment Opportunity Responsibilities:** (a) Subcontractor shall comply with the regulations relative to nondiscrimination in federally assisted programs of the Department of Transportation (hereinafter DOT), Title 49, Code of Federal Regulations, part 21, as they may be amended from time to time, herein incorporated by reference. (b) Subcontractor, with regard to work performed by it, shall not discriminate on the grounds of race, color, sex or national origin in the selection and retention of subcontracts, including procurement of materials and leases of equipment. Subcontractor shall not participate either directly or indirectly in the discrimination prohibited by Section 21.5 of the Regulations. (c) In all solicitations either by competitive bidding or negotiations made by the subcontractor or supplier for work to be performed under a subcontract including procurement of materials or leases of equipment, each potential subcontractor or supplier shall be notified of the obligations under this

Contract and regulations relative to nondiscrimination on the grounds of race, color, sex, or national origin. (d) Subcontractor shall provide all information and reports, required by the regulations or directives issued pursuant thereto, and shall permit access to its books, records, accounts, other sources of information, and its facilities, as may be determined to be pertinent to ascertain compliance with such Regulations, orders and instructions. Where any information required of a Contractor is in the exclusive possession of another who fails or refuses to furnish this information, the Contract shall so certify as appropriate, and shall set forth what efforts it has made to obtain the information. (e) In the event of noncompliance with the nondiscrimination provisions set forth herein, the applicable state regulator may impose such sanctions as it may determine to be appropriate, including, but not limited to i) withholding payments until compliance is met and/or ii) canceling, terminating or suspending the Contract, in whole or in part.

Sanctions: In the event a Subcontractor is found in noncompliance with the provisions regarding discrimination, the Contractor may impose such sanctions as it may determine necessary to gain compliance including, but not limited to: (a) progress payment requests may not be honored until the noncompliance is remedied to the satisfaction of the applicable regulator; (b) the subcontract may be suspended, in whole or in part, until such time as compliance is met (c) pre-qualification may be suspended or revoked and/or the (d) the subcontract may be terminated.

Gratuities: Subcontractor shall not extend any loan, gratuity, or gift of money in any form whatsoever to any employee or officer of the applicable regulator, nor rent or purchase any equipment or materials from any employee or officer of the applicable regulator.

Prevailing Wages: This subcontract may be subject to applicable State and local prevailing wage laws and regulations. Contractor is responsible for determining and complying with any such applicable requirements.

Force Majeure: For the purposes of this Contract, an event of "force majeure" shall mean any or all of the following events: strikes, work stoppages or other labor difficulties; fires, floods or other acts of God; riots or civil commotion; epidemics; failure and unavailability of power or other utility services, or U.S. west coast port lockouts. The reduction, depletion, shortage, curtailment or cessation of Subcontractor's supplies or reserves or any other supplies or materials for Subcontractor shall not be regarded as an event of force majeure. The party affected by a force majeure event shall give notice to the other party within ten days following the occurrence and shall apprise the other party of the probable extent to which the affected party will be unable to perform. The affected party shall exercise due diligence to eliminate or remedy the force majeure cause and shall give the other party prompt notice when that has been accomplished. No delay shall be authorized unless approved by Contractor.

Changes: The Contractor may, without invalidating this subcontract, order Extra Work or make changes by altering, adding to, or deducting from the Work, in which event the price herein provided for shall be reasonably adjusted. No change in the Work shall be binding upon the Contractor unless approved by the Contractor in writing. If the parties are unable to agree upon a reasonable price adjustment, the Subcontractor shall nevertheless proceed in accordance with the Contractor's directions, and the adjustment shall be determined under the Disputes Article of the subcontract. All such Extra Work shall be executed under the conditions hereof, and of the Main Contract. Any claim for extension of time caused by a change in the Work must be agreed upon at the time of ordering such change but if the parties are unable to agree upon a reasonable extension of time, the adjustment shall be determined under the Disputes Article of the subcontract.

Miscellaneous:

- (a) The waiver of any term, condition or provision shall not be construed to be a waiver of any other such term, condition or provision, nor shall such waiver be deemed a waiver of a subsequent breach of the same term, condition or provision.
- (b) Subcontractor shall not assign its rights or obligations under this subcontract without the prior written consent of Buyer.

- (c) The entire understanding and agreement of the parties with respect to the transactions contemplated herein is contained in the Main Contract and this document, and any prior understandings, agreements and representations, oral or written, shall be deemed superseded and merged herein.