

**AGREEMENT BETWEEN
TRANSBAY JOINT POWERS AUTHORITY
AND
SINGER ASSOCIATES
FOR
PUBLIC RELATIONS SUPPORT & COMMUNITY
OUTREACH PROFESSIONAL SERVICES**

Agreement No. 04-06-PR-000

THIS AGREEMENT is entered into as of the 8th day of April, 2005 by and between the TRANSBAY JOINT POWERS AUTHORITY (“Authority”) and Singer Associates (the “Contractor”).

Recitals

A. Authority wishes the services of a consulting individual or firm to provide public relations support and community outreach professional services for the Transbay Terminal Program (“Program”).

B. Contractor submitted a written proposal in response to a Request for Proposals issued December 15, 2004, which was evaluated and rated highest by the selection committee following oral interviews.

C. Contractor represents and warrants that it is qualified to perform the services required by Authority as set forth under this Agreement.

D. Authority and Contractor intend that this Agreement comply with the regulations of the Federal Transit Administration of the United States Department of Transportation (“FTA”).

E. On April 8, 2005, the Authority Board of Directors adopted Resolution No. _____, which authorized the Executive Director to execute this Agreement for said services by Contractor.

Now, THEREFORE, the parties agree as follows:

1. Certification of Funds; Budget and Fiscal Provisions; Termination in the Event of Non-Appropriation

Charges under this Agreement will accrue only after prior written authorization certified by the Chief Financial Officer (CFO), and the amount of Authority's obligation hereunder shall not at any time exceed the amount certified for the purpose and period stated in such advance authorization.

This Agreement will terminate without penalty, liability or expense of any kind to Authority at the end of any fiscal year if funds are not appropriated for the next succeeding fiscal year. If funds are appropriated for a portion of the fiscal year, this Agreement will terminate, without penalty, liability or expense of any kind at the end of the term for which funds are appropriated.

Authority has no obligation to make appropriations for this Agreement in lieu of appropriations for new or other agreements. Authority budget decisions are subject to the discretion of the Board of Directors of the Authority. Contractor's assumption of risk of possible non-appropriation is part of the consideration for this Agreement.

THIS SECTION CONTROLS AGAINST ANY AND ALL OTHER PROVISIONS OF THIS AGREEMENT.

2. Term of the Agreement

Subject to Section 1, the term of this Agreement shall not exceed three (3) years from the Effective Date of Agreement.

3. Effective Date of Agreement

This Agreement shall become effective when the CFO has certified to the availability of funds and the Contractor has been notified in writing, i.e., issued a Notice to Proceed (NTP).

4. Services Contractor Agrees to Perform

The Contractor agrees to perform the services provided for in Appendix A, "Scope of Work," attached to this Agreement and incorporated by reference as though fully set forth herein.

As part of its scope of work, Contractor agrees to testify at Authority's request if litigation is brought against the Authority in connection with Contractor's work. Unless the action is brought by Contractor or is based upon Contractor's negligence, Authority will compensate Contractor for the preparation and the testimony at Contractor's standard hourly rates.

a. Key Personnel

Work under this Agreement shall be performed only by competent personnel under the supervision of and/or in the employment of the Contractor.

The contractor agrees that the following Key Personnel shall be committed and assigned to work on the Contract and shall also be staffed at offices within the San Francisco Bay Area for the duration of the contract:

1. Principal: Sam Singer
2. Project Manager: Adam Alberti
3. Community Outreach: Lisbet Sunshine

The Executive Director or his/her designee is the designated Authority employee to provide direction to all Key Personnel assigned to the Program.

Contractor shall advise Authority immediately any time one of the Key Personnel deviates from its committed role to the Program. Authority may in turn require Contractor to provide a remedy and/or corrective actions for such deviations. If substitutions for any of the Key Personnel who are listed above are required, the Contractor shall propose a replacement in writing to Authority's Executive Director for approval. Substitutions will not be approved except for extenuating circumstances (e.g., illness or departure from company). If the performance of any person assigned to a Key Personnel position is determined to be unsatisfactory by the Authority, the Authority reserves the right to direct the Contractor to replace that person and/or take any other appropriate remedial action without prejudice to any of Authority's obligations under this Agreement.

The Contractor shall replace any Key Personnel departing from the Program of departing from his/her assigned role in the Program with an individual of comparable experience on a non-temporary basis within thirty (30) calendar days of the departure. Failure to replace Key Personnel shall be cause for the Authority to suspend invoice payments. Furthermore, the Contractor shall not be relieved of its obligation for full performance of the Scope of Services as a result of any unfilled position. The Contractor shall be held fully responsible for any inefficiencies, schedule delays or cost overruns resulting in whole or in part from any Key Personnel departing from the Program or departing from his/her assigned role in the Program before the end of the committed duration. Contractor shall bear any additional costs incurred in substituting personnel. Such costs include relocation expenses, expenses related to recruiting and hiring, training and learning on the job, etc.

Contractor acknowledges that the Contractor selection was based, in part, on Contractor's proposed Key Personnel as submitted in the response to the Request for Proposals and as negotiated for this Contract. Therefore, Authority will not approve any requests for substitution of Key Personnel within nine (9) months after the issuance of NTP, until it has investigated thoroughly and fully the causes and reasons for such requests and the Authority will not approve any substitution of Key Personnel within 9 months of the NTP unless the Key Personnel leaves the Contractor's employ, or is otherwise unable to perform his or her job duties due to death, disability, or extended leave of absence or the Contractor provides a satisfactory explanation for the requested substitution.

b. Contractor's Performance

The Contractor shall meet with Authority on a quarterly basis to evaluate Contractor's performance under the Contract with respect to the following:

- (1) Contractor's adherence to this Agreement
- (2) Quality of performance of Key Personnel and other staff assigned to the program by the Contractor and its subcontractors
- (3) Quality of performance and cooperative working relationship of the Contractor's project team and its members, including its subcontractors, in relationship to the other members of the Authority's staff and other contractors, including design, grant management, financial, construction management and other professionals.
- (4) Management of authorized contract budget
- (5) Performance in accordance with agreed Work Plans
- (6) Adherence to agreed schedule
- (7) Quality of deliverables
- (8) Monitoring, reporting and updating of progress of assigned work
- (9) Timeliness in resolving issues, including issues arising from performance evaluations
- (10) Working relationship between Contractor's team and other Authority

Should Authority be dissatisfied with any of the above categories of Contractor performance in the same evaluation, Authority will render a negative evaluation on the Contractor's performance for that preceding quarter. In such cases, the Contractor shall be required to formulate and deliver to Authority within five (5) working days a corrective action and schedule plan to be followed by the Contractor with results reported to Authority on a monthly basis until the problem areas have been resolved or brought under control.

c. Transmittal of Products

At a time when requested by Authority's Executive Director or his/her designee, and after completion of each task, the Contractor shall transmit to Authority all documents and work products (duplicates and originals) produced or accumulated in the course of its and its subcontractors' work on this Program. Documents and work products include, but are not limited to, all reports, studies, data, tape recordings, pictures, memoranda, letters, and such other information and materials as may have been accumulated or generated by the Contractor or its subcontractors, in connection with the services performed under this Agreement, whether completed or in process. The Contractor may retain at its own expense a copy of the documents and work products for recordkeeping purposes.

The Contractor's Project Manager and Key Personnel shall have thoroughly reviewed and approved all products and deliverables and signed off as such prior to transmitting to Authority.

d. Reproduction of Products

The Contractor shall arrange and provide for all printing (or other required reproduction) of work products produced in the course of its and its subcontractors work. Authority shall determine the products to be reproduced and the type, quality, and quantity of the reproduction. The cost of reproduction shall be treated as a reimbursable expense under this Agreement. The Contractor shall make its best efforts to obtain competitive quotations for any reproduction cost exceeding \$500.

e. Modifications of Scope

In conformance with the provisions of paragraph 45 of this Agreement, all modifications of scope shall be made in writing. The Authority shall not be responsible for any work performed by Contractor outside of the scope of work set forth in Appendix A unless and until the Authority fully authorizes such additional scope in writing. Modifications shall be negotiated by the parties as lump sum tasks or augmentation of tasks already itemized in Appendix A to this Agreement.

The Authority reserves the right to unilaterally direct a modification of task and/or price within the general scope of public relations services if the parties are unable to reach agreement or if time does not allow. The Authority also reserves the right to reduce scope and/or price as necessitated by the circumstances of the Program.

5. Compensation

All work under this Agreement shall be compensated on a lump sum basis. In no event shall the amount of this agreement exceed Four Hundred Twenty Thousand Dollars (\$420,000.00). The Fee Schedule associated with this Agreement appears in Appendix B, "Fee Schedule by Task," attached hereto and incorporated by reference as though fully set forth herein. The Authority shall pay Contractor monthly progress payments based on the percentage completion of the tasks listed in Appendix A and the fee schedule as itemized in Appendix B. All amounts paid to Contractor shall be subject to audit by Authority.

No charges shall be incurred under this Agreement nor shall any payments become due to Contractor until reports, services, or both, required under this Agreement are received from the Contractor and approved by the Executive Director as being in accordance with this Agreement. Authority may withhold payment to Contractor in any instance in which Contractor has failed or refused to satisfy any material obligation provided for under this Agreement.

Compensation will be allowable only to the extent that costs incurred, or costs estimates included in negotiated, or otherwise established prices, are consistent with the Federal Cost Principles with Office Management and Budget (OMB) Circular A-87 (Cost Principles for State, Local and Indian Tribal Governments).

In no event shall Authority be liable for interest or late charges for any late payments.

6. Guaranteed Maximum Costs

a. The Authority's obligation hereunder shall not at any time exceed the amount certified by the CFO for the purpose and period stated in such certification.

b. Except as may be provided by laws governing emergency procedures, officers and employees of the Authority are not authorized to request, and the Authority is not required to reimburse the Contractor for commodities or services beyond the agreed upon contract scope unless the changed scope is authorized by amendment and approved as required by law.

c. Officers and employees of the Authority are not authorized to offer or promise, nor is the Authority required to honor, any offered or promised additional funding in excess of the maximum amount of funding for which the contract is certified without certification of the additional amount by the CFO.

d. The CFO is not authorized to make payments on any contract for which funds have not been certified as available in the budget or by supplemental appropriation.

7. Payment; Invoice Format

Invoices furnished by Contractor under this Agreement must be in a form reasonably acceptable to the Authority and shall include:

Contract number, name and position of employee, description of work performed, percentage of deliverable complete and being billed for, other direct costs, subcontractor costs supported by itemization in the same format described above, total costs, percent of contract amount expended, DBE Utilization Report (as an attachment), Monthly Progress Report (as an attachment)

Authority shall make payment to Contractor at the address specified in the section entitled "Notices to the Parties."

8. Submitting False Claims; Monetary Penalties

Pursuant to San Francisco Administrative Code Chapter 6, Article V, any Contractor, subcontractor, or consultant who submits a false claim shall be liable to the Authority for three times the amount of damages which the Authority sustains because of the false claim. A Contractor, subcontractor or consultant who submits a false claim shall also be liable to the Authority for the costs, including attorney's fees, of a civil action brought to recover any of those penalties or damages, and may be liable to the Authority for a civil penalty of up to \$10,000 for each false claim. A Contractor, subcontractor or consultant will be deemed to have submitted a false claim to the Authority if the Contractor, subcontractor or consultant: (a) knowingly presents or causes to be presented to an officer or employee of the Authority a false claim or request for payment or approval; (b) knowingly makes, uses, or causes to be made or used a false record or statement to get a false claim paid or approved by the Authority; (c) conspires to defraud the Authority by getting a false claim allowed or paid by the Authority; (d) knowingly makes, uses, or causes to be made or used a false record or statement to conceal, avoid, or decrease an obligation to pay or transmit money or property to the Authority; or (e) is a beneficiary of an inadvertent submission of a false claim to the Authority, subsequently discovers the falsity of the claim, and fails to disclose the false claim to the Authority within a reasonable time after discovery of the false claim.

9. Disallowance

If Contractor claims or receives payment from Authority for a service, reimbursement for which is later disallowed by the State of California or United States Government, Contractor shall promptly refund the disallowed amount to Authority upon Authority's request. At its option, Authority may offset the amount disallowed from any payment due or to become due to Contractor under this Agreement or any other Agreement.

By executing this Agreement, Contractor certifies that Contractor is not suspended, debarred or otherwise excluded from participation in federal assistance programs. Contractor acknowledges that this certification of eligibility to receive federal funds is a material term of the Agreement.

10. Taxes

a. Payment of any taxes, including possessory interest taxes and California Sales and Use Taxes, levied upon this Agreement, the transaction, or the services delivered pursuant hereto, shall be the obligation of Contractor.

b. Contractor recognizes and understands that this Agreement may create a "possessory interest" for property tax purposes. Generally, such a possessory interest is not created unless the Agreement entitles the Contractor to the possession, occupancy or use of Authority real property for private gain. If such a possessory interest is created, then the following provisions apply:

- (1) Contractor, on behalf of itself and any permitted successors and assigns, recognizes and understands that Contractor, and any permitted successors and assigns, may be subject to real property tax assessments on the possessory interest;
- (2) Contractor, on behalf of itself and any permitted successors and assigns, recognizes and understands that the creation, extension, renewal, or assignment of this Agreement may result in a "change in ownership" for purposes of property taxation and therefore may result in a revaluation of any possessory interest created by this Agreement. Contractor

accordingly agrees on behalf of itself and its permitted successors and assigns to report on behalf of the Authority to the County Assessor the information required by Revenue and Taxation Code section 480.5, as amended from time to time, and any successor provision.

- (3) Contractor, on behalf of itself and any permitted successors and assigns, recognizes and understands that other events also may cause a change of ownership of the possessory interest and result in the revaluation of the possessory interest (see, e.g. Rev. & Tax. Code section 64, as amended from time to time). Contractor accordingly agrees on behalf of itself and its permitted successors and assigns to report any change in ownership to the County Assessor, the State Board of Equalization or other public agency as required by law.
- (4) Contractor further agrees to provide such other information as may be requested by Authority to enable Authority to comply with any reporting requirements under applicable law with respect to possessory interests.

11. Payment Does Not Imply Acceptance of Work

The granting of any payment by Authority, or the receipt thereof by Contractor, shall in no way lessen the liability of Contractor to correct or revise unsatisfactory work, even though the unsatisfactory character of such work may not have been apparent or detected at the time such payment was made.

12. Responsibility for Equipment

Authority shall not be responsible for any damage to persons or property as a result of the use, misuse or failure of any equipment used by Contractor, or by any of its employees, even though such equipment be furnished, rented or loaned to Contractor by Authority.

13. Independent Contractor; Payment of Taxes and Other Expenses

a. Independent Contractor

Contractor shall be deemed at all times to be an independent Contractor and is wholly responsible for the manner in which it performs the services and work requested by Authority under this Agreement. Contractor shall not have employee status with Authority, nor be entitled to participate in any plans, arrangements, or distributions by Authority pertaining to or in connection with any retirement, health or other benefits that Authority may offer its employees. Contractor or any agent or employee of Contractor is liable for the acts and omissions of itself, its employees and its agents. Contractor shall be responsible for all obligations and payments, whether imposed by federal, state or local law, including, but not limited to, FICA, income tax withholdings, unemployment compensation, insurance, and other similar responsibilities related to Contractor's performing services and work, or any agent or employee of Contractor providing same. Nothing in this Agreement shall be construed as creating an employment or agency relationship between Authority and Contractor.

Any terms in this Agreement referring to direction from Authority shall be construed as providing for direction as to policy and the result of Contractor's work only, and not as to the means by which such a result is obtained.

b. Payment of Taxes and Other Expenses

Should Authority, in its discretion, or a relevant taxing authority such as the Internal Revenue Service or the State Employment Development Division, or both, determine that Contractor is an employee for purposes of collection of any employment taxes, the amounts payable under this Agreement shall be reduced by amounts equal to both the employee and employer portions of the tax due (and offsetting any credits for amounts already paid by Contractor which can be applied against this liability). Authority shall then forward those amounts to the relevant taxing authority.

Should a relevant taxing authority determine a liability for past services performed by Contractor for Authority, upon notification of such fact by Authority, Contractor shall promptly remit such amount due or arrange with Authority to have the amount due withheld from future payments to Contractor under this Agreement (again, offsetting any amounts already paid by Contractor which can be applied as a credit against such liability).

A determination of employment status pursuant to the preceding two paragraphs shall be solely for the purposes of the particular tax in question, and for all other purposes of this Agreement, Contractor shall not be considered an employee of Authority. Notwithstanding the foregoing, should any court, arbitrator, or administrative authority determine that Contractor is an employee for any other purpose, then Contractor agrees to a reduction in Authority's financial liability so that Authority's total expenses under this Agreement are not greater than they would have been had the court, arbitrator, or administrative authority determined that Contractor was not an employee.

14. Insurance

a. Without in any way limiting Contractor's liability pursuant to the "Indemnification" section of this Agreement, the Contractor must maintain in force, during the full term of the Agreement, insurance in the following amounts and coverages:

- (1) If required under California law, Worker's Compensation, in statutory amounts, with Employers' Liability Limits not less than \$1,000,000 each accident; and
- (2) Commercial General Liability Insurance with limits not less than \$1,000,000 each occurrence Combined Single Limit for Bodily Injury and Property Damage, including Contractual Liability, Personal Injury, Products and Completed Operations; and
- (3) Business Automobile Liability Insurance with limits not less than \$1,000,000 each occurrence Combined Single Limit for Bodily Injury and Property Damage, including Owned, Non-Owned and Hired auto coverage, as applicable.
- (4) Professional liability insurance with limits not less than \$1,000,000 each claim and in the aggregate, with respect to negligent acts, errors or omissions in connection with professional services to be provided under this Agreement, and any deductible not to exceed \$25,000 each claim.

b. Commercial General Liability and Business Automobile Liability Insurance policies must provide the following:

- (1) Name as Additional Insured the Authority, its Members, Directors, Officers, Agents, and Employees.
- (2) That such policies are primary insurance to any other insurance available to the Additional Insureds, with respect to any claims arising out of this Agreement, and that insurance applies separately to each insured against whom claim is made or suit is brought.

c. All policies shall provide thirty (30) days' advance written notice to Authority of cancellation mailed to the following address:

Maria Ayerdi, Executive Director
Transbay Joint Powers Authority
201 Mission Street, Suite 1960
San Francisco, California 94105

d. Should any of the required insurance be provided under a claims-made form, Contractor shall

maintain such coverage continuously throughout the term of this Agreement, and without lapse, for a period of three years beyond the expiration of this Agreement, to the effect that, should occurrences during the contract term give rise to claims made after expiration of the Agreement, such claims shall be covered by such claims-made policies.

e. Should any of the required insurance be provided under a form of coverage that includes a general annual aggregate limit or provides that claims investigation or legal defense costs be included in such general annual aggregate limit, such general annual aggregate limit shall be double the occurrence or claims limits specified above.

f. Should any required insurance lapse during the term of this Agreement, requests for payment originating after such lapse shall not be processed until the Authority receives satisfactory evidence of reinstated coverage as required by this Agreement, effective as of the lapse date. If insurance is not reinstated, the Authority may, at its sole option, terminate this Agreement effective on the date of such lapse of insurance.

g. Before commencing any operations under this Agreement, Contractor shall do the following: (a) furnish to Authority certificates of insurance, and additional insured policy endorsements with insurers with ratings comparable to A-, VII or higher, that are authorized to do business in the State of California, and that are satisfactory to Authority, in form evidencing all coverages set forth above, and (b) furnish complete copies of policies promptly upon Authority request.

h. Approval of the insurance by Authority shall not relieve or decrease the liability of Contractor under this Agreement.

15. Indemnification

Contractor shall indemnify and save harmless Authority, and its officers, directors, agents and employees from and against any and all loss, cost, damage, injury, liability, and claims thereof for injury to or death of a person, including employees of Contractor or loss of or damage to property, resulting directly or indirectly from Contractor's performance of this Agreement, including, but not limited to, the use of Contractor's facilities or equipment provided by Authority or others, regardless of the negligence of, and regardless of whether liability without fault is imposed or sought to be imposed on Authority, except to the extent that such indemnity is void or otherwise unenforceable under applicable law in effect on or validly retroactive to the date of this Agreement, and except where such loss, damage, injury, liability or claim is the result of the active negligence or willful misconduct of Authority and is not contributed to by any act of, or by any omission to perform some duty imposed by law or agreement on Contractor, its subcontractors or either's agent or employee. The foregoing indemnity shall include, without limitation, reasonable fees of attorneys, consultants and experts and related costs and Authority's costs of investigating any claims against the Authority.

In addition to Contractor's obligation to indemnify Authority, Contractor specifically acknowledges and agrees that it has an immediate and independent obligation to defend Authority from any claim which actually or potentially falls within this indemnification provision, even if the allegations are or may be groundless, false or fraudulent, which obligation arises at the time such claim is tendered to Contractor by Authority and continues at all times thereafter. Contractor shall have the exclusive right to select and retain attorneys to defend against such indemnified claims (subject to the reasonable approval of Authority) and Authority shall cooperate with Contractor and its attorneys, at no cost to the Authority.

Contractor shall also indemnify and hold Authority harmless from all loss and liability, including attorneys' fees, court costs and all other litigation expenses, for any infringement of the patent rights, copyright, trade secret or any other proprietary right or trademark and all other intellectual property claims of any person or persons in consequence of the use by Authority, or any of its officers or agents, of articles or services to be supplied in the performance of this Agreement.

16. Incidental and Consequential Damages

Contractor shall be responsible for incidental and consequential damages resulting from Contractor's acts or omissions. Nothing in this Agreement shall constitute a waiver or limitation of any rights which Authority may have under applicable law.

17. Liability of Authority

AUTHORITY'S MONETARY OBLIGATIONS UNDER THIS AGREEMENT SHALL BE LIMITED TO THE PAYMENT OF THE COMPENSATION PROVIDED FOR IN SECTION 5 OF THIS AGREEMENT. NOTWITHSTANDING ANY OTHER PROVISION OF THIS AGREEMENT, IN NO EVENT SHALL AUTHORITY BE LIABLE, REGARDLESS OF WHETHER ANY CLAIM IS BASED ON CONTRACT OR TORT, FOR ANY SPECIAL, CONSEQUENTIAL, INDIRECT OR INCIDENTAL DAMAGES, INCLUDING, BUT NOT LIMITED TO, LOST PROFITS, ARISING OUT OF OR IN CONNECTION WITH THIS AGREEMENT OR THE SERVICES PERFORMED IN CONNECTION WITH THIS AGREEMENT.

18. Termination for Convenience

a. Authority shall have the option, in its sole discretion, to terminate this Agreement, at any time during the term hereof, for convenience and without cause. Authority shall exercise this option by giving Contractor written notice of termination. The notice shall specify the date on which termination shall become effective.

b. Upon receipt of the notice, Contractor shall commence and perform, with diligence, all actions necessary on the part of Contractor to effect the termination of this Agreement on the date specified by Authority and to minimize the liability of Contractor and Authority to third parties as a result of termination. All such actions shall be subject to the prior approval of Authority. Such actions shall include, without limitation:

- (1) Halting the performance of all services and other work under this Agreement on the date(s) and in the manner specified by Authority.
- (2) Not placing any further orders or subcontracts for materials, services, equipment or other items.
- (3) Terminating all existing orders and subcontracts.
- (4) At Authority's direction, assigning to Authority any or all of Contractor's right, title, and interest under the orders and subcontracts terminated. Upon such assignment, Authority shall have the right, in its sole discretion, to settle or pay any or all claims arising out of the termination of such orders and subcontracts.
- (5) Subject to Authority's approval, settling all outstanding liabilities and all claims arising out of the termination of orders and subcontracts.
- (6) Completing performance of any services or work that Authority designates to be completed prior to the date of termination specified by Authority.
- (7) Taking such action as may be necessary, or as the Authority may direct, for the protection and preservation of any property related to this Agreement which is in the possession of Contractor and in which Authority has or may acquire an interest.

c. Within 30 days after the specified termination date, Contractor shall submit to Authority an invoice, which shall set forth each of the following as a separate line item:

- (1) The reasonable cost to Contractor for all services and other work Authority directed Contractor to perform prior to the specified termination date, for which services or work Authority has not already tendered payment. The costs shall be determined as provided in Section 5 above, and shall be invoiced as provided in Section 7 above. Contractor may also recover the reasonable cost of preparing the invoice.
- (2) The reasonable cost to Contractor of handling material or equipment returned to the vendor, delivered to the Authority or otherwise disposed of as directed by the Authority.
- (3) A deduction for the cost of materials to be retained by Contractor, amounts realized from the sale of materials and not otherwise recovered by or credited to Authority, and any other appropriate credits to Authority against the cost of the services or other work.

d. In no event shall Authority be liable for costs incurred by Contractor or any of its subcontractors after the termination date specified by Authority, except for those costs specifically enumerated and described in the immediately preceding subsection (c). Such non-recoverable costs include, but are not limited to, anticipated profits on this Agreement, post-termination employee salaries, post-termination administrative expenses, post-termination overhead or unabsorbed overhead, attorneys' fees or other costs relating to the prosecution of a claim or lawsuit, prejudgment interest, or any other expense which is not reasonable or authorized under such subsection (c).

e. In arriving at the amount due to Contractor under this Section, Authority may deduct: (1) all payments previously made by Authority for work or other services covered by Contractor's final invoice; (2) any claim which Authority may have against Contractor in connection with this Agreement; (3) any invoiced costs or expenses excluded pursuant to the immediately preceding subsection (d); and (4) in instances in which, in the opinion of the Authority, the cost of any service or other work performed under this Agreement is excessively high due to costs incurred to remedy or replace defective or rejected services or other work, the difference between the invoiced amount and Authority's estimate of the reasonable cost of performing the invoiced services or other work in compliance with the requirements of this Agreement.

f. Authority's payment obligation under this Section shall survive termination of this Agreement.

19. Rights and Duties Upon Termination or Expiration

a. This Section and the following Sections of this Agreement shall survive termination or expiration of this Agreement: False Claims; Disallowance; Taxes; Payment Does Not Imply Acceptance of Work; Responsibility for Equipment; Independent Contractor; Insurance; Indemnification; Incidental and Consequential Damages; Liability of Authority; Proprietary or Confidential Information; Ownership of Results; Works for Hire; Audit and Inspection of Records; Limitation on Contributions; Modifications; Administrative Remedies for Agreement Interpretation; Agreement in California; Construction; Entire Agreement; Severability.

b. Subject to the immediately preceding subsection (a), upon termination of this Agreement prior to expiration of the term specified in Section 2, this Agreement shall terminate and be of no further force or effect. Contractor shall transfer title to Authority, and deliver in the manner, at the times, and to the extent, if any, directed by Authority, any work in progress, completed work, supplies, equipment, and other materials produced as a part of, or acquired in connection with the performance of this Agreement, and any completed or partially completed work which, if this Agreement had been completed, would have been required to be furnished to Authority. This subsection shall survive termination of this Agreement.

20. Default; Remedies

a. Each of the following shall constitute an event of default ("Event of Default") under this Agreement:

- (1) Contractor fails or refuses to perform or observe any term, covenant or condition contained in any of the following Sections of this Agreement: False Claims; Taxes;

Insurance; Proprietary or Confidential Information; Assignment; Compliance with Laws; Severability; FTA Requirements.

- (2) Contractor fails or refuses to perform or observe any other term, covenant or condition contained in this Agreement, and such default continues for a period of ten days after written notice thereof from Authority to Contractor.
- (3) Contractor (a) is generally not paying its debts as they become due, (b) files, or consents by answer or otherwise to the filing against it of, a petition for relief or reorganization or arrangement or any other petition in bankruptcy or for liquidation or to take advantage of any bankruptcy, insolvency or other debtors' relief law of any jurisdiction, (c) makes an assignment for the benefit of its creditors, (d) consents to the appointment of a custodian, receiver, trustee or other officer with similar powers of Contractor or of any substantial part of Contractor's property or (e) takes action for the purpose of any of the foregoing.
- (4) A court or government authority enters an order (a) appointing a custodian, receiver, trustee or other officer with similar powers with respect to Contractor or with respect to any substantial part of Contractor's property, (b) constituting an order for relief or approving a petition for relief or reorganization or arrangement or any other petition in bankruptcy or for liquidation or to take advantage of any bankruptcy, insolvency or other debtors' relief law of any jurisdiction or (c) ordering the dissolution, winding-up or liquidation of Contractor.

b. On and after any Event of Default, Authority shall have the right to exercise its legal and equitable remedies, including, without limitation, the right to terminate this Agreement or to seek specific performance of all or any part of this Agreement. In addition, Authority shall have the right (but no obligation) to cure (or cause to be cured) on behalf of Contractor any Event of Default; Contractor shall pay to Authority on demand all costs and expenses incurred by Authority in effecting such cure, with interest thereon from the date of incurrence at the maximum rate then permitted by law. Authority shall have the right to offset from any amounts due to Contractor under this Agreement or any other agreement between Authority and Contractor all damages, losses, costs or expenses incurred by Authority as a result of such Event of Default and any liquidated damages due from Contractor pursuant to the terms of this Agreement or any other agreement.

c. All remedies provided for in this Agreement may be exercised individually or in combination with any other remedy available hereunder or under applicable laws, rules and regulations. The exercise of any remedy shall not preclude or in any way be deemed to waive any other remedy.

21. Conflict of Interest

Through its execution of this Agreement, Contractor acknowledges that it is familiar with the provisions of the Conflict of Interest Code of the Authority, section 15.103 of the San Francisco City Charter, Article III, Chapter 2 of San Francisco's Campaign and Governmental Conduct Code, and sections 87100 et seq. and sections 1090 et seq. of the Government Code of the State of California, and certifies that it does not know of any facts which constitute a violation of said provisions.

22. Proprietary or Confidential Information of Authority

Contractor understands and agrees that, in the performance of the work or services under this Agreement or in contemplation thereof, Contractor may have access to private or confidential information which may be owned or controlled by Authority and that such information may contain proprietary or confidential details, the disclosure of which to third parties may be damaging to Authority. Contractor agrees that all information disclosed by Authority to Contractor shall be held in confidence and used only in performance of the Agreement. Contractor shall exercise the same standard of care to protect such information as a reasonably prudent Contractor would use to protect its own proprietary data.

23. Notices to the Parties

Unless otherwise indicated elsewhere in this Agreement, all written communications sent by the parties may be by US mail, email, or by fax, and shall be addressed as follows:

To Authority: Maria Ayerdi, Executive Director
Transbay Joint Powers Authority
201 Mission St., Suite 1960
San Francisco, CA 94105
(415) 597-4615 fax
Maria.Ayerdi@transbayproject.org

To Contractor: Sam Singer
Singer Associates, Inc.
140 Second Street
San Francisco, CA 94105
(415) 348-8478 fax
Email c/o Adam Alberti: adam@singersf.com

Any notice of default must be sent by registered mail.

24. Ownership of Results

Any interest of Contractor or its subcontractors, in drawings, plans, specifications, blueprints, studies, reports, memoranda, computation sheets, computer files and media, or other documents prepared by Contractor or its subcontractors in connection with services to be performed under this Agreement, shall become the property of and will be transmitted to Authority. However, Contractor may retain and use copies for reference and as documentation of its experience and capabilities.

25. Works for Hire

If, in connection with services performed under this Agreement, Contractor or its subcontractors create artwork, copy, posters, billboards, photographs, videotapes, audiotapes, systems designs, software, reports, diagrams, surveys, source codes or any other original works of authorship, such works of authorship shall be works for hire as defined under Title 17 of the United States Code, and all copyrights in such works are the property of the Authority. If it is ever determined that any works created by Contractor or its subcontractors under this Agreement are not works for hire under U.S. law, Contractor hereby assigns all copyrights to such works to the Authority, and agrees to provide any material and execute any documents necessary to effectuate such assignment. With the approval of the Authority, Contractor may retain and use copies of such works for reference and as documentation of its experience and capabilities.

26. Audit and Inspection of Records

Contractor agrees to maintain and make available to the Authority, during regular business hours, accurate books and accounting records relating to its work under this Agreement. Contractor will permit Authority to audit, examine and make excerpts and transcripts from such books and records, and to make audits of all invoices, materials, payrolls, records or personnel and other data related to all other matters covered by this Agreement, whether funded in whole or in part under this Agreement. Contractor shall maintain such data and records in an accessible location and condition for a period of not less than five years after final payment under this Agreement or until after final audit has been resolved, whichever is later. The State of California or any federal agency having an interest in the subject of this Agreement shall have the same rights conferred upon Authority by this Section.

27. Assignment

a. Assignment

The services to be performed by Contractor are personal in character and neither this Agreement nor any duties or obligations hereunder may be assigned or delegated by the Contractor unless first approved by Authority by written instrument executed and approved in the same manner as this Agreement. No approval of any assignment, transfer or delegation of duties shall constitute approval of any subsequent assignment, transfer or delegation of duties.

b. Subcontractors

The Contractor is permitted to subcontract portions of the services to be performed under this Agreement to the following subcontractors:

Lisbet Sunshine, Sunshine Communications, 447 Third Avenue, San Francisco, CA 94118

The Contractor will be permitted to subcontract additional portions of the work subject to the prior written approval of the Authority Executive Director and the Contract Compliance Office of the Municipal Transportation Agency (MTA CCO). Subcontractors shall be solely responsible to the Contractor throughout the performance of their services under this Agreement. Assignment by the Contractor of work to subcontractors shall not relieve the Contractor of any obligation to the Authority for the work performed.

c. Substitution

Any intended substitution of subcontractors listed in subsection b. above shall be submitted to the Authority's Executive Director prior to the substitution of subcontractors performing any work under the terms of this Agreement. In the event that a DBE subcontractor is unable to perform successfully and is to be replaced, the Contractor will be required to make good faith efforts to replace the original DBE subcontractor with another DBE subcontractor. No substitution of subcontractors shall be made at any time without prior written approval of the Authority Executive Director and the Contract Compliance Office of the Municipal Transportation Agency (MTA CCO).

28. Non-Waiver of Rights

The omission by either party at any time to enforce any default or right reserved to it, or to require performance of any of the terms, covenants, or provisions hereof by the other party at the time designated, shall not be a waiver of any such default or right to which the party is entitled, nor shall it in any way affect the right of the party to enforce such provisions thereafter.

29. Earned Income Credit (EIC) Forms

San Francisco Administrative Code section 12O requires that employers provide their employees with IRS Form W-5 (The Earned Income Credit Advance Payment Certificate) and the IRS EIC Schedule, as set forth below. Employers can locate these forms at the IRS Office, on the Internet, or anywhere that Federal Tax Forms can be found.

a. Contractor shall provide EIC Forms to each Eligible Employee at each of the following times: (1) within thirty days following the date on which this Agreement becomes effective (unless Contractor has already provided such EIC Forms at least once during the calendar year in which such effective date falls); (2) promptly after any Eligible Employee is hired by Contractor; and (3) annually between January 1 and January 31 of each calendar year during the term of this Agreement.

b. Failure to comply with any requirement contained in subparagraph (a) of this Section shall constitute a material breach by Contractor of the terms of this Agreement. If, within thirty days after Contractor receives written notice of such a breach, Contractor fails to cure such breach or, if such breach cannot reasonably be cured within such period of thirty days, Contractor fails to commence efforts to cure within such period or thereafter fails to diligently pursue such cure to completion, the Authority may pursue any rights or remedies available under this Agreement or under applicable law.

c. Any subcontract entered into by Contractor shall require the subcontractor to comply, as to the sub Contractor's Eligible Employees, with each of the terms of this section.

d. Capitalized terms used in this Section and not defined in this Agreement shall have the meanings assigned to such terms in Section 12O of the San Francisco Administrative Code.

30. Equal Employment Opportunity

Contractor is an equal opportunity employer and agrees to comply with all applicable state and federal regulations governing equal employment opportunity. Contractor will not discriminate against any employee or applicant for employment because of race, age, sex, creed, color, sexual orientation, marital status or national origin. Contractor will take affirmative action to ensure that applicants are treated during such employment without regard to race, age, sex, creed, color, sexual orientation, marital status or national origin. Such action shall include, but shall not be limited to, the following: employment, upgrading, demotion or transfer; recruitment or recruitment advertising; lay-offs or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. Contractor further agrees to post in conspicuous places, available to employees and applicants for employment, notices setting forth the provisions of this nondiscrimination clause. Contractor is encouraged to actively recruit minorities and women for its workforce and take other steps, such as on-the-job training and education, to ensure nondiscrimination in Contractor's employment practices.

31. Nondiscrimination; Penalties

a. Contractor Shall Not Discriminate

In the performance of this Agreement, Contractor agrees not to discriminate against any employee, Authority or City employee working with such Contractor or subcontractor, applicant for employment with such Contractor or subcontractor, or against any person seeking accommodations, advantages, facilities, privileges, services, or membership in all business, social, or other establishments or organizations, on the basis of the fact or perception of a person's race, color, creed, religion, national origin, ancestry, age, sex, sexual orientation, gender identity, domestic partner status, marital status, disability or Acquired Immune Deficiency Syndrome or HIV status (AIDS/HIV status), or association with members of such protected classes, or in retaliation for opposition to discrimination against such classes.

b. Subcontracts

Contractor shall incorporate by reference in all subcontracts the provisions of Sections 12B.2(a), 12B.2(c)-(k), and 12C.3 of the San Francisco Administrative Code (copies of which are available from Authority upon request) and shall require all subcontractors to comply with such provisions. Contractor's failure to comply with the obligations in this subsection shall constitute a material breach of this Agreement.

c. Non-Discrimination in Benefits

Contractor does not as of the date of this Agreement and will not during the term of this Agreement, in any of its operations in San Francisco, on real property owned by San Francisco, or where the work is being performed for the Authority elsewhere within the United States, discriminate in the provision of bereavement leave, family medical leave, health benefits, membership or membership discounts, moving expenses, pension and retirement benefits or travel benefits, as well as any benefits other than the benefits specified above, between employees with domestic partners and employees with spouses, and/or between the domestic partners and spouses of such employees, where the domestic partnership has been registered with a governmental entity pursuant to state or local law authorizing such registration, subject to the conditions set forth in Section 12B.2(b) of the San Francisco Administrative Code.

d. Condition to Contract

As a condition to this Agreement, Contractor shall execute the "Chapter 12B Declaration: Nondiscrimination in Contracts and Benefits" form (Form HRC-12B-101) with supporting documentation and

secure the approval of the form by the San Francisco Human Rights Commission.

e. Incorporation of Administrative Code Provisions by Reference

The provisions of Chapters 12B and 12C of the San Francisco Administrative Code are incorporated in this Section by reference and made a part of this Agreement as though fully set forth herein. Contractor shall comply fully with and be bound by all of the provisions that apply to this Agreement under such Chapters of the Administrative Code, including but not limited to the remedies provided in such Chapters. Without limiting the foregoing, Contractor understands that pursuant to Section 12B.2(h) of the San Francisco Administrative Code, a penalty of \$50 for each person for each calendar day during which such person was discriminated against in violation of the provisions of this Agreement may be assessed against Contractor and/or deducted from any payments due Contractor.

32. MacBride Principles--Northern Ireland

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

33. Tropical Hardwood/Virgin Redwood Ban

Pursuant to Section 804(b) of the San Francisco Environment Code, the Authority urges Contractors not to import, purchase, obtain, or use for any purpose, any tropical hardwood, tropical hardwood wood product, virgin redwood or virgin redwood wood product.

34. Drug-Free Workplace Policy

Contractor acknowledges that pursuant to the Federal Drug-Free Workplace Act of 1989, the unlawful manufacture, distribution, dispensation, possession, or use of a controlled substance is prohibited on Authority premises. Contractor agrees that any violation of this prohibition by Contractor, its employees, agents or assigns will be deemed a material breach of this Agreement.

35. Resource Conservation; Liquidated Damages

Chapter 5 of the San Francisco Environment Code ("Resource Conservation") is incorporated herein by reference. Failure by Contractor to comply with any of the applicable requirements of Chapter 5 will be deemed a material breach of contract.

36. Compliance with Americans with Disabilities Act

Contractor acknowledges that, pursuant to the Americans with Disabilities Act (ADA), programs, services and other activities provided by a public entity to the public, whether directly or through a Contractor, must be accessible to the disabled public. Contractor shall provide the services specified in this Agreement in a manner that complies with the ADA and any and all other applicable federal, state and local disability rights legislation. Contractor agrees not to discriminate against disabled persons in the provision of services, benefits or activities provided under this Agreement and further agrees that any violation of this prohibition on the part of Contractor, its employees, agents or assigns will constitute a material breach of this Agreement.

37. San Francisco Sunshine Ordinance

In accordance with San Francisco Administrative Code Section 67.24(e), contracts, contractors' bids, responses to requests for proposals and all other records of communications between Authority and persons or firms seeking contracts, shall be open to inspection immediately after a contract has been awarded. Nothing in this provision requires the disclosure of a private person's or organization's net worth or other proprietary financial data submitted for qualification for a contract or other benefit until and unless that person or organization is awarded the contract or benefit. Information provided which is covered by this paragraph will be made available to the public upon request.

38. Public Access to Meetings and Records

If the Contractor receives a cumulative total per year of at least \$250,000 in Authority funds or Authority-administered funds and is a non-profit organization as defined in Chapter 12L of the S.F. Administrative Code, Contractor shall comply with and be bound by all the applicable provisions of that Chapter. By executing this Agreement, the Contractor agrees to open its meetings and records to the public in the manner set forth in §§12L.4 and 12L.5 of the Administrative Code. Contractor further agrees to make-good faith efforts to promote community membership on its Board of Directors in the manner set forth in §12L.6 of the Administrative Code. The Contractor acknowledges that its material failure to comply with any of the provisions of this paragraph shall constitute a material breach of this Agreement. The Contractor further acknowledges that such material breach of the Agreement shall be grounds for the Authority to terminate and/or not renew the Agreement, partially or in its entirety.

39. Notification of Limitations on Contributions

Through execution of this Agreement, Contractor acknowledges that it is familiar with section 1.126 of the San Francisco Campaign and Governmental Conduct Code, which prohibits any person who contracts with the City for the rendition of personal services or for the furnishing of any material, supplies or equipment to the City, whenever such transaction would require approval by a City elective officer or the board on which that City elective officers serves, from making any campaign contribution to the officer at any time from the commencement of negotiations for the contract until three months after the date the contract is approved by the City elective officer or the board on which that City elective officer serves.

40. Requiring Minimum Compensation for Covered Employees

Contractor agrees to comply fully with and be bound by all of the provisions of the Minimum Compensation Ordinance (MCO), as set forth in San Francisco Administrative Code Chapter 12P (Chapter 12P), including the remedies provided, and implementing guidelines and rules. The provisions of Chapter 12P are incorporated herein by reference and made a part of this Agreement as though fully set forth. The text of the MCO is available on the web at <http://www.sfgov.org/oca/lwlh.htm>. Capitalized terms used in this Section and not defined in this Agreement shall have the meanings assigned to such terms in Chapter 12P. Consistent with the requirements of the MCO, Contractor agrees to all of the following:

a. For each hour worked by a Covered Employee during a Pay Period on work funded under the Authority contract during the term of this Agreement, Contractor shall provide to the Covered Employee no less than the Minimum Compensation, which includes a minimum hourly wage and compensated and uncompensated time off consistent with the requirements of the MCO. For the hourly gross compensation portion of the MCO, the Contractor shall pay \$9.00 an hour through December 31, 2001. On January 1, 2002, Contractor shall increase the hourly gross compensation to \$10.00 an hour; provided, however, that if Contractor is a Nonprofit Corporation or a public entity, it shall be required to pay the increased amount only if the Authority makes the finding required by Section 12P.3(a)(ii) of the San Francisco Administrative Code. If Contractor is required to increase the gross hourly compensation to \$10.00 an hour, it shall provide the 2.5% annual increase required by the MCO for each of the next three years.

b. Contractor shall not discharge, reduce in compensation, or otherwise discriminate against any employee for complaining to the Authority with regard to Contractor's compliance or anticipated compliance with

the requirements of the MCO, for opposing any practice proscribed by the MCO, for participating in proceedings related to the MCO, or for seeking to assert or enforce any rights under the MCO by any lawful means.

c. Contractor understands and agrees that the failure to comply with the requirements of the MCO shall constitute a material breach by Contractor of the terms of this Agreement. The Authority, acting through the Contracting Department, shall determine whether such a breach has occurred.

d. If, within 30 days after receiving written notice of a breach of this Agreement for violating the MCO, Contractor fails to cure such breach or, if such breach cannot reasonably be cured within such period of 30 days, Contractor fails to commence efforts to cure within such period, or thereafter fails diligently to pursue such cure to completion, the Authority, acting through the Contracting Department, shall have the right to pursue the following rights or remedies and any rights or remedies available under applicable law:

- (1) The right to charge Contractor an amount equal to the difference between the Minimum Compensation and any compensation actually provided to a Covered Employee, together with interest on such amount from the date payment was due at the maximum rate then permitted by law;
- (2) The right to set off all or any portion of the amount described in Subsection (d)(1) of this Section against amounts due to Contractor under this Agreement;
- (3) The right to terminate this Agreement in whole or in part;
- (4) In the event of a breach by Contractor of the covenant referred to in Subsection (b) of this Section, the right to seek reinstatement of the employee or to obtain other appropriate equitable relief; and
- (5) The right to bar Contractor from entering into future contracts with the Authority for three years.

Each of the rights provided in this Subsection (d) shall be exercisable individually or in combination with any other rights or remedies available to the Authority. Any amounts realized by the Authority pursuant to this subsection shall be paid to the Covered Employee who failed to receive the required Minimum Compensation.

e. Contractor represents and warrants that it is not an entity that was set up, or is being used, for the purpose of evading the intent of the MCO.

f. Contractor shall keep itself informed of the current requirements of the MCO, including increases to the hourly gross compensation due Covered Employees under the MCO, and shall provide prompt written notice to all Covered Employees of any increases in compensation, as well as any written communications received by the Contractor from the Authority, which communications are marked to indicate that they are to be distributed to Covered Employees.

g. Contractor shall provide reports to the Authority in accordance with any reporting standards promulgated by the Authority under the MCO, including reports on subcontractors.

h. The Contractor shall provide the Authority with access to pertinent records after receiving a written request from the Authority to do so and being provided at least five (5) business days to respond.

i. The Authority may conduct random audits of Contractor. Random audits shall be (1) noticed in advance in writing; (2) limited to ascertaining whether Covered Employees are paid at least the minimum compensation required by the MCO; (3) accomplished through an examination of pertinent records at a mutually agreed upon time and location within ten days of the written notice; and (4) limited to one audit of Contractor every two years for the duration of this Agreement. Nothing in this Agreement is intended to preclude the Authority from investigating any report of an alleged violation of the MCO.

j. Any subcontract entered into by Contractor shall require the subcontractor to comply with the requirements of the MCO and shall contain contractual obligations substantially the same as those set forth in this Section. A subcontract means an agreement between the Contractor and a third party which requires the third party to perform all or a portion of the services covered by this Agreement. Contractor shall notify the Department of Administrative Services when it enters into such a subcontract and shall certify to the Department of Administrative Services that it has notified the subcontractor of the obligations under the MCO and has imposed the requirements of the MCO on the subcontractor through the provisions of the subcontract. It is Contractor's obligation to ensure that any subcontractors of any tier under this Agreement comply with the requirements of the MCO. If any subcontractor under this Agreement fails to comply, Authority may pursue any of the remedies set forth in this Section against Contractor.

k. Each Covered Employee is a third-party beneficiary with respect to the requirements of subsections (a) and (b) of this Section, and may pursue the following remedies in the event of a breach by Contractor of subsections (a) and (b), but only after the Covered Employee has provided the notice, participated in the administrative review hearing, and waited the 21-day period required by the MCO. Contractor understands and agrees that if the Covered Employee prevails in such action, the Covered Employee may be awarded: (1) an amount equal to the difference between the Minimum Compensation and any compensation actually provided to the Covered Employee, together with interest on such amount from the date payment was due at the maximum rate then permitted by law; (2) in the event of a breach by Contractor of subsections (a) or (b), the right to seek reinstatement or to obtain other appropriate equitable relief; and (3) in the event that the Covered Employee is the prevailing party in any legal action or proceeding against Contractor arising from this Agreement, the right to obtain all costs and expenses, including reasonable attorney's fees and disbursements, incurred by the Covered Employee. Contractor also understands that the MCO provides that if Contractor prevails in any such action, Contractor may be awarded costs and expenses, including reasonable attorney's fees and disbursements, from the Covered Employee if the court determines that the Covered Employee's action was frivolous, vexatious or otherwise an act of bad faith.

l. If Contractor is exempt from the MCO when this Agreement is executed because the cumulative amount of agreements with this department for the fiscal year is less than \$25,000 (\$50,000 for nonprofits), but Contractor later enters into an agreement or agreements that cause Contractor to exceed that amount in a fiscal year, Contractor shall thereafter be required to comply with the MCO under this Agreement. This obligation arises on the effective date of the agreement that causes the cumulative amount of agreements between the Contractor and this department to exceed \$25,000 (\$50,000 for nonprofits) in the fiscal year.

41. Requiring Health Benefits for Covered Employees

Unless exempt, Contractor agrees to comply fully with and be bound by all of the provisions of the Health Care Accountability Ordinance (HCAO), as set forth in San Francisco Administrative Code Chapter 12Q, including the remedies provided, and implementing regulations, as the same may be amended from time to time. The provisions of Chapter 12Q are incorporated herein by reference and made a part of this agreement as though fully set forth. The text of the HCAO is available on the web at <http://www.sfgov.org/oca/lwlh.htm>. Capitalized terms used in this Section and not defined in this agreement shall have the meanings assigned to such terms in Chapter 12Q.

a. For each Covered Employee, Contractor shall provide the appropriate health benefit set forth in Section 12Q.3 of the HCAO. If Contractor chooses to offer the health plan option, such health plan shall meet the minimum standards set forth by the San Francisco Health Commission.

b. Notwithstanding the above, if the Contractor is a small business as defined in Section 12Q.3(d) of the HCAO, it shall have no obligation to comply with part (a) above.

c. Contractor's failure to comply with the HCAO shall constitute a material breach of this agreement. Authority shall notify Contractor if such a breach has occurred. If, within 30 days after receiving Authority's written notice of a breach of this Agreement for violating the HCAO, Contractor fails to cure such breach or, if such breach cannot reasonably be cured within such period of 30 days, Contractor fails to commence efforts to cure within such period, or thereafter fails diligently to pursue such cure to completion, Authority shall have the right to pursue the remedies set forth in 12Q.5(f)(1-5). Each of these remedies shall be exercisable individually or in combination with any other rights or remedies available to Authority.

d. Any Subcontract entered into by Contractor shall require the sub Contractors to comply with the requirements of the HCAO and shall contain contractual obligations substantially the same as those set forth in this Section. Contractor shall notify Authority when it enters into such a subcontract and shall certify to Authority that it has notified the sub Contractor of the obligations under the HCAO and has imposed the requirements of the HCAO on sub Contractor through the Subcontract. Each Contractor shall be responsible for its sub Contractors' compliance with this Chapter. If a sub Contractor fails to comply, the Authority may pursue the remedies set forth in this Section against Contractor based on the sub Contractor's failure to comply, provided that Authority has first provided Contractor with notice and an opportunity to obtain a cure of the violation.

e. Contractor shall not discharge, reduce in compensation, or otherwise discriminate against any employee for notifying Authority with regard to Contractor's compliance or anticipated compliance with the requirements of the HCAO, for opposing any practice proscribed by the HCAO, for participating in proceedings related to the HCAO, or for seeking to assert or enforce any rights under the HCAO by any lawful means.

f. Contractor represents and warrants that it is not an entity that was set up, or is being used, for the purpose of evading the intent of the HCAO.

g. Contractor shall keep itself informed of the current requirements of the HCAO.

h. Contractor shall provide reports to the Authority in accordance with any reporting standards promulgated by the Authority under the HCAO, including reports on sub Contractors and Subtenants, as applicable.

i. Contractor shall provide Authority with access to records pertaining to compliance with HCAO after receiving a written request from Authority to do so and being provided at least five business days to respond.

j. Authority may conduct random audits of Contractor to ascertain its compliance with HCAO. Contractor agrees to cooperate with Authority when it conducts such audits.

k. If Contractor is exempt from the HCAO when this Agreement is executed because its amount is less than \$25,000 (\$50,000 for nonprofits), but Contractor later enters into an agreement or agreements that cause Contractor's aggregate amount of all agreements with Authority to reach \$75,000, all the agreements shall be thereafter subject to the HCAO. This obligation arises on the effective date of the agreement that causes the cumulative amount of agreements between Contractor and the Authority to be equal to or greater than \$75,000 in the fiscal year.

42. First Source Hiring Program

a. Incorporation of Administrative Code Provisions by Reference

The provisions of Chapter 83 of the San Francisco Administrative Code are incorporated in this Section by reference and made a part of this Agreement as though fully set forth herein. Contractor shall comply fully with, and be bound by, all of the provisions that apply to this Agreement under such Chapter, including but not limited to the remedies provided therein. Capitalized terms used in this Section and not defined in this Agreement shall have the meanings assigned to such terms in Chapter 83.

b. First Source Hiring Agreement

- (1) Contractor will comply with First Source interviewing, recruitment and hiring requirements, which will provide the San Francisco Workforce Development System with the exclusive opportunity to initially provide Qualified Economically Disadvantaged Individuals for consideration for employment for Entry Level Positions. The duration of the First Source interviewing requirement shall be ten (10) days, unless business necessity requires a shorter period of time.;

- (2) Contractor will comply with requirements for providing timely, appropriate notification of available Entry Level Positions to the San Francisco Workforce Development System so that the System may train and refer an adequate pool of Qualified Economically Disadvantaged Individuals to participating Employers;
- (3) Contractor agrees to use good faith efforts to comply with the First Source hiring requirements. A Contractor may establish its good faith efforts by filling: i) its first available Entry Level Position with a job applicant referred through the First Source Program; and, ii) fifty percent (50%) of its subsequent available Entry Level Positions with job applicants referred through the San Francisco Workforce Development System. Failure to meet this target, while not imputing bad faith, may result in a review of the Contractor's employment records.

c. Hiring Decisions

Contractor shall make the final determination of whether an Economically Disadvantaged Individual referred by the System is "qualified" for the position.

d. Exceptions

Upon application by Employer, the First Source Hiring Administration may grant an exception to any or all of the requirements of Chapter 83 in any situation where it concludes that compliance with this Chapter would cause economic hardship.

e. Liquidated Damages

Violation of the requirements of Chapter 83 is subject to an assessment of liquidated damages in the amount of \$2,070 for every new hire for an Entry Level Position improperly withheld from the first source hiring process. The assessment of liquidated damages and the evaluation of any defenses or mitigating factors shall be made by the FSHA.

f. Subcontracts

Any subcontract entered into by Contractor shall require the subcontractor to comply with the requirements of Chapter 83 and shall contain contractual obligations substantially the same as those set forth in this Section.

43. Prohibition on Political Activity with Authority Funds

In accordance with San Francisco Administrative Code Chapter 12.G, Contractor may not participate in, support, or attempt to influence any political campaign for a candidate or for a ballot measure (collectively, "Political Activity") in the performance of the services provided under this Agreement. Contractor agrees to comply with San Francisco Administrative Code Chapter 12.G and any implementing rules and regulations promulgated by the Authority's Chief Financial Officer. The terms and provisions of Chapter 12.G are incorporated herein by this reference. In the event Contractor violates the provisions of this section, the Authority may, in addition to any other rights or remedies available hereunder, (a) terminate this Agreement, and (b) prohibit Contractor from bidding on or receiving any new Authority contract for a period of two (2) years.

44. Preservative-treated Wood Containing Arsenic

As of July 1, 2003, Contractor may not purchase preservative-treated wood products containing arsenic in the performance of this Agreement unless an exemption from the requirements of Chapter 13 of the San Francisco Environment Code is obtained from the Department of the Environment under Section 1304 of the Code. The term "preservative-treated wood containing arsenic" shall mean wood treated with a preservative that contains arsenic, elemental arsenic, or an arsenic copper combination, including, but not limited to, chromated copper arsenate preservative, ammoniacal copper zinc arsenate preservative, or ammoniacal copper arsenate preservative. Contractor may purchase preservative-treated wood products on the list of environmentally preferable alternatives

prepared and adopted by the Department of the Environment. This provision does not preclude Contractor from purchasing preservative-treated wood containing arsenic for saltwater immersion. The term "saltwater immersion" shall mean a pressure-treated wood that is used for construction purposes or facilities that are partially or totally immersed in saltwater.

45. Modification of Agreement

This Agreement may not be modified, nor may compliance with any of its terms be waived, except by written instrument executed and approved according to Authority requirements. Contractor shall submit to the Municipal Transportation Agency Contract Compliance Officer any amendment, modification, supplement or change order that would result in a cumulative increase of the original amount of this Agreement by more than 20%.

46. Administrative Remedy for Agreement Interpretation

Should any question arise as to the meaning and intent of this Agreement, the question shall, prior to any other action or resort to any other legal remedy, be referred to the Agency who shall decide the true meaning and intent of the Agreement. Nothing in this Section shall be interpreted as Contractor waiving any legal rights or remedies to which it is entitled.

47. Agreement Made in California; Venue

The formation, interpretation and performance of this Agreement shall be governed by the laws of the State of California. Venue for all litigation relative to the formation, interpretation and performance of this Agreement shall be in San Francisco.

48. Construction

All paragraph captions are for reference only and shall not be considered in construing this Agreement.

49. Entire Agreement

This contract sets forth the entire Agreement between the parties, and supersedes all other oral or written provisions. This Agreement may be modified only as provided in Section 50.

50. Compliance With Laws

Contractor shall keep itself fully informed of the Charter of the City and County of San Francisco, of codes, ordinances and regulations of the City, and of all state, federal laws and regulations in any manner affecting the performance of this Agreement, and must at all times comply with such codes, ordinances, regulations, and all applicable laws as they may be amended from time to time.

51. Services Provided by Attorneys

Any services to be provided by a law firm or attorney must be reviewed and approved in writing in advance by the Authority's counsel. No invoices for such services provided by law firms or attorneys, including, without limitation, as subcontractors of Contractor, will be paid unless the provider received advance written approval from the Authority's counsel.

52. Severability

Should the application of any provision of this Agreement to any particular facts or circumstances be found by a court of competent jurisdiction to be invalid or unenforceable, then (a) the validity of other provisions of this Agreement shall not be affected or impaired thereby, and (b) such provision shall be enforced to the maximum extent possible so as to effect the intent of the parties and shall be reformed without further action by the parties to the extent necessary to make such provision valid and enforceable.

53. News Releases/Interviews

All Contractor news releases, media interviews, testimony at hearings and public comment relating to the Transbay Terminal Program shall be prohibited unless expressly authorized by the Authority.

54. Disputes

a. Process

For any dispute involving a question of fact that does not involve a claim for additional compensation, the aggrieved party shall furnish the other party with a notice of dispute within fifteen (15) days of the determination of the dispute. The party receiving a notice of dispute shall submit a written reply within fourteen (14) days of delivery of the notice. The notice and response shall contain the following: (a) a statement of the party's position and a summary of the arguments supporting that position, and (b) any evidence supporting the party's position. Disputes arising in the performance of this Agreement which are not resolved by negotiation between the parties shall be decided in writing by the Executive Director 1, whose decision shall be administratively final and conclusive.

b. Performance of Work

Pending final resolution of a dispute hereunder, the Contractor shall proceed diligently with the performance of its obligations under the Agreement in accordance with the written directions of the Authority.

c. Alternative Dispute Resolution

If agreed to by both parties, disputes may be resolved by a mutually agreed to alternative dispute resolution process.

55. Authority to Execute Agreement

Each individual executing this Agreement on behalf of one of the parties represents that he or she is duly authorized to sign and deliver the Agreement on behalf of such party and that this Agreement is binding on such party in accordance with its terms.

56. FTA Requirements

The provisions contained in "FTA Requirements for Personal Services Contracts," attached as Appendix C are incorporated into this Agreement. If there is any conflict between the FTA terms and conditions and any other terms and conditions of this Agreement, the FTA terms and conditions shall take precedence.

57. DBE Requirements

Contractor shall comply with the DBE provisions contained in the Request for Proposals and incorporated into this Agreement as though fully set forth, including, but not limited to, achieving and maintaining the DBE goal as set forth in the RFP. Failure of the Consultant to comply with any of these requirements, or to submit compelling documentation acceptable to the Authority detailing the good faith efforts to comply, shall be deemed a material breach of this Agreement. A copy of any applicable forms is attached hereto as Appendix D. Pursuant to Authority policy, Contractor is encouraged to actively recruit minorities, women and other disadvantaged persons for its workforce and take other steps, such as on-the-job training and education, to ensure nondiscrimination in Consultant's employment practices.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement on the day first mentioned above.

TRANSBAY JOINT POWERS AUTHORITY

Maria Ayerdi
Executive Director

Approved as to Form:

Dennis J. Herrera, City Attorney

By _____
Deputy City Attorney

SINGER ASSOCIATES

By signing this Agreement, I certify that I comply with the requirements of the Minimum Compensation Ordinance, which entitle Covered Employees to certain minimum hourly wages and compensated and uncompensated time off.

I have read and understood paragraph 33, the Authority's statement urging companies doing business in Northern Ireland to move towards resolving employment inequities, encouraging compliance with the MacBride Principles, and urging San Francisco companies to do business with corporations that abide by the MacBride Principles.

Authorized Signature

Printed Name

Title

Company Name

Address

Authority, State, ZIP

Phone Number

Federal Employer ID Number

APPENDIX A

SCOPE OF WORK

The Transbay Terminal Program (Program) will provide expanded bus and rail service in a new transportation terminal building on the site of the existing terminal at First and Mission Streets. The Program also includes viaducts and ramps linking the new terminal to the Bay Bridge and to an off-site bus storage facility, a below-grade extension of Caltrain to the new terminal building including the construction of a new subsurface station in the vicinity of Fourth and Townsend, modifications to the existing Fourth and Townsend surface station, a temporary bus terminal and storage area for use by buses during construction of the new terminal building, and the new permanent off-site bus storage facility. The new station will also be designed to accommodate future California High Speed rail and a subaqueous extension of rail service across the Bay to Alameda County. The following Scope of Work describes the goals, tasks and deliverables required to develop and carry out effective Public Relations, Media and Outreach for the Transbay Terminal Program. The Contractor shall work in tandem with other Authority Contractors and shall be proactive and bring forth ideas to Authority staff on how to continuously maintain public interest and support of the overall Program and the TJPA.

Under direction of Authority staff, the Contractor shall be responsible for developing and implementing a comprehensive public relations program/plan, and will serve as a resource and contact for the media. The Contractor shall work in tandem with Authority staff and other Authority Contractors. The Contractor shall work with Authority staff to develop a detailed work plan outlining the scope of services to be performed under the contract within thirty (30) days of the Notice to Proceed. Detailed work plans shall be updated on a regular basis, but no less than quarterly, to reflect current Project and Authority needs. The work plans shall describe in detail the actual tasks to be performed by the Contractor based on the scope of work below, the schedule for performance of these tasks, and the specific deliverables, including any recurring or updated deliverables, for each task. The Contractor shall meet with the Authority to review Contractor's performance with respect to work plans in accordance with Section 4.b of this Agreement.

The Contractor shall:

1. Recommend policies, strategies and tactics for pinpointing, addressing and resolving public issues and concerns;
2. Develop and maintain Project identity, visibility, and consistent positive media coverage through print, television, and radio;
3. Develop materials with clear and consistent messaging for myriad public audiences;
4. Implement additional public relations/community outreach projects as directed;
5. Define and recommend additional or alternative tasks not identified in this Scope that would enhance the goals described herein;
6. Provide daily briefings to TJPA staff, attend TJPA staff meetings as required (currently scheduled bi-weekly) and submit written monthly progress reports to Authority Board and staff; and
7. Provide support and advice to the Authority's Board and executive staff.

A comprehensive Public Information Plan shall be created and implemented through the use of established methods, effective tools and available resources. The Plan shall use marketing strategies to communicate effectively with identified target audiences and disseminate the message in order to develop and maintain a consistent and positive impression of the overall Transbay Program including the new terminal, the rail extension, and the redevelopment area. Plan shall communicate consistently and positively regarding the value and import of every component of the Program, and the strong widespread support for the Program.

The goal of the Public Relations, Media and Outreach Programs is to create a strong positive region-wide Program identity and visibility and a sense of excitement, anticipation and inevitability about the Program with the public, elected officials and stakeholders. Specific Scope tasks are outlined below.

TASK 1: Public Information

TASKS

- 1.1 Assist to update and expand Program website.
- 1.2 Hold briefings with stakeholders and site tours for groups
- 1.3 Provide outreach to legislative/administrative bodies and elected officials

- 1.4 Translate technical information into public communications
- 1.5 Track and summarize key public issues and concerns for TJPA staff, and develop appropriate outreach plans as necessary to address.

TASK 2: Materials: Public Information, Outreach and Media

TASKS

- 2.1 Develop FAQs and Fact Sheets for target audiences.
- 2.2 Update FAQs and Fact Sheets and translate as needed.
- 2.3 Develop project newsletters for print and electronic distribution (translate as needed).
- 2.4 Develop and produce informational brochures, compact discs/DVD's/tapes, and public service announcements (translate as needed). Collateral materials should be simply written, cost-effective, easy to print or produce, appropriate for each audience. Contractor will be responsible for production oversight and quality and will use cost-effective communication tactics appropriate for nature of information to be distributed and target audience.

DELIVERABLE SPECIFICS

- Fact Sheets targeted toward specific audiences (updated and translated as needed)
- Provide content for project website monthly or as needed
- Press releases as needed to highlight Program progress
- Brochures for specific audiences
 - General Public
 - Transit Users
 - Public in direct Program impact area
 - Elected officials
- Compact discs/DVD's/tapes
- Public service announcements as needed
- Project newsletter
- Articles in local neighborhood, employer and trade newsletters/magazines
- Briefings and site tours for neighborhood groups

TASK 3: Media Relations

TASKS

- 3.1 Develop and implement a news media outreach plan, including messaging, establishing media contacts and providing information to local, regional and national news outlets, scheduling media briefings and walking tours of project area for media and elected officials.
- 3.2 Coordinate Editorial Board Program and secure editorial and news coverage, including briefing meetings, update meetings, briefing papers and guest Op Eds.
- 3.3 Develop communications strategy for Terminal A&E Team selection process, including managing and shaping public face of the process.
- 3.4 Conduct communications training session for Authority staff and Board in preparation for press conferences or media events.
- 3.5 Act as Program spokesperson and respond to media inquiries, and identify and refer to appropriate experts to respond to technical questions.
- 3.6 Track and keep a record of media coverage, including daily press clipping services.
- 3.7 Support TJPA Board and staff in media and public forums.

DELIVERABLE SPECIFICS

- Media kit to serve as a resource for journalists, the public and elected officials. Kit shall include development or upgrade of the following pieces in printed/electronic formats:
 - Project Overview Fact Sheet
 - Milestones/Timeline
 - Housing Benefits Fact Sheet
 - Economic Benefits Fact Sheet

- Transportation Benefits Fact Sheet
- Environmental Benefits Fact Sheet
- Conceptual designs for Terminal
- High Speed Rail Fact Sheet
- Media briefings
- Media walking tours of project area
- Press releases
- Editorial Board briefings, talking points, update meetings
- Press clippings
- List of local, state and national print, radio and television outlets to market Program and strategy for contact and submission of material for publication

TASK 4: Community Outreach

TASKS

- 4.1 Develop matrix of audiences and set strategic outreach goals accordingly
- 4.2 Inform public of Program/project progress, proactively reaching out to community leaders and neighborhood groups via quarterly updates
- 4.3 Update and distribute Program Newsletter
- 4.4 Mobilize and expand core constituency of advocates, including Transit and Rail Advocates, Housing and Land Use Advocates, the Business Community and Labor
- 4.5 Perform targeted outreach to the following groups (Please note that this list is not meant to be exclusive and does not preclude identification of other audiences at a future date):
 - Residents
 - Businesses and Business Leadership
 - Elected Officials
 - Government Officials and Legislative/Administrative Bodies
 - Community-based Organizations
 - General Public
 - Commuters to/from San Francisco
 - Regulatory and Funding Agencies

DELIVERABLE SPECIFICS

- Staff a minimum of five public meetings during contract period, and develop meeting specific materials, translate as needed
- Create calendar of high-impact speaking opportunities for Executive Director and TJPA Board members, focusing on business, labor, housing, environmental and transportation communities and including other relevant communities as directed
- Program newsletter in print format for neighborhood distribution
- Articles and stories for local neighborhood and trade publications, translate as needed

TASK 5: Messaging, Graphics and Visual Design

TASKS

- 5.1 Conduct branding study and focus groups to create new visual identity for the Program
- 5.2 Develop new visual identity, image and messaging for all print, electronic and multimedia outreach material, to maintain consistent positive coverage and support for the Program. The TJPA seeks a consistent and common public identity that the public, media and decision makers can easily associate with the program and TJPA Board and staff
- 5.3 Apply identity to website and other materials

TASK 6: Crisis Communications

TASKS

- 6.1 Create and develop of a crisis plan with clear procedures for handling unexpected occurrences
- 6.2 Update crisis plan
- 6.3 Promptly and effectively address any Program-related crisis to minimize Program impact
- 6.4 Anticipate and address possible scenarios and questions that may arise

DELIVERABLE SPECIFICS

- Crisis plan, including communication plan for staff, Board and elected officials
- As needed: Press releases, Fact Sheets, OpEds, and Letters

TASK	Project Name	Not to Exceed: Year 1	Estimated Not to Exceed: Year 2	Estimated Not to Exceed: Year 3	Date Due
TOTAL		\$210,000	\$130,000	\$80,000	Year 1, 2, 3
TASK 1	Public Information	\$30,000	\$35,000	\$15,000	1, 2, 3
1.1	Assist to update and expand Program website	10%	10%	10%	1, 2, 3
1.2	Hold briefings with stakeholders and site tours for groups	35%	40%	40%	1, 2, 3
1.3	Provide outreach to legislative/administrative bodies and elected officials	40%	40%	40%	1, 2, 3
1.4	Translate technical information into public communications	5%	5%	5%	1, 2, 3
1.5	Track and summarize key public issues and concerns for TJPA staff, and develop appropriate outreach plans as necessary to address	10%	5%	5%	1, 2, 3
TASK 2	Materials: Public Information, Outreach and Media	\$50,000	\$15,000	\$15,000	1, 2, 3
2.1	Develop FAQs and Fact Sheets, using new identity and messaging	50%	0	0	1
2.2	Update FAQs, fact sheets	0	45%	45%	2, 3
2.3	Develop Program Newsletter for print and electronic distribution	20%	0	0	1
2.4	Develop and produce informational brochures, CDs/DVDs, PSAs	30%	55%	55%	1, 2, 3
TASK 3	Media Relations	\$35,000.00	\$35,000.00	\$10,000.00	1, 2, 3
3.1	Develop and implement news media outreach plan, including messaging, establishing media contacts and providing information to local, regional and national outlets and news pipelines for outreach and media events	45%	35%	35%	1, 2, 3
3.2	Coordinate Editorial Board Program, and secure editorial and news coverage	10%	20%	20%	1, 2, 3
3.3	Develop communications strategy for Terminal A&E team selection process and manage and shape public face of process	20%	0	0	1
3.4	Conduct communications training session for TJPA staff and Board	5%	0	0	1
3.5	Act as Program Spokesperson and respond to media inquiries	10%	25%	25%	1, 2, 3
3.6	Track and record all media coverage	5%	5%	5%	1, 2, 3
3.7	Support staff and Board in media and public forums	5%	15%	15%	1, 2, 3
TASK 4	Community Outreach	\$35,000.00	\$30,000.00	\$30,000.00	1, 2, 3
4.1	Develop matrix of audiences and set strategic outreach goals accordingly	5%	5%	5%	1, 2, 3
4.2	Inform public of Program/project progress via quarterly updates	25%	15%	15%	1, 2, 3
4.3	Update and distribute Program Newsletter	0%	25%	25%	2, 3
4.4	Mobilize and expand core constituencies of advocates	35%	20%	20%	1, 2, 3
4.5	Perform targeted group outreach	35%	35%	35%	1, 2, 3
TASK 5	Messaging, Graphics and Visual Design	\$40,000.00	\$0.00	\$0.00	1
5.1	Conduct Branding Study and focus groups	20%	0	0	1
5.2	Develop new visual identity, image and messaging for use on all print, electronic and multimedia materials	70%	0	0	1
5.3	Apply identity to website and other materials	10%	0	0	1
TASK 6	Crisis Communications	\$20,000.00	\$15,000.00	\$10,000.00	1, 2, 3
6.1	Create crisis plan	65%	0	0	1
6.2	Update Crisis plan	0	40	20	2, 3
6.3	Promptly and effectively address any program-related crisis	20%	40	60	1, 2, 3
6.4	Anticipate and address possible scenarios and questions that may arise	15%	20	20	1, 2, 3
	TOTAL CONTRACT AMOUNT: \$420,000				

APPENDIX C

FTA REQUIREMENTS FOR PERSONAL SERVICES CONTRACTS DEFINITIONS

1. DEFINITIONS

a. **Approved Project Budget** means the most recent statement, approved by the FTA, of the costs of the Project, the maximum amount of Federal assistance for which the City is currently eligible, the specific tasks (including specified contingencies) covered, and the estimated cost of each task.

b. **Contractor** means the individual or entity awarded a third party contract financed in whole or in part with Federal assistance originally derived from FTA.

c. **Cooperative Agreement** means the instrument by which FTA awards Federal assistance to a specific Recipient to support a particular Project or Program, and in which FTA takes an active role or retains substantial control.

d. **Federal Transit Administration** is the current designation for the former Urban Mass Transportation Administration. Any reference in any law, map, regulation, document, paper, or other record of the United States to the Urban Mass Transportation Administration shall be deemed a reference to the Federal Transit Administration.

e. **Federal Transit Administrator** is the current designation for the former Urban Mass Transportation Administrator. Any reference in any law, map, regulation, document, paper, or other record of the United States to the Urban Mass Transportation Administrator shall be deemed a reference to the Federal Transit Administrator.

f. **FTA** is the acronym for the Federal Transit Administration, one of the operating administrations of the U.S. DOT. FTA replaces the acronym UMTA.

g. **FTA Directive** includes any FTA circular, notice, order or guidance providing information about FTA's programs, application processing procedures, and Project management guidelines. In addition to FTA directives, certain U.S. DOT directives also apply to the Project.

h. **Grant Agreement** means the instrument by which FTA awards Federal assistance to a specific Recipient to support a particular Project, and in which FTA does not take an active role or retain substantial control, in accordance with 31 U.S.C. § 6304.

i. **Government** means the United States of America and any executive department or agency thereof.

j. **Project** means the task or set of tasks listed in the Approved Project Budget, and any modifications stated in the Conditions to the Grant Agreement or Cooperative Agreement applicable to the Project. In the case of the formula assistance program for urbanized areas, for elderly and persons with disabilities, and non-urbanized areas, 49 U.S.C. §§ 5307, 5310, and 5311, respectively, the term "Project" encompasses both "Program" and "each Project within the Program, as the context may require, to effectuate the requirements of the Grant Agreement or Cooperative Agreement.

k. **Recipient** means any entity that receives Federal assistance directly from FTA to accomplish the Project. The term "Recipient" includes each FTA "Grantee" as well as each FTA Recipient of a Cooperative Agreement. For the purpose of this Agreement, Recipient is the City.

l. **Secretary** means the U.S. DOT Secretary, including his or her duly authorized designee.

m. **Third Party Contract** means a contract or purchase order awarded by the Recipient to a vendor or Contractor, financed in whole or in part with Federal" assistance awarded by FTA.

n. **Third Party Subcontract** means a subcontract at any tier entered into by Contractor or third party subContractor, financed in whole or in part with Federal assistance originally derived from FTA.

o. **U.S. DOT** is the acronym for the U.S. Department of Transportation, including its operating administrations.

2. **FEDERAL CHANGES**

Contractor shall at all times comply with all applicable FTA regulations, policies, procedures and directives, including without limitation those listed directly or by reference in the Agreement (Form FTA MA(3) dated October, 1996) between Purchaser and FTA, as they may be amended or promulgated from time to time during the term of this contract. Contractor's failure to so comply shall constitute a material breach of this contract.

3. **AUDIT AND INSPECTION**

a. The Contractor agrees to provide the City and County of San Francisco, the FTA Administrator, the Comptroller General of the United States or any of their authorized representatives access to any books, documents, papers and records of the Contractor which are directly pertinent to this Agreement for the purposes of making audits, examinations, excerpts and transcriptions.

b. The Contractor agrees to permit any of the foregoing parties to reproduce by any means whatsoever or to copy excerpts and transcriptions as reasonably needed.

c. The Contractor agrees to maintain all books, records, accounts and reports required under this Agreement for a period of not less than three years after the date of termination or expiration of this Agreement, except in the event of litigation or settlement of claims arising from the performance of this Agreement, in which case Contractor agrees to maintain same until the City, the FTA Administrator, the Comptroller General, or any of their duly authorized representatives, have disposed of all such litigation, appeals, claims or exceptions related thereto. 49 CFR 18.36(i)(11).

4. **DEBARMENT AND SUSPENSION**

The Contractor agrees as follows:

a. The Contractor shall supply certifications on debarment and suspension and otherwise comply with the requirements of Executive Orders Nos. 12549 and 12689, "Debarment and Suspension," 31 U.S.C. § 6101; and U.S. DOT regulations on Debarment and Suspension at 49 CFR Part 29.

b. (Applicable to contracts in excess of \$100,000) Contractor agrees to refrain from awarding any third party subcontract of any amount (at any tier) to a debarred or suspended subcontractor.

c. Before entering into any third party subcontract in excess of \$100,000, Contractor agrees to obtain a debarment and suspension certification from each prospective third party subcontractor (at any tier). The certificate shall contain information about the debarment and suspension status and other specific information about the subcontractor and its "principals," as defined at 49 CFR § 29.105(p). An example of the appropriate certification is contained in 49 CFR Part 29, Appendix B.

d. Contractor shall provide City with a copy of each conditioned debarment or suspension certification provided by a prospective third party subcontractor (at any tier).

5. NO FEDERAL GOVERNMENT OBLIGATIONS TO CONTRACTOR

a. The City and Contractor acknowledge and agree that, notwithstanding any concurrence by the Federal Government in or approval of the solicitation or award of the underlying contract, absent the express written consent by the Federal Government, the Federal Government is not a party to this contract and shall not be subject to any obligations or liabilities to the City, Contractor, or any other party (whether or not a party to that contract) pertaining to any matter resulting from the underlying contract.

b. The Contractor agrees to include the above clause in each subcontract financed in whole or in part with Federal assistance provided by FTA. It is further agreed that the clause shall not be modified, except to identify the subcontractor who will be subject to its provisions.

6. CIVIL RIGHTS

a. **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, 41 U.S.C. § 12132, and Federal transit law at 49 U.S.C. § 5332, the Contractor agrees that it will 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.

b. **Equal Employment Opportunity** - The following equal employment opportunity requirements apply to the underlying contract:

- (1) **Race, Color, Creed, National Origin, Sex** - 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. DOT) regulations, "Office of Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor," 41 CFR 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 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, 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.
- (2) **Age** - In accordance with section 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.

- (3) **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.

c. 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.

7. **PATENT RIGHTS** (*required in contracts for experimental, research, or development projects financed by FTA*)

a. **General.** If any invention, improvement, or discovery is conceived or first actually reduced to practice in the course of or under this Agreement, and that invention, improvement, or discovery is patentable under the laws of the United States of America or any foreign country, the City and Contractor agree to take actions necessary to provide immediate notice and a detailed report to the FTA.

b. Unless the Federal Government later makes a contrary determination in writing, irrespective of the Contractor's status (large business, small business, state government or instrumentality, local government, nonprofit organization, institution of higher education, individual), the City and Contractor agree to take the necessary actions to provide, through FTA, those rights in that invention due the Federal Government described in U.S. Department of Commerce regulations, "Rights to Inventions Made by Nonprofit Organizations and Small Business Firms Under Government Grants, Contracts and Cooperative Agreements," 37 CFR Part 401.

c. The Contractor also agrees to include the requirements of this clause in each subcontract for experimental, developmental, or research work financed in whole or in part with Federal assistance provided by FTA.

8. **RIGHTS IN DATA AND COPYRIGHTS** (*Required in contracts for planning, research, or development financed by FTA*)

a. **Definition.** The term "subject data" used in this section means recorded information, whether or not copyrighted, that is delivered or specified to be delivered under this Agreement. The term includes graphic or pictorial delineation in media such as drawings or photographs; text in specifications or related performance or design-type documents; machine forms such as punched cards, magnetic tape, or computer memory printouts; and information retained in computer memory. Examples include, but are not limited to, computer software, engineering drawings and associated lists, specifications, standards, process sheets, manuals, technical reports, catalog item identifications, and related information. The term "subject data" does not include financial reports, cost analyses, and similar information incidental to contract administration.

b. **Federal Restrictions.** The following restrictions apply to all subject data first produced in the performance of this Agreement.

- (1) **Publication of Data.** Except for its own internal use in conjunction with the Agreement, Contractor may not publish or reproduce subject data in whole or in part, or in any manner or form, nor may Contractor authorize others to do so, without the written consent of the Federal Government, until such time as the Federal Government may have either released or approved the release of such data to the public; this restriction on publication, however, does not apply to any contract with an academic institution.

- (2) **Federal License.** In accordance with 49 CFR §§ 18.34 and 19.36, the Federal Government reserves a royalty-free, non-exclusive and irrevocable license to reproduce, publish or otherwise use, and to authorize others to use, “for Federal Government purposes,” any subject data or copyright described below. As used in the previous sentence, “for Federal Government purposes” means use only for the direct purposes of the Federal Government. Without the copyright owner's consent, the Federal Government may not extend its Federal license to any other party:
- (a) Any subject data developed under this Agreement, whether or not a copyright has been obtained; and
 - (b) Any rights of copyright purchased by City or Contractor using Federal assistance in whole or in part provided by FTA.
- (3) **FTA Intention.** When FTA awards Federal assistance for an experimental, research or developmental work, it is FTA's general intention to increase transportation knowledge available to the public, rather than to restrict the benefits resulting from the work to participants in the work. Therefore, unless FT A determines otherwise, the Contractor performing experimental, research, or developmental work required by the underlying Agreement agrees to permit FTA to make available to the public, either FTA's license in the copyright to any subject data developed in the course of the Agreement, or a copy of the subject data first produced under the Agreement for which a copyright has not been obtained. If the experimental, research, or developmental work which is the subject of this Agreement is not completed for any reason whatsoever, all data developed under this Agreement shall become subject data as defined in Subsection a. above and shall be delivered as the Federal Government may direct. This subsection does not apply to adaptations of automatic data processing equipment or programs for the City's use the costs of which are financed with Federal transportation funds for capital projects.
- (4) **Hold Harmless.** Unless prohibited by state law, upon request by the Federal Government, the Contractor agrees to indemnify, save, and hold harmless the Federal Government, its officers, agents, and employees acting within the scope of their official duties, against any liability, including costs and expenses, resulting from any willful or intentional violation by the Contractor of proprietary rights, copyrights, or right of privacy, arising out of the publication, translation, reproduction, delivery, use, or disposition of any data furnished under this Agreement. The Contractor shall not be required to indemnify the Federal Government for any such liability arising out of the wrongful acts of employees or agents of the Federal Government.
- (5) **Restrictions on Access to Patent Rights.** Nothing contained in this section on rights in data shall imply a license to the Federal Government under any patent or be construed as affecting the scope of any license or other right otherwise granted to the Federal Government under any patent.
- (6) **Application to Data Incorporated into Work.** The requirements of Subsections (2), (3) and (4) of this Section do not apply to data developed by the City or Contractor and incorporated into the work carried out under this Agreement, provided that the City or Contractor identifies the data in writing at the time of delivery of the work.
- (7) **Application to SubContractors.** Unless FTA determines otherwise, the Contractor agrees to include these requirements in each subcontract for experimental, developmental, or research work financed in whole or in part with Federal assistance

provided by FTA.

c. **Provision of Rights to Government.** Unless the Federal Government later makes a contrary determination in writing, irrespective of the Contractor's status (large business, small business, state government or instrumentality, local government, nonprofit organization, institution of higher education, individual, etc.), the City and Contractor agree to take the necessary actions to provide, through FTA, those rights in that invention due the Federal Government described in U.S. Department of Commerce regulations, "Rights to Inventions Made by Nonprofit Organizations and Small Business Firms Under Government Grants, Contracts and Cooperative Agreements," 37 CFR Part 401.

d. **Flow Down.** The Contractor also agrees to include these requirements in each subcontract for experimental, developmental, or research work financed in whole or in part with Federal assistance provided by FTA.

9. **EMPLOYEE PROTECTIONS** (*applicable to nonconstruction contracts in excess of \$2,500*)

a. **Overtime requirements.** No Contractor or subcontractor contracting for any part of the contract work which may require or involve the employment of laborers or mechanics shall require or permit any such laborer or mechanic in any workweek in which he or she is employed on such work to work in excess of forty hours in such workweek unless such laborer or mechanic receives compensation at a rate not less than one and one-half times the basic rate of pay for all hours worked in excess of forty hours in such workweek.

b. **Violation; liability for unpaid wages; liquidated damages.** In the event of any violation of the clause set forth in paragraph (a) of this section the Contractor and any subcontractor responsible therefor shall be liable for the unpaid wages. In addition, Contractor and subcontractors shall be liable to the United States for liquidated damages. Such liquidated damages shall be computed with respect to each individual laborer or mechanic, including watchmen and guards, employed in violation of the clause set forth in paragraph (a) of this section, in the sum of \$10 for each calendar day on which such individual was required or permitted to work in excess of the standard workweek of forty hours without payment of the overtime wages required by the clause set forth in paragraph (a) of this section.

c. **Withholding for unpaid wages and liquidated damages.** The City and County of San Francisco shall upon its own action or upon written request of an authorized representative of the Department of Labor withhold or cause to be withheld, from any moneys payable on account of work performed by the Contractor or subcontractor under any such contract or any other Federal contract with the same prime Contractor, or any other federally-assisted contract subject to the Contract Work Hours and Safety Standards Act, which is held by the same prime Contractor, such sums as may be determined to be necessary to satisfy any liabilities of such Contractor or subcontractor for unpaid wages and liquidated damages as provided in the clause set forth in paragraph (b) of this section.

d. **Subcontracts.** The Contractor or subcontractor shall insert in any subcontracts the clauses set forth in this section and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The prime Contractor shall be responsible for compliance by any subcontractor or lower tier subcontractor with the clauses set forth in this section.

e. **Payrolls and basic records.** Payrolls and basic records relating thereto shall be maintained by the Contractor during the course of the work and preserved for a period of three years thereafter for all laborers and mechanics working at the site of the work (or under the United States Housing Act of 1937, or under the Housing Act of 1949, in the construction or development of the Project). Such records shall contain the name, address, and social security number of each such worker, his or her correct classification, hourly rates of wages paid (including rates of contributions or costs anticipated for bona fide fringe benefits or cash equivalents thereof of the types described in section 1(b)(2)(B) of the Davis-

Bacon Act), daily and weekly number of hours worked, deductions made and actual wages paid. Whenever the Secretary of Labor has found under 29 CFR 5.5(a)(1)(iv) that the wages of any laborer or mechanic include the amount of any costs reasonably anticipated in providing benefits under a plan or program described in section 1(b)(2)(B) of the Davis-Bacon Act, the Contractor shall maintain records which show that the commitment to provide such benefits is enforceable, that the plan or program is financially responsible, and that the plan or program has been communicated in writing to the laborers or mechanics affected, and records which show the costs anticipated or the actual cost incurred in providing such benefits. Contractors employing apprentices or trainees under approved programs shall maintain written evidence of the registration of apprenticeship programs and certification of trainee programs, the registration of the apprentices and trainees, and the ratios and wage rates prescribed in the applicable programs.

10. **ENERGY CONSERVATION REQUIREMENTS**

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

11. **CLEAN WATER REQUIREMENTS** *(The Clean Water requirements apply to all contracts in excess of \$100,000.)*

a. The Contractor agrees to comply with all applicable standards, orders, or regulations issued pursuant to the Federal Water Pollution Control Act, as amended, 33 U.S.C. §§ 1251 et seq. Contractor agrees to report each violation of these requirements to the City and understands and agrees that the City will, in turn, report each violation as required to assure notification to FTA and the appropriate EPA regional office.

b. The Contractor also agrees to include these requirements in each subcontract exceeding \$100,000 financed in whole or in part with Federal assistance provided by FTA.

12. **CLEAN AIR** *(The Clean Air requirements apply to all contracts in excess of \$100,000, including indefinite quantities where the amount is expected to exceed \$100,000 in any year.)*

a. Contractor agrees to comply with applicable standards, orders, or regulations issued pursuant to the Clean Air Act, as amended, 42 V.S.C. §§ 7401 et seq. The Contractor agrees to report each violation to the City and understands and agrees that the City will, in turn, report each violation as required to assure notification to FTA and the appropriate EPA Regional Office.

b. The Contractor also agrees to include these requirements in each subcontract exceeding \$100,000 financed in whole or in part with Federal assistance provided by FTA.

13. **METRIC SYSTEM**

To the extent practicable and feasible, the City will accept products and services with dimensions expressed in the metric system of measurement.

14. **PRIVACY**

If Contractor or its employees administer any system of records on behalf of the Federal Government, Contractor and its employees agree to comply with the information restrictions and other applicable requirements of the Privacy Act of 1974, 5 V.S.C. § 552a (the Privacy Act). Specifically, Contractor agrees to obtain the express consent of the Federal Government before it or its employees operates a system of records on behalf of the Government. Contractor acknowledges that the requirements of the

Privacy Act, including the civil and criminal penalties for violations of the Privacy Act, apply to those individuals administering a system of records for the Federal Government under the Project, and that failure to comply with the terms of the Privacy Act may result in termination of this Agreement. The Contractor also agrees to include these requirements in each subcontract to administer any system of records on behalf of the Federal Government financed in whole or in part with Federal assistance provided by FTA.

15. DRUG AND ALCOHOL TESTING

To the extent Contractor, its subcontractors or their employees perform a safety-sensitive function under the Agreement, Contractor agrees to comply with, and assure compliance of its subcontractors, and their employees, with 49 U.S.C. § 5331, and FTA regulations, "Prevention of Alcohol Misuse and Prohibited Drug Use in Transit Operations," 49 CFR Part 655.

16. TERMINATION FOR CONVENIENCE OF CITY *(required for all contracts in excess of \$10,000)*

See Agreement Terms and Conditions.

17. TERMINATION FOR DEFAULT *(required by FTA for all contracts in excess of \$10,000)*

See Agreement Terms and Conditions.

18. FALSE OR FRAUDULENT STATEMENTS AND CLAIMS

a. The Contractor acknowledges that the provisions of the Program Fraud Civil Remedies Act of 1986, as amended, 31 V.S.C. §§ 3801 et seq. and U.S. DOT regulations, "Program Fraud Civil Remedies," 49 CFR Part 31, apply to its actions pertaining to this Project. Upon execution of the underlying Agreement, the Contractor certifies or affirms the truthfulness and accuracy of any statement it has made, it makes, it may make, or causes to be made, pertaining to the underlying contract or the FTA-assisted project for which this contract work is being performed. In addition to other penalties that may be applicable, the Contractor further acknowledges that if it makes, or causes to be made, a false, fictitious, or fraudulent claim, statement, submission, or certification, the Federal Government reserves the right to impose the penalties of the Program Fraud Civil Remedies Act of 1986 on the Contractor to the extent the Federal Government deems appropriate.

b. The Contractor also acknowledges that if it makes, or causes to be made, a false, fictitious, or fraudulent claim, statement, submission, or certification to the Federal Government under a contract connected with a project that is financed in whole or in part with Federal assistance originally awarded by FTA under the authority of 49 U.S.C. § 5307, the Government reserves the right to impose the penalties of 18 U.S.C. § 1001 and 49 V.S.C. § 5307(n)(1) on the Contractor, to the extent the Federal Government deems appropriate.

c. The Contractor agrees to include the above two clauses in each subcontract financed in whole or in part with Federal assistance provided by FTA. It is further agreed that the clauses shall not be modified, except to identify the subContractor who will be subject to the provisions.

19. INCORPORATION OF FEDERAL TRANSIT ADMINISTRATION (FTA) TERMS

The preceding provisions include, in part, certain Standard Terms and Conditions required by DOT, whether or not expressly set forth in the preceding contract provisions. All contractual provisions required by DOT, as set forth in FTA Circular 4220.1D, dated April 15, 1996, are hereby incorporated by

reference. Anything to the contrary herein notwithstanding, all FTA -mandated terms shall be deemed to control in the event of a conflict with other provisions contained in this Agreement. The Contractor shall not perform any act, fail to perform any act, or refuse to comply with any City request which would cause the City to be in violation of the FTA terms and conditions.

20. **FLY AMERICA REQUIREMENTS**

The Contractor agrees to comply with 49 V.S.C. 40118 (the "Fly America" Act) in accordance with the General Services Administration's regulations at 41 CFR Part 301-10, which provide that recipients and subrecipients of Federal funds and their Contractors are required to use U.S. Flag air carriers for U.S. Government-financed international air travel and transportation of their personal effects or property, to the extent such service is available, unless travel by foreign air carrier is a matter of necessity, as defined by the Fly America Act. The Contractor shall submit, if a foreign air carrier was used, an appropriate certification or memorandum adequately explaining why service by a U.S. flag air carrier was not available or why it was necessary to use a foreign air carrier and shall, in any event, provide a certificate of compliance with the Fly America requirements. The Contractor agrees to include the requirements of this section in all subcontracts that may involve international air transportation.

APPENDIX D

San Francisco Municipal Transportation Agency

Disadvantaged Business Enterprise Program

**Public Relations Support & Community Outreach Services
for the Transbay Joint Powers Authority**

MTA CCO No. _____

FTA Funded

**San Francisco Municipal Railway's Revised DBE Program
April 9, 2003**

APPENDIX D

DISADVANTAGED BUSINESS ENTERPRISE PROGRAM REQUIREMENTS

**ARCHITECTS, ENGINEERS, PLANNERS, ENVIRONMENTAL SCIENTISTS AND OTHER
PROFESSIONAL SERVICES**

FOR FEDERALLY-FUNDED PROJECTS

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APPENDIX D

DISADVANTAGED BUSINESS ENTERPRISE PROGRAM REQUIREMENTS

**ARCHITECTS, ENGINEERS, PLANNERS, ENVIRONMENTAL SCIENTISTS AND OTHER
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FOR FEDERALLY-FUNDED PROJECTS

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APPENDIX D

Disadvantaged Business Enterprise Program Requirements

Architects, Engineers, Planners, Environmental Scientists and Other Professional Services

I. POLICY

The Municipal Transportation Agency ("Agency") of the City and County of San Francisco is committed to a Disadvantaged Business Enterprise (DBE) Program ("Program") for the participation of DBEs in MUNI contracting opportunities in accordance with the federal regulations in 49 CFR Part 26, issued March 4, 1999, as amended from time to time (the "Regulations").

It is the policy of MUNI to ensure nondiscrimination on the basis of race, color, sex or national origin in the award and administration of DOT-assisted contracts. It is the intention of MUNI to create a level playing field on which DBEs can compete fairly for contracts and subcontracts relating to MUNI's construction, procurement and professional services activities.

A. Applicability

Pursuant to 49 CFR Sections 26.3 and 26.21, MUNI, a recipient of federal financial assistance from the Federal Transit Administration ("FTA") of the United States Department of Transportation ("DOT"), is required to implement a DBE Program in accordance with the Regulations. The Regulations are incorporated into this Program as though fully set forth herein. This Program applies to all MUNI contracts that are funded, in whole or in part, by DOT federal financial assistance.

B. Objectives

The objectives of this program are to:

Remove barriers to DBE participation in the bidding, award and administration of MUNI contracts;

Assist DBEs to develop and compete successfully outside of the Program;

Ensure that the Program is narrowly tailored in accordance with 49 CFR Part 26;

Ensure that only DBEs meeting the eligibility requirements are allowed to participate as DBEs;

Identify business enterprises that are qualified as DBEs and are qualified to provide MUNI with required materials, equipment, supplies and services; and to develop a good rapport with the owners, managers and sales representatives of those enterprises;

Develop communications programs and procedures which will acquaint prospective DBEs with MUNI's contract procedures, activities and requirements and allow DBEs to provide MUNI with feedback on existing barriers to participation and effective procedures to eliminate those barriers; and

Administer the Program in close coordination with the various divisions within MUNI so as to facilitate the successful implementation of this Program.

C. Administration of Program

The Director of Transportation is responsible for adherence to this policy. The Contract Compliance Office (CCO) shall be responsible for the development, implementation and monitoring of this program. All MUNI personnel shall adhere to the provisions and the spirit of the program.

D. Prohibited Discrimination

MUNI shall not exclude persons from participation in, deny benefits to, or otherwise discriminate against any persons in connection with the award and performance of any contract governed by the Regulations on the basis of race, color, sex or national origin. The City and County of San Francisco also prohibits discrimination on the fact or perception of a person's race, color, creed, religion, national origin, ancestry, age, sex, sexual orientation, gender identity, domestic partner status, marital status, disability or Acquired Immune Deficiency Syndrome or HIV status (AIDS/HIV status).

MUNI shall not directly or through contractual or other arrangements, use criteria or methods of administration that have the effect of defeating or substantially impairing accomplishment of the objectives of this program with respect to individuals in the groups or categories or having the characteristics listed above.

MUNI will not use quotas in any way in the administration of this DBE program.

II. DEFINITIONS

Any terms used in this Program that are defined in 49 CFR Section 26.5 or elsewhere in the Regulations shall have the meaning set forth in the Regulations. Some of the most common terms are defined below:

A. Disadvantaged Business Enterprise (DBE)

A DBE is a for-profit, small business concern (1) that is at least fifty-one percent (51%) owned by one or more individuals who are both socially and economically disadvantaged, or, in the case of a corporation, in which fifty-one percent (51%) of the stock is owned by one or more socially and economically disadvantaged individuals; and (2) whose management and daily business operations are controlled by one or more of the socially and economically disadvantaged individuals who own it.

B. Small Business Concern

A small business concern is an existing small business, as defined by Section 3 of the Small Business Act and the Small Business Administration regulations implementing it (13 CFR Part 121), whose average annual gross receipts (including those of its affiliates) for the previous three years does not exceed \$17.4 million (or as adjusted for inflation by the Secretary of DOT) pursuant to 49 CFR Section 26.65(b).

C. Socially and Economically Disadvantaged Individuals

There is a rebuttable assumption that an individual is both socially and economically disadvantaged if s/he is a citizen or lawfully admitted permanent resident of the United States and is:

1. Black American (including persons having origins in any of the Black racial groups of Africa);
2. Hispanic American (including persons of Central or South American, Cuban, Dominican, Mexican, Puerto Rican, or other Spanish or Portuguese culture or origin, regardless of race);
3. Native American (including persons who are Aleuts, American Indians, Eskimos, or Native Hawaiians);
4. Asian-Pacific American (including persons whose origins are from Brunei, Burma (Myanmar), Cambodia (Kampuchea), China, the Commonwealth of the Northern Marianas Islands, the Federated States of Micronesia, Fiji, Guam, Hong Kong, Indonesia, Japan, Juvalu, Kirbati, Korea, Laos, Macao, Malaysia, Nauru, the Philippines, Samoa, Taiwan, Thailand, Tonga, the U.S. Trust Territories of the Pacific Islands (Republic of Pilau), or Vietnam);
5. Subcontinent Asian American (including persons whose origins are from Bangladesh, Bhutan, India, the Maldives Islands, Nepal, Pakistan, or Sri Lanka);
6. A Woman; or
7. A member of any additional group that is designated as socially and economically disadvantaged by the Small Business Administration.

Additionally, any individual who does not fall within one of the above classifications can demonstrate, by a preponderance of evidence, that he or she is socially and economically disadvantaged. MUNI will follow the guidelines in 49 CFR Part 26, Appendix E, on a case-by-case basis to evaluate a claim by such an individual.

An individual cannot be presumed or determined to be economically disadvantaged if he or she has a personal net worth exceeding \$750,000 (excluding the individual's ownership interests in the small business concern and his or her primary residence.)

D. Race-Neutral

A procedure or program that is used to assist all small businesses. For the purposes of this Program, race-neutral includes gender neutrality.

E. Race-Conscious

A measure or program that is specifically focused on assisting only DBEs, including women-owned DBEs.

F. Personal Net Worth

The net values of the assets of an individual remaining after total liabilities are deducted. An individual's personal net worth does not include: The individual's ownership interest in an applicant or participating DBE firm; or the individual's equity in his or her primary place of residence. An individual's personal net worth includes only his or her own share of assets held jointly or as community property with the individual's spouse.

G. Unified Certification Program or California Unified Certification Program (UCP)

Under 49 CFR Section 26.81, all DOT recipients in a state must agree to be bound by a single certification program within their state. Effective January 1, 2002, the UCP went into effect, which created a One Stop Certification process. The UCP eliminated the need for firms to acquire multiple DBE certifications throughout California by the creation of a reciprocity agreement among all UCP member agencies, which receive funding from the United States Department of Transportation. A DBE certification issued to a firm in California will be accepted by all other UCP member agencies. DBE certified firms are placed in the California UCP database maintained by the California Department of Transportation (Caltrans) and the Regional Transit Coordinating Committee (RTCC). All UCP member agencies, as well as firms and agencies in both private and public sectors, use this database to locate DBE businesses.

III. DBE PROGRAM PROCEDURES

The Agency has adopted a DBE Program in accordance with the Regulations.

It is the policy of the Agency to ensure nondiscrimination in the award and administration of DOT-assisted contracts and to create a level playing field on which DBEs can compete fairly for contracts and subcontracts relating to MUNI's construction, procurement and professional services activities. To this end, MUNI has developed procedures to remove barriers to DBE participation in the bidding and award process and to assist DBEs to develop and compete successfully outside of the DBE program. In connection with the performance of this contract, the Consultant will cooperate with MUNI in meeting these commitments and objectives, as explained more fully below.

A. Consultant Assurances

Pursuant to 49 CFR Section 26.13, the Consultant makes the following assurances and will include these assurances in any agreements it makes with subconsultants in the performance of this contract:

The Consultants or subconsultants shall not discriminate on the basis of race, color, national origin, or sex in the performance of this contract. The Consultant shall carry out applicable requirements of 49 CFR Part 26 in the award and administration of DOT – assisted contracts. Failure by the Consultant or subconsultant to carry out these requirements is a material breach of this contract, which may result in the termination of this contract or such other remedy, as MUNI deems appropriate.

IV. DBE PARTICIPATION AND SUBCONTRACTING REQUIREMENTS

A. DBE Participation Goal

A 25 percent DBE participation goal has been established for this contract.

B. DBE Participation

MUNI strongly encourages the prime consultant to make every good faith effort to include DBEs to perform meaningful work in all aspects of the project. To accomplish these efforts, the following guidance is provided:

1. Nature of DBE Participation

DBE participation includes contracts (other than employee contracts) with DBEs for any goods or services specifically required for the completion of the work under the Agreement. A DBE may participate as a prime consultant, subconsultant, joint venture partner with a prime consultant, vendor of material or supplies incorporated or expended in the work, or a supplier of other services such as shipping, transportation, testing, equipment rental, insurance services and other support services necessary to fulfill the requirements of the Agreement.

2. Function

A DBE must perform a commercially useful function, i.e., must be responsible for the execution of a distinct element of work and must carry out its responsibility by actually performing, managing and supervising the work. However, a DBE may contract out a portion of the work if it is considered to be a normal industry practice. If a DBE consultant subcontracts a significantly greater portion of the work of the contract than would be expected on the basis of normal industry practices, the DBE shall be presumed not to be performing a commercially useful function.

3. Counting the amount of DBE Participation

Pursuant to 49 CFR Section 26.55, DBE participation includes that portion of the contract work actually performed by a certified DBE with its own forces. A DBE may participate as a prime consultant, subconsultant, joint venture partner, or vendor or supplier of materials or services required by the contract.

A DBE's participation can only be counted if it is performing a commercially useful function on the contract as defined in 49 CFR Section 26.55(c). The DBE must be listed for the type of work for which it has been certified if it is to be counted. A DBE is performing a commercially useful function when it actually performs, manages and supervises a portion of the work involved. There is a rebuttable presumption that if the DBE is not responsible for at least 30% of the work with its own forces, or subcontracts a greater portion of the work than the normal industry standard, it is not performing a commercially useful function.

The Consultant shall determine the amount of DBE participation for each DBE performing work on the contract in terms of both the total value of the work in dollars and the percentage of the total contract bid price. The Consultant shall also determine the total amount of DBE participation for the entire contract. The Consultant shall count DBE participation according to the following guidelines and in accordance with 49 CFR Section 26.55:

a. DBE Prime Consultant

Count the entire dollar amount of the work performed or services provided by the DBE's own forces, including the cost of materials and supplies obtained for the work and the reasonable fees and commissions charged for the services. Do not count any work subcontracted to another firm as DBE participation by the DBE Prime Consultant.

b. DBE Subconsultant

Count the entire amount of the work performed or services provided by the DBE's own forces, including the cost of materials and supplies obtained for the work (except for materials and supplies purchased or leased from the Prime Consultant or supplier) and reasonable fees and commissions charged for the services. Do not count any work subcontracted by a DBE subconsultant to another firm as DBE participation by said DBE subconsultant. If the work has been subcontracted to another DBE, it will be counted as DBE participation by that other DBE.

c. DBE Joint Venture Partner

Count the portion of the work that is performed solely by the DBE's forces or if the work is not clearly delineated between the DBE and the joint venture partner, count the portion of the work equal to the DBE's percentage of ownership interest in the joint venture.

d. Other DBEs

Count the entire amount of fees or commissions charged for assistance in procuring or delivering materials and supplies when purchased from a DBE that is not a manufacturer or regular dealer. Do not count the cost of the materials and supplies.

e. Materials or Supplies

Count expenditures with DBEs for materials or supplies toward DBE goals as provided in the following:

- (1) If the materials or supplies are obtained from a DBE manufacturer, count 100 percent of the cost of the materials or supplies toward DBE goals.
- (2) For purposes of this paragraph (e)1(i), a manufacturer is a firm that operates or maintains a factory or establishment that produces, on the premises, the materials, supplies, articles, or equipment required under the contract and of the general character described by the specifications.
- (3) If the materials or supplies are purchased from a DBE regular dealer, count 60 percent of the cost of the materials or supplies toward DBE goals.
- (4) For purposes of this section, a regular dealer is a firm that owns, operates, or maintains a store, warehouse, or other establishment in which the material, supplies, articles or equipment of the general character described by the specifications and required under the contract are bought, kept in stock, and regularly sold or leased to the public in the usual course of business.

C. Submission of Certification for DBEs

Proposers and subconsultants must be certified as DBEs by the UCP to qualify to meet the DBE subcontracting goals. Firms that wish to be certified as DBEs can obtain DBE certification applications from MUNI at the following address:

San Francisco Municipal Railway
Contract Compliance Office
1145 Market Street, 7th Floor
San Francisco, California 94103
(415) 934-3985

Completed DBE certification applications can be returned to MUNI or another certifying agency. A list of certifying agencies can be obtained by calling (415) 934-3985 or by going to the following website: <http://www.dot.ca.gov/hq/bep/ucp.htm>

Application for certification may be made at any time and once approved will be good for a period of at least three years unless and until certification has been removed. Project by project certification will not be required; however, if the status of the DBE changes during the certification period, the certification may no longer be valid. In such cases, a newly completed certification application should be submitted to the address indicated above.

To be certified as a bona fide DBE, a firm has the burden of showing, by a preponderance of the evidence, that it meets the DOT definitions and requirements set forth in Part II above.

D. Successful Proposer

1. Substitution of Subconsultants and Suppliers

The Consultant shall not terminate a DBE subconsultant or supplier for convenience and then perform the work with its own forces. The Consultant must make good faith efforts to substitute another DBE for an original DBE subconsultant or supplier when the original DBE subconsultant or supplier is terminated or fails to complete the work on the contract. The Consultant shall notify MUNI in writing of any request to substitute a DBE subconsultant or supplier and provide the CCO with any documentation requested to support the substitution. The CCO must approve the request in writing in order for the substitution to be valid. The substitution may also have to be approved by the Agency's Board of Directors.

2. Addition of Subconsultants and Suppliers

The Consultant shall notify the CCO prior to any addition of a DBE or non-DBE subconsultant or supplier to the project and submit MUNI Form No. 4 from each new subconsultant or supplier. Any new DBE subconsultant or supplier approved by the CCO also must submit a MUNI Form No. 5.

3. Prompt Payment to Subconsultants

In accordance with MUNI's DBE Program, no later than three (3) working days from the date of Consultant's receipt of progress payments by the City, the Consultant shall pay any subconsultants for work that has been satisfactorily performed by said subconsultants, unless the prime contractor notifies the CCO Director in writing within (10) working days prior to receiving payment from the City that there is a bona fide dispute between the prime contractor and the subcontractor. Within five (5) working days of such payment, Contractor shall provide City with a declaration under penalty of perjury that it has promptly paid such subconsultants for the work they have performed. Failure to provide such evidence shall be cause for City to suspend future progress payments to

Consultants. Within forty (40) days of satisfactory completion of all work required of the subconsultants, Contractor shall release any retention withheld to the subconsultants.

If the Consultant does not pay its subconsultants as required under the above paragraph, it shall pay interest to the subconsultants at the legal rate set forth in subdivision (a) of Section 685.010 of the California Code of Civil Procedure.

4. Reporting requirements

The Consultant shall maintain records of all DBE participation in the performance of the contract, including subcontracts entered into with certified DBEs and all materials purchased from certified DBEs. The Consultant shall submit DBE participation reports to MUNI on a monthly basis, or as otherwise directed by the CCO. The reports shall identify the name and address of each DBE performing work on the project, and show the total dollar amount requested for payment and the total dollar amount actually paid to each DBE. Within thirty (30) days of completion of the contract, or as otherwise directed by the CCO, the Consultant shall submit a final summary DBE report to the CCO.

E. Administrative Remedies

1. Monitoring DBE Participation

The CCO shall monitor and track the actual DBE participation through consultant and subconsultant reports of payments, site visits and other appropriate monitoring. The CCO shall ensure that DBE participation is counted towards contract goals and the overall annual goal in accordance with the Regulations.

The CCO will require prime consultants to maintain records and documents of payments to DBEs for three years following the performance of the contract. These records will be made available for inspection upon request by any authorized representative of MUNI or DOT. This reporting requirement also extends to any certified DBE subconsultant.

The CCO will keep a running tally of actual payments to DBE firms for work committed to them at the time of contract award.

The CCO will perform interim audits of contract payments to DBEs. The audit will review payments to DBE subconsultants to ensure that the actual amount paid to DBE subconsultants equals or exceeds the dollar amount stated in the schedule of DBE participation.

2. Enforcement Mechanisms

a. Reporting to DOT

MUNI will bring to the attention of the Department of Transportation any false, fraudulent, or dishonest conduct in connection with the Program, so that DOT can take the steps (e.g., referral to the Department of Justice for criminal prosecution, referral to the DOT Inspector General, action under suspension and debarment or Program Fraud and Civil Penalties rules) provided in Section 26.109. Consultant may also be subject to penalties

and/or a debarment action under the San Francisco Administrative Code. Failure to comply with the requirements of the DBE Program constitutes a material breach of contract and will be grounds for termination of the contract. Funds may also be withheld under the Contract pending investigation of a complaint of violation of the DBE Program.

b. Liquidated Damages

If the Contractor fails to meet any or all of the DBE participation goals called for under the Contract, or has failed to demonstrate good-faith efforts to do so, the City will suffer actual damages that will be impractical or extremely difficult to determine. Such damages may include, but are not limited to, potential loss of all or part of the FTA grant, and the cost of development, implementation, administration, and enforcement of the Agency's DBE Program. The liquidated damages shall not be considered a penalty, but rather agreed monetary damages sustained by City because of Contractor's failure to comply with the DBE requirements. Pursuant to FTA Circular C 4716.1A (July 26, 1988), Chapter I (9), the City may impose liquidated damages on the Contractor and the Contractor shall pay the City the amount set forth below. The City may deduct these liquidated damages from any payments due the Contractor or from any funds retained.

For failure to meet any or all of the DBE participation goals or to demonstrate good-faith efforts to do so, liquidated damages may be imposed in an amount equal to the difference between the DBE participation goals and the actual DBE goal attainment at the time a deficiency is determined, multiplied by the liquidated damage assessment as set forth below.

The Contractor shall pay an amount to be determined for each tenth (0.1%) percentage point below the DBE goals.

(Example: On a contract where there is a 26% DBE participation goal, Contractor achieved only 22.59% DBE participation at Contract closeout and did not demonstrate good faith efforts to meet the goal. The liquidated damages would be 26 minus 22.59, or 3.41 percentage points, multiplied by \$50,000.00 for each .1% point, for a total of (\$1,705,000.00).

F. Confidentiality

MUNI will safeguard from disclosure from third parties information that may reasonably be regarded as confidential business information, consistent with Federal, state, and local laws. Notwithstanding any contrary provisions of state or local law, MUNI will not release personal financial information submitted in response to the personal net worth requirement to a third party (other than DOT) without the written consent of the person submitting the information.

VI. SUBMISSION OF FORMS AND INSTRUCTIONS

Required Forms

Consultants/Contractors must comply with the requirements for submission of forms, unless a later time is authorized by Muni CCO:

MUNI FORM No. 6	Progress Payment Report	DBE – 12
MUNI FORM No. 7	Subconsultant/Subcontractor Payment Declaration	DBE - 14
MUNI FORM No. 8	Declaration – Modification/Amend of Construction/Professional Service Contracts	DBE - 15
MUNI FORM No. 9	Consultant Exit Report and Declaration	DBE - 17

Note: The following instructions are included for the convenience of proposers in preparing required forms for Muni CCO. If there are any conflicts between these instructions and the provisions elsewhere in the specifications or with federal, state, or city statutory requirements, the latter will prevail.

CONSULTANT POST-AWARD FORMS

❑ MUNI FORM No. 6 - PROGRESS PAYMENT REPORT

This form shall be completed by Consultant, including each joint venture partner, if applicable, and submitted to the Project Manager (copy to CCO) with its monthly progress payment applications after award of Contract. Consultants must provide complete information and documentation on MUNI FORM No. 6 for the immediately preceding period for DBE joint venture partners and all subconsultants that are utilized on the Contract.

- ❑ MUNI FORM No. 7 - SUBCONSULTANT PAYMENT DECLARATION** Consultant shall complete MUNI FORM No. 7 and submit it to CCO (copy to Project Manager) within five (5) working days following each payment to subconsultants in compliance with prompt payment requirements (see page DBE-14, C-3) Note: This form shall provide evidence that the Consultant has complied with the prompt payment provisions of the Contract.

❑ MUNI FORM No. 8 – DECLARATION – AMENDMENTS OF PROFESSIONAL SERVICES CONTRACTS

This form shall be completed when processing all modifications, supplements or change orders that cumulatively increase the original amount of the contract. All prime consultants, individual joint venture partners, subconsultants and any other vendors participating in the modification must be listed.

❑ MUNI FORM No. 9 - CONSULTANT EXIT REPORT AND DECLARATION

Consultant, including all joint venture partners, if any, shall complete MUNI FORM No. 9 and submit it to the Project Manager (copy to CCO) with its final progress payment application. Consultant must provide complete and accurate information on MUNI FORM No. 9 and have it executed by all DBE joint venture partners and all subconsultants.

POST AWARD SUBMITTAL
MUNI FORM No. 6
PROGRESS PAYMENT REPORT

To be completed by Consultant and submitted to Project Manager with its monthly progress payment application (transmit and copy to all of the following.)

TRANSMITTAL To: Project Manager Copy: Contract Compliance Office

From: Consultant _____ Date Transmitted: _____

PART 1: Fill in all blanks and check the box below.

Contract Number: _____	Contract Title: _____
------------------------	-----------------------

Reporting Period (Month and Year): _____

Corresponding Progress Payment No.: _____

Note: The information submitted on Parts 1 and 2 of this form is accurate for the progress payment period immediately preceding that of the current payment application attached herewith.

1. Amount of Prime Contract	\$ _____
2. Amount of Change Orders, Amendments and Modifications to Date	\$ _____
3. Total Contract to Date including Change Orders, Amendments and Modifications (Line 1 + Line 2)	\$ _____
4. Amount Invoiced this Reporting Period	\$ _____
5. Total Amount Paid to Date including Retention (excluding Line 4)	\$ _____
6. Amount of Progress Payment Requested to Date (Line 4 + Line 5)	\$ _____
7. Percent Complete (Line 6 ÷ Line 3)	_____
8. Reporting Period - From (date): _____	To (date): _____

Consultant, including each joint venture partner, must execute this form.

 Owner/Authorized Representative (Signature)

 Owner/Authorized Representative

 Name & Title (Please Print) Date

 Name & Title (Please Print) Date

 Firm Name

 Firm Name

() _____ () _____
 Telephone Fax

() _____ () _____
 Telephone Fax

POST AWARD SUBMITTAL

MUNI FORM No. 7

SUBCONSULTANT PAYMENT DECLARATION

(To be completed and submitted by Consultant, including all joint venture partners, if any, and submitted to the Contract Compliance Office within **5 working days** following actual payment to subconsultant. Payments to subconsultant shall be made no later **than 3 working days** following receipt of progress payment from the City).

TRANSMITTAL TO: Contract Compliance Office

COPY TO: Project Manager

From: Prime Consultant: _____ Date Transmitted: _____

Provide the following information for each progress payment received from MUNI. Use additional sheets to include complete payment information for all subconsultants and vendors utilized on this Contract including each joint venture partner. Failure to submit all required information may lead to partial withholding of progress payment.

Contract No.: _____ Contract Title: _____

Contract Awarding Department: _____

Progress Payment No.: _____ Period Ending: _____

Amount Received: \$ _____ Date: _____ Warrant/Check No.: _____

JV/Subconsultant/ Vendor Name	Business Address	Amount Paid	Payment Date	Check Number

I/We declare under penalty of perjury under the laws of the State of California that the above information is complete, and that the tabulated amounts paid to date are accurate and correct.

Prime Consultant, including each joint venture partner, must sign this form.

Owner/Authorized Representative (Signature)

Owner/Authorized Representative (Signature)

Name (Please print/type)

Name (Please print/type)

Title (Please print/type) Date

Title (Please print/type) Date

Firm Name

Firm Name

Telephone Fax

Telephone Fax

END OF MUNI FORM NO. 7

POST AWARD SUBMITTAL

MUNI FORM No. 8 DECLARATION – AMENDMENTS OF PROFESSIONAL SERVICE CONTRACTS

This section is to be completed for all modifications to this contract. All prime consultants, individual joint venture partners, subconsultants and any other vendors participating in the modifications must be listed.

CONTRACT NO.:		CONTRACT MOD NO.:	
CONTRACT TITLE:			
ORIGINAL AMOUNT: \$		DBE GOAL:	
CONTRACT MODIFICATION AMOUNT: \$		CONSULTANT:	
CONTACT PERSON:		PHONE:	
ADDRESS:			
CITY:		STATE:	ZIP CODE:

JV/P/S: Indicate if consultant is Joint Venture Partner, Prime or Sub.

JV/P/S	NAME	SERVICES PERFORMED	% of Total Mod	MODIFICATION AMOUNT	% DBE

I declare, under penalty of perjury under the laws of the State of California, that the information contained on this form is true and correct.	
_____ Owner/Authorized Representative (Signature):	_____ Date:
_____ Owner/Authorized Representative (Print):	_____ Title:

POST AWARD SUBMITTAL

**MUNI FORM 8
DECLARATION – AMENDMENTS TO PROFESSIONAL SERVICE CONTRACTS**

Information is needed for each firm listed on Page 1 (prime consultants, joint venture partners, subconsultants and suppliers). Firms that have previously worked on City contracts may already have a vendor number. You may enter the vendor or federal I.D. number instead of completing the rest of the information. Use additional sheets if necessary.

FIRM NAME			
ADDRESS:			
CITY:		FEDERAL I.D. NO.:	VENDOR NO.
STATE:	ZIP:		
PHONE NO.:	FAX NO.:	ETHNIC OWNERSHIP:	
SERVICE:	\$ AMOUNT:		
FIRM NAME			
ADDRESS:			
CITY:		FEDERAL I.D. NO.:	
STATE:	ZIP:		
PHONE NO.:	FAX NO.:	ETHNIC OWNERSHIP:	
SERVICE:	\$ AMOUNT:		
FIRM NAME			
ADDRESS:			
CITY:		FEDERAL I.D. NO.:	
STATE:	ZIP:		
PHONE NO.:	FAX NO.:	ETHNIC OWNERSHIP:	
SERVICE:	\$ AMOUNT:		
FIRM NAME			
ADDRESS:			
CITY:		FEDERAL I.D. NO.:	
STATE:	ZIP:		
PHONE NO.:	FAX NO.:	ETHNIC OWNERSHIP:	
SERVICE:	\$ AMOUNT:		

ETHNIC OWNERSHIP: Asian, Black, Hispanic, Native American, White, Other (please state) _____.

END OF MUNI FORM NO. 8

POST AWARD SUBMITTAL

MUNI FORM No. 9

CONSULTANT EXIT REPORT AND DECLARATION

To be completed by Consultant, including all joint venture partners if any, and submitted to Resident Engineering (copy to Contract Compliance) with its final progress payment application (transmit and copy to all of the following.)

TRANSMITTAL To: Project Manager Copy: Contract Compliance Office
From: Consultant: _____
Date Transmitted: _____

Consultant must complete MUNI Form 9, Page 2 and have it executed by all DBE joint venture partners and all subconsultants.

Reporting Date: _____

I/We declare under penalty of perjury under the laws of the State of California that the information on Page 2 of this form is complete, that the tabulated amounts paid to date are accurate and correct, and that the tabulated amounts owing will be paid within forty (40) days after the date of MUNI's final payment under the Contract.

Consultant, including each joint venture partner, must execute this form.

**Owner/Authorized Representative
(Signature)**

Name (Please print/type)

Title (Please print/type) Date

Firm Name

() ()
Telephone Fax

**Owner/Authorized Representative
(Signature)**

Name (Please print/type)

Title (Please print/type) Date

Firm Name

() ()
Telephone Fax

Note: Failure to submit all required information may lead to partial withholds of progress payment. See 49 CFR Sections 26.29, 26.37.

Name of Firm (List Consultant, including each joint venture partner, and all subconsultants, and indicate if the firm is a DBE.)	Portion of Work	Amount of Progress Payments Paid to Date	Amount Owing under the Contract including all Change Orders, Amendments and Modifications	Owner/Authorized Representative Signature (Consultant, including each joint venture partner, and all subconsultants)
TOTALS				

END OF MUNI FORM NO. 9