

**Metropolitan Council  
COOPERATIVE AGREEMENT  
WITH CITY OF SAINT PAUL FOR  
A Line Bus Rapid Transit Construction**

This Agreement is entered by and between the City of Saint Paul, a municipal corporation ("City") and the Metropolitan Council, a public corporation and political subdivision of the State of Minnesota, ("Council") for the construction of the A Line Bus Rapid Transit Project ("Project") on Snelling Avenue and Ford Parkway ("Corridor");

WITNESSETH:

WHEREAS, the City and the Council desire to reconstruct segments of the Corridor limited to Bus Rapid Transit Platforms on Snelling Avenue from Como Avenue to Ford Parkway and on Ford Parkway from Snelling Ave to Woodlawn Avenue.

WHEREAS, Snelling Avenue, in the area affected by reconstruction is designated Trunk Highway 51 and Ford Parkway, in the area affected by reconstruction is designated as County State Aid Highway 42; and

WHEREAS, preliminary studies and reports conducted by the City and Council indicate that it is feasible to reconstruct segments of the Corridor limited to Bus Rapid Transit Platforms, including reconstruction of signals, sidewalk, and parking lanes throughout the Project limits; and

WHEREAS, the Council has prepared the necessary designs, plans, specifications, estimates, proposals, and approvals in accordance with funding requirements to take bids for the Project and will incorporate certain items prepared by the City in the plans and specifications; and

WHEREAS, the City has prepared or will prepare those sections of the plans relating to street lighting and traffic signals for incorporation into the Project; and

WHEREAS, construction will be done as part of this Project in accordance with local watershed rules; and

WHEREAS, plans for the Project showing proposed reconstruction, alignment, profiles, grades, and cross-sections for the improvement of the Corridor within the limits of the City as a Trunk Highway have been presented to the City and are on file at the Council's Bus Rapid Transit Project Office; and

WHEREAS, a preliminary estimate of Project costs has been prepared and is attached hereto as Exhibit A, and a Cost Participation schedule has been prepared and is attached as Exhibit B.

NOW, THEREFORE, for mutual consideration, the receipt and sufficiency of which is hereby acknowledged by the Parties, IT IS HEREBY AGREED AS FOLLOWS:

## **I. RESPONSIBILITIES OF THE PARTIES**

**1.01** The Council will prepare all plans, specifications, estimates, and proposals for the Project, that will include, among other things, the proposed reconstruction, alignment, profiles, grades, cross sections, impacts, utility replacements and relocations, Bus Rapid Transit station amenities, and costs for the improvements including paving, concrete curb and gutter, storm sewer, concrete sidewalk, boulevard, utility replacement and adjustments. Upon completion of the Project, the Council shall own and maintain the Bus Rapid Transit Platforms and amenities located within the Platform with the exceptions listed below.

**1.02** The Council will take bids for the Project, prepare an abstract of bids and cost participation summary, award a contract and pay the contractor from Trunk Highway, and local, state, and federal funds identified for the Project.

**1.03** Upon award of a construction contract the Council shall perform or contract the performance of the construction administration for all elements of the Project except for street lighting and traffic signal systems. The City will provide inspection for street lighting and traffic signal systems.

**1.04** There are 11 traffic signal systems proposed for revisions on the Project located on Snelling Avenue and Ford Parkway listed on Exhibit B, Table 2. Through the design stage of the project, it was determined new controllers will be needed at a majority of these intersections to deploy Transit Signal Priority. It was determined the Council's Contractor will furnish the Controllers to the City. The City, with its own forces, will program and install signal controllers that are procured by the Council for the signals operated and maintained by the City, as indicated in the plans and specifications. The Council's Contractor will complete all other signal modifications work required at the traffic signals and controller cabinets. The City shall be responsible for the ongoing maintenance of its traffic signal system. Operations and maintenance of the Transit Signal Priority equipment will be covered under Metropolitan Council agreement 14I087.

**1.05** The City, with their own forces, will salvage existing light standards, install new conduits and wiring and will install light standards that are located within Project limits inside the City, as indicated in the plans and listed on Exhibit B, Table 1. The City will prepare any plans and specifications needed for the removal and replacement of street lighting. The Council will incorporate the location of the City's lighting standards into the Council's plans and specifications for bidding. The City shall own and maintain the street lights.

## **II. COST SHARING**

**2.01** The Council and City shall participate in the costs of construction in accordance with attached Exhibit B.

**2.02** The Council shall pay the City for the actual costs of (1) programming and installing the signal controllers as specified in Section 1.04, and (2) installing the lighting as specified in Section 1.05, upon completion of the Project.

**2.03** The Council shall pay the City 3% of the final cost for design services for signals and lighting constructed as part of the Project as shown on Exhibit B. Quantity distributions and costs in Exhibit B are estimates. Actual costs shall be based on the actual final costs and the quantities constructed.

**2.04** Any costs associated with Project revisions after the completion of plans and specifications will be paid for by the party requesting the revisions. Revisions must be consistent with State Aid requirements and are subject to approval by the Council.

### **III. PAYMENT**

**3.01** Payment for all work performed by the City pursuant to this Agreement shall be on a reimbursement basis, based upon the submittal of an invoice upon completion of the Project. The invoice shall reference the Council Contract No. 15I009 and include an itemization of the expenditures for which payment is requested, **consistent with Exhibit B**, along with supporting documentation. The City shall submit its invoice to the following address:

Katie Roth  
Metropolitan Council  
390 Robert Street North  
St. Paul, MN 55101

**3.02** After receipt of an invoice, the receiving Party may request additional information from the invoicing Party regarding the invoice in order to verify the accuracy and appropriateness of the expenditures for which reimbursement is requested ((or as required by the FTA for reporting purposes)). The Parties will make prompt payment of undisputed amounts as required by Minnesota Statutes Section 471.425. Under either 49 C.F.R. Section 18.22 or Minnesota Statutes Section 471.425, the receiving Party may dispute or deny part or all of any invoice payment request if it reasonably believes that the requested payment does not conform to the terms of this Agreement. The Parties will promptly meet to review and discuss any disputed or denied payment requests. If the Parties do not pay the invoiced amount within 35 days of receipt, the receiving Party shall pay interest on the non-disputed amount at the rate of 1-1/2 percent per month.

### **IV. TERM AND TERMINATION**

**4.01** **Effective Date.** This Agreement is effective upon execution and approval by authorized representatives of both Parties.

**4.02 Term.** This Agreement will expire on the date that all obligations, including payments and excluding ongoing maintenance requirements, have been satisfactorily fulfilled.

**4.03 Termination.** This Agreement may be terminated by mutual agreement of the Parties.

## **V. GENERAL TERMS**

**5.01 Temporary Access.** The City grants the Council Temporary Access over all City owned Rights-of-Way and property within the limits of the Project for use during construction.

**5.02 Indemnity.** The City and Council shall indemnify, defend, and hold each other harmless against any and all liability, losses, costs, damages, expenses, claims, or actions, including attorney's fees, which the indemnified party, its officials, agents, or employees may hereafter sustain, incur, or be required to pay, arising out of or by reason of any act or omission of the indemnifying party, its officials, agents, or employees, in the execution, performance, or failure to adequately perform the indemnifying party's obligation pursuant to this Agreement. Nothing in this Agreement shall constitute a waiver by the Council or the City of any statutory or common law immunities, limits, or exceptions on liability.

Any and all employees of each of the respective Parties hereto, and all other persons engaged by each respective party in the performance of any work or services required or provided herein to be performed by the respective party shall not be considered employees of the other Party. Each party shall be solely responsible for its own employees for any workers compensation claims.

**5.03 Force Majeure.** Neither party will be responsible to the other for failure to perform or a delay in performance under this Agreement where such delay or failure to perform is caused by events beyond the performing Party's reasonable control, including but not limited to unusually severe weather, fire, floods, other acts of God, labor disputes, acts of war or terrorism, or public health emergencies.

**5.04 Record Keeping/Audit.** All records kept by the City and the Council with respect to this Agreement shall be subject to examination by the representatives of each party hereto. All data collected, created, received, maintained, or disseminated for any purpose by the activities of the City and the Council pursuant to this Agreement shall be governed by Minnesota Statutes, Chapter 13, as amended. Pursuant to Minnesota Statutes Chapter 16C.05 Subd. 5, the Parties further agree that the books, records, documents, and accounting procedures and practices relevant to this Agreement are subject to examination by the other Party and the state or legislative auditors, as appropriate, for a minimum of six years from the end of this Agreement.

**5.05 Severability.** The provisions of this Agreement shall be deemed severable. If any part of this Agreement is rendered void, invalid, or unenforceable, such rendering shall not affect the validity and enforceability of the remainder of this Agreement unless the part or parts which are void, invalid, or otherwise unenforceable shall substantially impair the value of the entire Agreement with respect to the Parties. One or more waivers by one Party of any provision, term, condition, or covenant shall not be construed by the other Party as a waiver of a subsequent breach of the same by the other Party.

**5.06     Amendment.** Any alterations, variations, modifications or waivers of provisions of this Agreement shall only be valid when reduced to writing as an amendment to this Agreement and signed by the authorized representatives of both Parties, or their successors in office.

**5.07     Notices.** Any notice or demand made pursuant to this Agreement or applicable law, rule, or statute must be in writing and shall be deemed validly given if sent by certified mail, return receipt requested or by commercial courier, provided the courier's regular business is delivery service and provided further that it guarantees delivery to the addressee by the end of the next business day following the courier's receipt from the sender, addressed as follows:

**For the Council:**

Katie Roth  
Metropolitan Council  
390 Robert Street North  
St. Paul, MN 55101

**For the City:**

Paul St. Martin  
Assistant City Engineer  
St. Paul Public Works  
800 City Hall Annex  
25 W 4<sup>th</sup> Street  
St. Paul, MN 55102

**5.08     Governing Law.** This Agreement is entered into in and under the laws of the State of Minnesota and shall be interpreted in accordance therewith.

**5.09     Complete Agreement.** It is understood and agreed that the entire Agreement between the Parties is contained herein. This Agreement supersedes all oral agreements and negotiations between the parties relating to the subject matter hereof. All items referred to or attached to this Agreement are hereby incorporated and deemed to be part of this Agreement. The "Whereas" recitals set forth in this Agreement are hereby made a part of this Agreement as set out in full.

**5.10     Compliance with Federal Law.** The funding provided by the Council pursuant to this Agreement is composed in part of federal funds. The State shall abide, and shall cause its Contractor and any other entities, employees, agents, or subcontractors performing work under this Agreement to abide by all relevant federal rules and regulations, including but not limited to those regulations identified in Exhibit C, which is incorporated by reference into the terms of this Agreement. If there is an inconsistency between Exhibit C and the terms of this Agreement, the terms of Exhibit C will prevail.

[The remainder of this page is intentionally left blank. Signature page to follow]



**IN WITNESS WHEREOF**, the Parties have caused this Agreement to be executed by their duly authorized representatives on the dates indicated below. Furthermore, this Agreement may be executed in counterparts, each of which shall be deemed to be an original, but all of which, taken together, shall constitute one and the same agreement.

**METROPOLITAN COUNCIL**

\_\_\_\_\_

Date: \_\_\_\_\_

**CITY OF ST. PAUL, MINNESOTA**

By: \_\_\_\_\_  
Mayor

Date:\_\_\_\_\_

By: \_\_\_\_\_  
Kathy Lantry  
Director of Public Works

Date:\_\_\_\_\_

Approved by the Office of Financial Services:

By: \_\_\_\_\_

Approved as to Form:

By: \_\_\_\_\_  
City Attorney

**ENGINEER'S OPINION OF PROBABLE COST**

**Project:** A LINE BRT (Final)  
**Owner:** Metro Transit  
**Date:** March 16, 2015



**KHA Job No:** 160533046

		A LINE AMOUNT
1	46TH STREET STATION	\$ 141,147
2	46TH/MINNEHAHA	\$ 232,500
3	46TH/46TH	\$ 351,522
4	WOODLAWN	\$ 432,362
5	FINN	\$ 522,097
6	KENNETH	\$ 453,912
7	FAIRVIEW	\$ 233,588
8	HIGHLAND	\$ 400,641
9	RANDOLPH	\$ 482,395
10	ST CLAIR	\$ 477,320
11	GRAND	\$ 526,789
12	DAYTON	\$ 204,400
13	SPRUCE TREE	\$ 287,500
14	MINNEHAHA	\$ 270,700
15	HEWITT	\$ 244,800
16	COMO	\$ 442,115
17	HOYT	\$ 368,251
18	LARPENTEUR	\$ 409,438
19	COUNTY ROAD B	\$ 393,451
20	ROSEDALE	\$ 90,683

**A LINE SUBTOTAL \$ 6,965,608**

**5.0% ESCALATION (2015) \$ 348,280**

TRANSIT SIGNAL PRIORITY (TSP) - 19 Intersections	\$ 302,500
WATERSHED IMPACT MITIGATION	
ALLOWANCES	\$ 80,000

**10.0% CONTINGENCY \$ 761,639**

**A LINE TOTAL \$ 8,458,027**

PS	PILOT STATION	\$ 521,862
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**5.0% ESCALATION (2015) \$ 26,093**

**10.0% CONTINGENCY \$ 54,796**

**PILOT STATION TOTAL \$ 602,751**

**PROJECT TOTAL \$ 9,060,778**



**Exhibit B**

Agreement No. and Name:  
Description:

15I009 A Line Bus Rapid Transit Construction  
Lighting and Signal Work

Prepared By: Peter DeMuth (Metro Transit)

Date: 6/19/2015

Checked by: Brain Vitek (City of St. Paul)

Description	Quantity	Estimated Cost	Unit	Extension	Location
<b>Table 1: Lighting Relocations</b>					
The City of St. Paul, with their own forces, will salvage existing light standards, install new conduits and wiring and will install light standards that are located within station areas located within St. Paul, MN, as indicated in the plans.					
Salvage Light Poles	2	\$350.00	EA	\$700.00	Woodlawn East Bound Sheet 132
Install Conduit and Wiring	1	\$6,221.00	LS	\$6,221.00	Woodlawn Sheet 140-141
Install Salvage Light Poles	2	\$650.00	EA	\$1,300.00	Woodlawn East Bound Sheet 133
Salvage Light Poles	3	\$350.00	EA	\$1,050.00	Woodlawn West Bound Sheet 135
Install Conduit and Wiring	1	\$4,437.00	LS	\$4,437.00	Woodlawn Sheet 140-141
Install Salvage Light Poles	3	\$650.00	EA	\$1,950.00	Woodlawn West Bound Sheet 136
Salvage Light Poles	4	\$350.00	EA	\$1,400.00	Finn East Bound Sheet 145
Install Conduit and Wiring	1	\$6,960.00	LS	\$6,960.00	Finn East Bound Sheet 148/153/154
Install Salvage Light Poles	3	\$650.00	EA	\$1,950.00	Finn East Bound Sheet 146
Salvage Light Poles	2	\$350.00	EA	\$700.00	Finn West Bound Sheet 149
Install Conduit and Wiring	1	\$6,100.00	LS	\$6,100.00	Finn West Bound Sheet 153/154
Install Salvage Light Poles	2	\$650.00	EA	\$1,300.00	Finn West Bound Sheet 150
Salvage Light Poles	2	\$350.00	EA	\$700.00	Kenneth East Bound Sheet 158
Install Conduit and Wiring	1	\$5,235.00	LS	\$5,235.00	Kenneth Sheet 165
Install Salvage Light Poles	2	\$650.00	EA	\$1,300.00	Kenneth East Bound Sheet 159
Salvage Light Poles	1	\$350.00	EA	\$350.00	Kenneth West Bound Sheet 161
Install Conduit and Wiring	1	\$4,365.00	LS	\$4,365.00	Kenneth Sheet 165
Install Salvage Light Poles	1	\$650.00	EA	\$650.00	Kenneth West Bound Sheet 162
Salvage Light Poles	1	\$350.00	EA	\$350.00	Randolph North Bound Sheet 189
Install Conduit and Wiring	1	\$1,640.00	LS	\$1,640.00	Randolph Sheet 196/197
Install Salvage Light Poles	1	\$650.00	EA	\$650.00	Randolph North Bound Sheet 190
Salvage Light Poles	1	\$350.00	EA	\$350.00	Randolph South Bound Sheet 192
Install Conduit and Wiring	1	\$1,000.00	LS	\$1,000.00	Randolph Sheet 196/197
Install Salvage Light Poles	1	\$650.00	EA	\$650.00	Randolph South Bound Sheet 193
Salvage Light Poles	1	\$350.00	EA	\$350.00	St Clair North Bound Sheet 201
Install Conduit and Wiring	1	\$2,830.00	LS	\$2,830.00	St Clair Sheet 210/211
Install Salvage Light Poles	1	\$650.00	EA	\$650.00	St Clair North Bound Sheet 202
Salvage Light Poles	1	\$350.00	EA	\$350.00	St Clair South Bound Sheet 205
Conduit and Wiring	1	\$2,425.00	LS	\$2,425.00	St Clair Sheet 210/211
Install Salvage Light Poles	1	\$650.00	EA	\$650.00	St Clair South Bound Sheet 206
Salvage Light Poles	1	\$350.00	EA	\$350.00	Grand North Bound Sheet 215
Conduit and Wiring	1	\$2,000.00	LS	\$2,000.00	Grand Sheet 225
Install Salvage Light Poles	1	\$650.00	EA	\$650.00	Grand North Bound Sheet 216
Salvage Light Poles	1	\$350.00	EA	\$350.00	Nebraska North Bound Sheet 270
Conduit and Wiring	1	\$2,300.00	LS	\$2,300.00	Nebraska Sheet 273
Install Salvage Light Poles	1	\$650.00	EA	\$650.00	Nebraska North Bound Sheet 271
City Labor Subtotal				\$64,863.00	Payed by Met Council to the City
<b>Table 2: Signal Work</b>					
The City of St. Paul, with their own forces, will program and install signal controllers that are procured as part of this project, for the signals operated and maintained by St. Paul, as indicated in the plans and specifications. The CONTRACTOR will complete all other signal modifications work required in their traffic signal controller cabinets.					
Controller program and Install	1	\$2,000.00	LS	\$2,000.00	Ford Parkway and Finn Street
Controller program and Install	1	\$2,000.00	LS	\$2,000.00	Ford Parkway and Kenneth Street
Controller program and Install	1	\$2,000.00	LS	\$2,000.00	Snelling Avenue and Highland Parkway
Controller program and Install	1	\$2,000.00	LS	\$2,000.00	Snelling Avenue and Randolph Avenue
Controller program and Install	1	\$2,000.00	LS	\$2,000.00	Snelling Avenue and Jefferson Avenue
Controller program and Install	1	\$2,000.00	LS	\$2,000.00	Snelling Avenue and St. Clair Avenue
Controller program and Install	1	\$2,000.00	LS	\$2,000.00	Snelling Avenue and Grand Avenue
Controller program and Install	1	\$2,000.00	LS	\$2,000.00	Snelling Avenue and Selby Ave
Controller program and Install	1	\$2,000.00	LS	\$2,000.00	Snelling Avenue and Thomas Ave
Controller program and Install	1	\$2,000.00	LS	\$2,000.00	Snelling Avenue and Minnehaha Ave
Controller program and Install	1	\$2,000.00	LS	\$2,000.00	Snelling Avenue and Hewitt Avenue
City Labor Subtotal				\$22,000.00	Payed by Met Council to the City
Engineering Fee	3%			\$2,605.89	
<b>Total Cost:</b>				<b>\$86,863.00</b>	
				<b>\$89,468.89</b>	

## EXHIBIT C

### FEDERAL TRANSIT ADMINISTRATION (FTA) CLAUSES

The provisions of this Exhibit are required because this Contract is funded in whole or in part by the United States Department of Transportation (USDOT), Federal Transit Administration. The requirements in this Exhibit are in addition to and, unless inconsistent and irreconcilable, do not supplant requirements found elsewhere in this Contract. If any requirement of this Exhibit is inconsistent with a provision found elsewhere in this Contract and is irreconcilable with such provision, the requirement in this Exhibit shall prevail.

**15.01 Fly America Requirements.** The CONTRACTOR agrees to comply with 49 U.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.

**15.02 Energy Conservation.** 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 Federal Energy Policy and Conservation Act.

**15.03 Access to Records and Reports.** The CONTRACTOR agrees to provide the COUNCIL, the FTA Administrator, the Comptroller General of the United States, and any of their authorized representatives access to any books, documents, papers and records of the CONTRACTOR which are directly pertinent to this Contract for the purposes of making audits, examinations, excerpts, and transcriptions.

CONTRACTOR also agrees, pursuant to 49 C.F.R. 633.15, to provide the FTA Administrator or the Administrator's authorized representatives, including any project management oversight (PMO) contractor, access to CONTRACTOR's records and construction sites pertaining to a major capital project, defined at 49 U.S.C. 5302(a)(1), which is receiving federal financial assistance through the programs described at 49 U.S.C. 5307, 5309 or 5311.

The CONTRACTOR agrees to permit any of the foregoing parties to reproduce such documents by any means whatsoever or to copy excerpts and transcriptions as reasonably needed. In addition to any requirements for maintenance of project records and documents in other sections of this Contract, CONTRACTOR agrees to maintain such records and documents until the FTA Administrator, the Comptroller General, or any of their duly authorized representatives have disposed of all litigation, appeals, claims or exceptions arising from the performance of this Contract

**15.04 Federal Changes.** The CONTRACTOR shall comply with the required FTA clauses set forth in this Contract and with all applicable FTA regulations, policies, procedures and directives including, without limitation, those listed directly or by reference in the agreement between the COUNCIL and FTA. The CONTRACTOR's failure to comply with applicable FTA regulations,

policies, procedures, and directives, as they may be amended or promulgated from time to time during the term of this Contract, shall constitute a material breach of this Contract.

**15.05 Recovered Materials.** The CONTRACTOR agrees to comply with all the requirements of Section 6002 of the Resource Conservation and Recovery Act (RCRA), as amended (42 U.S.C. 6962), including but not limited to the regulatory provisions of 40 CFR part 247, and Executive Order 12873, as they apply to the procurement of the items designated in Subpart B of 40 CFR part 247.

**15.06 No Obligation by the Federal Government.** The COUNCIL and CONTRACTOR acknowledge and agree that, notwithstanding any concurrence by the Federal Government in or approval of the solicitation or award of this 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 COUNCIL, CONTRACTOR, or any other party (whether or not a party to the Contract) pertaining to any matter resulting from this Contract.

The CONTRACTOR agrees to include the preceding clause in each subcontract under this Contract, modified only to identify the subcontractor that will be subject to the provisions.

**15.07 Program Fraud and False or Fraudulent Statements or Related Acts.** The CONTRACTOR acknowledges that the provisions of the Program Fraud Civil Remedies Act of 1986, as amended, 31 U.S.C. Section 3801 *et seq.*, and USDOT regulations, "*Program Fraud Civil Remedies*," 49 CFR part 31, apply to its actions pertaining to this Contract. Upon execution of this Contract, 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 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.

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. Chapter 53, the Federal Government reserves the right to impose the penalties of 18 U.S.C. Section 1001, 49 U.S.C. Section 5323(l), or other applicable federal law, on the CONTRACTOR, to the extent the Federal Government deems appropriate.

The CONTRACTOR agrees to include the above language in each subcontract under this Contract, modified only to identify the subcontractor that will be subject to the provisions.

**15.08 Civil Rights.** The following requirements apply to this Contract:

- 1. Nondiscrimination.** In accordance with Title VI of the Civil Rights Act, as amended, 42 U.S.C. § 2000d, section 303 of the Age Discrimination Act of 1975, as amended, 42 U.S.C. § 6102, section 202 of the Americans with Disabilities Act of 1990, 42 U.S.C. § 12132, and federal transit law at 49 U.S.C. § 5332, the CONTRACTOR agrees that it 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.

**2. Equal Employment Opportunity.** The following equal employment opportunity requirements apply to this Contract:

- a. 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. DOL) regulations, "Office of Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor," 42 C.F.R. Parts 60 *et seq.*, (which implement Executive Order No. 11246, "Equal Employment Opportunity," as amended by Executive Order No. 11375, "Amending Executive Order 11246 Relating to Equal Employment Opportunity," 42 U.S.C. § 2000e note), and with any applicable federal statutes, executive orders, regulations, and federal policies that may in the future affect construction activities undertaken in the course of this Contract. 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.
- b. 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.
- c. Disabilities.** In accordance with section 102 of the Americans with Disabilities Act, as amended, 42 U.S.C. § 12112, the CONTRACTOR agrees that it will comply with the requirements of U.S. Equal Employment Opportunity commission, "Regulations to Implement the Equal Employment Provisions of the Americans with Disabilities Act," 29 C.F.R. Part 1630, pertaining to employment of persons with disabilities. In addition, the CONTRACTOR agrees to comply with any implementing requirements FTA may issue.

**3. Inclusion in Subcontracts.** The CONTRACTOR agrees to include the requirements of this Section 15.08 in each subcontract under this Contract, modified only to identify the subcontractor that will be subject to the provisions.

**15.09 Disadvantaged Business Enterprise ("DBE"). (FTA funding with DBE goal)**

- 1. Nondiscrimination.** Pursuant to 49 CFR section 26.13, the CONTRACTOR, sub-recipient or subcontractor shall not discriminate on the basis of race, color, national origin, or sex in the performance of this Contract. The CONTRACTOR shall carry out applicable requirements of 49 CFR part 26 in the award and administration of DOT-assisted contracts. Failure by the CONTRACTOR 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 the COUNCIL deems appropriate. The CONTRACTOR shall include this requirement in all subcontracts pursuant to this Contract.
- 2. Prompt Payment.** The CONTRACTOR agrees to pay subcontractors within ten (10) calendar days of the CONTRACTOR's receipt of payment from the COUNCIL for undisputed services provided by the subcontractor. In addition, the CONTRACTOR agrees to pay

subcontractors all undisputed retainage payments within ten (10) calendar days of the CONTRACTOR's receipt of the subcontractor's final undisputed invoice regardless of whether CONTRACTOR has received any retainage payment from the COUNCIL. The CONTRACTOR shall not postpone or delay any undisputed payments owed subcontractors without good cause and without prior written consent of the COUNCIL. The CONTRACTOR agrees to include in all subcontracts a provision requiring the use of appropriate alternative dispute resolution mechanisms to resolve payment disputes. The CONTRACTOR will not be reimbursed for work performed by subcontractors unless and until the CONTRACTOR ensures that subcontractors are promptly paid for work they have performed. Failure to comply with the provisions of this section may result in the COUNCIL finding CONTRACTOR in noncompliance with the DBE provisions of this Contract and the imposition of Administrative Sanctions described in paragraph 6 below.

3. **DBE Good Faith Efforts.** During the term of this Contract, the CONTRACTOR will continue to make good faith efforts to ensure that DBEs have maximum opportunity to successfully perform under the Contract, and that the CONTRACTOR meets its DBE commitment as set forth in its proposal. These efforts shall include, without limitation, the following:
  - a. If CONTRACTOR requests substitution of a DBE subcontractor or supplier listed in its List of Proposed DBEs, the CONTRACTOR shall exert good faith efforts to replace the DBE firm with another DBE firm subject to approval of the COUNCIL's Project Manager.
  - b. CONTRACTOR shall not terminate for convenience any DBE subcontractor or supplier listed in its List of Proposed DBEs (or an approved substitute DBE firm) and then perform the work itself or with its affiliates without prior written consent of the COUNCIL.
  - c. If a DBE subcontractor or supplier is terminated or fails to complete its work on the Contract for any reason, CONTRACTOR shall make good faith efforts to find another DBE firm to substitute for the original DBE firm.
  - d. The dollar amount of amendments or any other Contract modifications that increase or decrease the work area in which DBE participation has been committed to in the CONTRACTOR's proposal will be commensurately added to or subtracted from the total Contract base figure used to compute actual dollars paid to DBEs. Revised total Contract dollar values shall be reflected in the monthly progress report submitted to the COUNCIL.
  - e. Failure to comply with the provisions of this section may result in the COUNCIL finding CONTRACTOR in noncompliance with the DBE provisions of this Contract and the imposition of Administrative Sanctions described in paragraph 6 below.
4. **Reporting.** The CONTRACTOR will submit, on a monthly basis or along with any payment request submitted to the COUNCIL, a DBE Progress/Payment report which reflects all DBE payment activity during the invoicing period. Payment requests will not be reimbursed unless or until this report is submitted.
5. **Review of Good Faith Efforts.**
  - a. The COUNCIL's Office of Equal Opportunity will review the CONTRACTOR's monthly DBE progress reports to monitor and determine whether the utilization of DBE firms is consistent with the commitment of CONTRACTOR as stated in its proposal.

- b. If it is determined that the CONTRACTOR's DBE utilization under the Contract is not consistent with its commitment, the CONTRACTOR will be requested, in writing, to submit evidence of its good faith efforts to meet the commitment. The CONTRACTOR shall be given ten (10) working days to submit this documentation. Failure to respond shall place the CONTRACTOR in non-compliance and subject to imposition of Administrative Sanctions as described in paragraph 6 below.
- c. The CONTRACTOR's good faith efforts documentation will then be reviewed for accuracy, sufficiency and internal consistency. COUNCIL staff shall make a determination as to the adequacy of the CONTRACTOR's good faith efforts documentation and so inform the CONTRACTOR. If it is determined that the CONTRACTOR's good faith efforts documentation is acceptable, the CONTRACTOR will be deemed to be in compliance with the DBE utilization goals.
- d. If it is determined that the CONTRACTOR's good faith efforts documentation is not acceptable, the CONTRACTOR will be notified and be deemed to be in non-compliance with the DBE utilization goals.
- e. Non-compliance by the CONTRACTOR with the requirements of federal DBE regulations (49 CFR part 26) constitutes a breach of contract and may result in imposition of Administrative Sanctions as described in paragraph 6 below.

**6. Administrative Sanctions.**

- a. If the COUNCIL deems the CONTRACTOR to be in non-compliance with the DBE requirements of this Contract, the COUNCIL will inform the CONTRACTOR in writing, by certified mail, that sanctions shall be imposed for failure to meet DBE utilization goals and/or failure to submit documentation of good faith efforts. The notice will state the specific sanction to be imposed.
- b. The CONTRACTOR has five (5) working days from the date of the notice to file a written appeal to the COUNCIL's Regional Administrator. Failure to respond within the five (5) day period shall constitute a waiver of appeal. The Regional Administrator or designee, at his or her sole discretion, may schedule a hearing to gather additional facts and evidence and shall issue a final determination on the matter within five (5) working days of receipt of the written appeal. There shall be no right of appeal to the COUNCIL's governing board.
- c. Sanctions may include, without limitation: 1) suspension of payment to the CONTRACTOR for work that was identified to be performed by a DBE at the time of Contract award, or of any monies held by the COUNCIL as retained on the Contract; denial to the CONTRACTOR (including its principal and key personnel) of the right to participate in future contracts of the COUNCIL for a period of up to three years; and/or termination of the Contract for cause.

**15.09 Disadvantaged Business Enterprise ("DBE"). (FTA funding with no DBE Goal)**

- 1. **Nondiscrimination.** Pursuant to 49 CFR section 26.13, the CONTRACTOR, sub-recipient or subcontractor shall not discriminate on the basis of race, color, national origin, or sex in the performance of this Contract. The CONTRACTOR shall carry out applicable requirements of 49 CFR part 26 in the award and administration of DOT-assisted contracts. Failure by the CONTRACTOR 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 the COUNCIL deems appropriate. The CONTRACTOR shall include this requirement in all subcontracts pursuant to this Contract.

2. **Prompt Payment.** The CONTRACTOR agrees to pay subcontractors within ten (10) calendar days of the CONTRACTOR's receipt of payment from the COUNCIL for undisputed services provided by the subcontractor. In addition, the CONTRACTOR agrees to pay subcontractors all undisputed retainage payments within ten (10) calendar days of the CONTRACTOR's receipt of the subcontractor's final undisputed invoice regardless of whether CONTRACTOR has received any retainage payment from the COUNCIL. The CONTRACTOR shall not postpone or delay any undisputed payments owed subcontractors without good cause and without prior written consent of the COUNCIL. The CONTRACTOR agrees to include in all subcontracts a provision requiring the use of appropriate alternative dispute resolution mechanisms to resolve payment disputes. The CONTRACTOR will not be reimbursed for work performed by subcontractors unless and until the CONTRACTOR ensures that subcontractors are promptly paid for work they have performed. Failure to comply with the provisions of this section may result in the COUNCIL finding CONTRACTOR in noncompliance with the DBE provisions of this Contract.

**15.10 Incorporation of FTA Terms.** Specific provisions in this Contract include, in part, certain standard terms and conditions required by USDOT, whether or not expressly set forth in the Contract provisions. All contractual provisions required by USDOT, as set forth in 49 CFR section 18.36 and FTA Circular 4220.1F are hereby incorporated by reference. Notwithstanding anything to the contrary in this Contract, all FTA mandated terms shall be deemed to control in the event of a conflict with other provisions contained in this Contract. The CONTRACTOR shall not perform any act, fail to perform any act, or refuse to comply with any COUNCIL requests which would cause the COUNCIL to be in violation of the FTA terms and conditions.

**15.10a National Intelligent Transportation Systems Architecture and Standards.** To the extent applicable, the CONTRACTOR agrees to conform to the National Intelligent Transportation Systems (ITS) Architecture and Standards as required by SAFETEA-LU § 5307(c), 23 U.S.C. § 512 note, and to comply with FTA Notice, "FTA National ITS Architecture Policy on Transit Projects" 66 Fed. Reg. 1455 et seq., January 8, 2001, and other federal requirements that may be issued.

**15.11 Clean Water.** The provisions of this section 15.11 apply only if the amount of this Contract (including the value of any amendments thereto) exceeds \$100,000.

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. Section 1251 *et seq.* The CONTRACTOR agrees to report each violation to the COUNCIL and understands and agrees that the COUNCIL will, in turn, report each violation as required to assure notification to FTA and the appropriate Environmental Protection Agency (EPA) Regional Office. 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.

**15.12 Certification of Restrictions on Lobbying; Disclosure.** The provisions of this Section 15.12 apply only if the amount of this Contract (including the value of any amendments thereto) is equal to, or exceeds \$100,000.

The CONTRACTOR certifies that no federal appropriated funds have been paid or will be paid by or on behalf of the CONTRACTOR for influencing or attempting to influence an officer or employee of any federal agency, a member of Congress, an officer or employee of Congress, or an employee of a member of Congress in connection with the awarding of any federal contract, the making of any federal grant, the making of any federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any federal contract, grant, loan, or cooperative agreement. The certification of this compliance ("Lobbying Restriction

Certification") submitted by CONTRACTOR in connection with this project is incorporated in, and made a part of, this Contract.

The CONTRACTOR further certifies that, if any funds other than federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee or any federal agency, a member of Congress, an officer or employee of Congress, or an employee of a member of Congress in connection with the projects funded by the funds allocated to the CONTRACTOR in this agreement, the CONTRACTOR shall complete and submit to the COUNCIL, Standard Form-LLL, "*Disclosure Form to Report Lobbying*," in accordance with its instructions.

The CONTRACTOR certifies that it will require the language of this certification be included in the award documents for any subcontracts equal to or in excess of \$100,000.00 under this agreement, and that all subcontractors shall certify and disclose accordingly to the CONTRACTOR. All certifications and disclosures shall be forwarded to the COUNCIL by the CONTRACTOR.

The certifications referred to in this section (including the "Lobbying Restriction Certification" submitted by CONTRACTOR in connection with this project and incorporated in, and made a part of, this Contract) are material representations of fact upon which the COUNCIL relies when this Contract is made.

**15.13 Clean Air.** The provisions of this section 15.13 apply only if the amount of this Contract (including the value of any amendments thereto) exceeds \$100,000.

The CONTRACTOR agrees to comply with all applicable standards, orders, or regulations issued pursuant to the Clean Air Act, as amended, 42 U.S.C. section 7401 *et seq.* The CONTRACTOR agrees to report each violation to the COUNCIL and understands and agrees that the COUNCIL will, in turn, report each violation as required to assure notification to FTA and the appropriate Environmental Protection Agency (EPA) Regional Office. 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.

**15.14 Integrity Certification.** The provisions of this section 15.14 apply only if the amount of this Contract (including the value of any amendments thereto) exceeds \$25,000.

By signing this Contract, the CONTRACTOR certifies that neither it nor its principals is presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this Contract by any federal department or agency. This certification is a material representation of fact upon which the COUNCIL relies in entering this Contract. If it is later determined that the CONTRACTOR knowingly rendered an erroneous certification, in addition to other remedies available to the Federal Government, the department or agency with which this transaction originated may pursue available remedies, including suspension and/or debarment. The CONTRACTOR shall provide to the COUNCIL immediate written notice if at any time the CONTRACTOR learns that its certification was erroneous when submitted or has become erroneous by reason of changed circumstances.

**15.15 Seismic Safety Requirements.** The CONTRACTOR agrees that any new building or addition to an existing building will be designed and constructed in accordance with the standards for Seismic Safety required in Department of Transportation Seismic Safety Regulations 49 CFR part 41 and will certify compliance to the extent required by the regulation. The CONTRACTOR also agrees to ensure that all Work performed under this agreement including work performed by a



subcontractor is in compliance with the standards required by the Seismic Safety Regulations and the certification of compliance issued on the project.

**15.16 Rights in Data and Patent Rights.** The following requirements apply to each contract involving experimental, developmental, or research work:

1. The term “subject data” used in this Contract means recorded information, whether or not copyrighted, that is delivered or specified to be delivered under the Contract. 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.
2. The following restrictions apply to all subject data first produced in the performance of the Contract:
  - a. Except for its own internal use, the CONTRACTOR may not publish or reproduce subject data in whole or in part, or in any manner or form, nor may the 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.
  - b. In accordance with 49 CFR section 18.34 and 49 CFR section 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 in subsections (2)(b)1 and (2)(b)2 of this paragraph 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.
    1. Any subject data developed under that contract, whether or not a copyright has been obtained; and
    2. Any rights of copyright purchased by the CONTRACTOR using federal assistance in whole or in part provided by FTA.
  - c. When FTA awards federal assistance for experimental, developmental, or research 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 that work. Therefore, unless FTA determines otherwise, the CONTRACTOR performing experimental, developmental, or research work required by the underlying Contract to which this clause is added 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 that Contract, or a copy of the subject data first produced under the Contract for which a copyright has not been obtained. If the experimental, developmental, or research work, which is the subject of the underlying Contract, is not completed for any reason whatsoever, all data developed under that Contract shall become subject data as defined in subsection (a) of this paragraph and shall be

delivered as the Federal Government may direct. This subsection (c), however, does not apply to adaptations of automatic data processing equipment or programs for the CONTRACTOR's use whose costs are financed in whole or in part with federal assistance provided by FTA for transportation capital projects.

- d. 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 that Contract. The CONTRACTOR shall not be required to indemnify the Federal Government for any such liability arising out of the wrongful act of any employee, official, or agents of the Federal Government.
  - e. Nothing contained in this paragraph 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.
  - f. Data developed by the CONTRACTOR and financed entirely without using federal assistance provided by the Federal Government that has been incorporated into work required by the underlying Contract to which this clause has been added is exempt from the requirements of subsections (b), (c), and (d) of this paragraph, provided that the CONTRACTOR identifies that data in writing at the time of delivery of the Contract work.
  - g. 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.
- 3. Unless the Federal Government later makes a contrary determination in writing, irrespective of the CONTRACTOR's status (i.e., a large business, small business, state government or state instrumentality, local government, nonprofit organization, institution of higher education, individual, etc.), the CONTRACTOR agrees to take the necessary actions to provide, through FTA, those rights in that invention due the Federal Government as 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.
  - 4. 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.

The following requirements apply to each contract involving experimental, developmental, or research work:

- 1. If any invention, improvement, or discovery is conceived or first actually reduced to practice in the course of or under the Contract to which this clause has been added, and that invention, improvement, or discovery is patentable under the laws of the United States of America or any foreign country, the CONTRACTOR agrees to take actions necessary to provide immediate notice and a detailed report to the COUNCIL until FTA is ultimately notified.

2. Unless the Federal Government later makes a contrary determination in writing, irrespective of the CONTRACTOR's status (a large business, small business, state government or state instrumentality, local government, nonprofit organization, institution of higher education, individual), the CONTRACTOR agrees to take the necessary actions to provide, through FTA, those rights in that invention due the Federal Government as 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.
3. The CONTRACTOR also agrees to include the requirements of this paragraph in each subcontract for experimental, developmental, or research work financed in whole or in part with federal assistance provided by FTA.

## **XVI. PUBLIC FACILITIES AUTHORITY (PFA) CLAUSES**

The provisions of this Article XVI are required because this Contract is funded in whole or in part through loan funds from the Public Facilities Agency. The requirements in this article are in addition to and, unless inconsistent and irreconcilable, do not supplant requirements found elsewhere in this Contract. If any requirement of this article is inconsistent with a provision found elsewhere in this Contract and is irreconcilable with such provision, the requirement in this article shall prevail.

**16.01 Certification of Restrictions on Lobbying; Disclosure.** The provisions of this section 16.01 apply only if the amount of this Contract (including the value of any amendments thereto) is equal to or exceeds one hundred thousand dollars (\$100,000).

The CONTRACTOR certifies that no federal appropriated funds have been paid or shall be paid by or on behalf of the CONTRACTOR for influencing or attempting to influence an officer or employee of any federal agency, a member of Congress, an officer or employee of Congress, or an employee of a member of Congress in connection with the awarding of any federal contract, the making of any federal grant, the making of any federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any federal contract, grant, loan, or cooperative agreement. The certification of this compliance ("Lobbying Restriction Certification") submitted by CONTRACTOR in connection with this project is incorporated in, and made a part of, this Contract.

The CONTRACTOR further certifies that, if any funds other than federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee or any federal agency, a member of Congress, an officer or employee of Congress, or an employee of a member of Congress in connection with the projects funded by the funds allocated to the CONTRACTOR in this Contract, the CONTRACTOR shall complete and submit to the COUNCIL, Standard Form-LLL, "*Disclosure Form to Report Lobbying*," in accordance with its instructions.

The CONTRACTOR certifies that it shall require the language of this certification be included in the award documents for any subcontracts equal to or in excess of one hundred thousand dollars (\$100,000) under this Contract, and that all subcontractors shall certify and disclose accordingly to the CONTRACTOR. The certifications referred to in this section (including the "Lobbying Restriction Certification") submitted by CONTRACTOR in connection with this project and incorporated in, and made a part of, this Contract are material representations of fact upon which the COUNCIL relies when this Contract is made.

**16.02 Minority/Women's Business Enterprise. (PFA funding with no MBE/WBE goals)** If any subcontracts are let under this Contract, CONTRACTOR shall take the following affirmative steps to assure that minority and women's business enterprises are used when possible:

1. Including small, minority and women's business on solicitation lists.
2. Assuring that small, minority and women's business are solicited whenever they are potential sources.
3. Dividing total requirements, when economically feasible, into smaller tasks or quantities to permit maximum participation by small, minority and women's business.
4. Establishing delivery schedules, when the requirements of the work permit, which will encourage participation by small, minority and women's business.
5. Using the services and assistance of the Small Business Administration and the Office of Minority Business Enterprise of the Department of Commerce, as appropriate.

If any minority business enterprises (MBE) or women's business enterprises (WBE) are used as subcontractors under this Contract, the CONTRACTOR shall submit the following information to the contract compliance function of the COUNCIL's Office of Diversity and Equal Opportunity for each such enterprise: MBE or WBE name, mailing address, contact person, and telephone number; certifying agency which has certified the enterprise as MBE or WBE; brief description of the Work to be performed or materials supplied by the MBE or WBE; percent of the Contract work to be performed by the MBE or WBE; and total dollar value of the MBE or WBE participation. The information shall be submitted within thirty (30) days after entering into a subcontract arrangement with either the MBE or WBE contractor.

**16.02 Minority Business Enterprise (MBE) and Women's Business Enterprise (WBE). (PFA Funding with MBE/WBE goals)**

1. **Good Faith Efforts.** During the term of this Contract, the CONTRACTOR shall continue to make good faith efforts to ensure that MBEs and WBEs have maximum opportunity to successfully perform under the Contract, and that the CONTRACTOR meets its MBE and WBE commitments in its proposal. These efforts shall include, without limitation, the following:
  - a. If CONTRACTOR requests substitution of an MBE or WBE subcontractor or supplier listed in its list of proposed MBEs or list of proposed WBEs, the CONTRACTOR shall exert good faith efforts to replace the MBE or WBE firm with another MBE or WBE firm subject to approval of the COUNCIL's Project Manager.
  - b. CONTRACTOR shall not terminate for convenience any MBE or WBE subcontractor or supplier listed in its list of proposed MBEs or list of proposed WBEs (or an approved substitute MBE or WBE firm) and then perform the Work itself or with its affiliates without prior written consent of the COUNCIL.
  - c. If an MBE or WBE subcontractor or supplier is terminated or fails to complete its Work on the Contract for any reason, CONTRACTOR shall make good faith efforts to find another MBE or WBE firm to substitute for the original MBE or WBE firm.
  - d. The dollar amount of amendments or any other Contract modifications that increase or decrease the work area in which MBE or WBE participation has been committed to in the CONTRACTOR's proposal shall be commensurately added to or subtracted from the total Contract base figure used to compute actual dollars paid to MBEs and

WBEs. Revised total Contract dollar values shall be reflected in the monthly progress report submitted to the COUNCIL.

2. **Reporting.** The CONTRACTOR shall submit monthly progress reports to the COUNCIL reflecting its MBE and WBE participation. A "Summary of Subcontracts Awarded and Paid Report," submitted in the format provided by the COUNCIL, shall be submitted to comply with this reporting requirement. For the purposes of this section, timely submittal means receipt in the contract compliance function of the COUNCIL's Office of Equal Opportunity by the close of business on the fifteenth (15<sup>th</sup>) of the following month.
3. **Subcontracts.** If any additional subcontracts are let under this Contract, CONTRACTOR shall take the following affirmative steps to assure that minority and women's business enterprises are used when possible:
  - a. Including small, minority and women's business on solicitation lists.
  - b. Assuring that small, minority and women's business are solicited whenever they are potential sources.
  - c. Dividing total requirements, when economically feasible, into smaller tasks or quantities to permit maximum participation by small, minority and women's business.
  - d. Establishing delivery schedules, when the requirements of the work permit, which will encourage participation by small, minority and women's business.
  - e. Using the services and assistance of the Small Business Administration and the Office of Minority Business Enterprise of the Department of Commerce, as appropriate.

#### **16.03 Small Business in a Rural Area (SBRA).**

1. **Definition.** Small Business in a Rural Area (SBRA) means a for-profit business which:
  - a. Is small as defined by the U.S. Small Business Administration (SBA) under 13 C.F.R. 121;
  - b. Conducts its principal operations in a county listed in the SBA's *Listing of Non-Metropolitan Counties*, and is coded as a rural county in the U.S. Department of Agriculture's *Rural Urban Continuum Code Classification*.
2. **Use.** During the term of this Contract, the CONTRACTOR is encouraged to give SBRA an opportunity to successfully perform under the Contract.

**16.04 Executive Order Clauses.** The provisions of this section 16.04 apply only if the value of this Contract exceeds one hundred thousand dollars (\$100,000).

During the performance of this Contract, the CONTRACTOR agrees as follows:

1. The CONTRACTOR shall not discriminate against any employee or applicant for employment because of race, color, religion, sex or national origin. The CONTRACTOR shall take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, color, religion, sex, or national origin. 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. The CONTRACTOR agrees to post in conspicuous places, available to employees and

applicants for employment, notices to be provided by the COUNCIL setting forth the provisions of this nondiscrimination clause.

2. The CONTRACTOR shall, in all solicitations or advertisements for employees placed by or on behalf of the CONTRACTOR state that all qualified applicants shall receive consideration for employment without regard to race, color, religion, sex or national origin.
3. The CONTRACTOR shall send to each labor union or representative of workers with which it has a collective bargaining agreement or other contract or understanding, a notice, to be provided by the COUNCIL, advising the labor union or workers' representative of the CONTRACTOR's commitments under Section 202 of Executive Order No. 11246 of September 24, 1965, and shall post copies of the notice in conspicuous places available to employees and applicants for employment.
4. The CONTRACTOR shall comply with all provisions of Executive Order No. 11246 of September 24, 1965, and all of the rules, regulations, and relevant orders of the Secretary of Labor.
5. The CONTRACTOR shall furnish all information and reports required by Executive Order No. 11246 of September 24, 1965, and by the rules, regulations and orders of the Secretary of Labor, or pursuant thereto, and shall permit access to its books, records, and accounts by the COUNCIL and the Secretary of Labor for purposes of investigation to ascertain compliance with such rules, regulations, and orders.
6. In the event of the CONTRACTOR's noncompliance with the nondiscrimination clauses of this Contract or with any such rules, regulations, or orders, this Contract may be cancelled, terminated or suspended in whole or in part and the CONTRACTOR may be declared ineligible for further government contracts in accordance with procedures authorized in Executive Order No. 11246 of September 24, 1965, or by rule, regulation, or order of the Secretary of Labor, or as otherwise provided by law.
7. The CONTRACTOR shall include the provisions of paragraphs 1 through 7 of this section 16.04 in every subcontract or purchase order unless exempted by rules, regulations, or orders of the Secretary of Labor issued pursuant to Section 204 of Executive Order No. 11246 of September 24, 1965, so that such provisions shall be binding upon each subcontractor or vendor. The CONTRACTOR shall take such action with respect to any subcontract or purchase order as may be directed by the Secretary of Labor as a means of enforcing such provisions including sanctions for noncompliance: *Provided, however*, that in the event the CONTRACTOR becomes involved in, or is threatened with, litigation with a subcontractor or vendor as a result of such direction, the CONTRACTOR may request the United States to enter into such litigation to protect the interests of the United States.

**15.15 Seismic Safety Requirements.** The CONTRACTOR agrees that any new building or addition to an existing building will be designed and constructed in accordance with the standards for Seismic Safety required in Department of Transportation Seismic Safety Regulations 49 CFR part 41 and will certify compliance to the extent required by the regulation. The CONTRACTOR also agrees to ensure that all Work performed under this agreement including work performed by a subcontractor is in compliance with the standards required by the Seismic Safety Regulations and the certification of compliance issued on the project.