

REGIONAL TRANSIT AUTHORITY

RESOLUTION NO. 39

A RESOLUTION of the Board of the Regional Transit Authority for the Pierce, King and Snohomish Counties region authorizing the Executive Director to execute a contract for federal government representation.

WHEREAS, a Regional Transit Authority ("RTA") has been created for the Pierce, King and Snohomish Counties region by action of their respective county councils pursuant to RCW 81.112.030; and

WHEREAS, the RTA Board has established a work program for 1994-95; and

WHEREAS, representation of the RTA's interest in Washington, D.C., with Congress and Executive Branch offices is an essential element in the achievement of the RTA's work program; and

WHEREAS, the RTA obtained federal representation from September 1993 to April 1994 through the assistance of the Washington State Department of Transportation's consultant; Denny Miller Associates; and

WHEREAS, since April 1994, the RTA has continued federal representation through Denny Miller Associates with a short-term contract due to expire in December, 1994; and

WHEREAS, the RTA issued Request For Proposal #2-94 requesting proposals from qualified firms to represent the RTA's interests in Washington, D.C.; and


WHEREAS, an RTA evaluation panel has reviewed, interviewed, and ranked consultant proposals;

NOW, THEREFORE, BE IT RESOLVED by the Board of the Regional Transit Authority as follows:

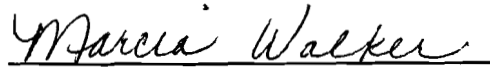
Section 1. The Executive Director is hereby authorized to execute the attached contract for Federal Representation with Denny Miller Associates and Bracy Williams & Company (subconsultants).

Section 2. The Executive Director is hereby further authorized to amend the RTA's adopted 1994 and interim 1995 budgets appropriately to reflect this contract.

ADOPTED by the Board of the Central Puget Sound Regional Transit Authority at a regular meeting thereof held on the 14th day of October, 1994.


Bruce Laing
Chair of the Board

ATTEST:



Marcia Walker
Board Administrator

**PROFESSIONAL SERVICES AGREEMENT
FEDERAL LEGISLATIVE AND ADMINISTRATIVE REPRESENTATION**

1. Introduction.

THIS AGREEMENT is made by and between the Regional Transit Authority, hereinafter "RTA," and that person or firm whose name appears in Section 2, hereinafter referred to as the "Consultant," who is hereby retained to provide federal legislative and administrative representation services to the RTA.

2. Consultant Name: Denny Miller Associates, Inc.

3. Address: 400 N. Capitol Street, N.W.
Suite 363
Washington, D.C. 20001

It is agreed that:

4. Services Defined.

The services shall be provided by Denny Miller Associates, as the prime consultant, in cooperation with Bracy Williams & Company, as a subconsultant. The Consultant shall be responsible for the quality, technical accuracy and the coordination of all services furnished under this Agreement. The Consultant shall, without additional compensation, correct or revise any errors or deficiencies in the services furnished.

The Consultant will use its best efforts to provide the services as described in the attached Scope of Work in a professional, complete and competent manner. The Scope of Work is incorporated herein by reference.

5. Term.

The term of this Agreement will be from November 1, 1994 through June 30, 1995, subject to the RTA's right, but not obligation, to extend the Agreement for up to three (3) additional one year terms.

6. Consideration.

The RTA shall pay the Consultant for services provided in a satisfactory manner as follows:

\$10,000 per month and up to \$6,000 (annually) for the costs of travel, authorized in advance. The Consultant shall be responsible for allocating such reimbursement with its

subconsultant, however, the parties anticipate that approximately forty percent of the services will be provided by the subconsultant.

Maximum payment to the Consultant for services provided under this Agreement shall not exceed \$86,000.

Reimbursement for expenses shall be subject to the maximum amount specified above and shall be based on allowances approved by the State of Washington Office of Financial Management pursuant to RCW 43.03.050 and include only actual costs and expenses directly incurred to benefit the RTA, without markups.

7. General Terms and Conditions.

Definitions. As used throughout this Agreement, the following terms shall have the meanings set forth below:

A. "RTA" shall mean the Regional Transit Authority, or any of the officers or other officials lawfully representing RTA.

B. "Consultant" shall mean that individual or other entity performing services under this Agreement. It shall include any subconsultant retained by the prime consultant as permitted under the terms of this Agreement.

C. "Project Manager" shall mean that person appointed by RTA from its staff to administer this Agreement to whom the Consultant shall look for direction in the performance of the services.

D. "Subconsultant" shall mean a person or firm not employed by the Consultant, who performs all or part of those services under this Agreement on behalf of the Consultant regardless of tier.

E. "Consultant-Acquired Property" shall mean property procured or otherwise acquired by the Consultant for the performance of this Agreement and for the cost of which the Consultant is entitled to be reimbursed, in whole or in part, under this Agreement.

8. Consultant Not An Employee or Agent of RTA.

The Consultant, its employees or subconsultants performing services under this Agreement are not to be deemed employees or agents of RTA in any manner whatsoever. The Consultant will not hold itself out as, nor claim to be, an officer, employee or agent of RTA by reason hereof and will not make any claim, demand, or application to or for any right or privilege applicable to an officer or employee of RTA.

9. Equal Employment Opportunity.

A. The Consultant will not discriminate against any employee, applicant for employment, or subconsultant because of race, religion, creed, sex, age, nationality, or the presence of any sensory, mental or physical disability, unless based upon a bona fide occupational qualification. The Consultant will take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, religion, creed, sex, sexual orientation, age, nationality, or the presence of such disability. 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 of training, including apprenticeship. The Consultant agrees to post in conspicuous places, available to employees and applicants for employment, notices setting forth the provision of this nondiscrimination clause.

B. The Consultant will, prior to commencement and during the term of this Agreement, furnish the RTA, upon request and on such forms as may be provided by the RTA, a report of the affirmative action taken by the Consultant in implementing the terms of this provision, and will permit access by the RTA's Executive Director or his designee to the Consultant's records of employment, employment advertisement, application forms, and other pertinent data and records for the purpose of investigation to determine compliance with this provision.

C. The Consultant will implement and carry out the obligations contained in its sworn statement regarding equal employment opportunity submitted as part of its proposal to perform these services. Failure to implement and carry out such obligations in good faith may be considered by the RTA as a material breach of this Agreement and grounds for withholding payment and/or termination of the Agreement and dismissal of the Consultant. The Consultant shall require that sworn statements substantially in the form of that required by RTA from the Consultant be submitted by its subconsultant(s) and that substantially the foregoing provisions be contained in all such subcontracts.

D. During the term of this Agreement, the Consultant shall maintain records to document compliance with the equal employment opportunity requirements described herein.

10. Utilization of Minority and Women Businesses.

The RTA recognizes there may be few subconsulting opportunities for minority and women businesses under this Agreement. Accordingly, no minority/women business participation goals have been set. However, if the Consultant elects to further subcontract any work, then the Consultant shall make affirmative efforts to solicit and utilize minority/women business certified by the State Office of Minority and Women Business Enterprises.

The Consultants should contact the Washington State Minority/Women Business Office to obtain a listing of certified businesses capable of performing such subconsultant work.

Affirmative efforts shall include soliciting proposals from such certified businesses by written letter and award of subcontracts to such capable, certified businesses which provide reasonable proposals.

11. Subcontracts.

The Consultant shall not enter into subcontracts for any of the work contemplated under this Agreement without first obtaining prior written approval of the Project Manager. The RTA hereby approves the use of Bracy Williams & Company as a subconsultant.

Any subconsultants and outside associates or consulting firms or individuals, including any substitutions thereof, used by the Consultant in connection with services to be provided under this Agreement must be approved in advance by the RTA. The Consultant shall be responsible for the professional standards, performance, errors and omissions of all persons and firms performing subconsulting work.

12. Worker's Compensation.

The Consultant and its subconsultants shall comply with the workers' compensation laws of the State of Washington and shall maintain workers' compensation and/or industrial accident insurance in the amount and type required by law whenever such laws are applicable to work and services provided under this Agreement. The Consultant shall make all payments arising from the performance of this Agreement due the State of Washington pursuant to Titles 50 and 51 RCW. If requested, the Consultant must supply a copy of the official compliance letter from the Washington State Department of Labor and Industries. The Consultant agrees to defend, indemnify and hold RTA harmless from damages or penalties assessed or claims brought as a result of Consultant's failure to comply with workers' compensation and/or industrial accident insurance requirements.

13. Legal Compliance.

The Consultant agrees to comply with all applicable federal, state and local laws and regulations applicable to such services, including all regulations, requirements and registrations related to lobbying activities and including the conditions of the federal Occupational Safety and Health Act of 1970 (OSHA) and the Washington Industrial Safety and Health Act of 1973 (WISHA) whenever such laws are applicable to work and services provided under this Agreement.

The Consultant shall comply with all federal, state and local licensing, registration, filing and/or certification standards, all applicable accrediting standards, and any other standards or criteria established by any agency of the State of Washington or of the federal government applicable to the Consultant's operation.

The Consultant agrees to defend, indemnify and hold RTA harmless from damages or penalties assessed or claims brought as a result of Consultant's failure to comply with such laws, regulations, requirements or standards.

14. Advance Payments Prohibited.

No payment in advance or in anticipation of services or supplies to be provided under this Agreement shall be made by RTA.

15. Publicity.

During the period of this Agreement the Consultant shall not release for publication any document, report or other material of any nature pertaining to the services provided under this Agreement unless such release has been given prior written approval by the Project Manager. The provisions of this clause shall extend to the release of any such material to any person not authorized by the Project Manager.

16. Ownership of Documents.

All documents, computer programs, reports, and other work prepared or produced by the Consultant or subconsultants under this Agreement shall be owned by the RTA for its exclusive use. All such documents, other than those exclusively for internal use within the RTA, shall carry such notations on the front cover or title page as may be directed by the Project Manager. The Consultant shall place its endorsement on all such documents or other data furnished to RTA under this Agreement.

17. Liability and Legal Relations.

The Consultant shall comply and, to the best of its ability, shall ensure its subconsultants comply, with all RTA resolutions and federal, state and local laws, regulations and ordinances applicable to the work and services to be performed under this Agreement.

The Consultant shall defend, protect, indemnify and hold the RTA harmless from and against any and all suits, claims, actions, losses, costs, penalties and damages for acts or omissions of the Consultant, its employees, agents, or subconsultants in performance of this Agreement regardless of cause. The Consultant will not be held responsible for the RTA's negligence.

The RTA's review, approval or acceptance of, or payment for, the services required under this Agreement shall not be construed to operate as a waiver of any rights under this Agreement or of any cause of action arising out of the performance of the Agreement, and the Consultant shall be and remain liable to the RTA in accordance with applicable law for all damages to the RTA caused by the Consultant's performance or failure of performance of any of the services required under this Agreement. The rights and remedies of the RTA under this Agreement are in addition to any other rights and remedies provided by law.

18. Assignment.

No assignment by the Consultant of its responsibilities, monies due, or claims arising out of this Agreement may be made without the prior written consent of RTA.

19. Changes and Modifications.

The Project Manager may, at any time, by written notification to the Consultant, and without notice to any known guarantor or surety, make changes within the general Scope of Work of this Agreement. If such change causes an increase or decrease in the cost of, or in the time required for the performance, of any services under this Agreement, an equitable adjustment may be made in the Agreement price, maximum payment ceiling, or period of performance, and the Agreement shall be modified in writing accordingly. Any claim by the Consultant for adjustment under this clause must be asserted within 30 days from the date of receipt by the Consultant of the notice of such change; provided, however, that the Project Manager may, if he or she decides that the facts justify such action, receive and act upon any such claim asserted at any time prior to final payment under this Agreement. Failure to agree to any adjustment shall be a dispute within the meaning of the clause of this Agreement entitled "Disputes." However, nothing in this clause shall excuse the Consultant from proceeding with the Agreement as changed.

20. Invoices.

The Consultant shall submit invoices for services rendered on a monthly basis. Such invoices shall be in such form as may be approved by the Project Manager and shall be tendered to the Project Manager with complete documentation within twenty (20) days after the last day of each month. RTA reserves the right to request additional substantiating documentation, including receipts, for invoiced charges as the RTA deems necessary.

21. Disputes.

All claims, disputes and other matters in question between RTA and the Consultant arising out of or relating to this Agreement shall be referred in writing to RTA's Executive Director for final determination, including all facts, documents and records related thereto. The Executive Director shall make a written determination within 30 days of such referral. Such referral and determination shall be a condition precedent to commencement of a civil action to adjudicate such issue. The RTA and the Consultant agree that any such determination shall not be considered or constructed as a decision resulting from arbitration under Washington State law.

22. Termination of Agreement.

A. The RTA may terminate this Agreement, in whole or in part, in writing if the Consultant substantially fails to fulfill any or all of its obligations under this Agreement through no

fault of the RTA; provided, that, insofar as practicable, the Consultant will be given: (1) not less than 30 calendar days' written notice delivered by certified mail, return receipt requested, of intent to terminate; and, (2) an opportunity for consultation with the RTA before termination to review what steps are deemed necessary by the RTA cure the default.

B. In addition to termination under Paragraph A of this Section, the RTA may terminate this Agreement, in whole or in part, in writing, for its convenience; provided, the Consultant will be given: (1) not less than 30 calendar days' written notice delivered by certified mail, return receipt requested, of intent to terminate; and (2) an opportunity for consultation with the RTA before termination.

C. If the RTA terminates for default on the part of the Consultant, the Project Manager shall determine the amount of work satisfactorily completed to the date of termination and the amount owing to the Consultant using the criteria set forth below on this paragraph; provided, that: (1) no amount shall be allowed for anticipated profit on unperformed services or other work; and (2) any payment due to the Consultant at the time of termination may be adjusted to the extent of any additional costs the RTA is likely to incur because of the Consultant's default. In the event of a default termination, the Project Manager shall consider the actual costs incurred by the Consultant in performing the work to the date of termination, the amount of work originally required which was satisfactorily completed to the date of termination, whether that work is in a form or of a type which is usable and suitable to the RTA at the date of termination, the cost to the RTA of completing this work itself or of employing another firm to complete it and the inconvenience and time which may be required to do so, and other factors which affect the value to the RTA of the work performed to the date of termination. Under no circumstances shall payments made under this provision exceed the maximum payment set forth in this Agreement. This provision shall not preclude the RTA from filing claims and/or commencing litigation to secure compensation for damages incurred beyond that covered by withheld payments.

D. If the RTA terminates for convenience, the RTA will pay the Consultant an amount for services satisfactorily performed to the date of termination, a reasonable profit for such services or other work satisfactorily performed, and an amount to reimburse the Consultant for reasonable and necessary expenses incurred before the termination. In addition, reasonable termination settlement costs incurred by the Consultant arising from commitments made before the termination may be paid unless the RTA determines to assume said commitments.

E. Upon receipt of a termination notice under Paragraphs A or B above, the Consultant shall: (1) promptly discontinue all services affected (unless the notice directs otherwise); and (2) promptly deliver or otherwise make available to the RTA all data, drawings, specifications, calculations, reports, estimates, summaries, such other information and materials as the Consultant or subconsultants may have accumulated in performing this Agreement, whether completed or in progress, and all equipment/materials purchased specifically for the work where the RTA has reimbursed the Consultant for such costs; and (3) promptly take all necessary steps to terminate related contractual commitments to minimize termination settlement costs.

F. Upon termination under any paragraph above, the RTA may take over the work and prosecute the same to completion by agreement with another party or otherwise.

G. If, after termination for failure of the Consultant to fulfill contractual obligations, it is determined that the Consultant has not so failed, the termination shall be deemed to have been effected for the convenience of the RTA. In such event, the equitable adjustment shall be determined as set forth in Paragraph D of this Section.

H. If, because of death, unavailability or any other occurrence, it becomes impossible for any lead personnel employed by the Consultant or for any corporate officer of the Consultant to render services, the Consultant shall not be relieved of its obligations to complete performance under this Agreement without the concurrence and written approval of the Project Manager. If the RTA agrees to termination of this Agreement under this provision, payment shall be made as set forth in Paragraph C of this Section.

23. Waiver of Default.

Waiver of any default shall not be deemed to be a waiver of any subsequent default. Waiver of breach of any provision of this Agreement shall not be deemed to be a waiver of any other or subsequent breach and shall not be construed to a modification of the terms of this Agreement unless stated to be such in writing, signed by authorized parties and attached to the original Agreement.

24. Price Warranty.

The Consultant warrants that prices charged the RTA are based on standard rates, and that prices charged for services or goods provided do not exceed those charged by Consultant to other customers purchasing similar services.

25. Audit.

The RTA reserves the right to inspect, copy and audit all records and documents of the Consultant, or its subconsultants or associates, relating to the work and services provided under this Agreement; provided, the RTA gives Consultant twenty-four (24) hours advance notice and such inspection or audit takes place during normal business hours. Consultant shall maintain such records and documents in files or forms convenient to review for a period of three (3) years following the conclusion of Consultant's services under this Agreement.

26. Washington Law.

The laws of the State of Washington will govern this Agreement. The venue for any legal action brought by either party against the other will be King County Superior Court unless otherwise agreed to in writing.

27. All Terms and Conditions.

This Agreement merges and supersedes all prior negotiations, representations and agreements between the parties related to the subject matter hereof and constitutes the entire agreement between the parties. This Agreement may be amended only by written agreement of both parties.

This Agreement contains all the terms and conditions agreed upon by the parties. No other understandings, oral or otherwise, regarding the subject matter of this Agreement shall be deemed to exist or to bind any of the parties hereto. The prior interim services agreement between the parties shall be terminated as of the effective date of this Agreement.

28. Conflicts of Interest an Noncompetitive Practices.

The Consultant agrees as follows:

A. Conflict of Interest. The Consultant, by entering into this Agreement with RTA to perform or provide work, services or materials, has thereby covenanted that it has no direct or indirect pecuniary or proprietary interest, and that it shall not acquire any such interest, which conflicts in any manner or degree with the services required to be performed under this Agreement and that it shall not employ any person or agent having any such interest. In the event that the Consultant or its agents, subconsultants, employees or representatives hereafter acquires such a conflict of interest, it shall immediately disclose such interest to the RTA and take action immediately to eliminate the conflict or to withdraw from this Agreement as the RTA may require.

B. Contingent Fees and Gratuities. The Consultant, by entering into this Agreement with the RTA to perform or to provide services or materials, has thereby covenanted:

(1) That no person or selling agency except bona fide employees or designated agents or representatives of the Consultant has been employed or retained to solicit or secure this Agreement with an agreement or understanding that a commission, percentage, brokerage, or contingent fee would be paid; and

(2) That no gratuities, in the form of entertainment, gifts or otherwise, were offered or given by the Consultant or any of its agents, subconsultants, employees or representatives, to any official, member or employee of RTA or other governmental agency with a view toward securing this Agreement or securing favorable treatment with respect to the awarding or amending, or the making of any determination with respect to the performance of this Agreement.

C. Anti Kickback. No money, fee, commission, gift, gratuity, or other thing of value may be offered to or accepted by an RTA Board member, officer, employee or consultant, or

subconsultant as a reward for favorable treatment in connection with the Agreement award or the purchase of a good or service.

29. Approval of Executive Director.

This Agreement shall be subject to the written approval of the RTA's Executive Director or his/her designee and shall not be binding until so approved.

IN WITNESS WHEREOF, RTA and the Consultant have signed this Agreement this _____ day of _____, 1994.

DENNY MILLER ASSOCIATES, INC.

REGIONAL TRANSIT AUTHORITY

By _____

By _____

Thomas G. Matoff
Executive Director

SCOPE OF WORK

Federal Government Relations Representation

The Consultant will provide certain professional services by way of liaison and information exchange with Congress and federal agencies in Washington, D.C.

These services shall include, but not be limited, to the following:

1. Closely monitoring federal legislation and federal activities of interest to the Regional Transit Authority.
2. Interceding in the legislative process, when appropriate, on behalf of and at the direction of the Regional Transit Authority.
3. Assisting the Regional Transit Authority with the planning and application for, and acquisition of, federal funds.
4. Arranging meetings between appropriate RTA officials and federal officials.
5. Providing other legislative consulting services in areas where Consultant has knowledge or expertise.
6. Preparing periodic reports of Consultant's activities on behalf of the RTA for RTA staff and Board members, and timely reports on the status of proposed legislation relating to public transit issues or impacting the RTA.
7. Assisting in the analysis and drafting of appropriate legislation and/or regulations to benefit the RTA.
8. Working in association with the representatives of other agencies, governments and associations who have a common interest in public transit and high capacity transportation legislation and funding.

