

CITY OF SANTA FE



"REQUEST FOR PROPOSALS"

**ADVERTISING SALES, DESIGN, PRODUCTION, INSTALLATION,
MAINTENANCE, AND REMOVAL FOR
SANTA FE TRAILS' BUSES EXTERIOR, SHELTERS AND BENCHES**

RFP # '17/11/P

PROPOSAL DUE:

**October 3, 2016
2:00 P.M.
CITY OF SANTA FE
PURCHASING OFFICE
2651 SIRINGO ROAD
BUILDING "H" SANTA FE,
NEW MEXICO 87505**

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Attachments:

Living Wage Ordinance

Sample Professional Services Contract

Santa Fe Trails Bus Schedule with System Map:

http://www.santafenm.gov/media/files/transportation/transit/maps_and_schedules/2015_sys_map.jpg

Santa Fe Pick-Up Hours and System Map:

http://www.santafenm.gov/santa_fe_pickup_shuttle

City of Santa Fe's Advertising Policy

Federal Requirement Forms:

- Energy Conservation Requirements
- Lobbying (three pages)
- Federal Changes
- No Government Obligation to Third Parties
- Program Fraud and False or Fraudulent Statements (2 pages)
- Termination (5 pages)
- Govt.-Wide Debarment and Suspension (Non-procurement) (2 pages)
- Privacy Act
- Civil Rights Requirements (2 pages)
- Disadvantaged Business Enterprise (DBE) (2 pages)
- Incorporation of Federal Transit Administration (FTA) Terms

REQUEST FOR PROPOSALS
PROPOSAL NUMBER '17/11/P

Proposals will be received by the City of Santa Fe and shall be delivered to the City of Santa Fe Purchasing Office, 2651 Siringo Road Building "H" Santa Fe, New Mexico 87505 **until 2:00 P.M. local prevailing time, October 3, 2016**. Any proposal received after this deadline will not be considered. This proposal is for the purpose of procuring professional services for the following:

**Advertising sales, design, production, installation, maintenance and removal
for Santa Fe Trails' buses exterior, shelters and benches.**

The proponent's attention is directed to the fact that all applicable Federal Laws, State Laws, Municipal Ordinances, and the rules and regulations of all authorities having jurisdiction over said item shall apply to the proposal throughout, and they will be deemed to be included in the proposal document the same as though herein written out in full.

The City of Santa Fe is an Equal Opportunity Employer and all qualified applicants will receive consideration for employment without regard to race, color, religion, sex, sexual orientation or national origin. The successful proponent will be required to conform to the Equal Opportunity Employment regulations.

Proposals may be held for sixty (60) days subject to action by the City. The City reserves the right to reject any of all proposals in part or in whole. Proposal packets are available by contacting: Shirley Rodriguez, City of Santa Fe, Purchasing Office, 2651 Siringo Road, Building "H" Santa Fe, New Mexico, 87505, (505) 955-5711.



Robert Rodarte, Purchasing Officer

Received by the Santa Fe New Mexican Newspaper on: 08/19/16
To be published on: 09/01/2016

Received by the Albuquerque Journal Newspaper on: 08/19/16
To be published on: 09/1/2016

PROPOSAL SCHEDULE

RFP # '17/11/P

- | | | |
|-----|--|---|
| 1. | Advertisement | September 1, 2016 |
| 2. | Issuance of RFP'S: | September 1, 2016 |
| 3. | Receipt of proposals: | October 3, 2016 at 2:00 p.m.
local prevailing time.
Purchasing Office 2651
Siringo Road Bldg., "H"
Santa Fe, New Mexico
87505 (505) 955-5711 |
| 4. | Evaluation of proposals: | October 11, 2016 |
| 5. | Interviews (if necessary): | October 18, 2016 |
| 6. | Recommendation to Public Works | November 7, 2016 |
| 7. | Transportation Advisory Board | November 22, 2016 |
| 8. | Recommendation of award
to Finance Committee: | December 5, 2016 |
| 9. | Recommendation of award
to City Council: | December 14, 2016 |
| 10. | Contract effective: | July 1, 2017 |

DATES OF CONSIDERATION BY FINANCE COMMITTEE AND CITY COUNCIL ARE TENTATIVE AND SUBJECT TO CHANGE WITHOUT NOTICE.

INFORMATION FOR PROPONENTS

1. RECEIPT OF PROPOSALS

The City of Santa Fe (herein called "City"), invites firms to submit one cd, six copies and one original of the proposal. Proposals will be received by the Purchasing Office, until 2:00 p.m. local prevailing time, October 3, 2016.

The packets shall be submitted and addressed to the Purchasing Office, at 2651 Siringo Road Bldg. "H" Santa Fe, New Mexico 87505. No late proposals will be accepted whether hand delivered, mailed or special delivery. Do not rely on "overnight delivery" without including some lead-time. "Overnight delivery" will be determined to be non-responsive if delivered late, no matter whose fault it was. It is recommended that extra days be included in the anticipated delivery date to ensure delivery is timely. The Purchasing Office is closed 12:00 p.m. to 1:00 p.m. The outside of the envelope should clearly indicate the following information:

Proposal number:	'17/11/P
Title of the proposal:	Advertising sales, design, production, installation maintenance, and removal for Santa Fe Trails' buses, interior and exterior, and shelters and benches.

Name and address of the proponent:

Any proposal received after the time and date specified shall not be considered. No proposing firm may withdraw a proposal within 60 days after the actual date of the opening thereof.

2. PREPARATION OF PROPOSAL

Vendors shall comply with all instructions and provide all the information requested. Failure to do so may disqualify your proposal. All information shall be given in ink or typewritten. Any corrections shall be initialed in ink by the person signing the proposal.

This request for proposal may be canceled or any and all proposals may be rejected in whole or in part, whenever the City of Santa Fe determines it is in the best interest of the city.

3. ADDENDA AND INTERPRETATIONS

No oral interpretation of the meaning of any section of the proposal documents will be binding. Oral communications are permitted in order to make an assessment of the need for an addendum. Any questions concerning the proposal must be addressed prior to the date set for receipt of proposal.

Every request for such interpretations should be in writing addressed to, Purchasing Officer, 2651 Siringo Road Bldg. "H" Santa Fe, New Mexico, 87505 and to be given consideration must be received at least (5) days prior to the date set for the receiving of proposals.

Any and all such interpretations and any supplemental instruction will be in the form of written addenda to the RFP, which if issued, will be delivered to all prospective firms not later than three days prior to the date fixed for the receipt of the proposals. Failure of any proposing firm to receive any such addenda or interpretations shall not relieve such firm from any obligation under their proposal as submitted. All addenda so issued shall become part of the contract documents.

The City reserves the right to not comply with these time frames if a critical addendum is required or if the proposal deadline needs to be extended due to a critical reason in the best interest of the City of Santa Fe.

4. LAWS AND REGULATIONS

The proposing firm's attention is directed to the fact that all applicable Federal Laws, State Laws, Municipal Ordinances, and the rules and regulations of all authorities having jurisdiction over said item shall apply to the contract throughout. They will be deemed to be included in the contract the same as though herein written out in full.

5. METHOD OF AWARD

The proposal is to be awarded based on qualified proposals as per the enclosed rating system and at the discretion and consideration of the governing body of the City of Santa Fe. The selection committee may interview the top three rated proponents; however, contracts may be awarded without such interviews. At its discretion the city reserves the right to alter the membership or size of the selection committee. The City reserves the right to change the number of firms interviewed.

6. COMPLIANCE WITH CITY'S MINIMUM WAGE RATE ORDINANCE (LIVING WAGE ORDINANCE)

A copy of the City of Santa Fe Ordinance No. 2003-8, passed by the Santa Fe City Council on February 26, 2003, see attachment 2. The proponent or bidder will be required to submit the proposal or bid such that it complies with the ordinance to the extent applicable. The recommended Contractor will be required to comply with the ordinance to the extent applicable, as well as any subsequent changes to the Ordinance throughout the term of this contract.

7. PROTESTS AND RESOLUTIONS PROCEDURES

Any proponent, offeror, or contractor who is aggrieved in connection with a procurement may protest to the Purchasing Officer. The protest must be in writing and submitted within fifteen (15) days and requirements regarding protest and resolution of protests are available from the Purchasing Office upon request.

SPECIAL CONDITIONS

1. GENERAL

When the City's Purchasing Officer issues a purchase order document in response to the vendor's bid, a binding contract is created.

2. ASSIGNMENT

Neither the order, nor any interest therein, nor claim under, shall be assigned or transferred by the vendor, except as expressly authorized in writing by the City Purchasing Officer's Office. No such consent shall relieve the vendor from its obligations and liabilities under this order.

3. VARIATION IN SCOPE OF WORK

No increase in the scope of work of services or equipment after award will be accepted, unless means were provided for within the contract documents. Decreases in the scope of work of services or equipment can be made upon request by the city or if such variation has been caused by documented conditions beyond the vendor's control, and then only to the extent, as specified elsewhere in the contract documents.

4. DISCOUNTS

Any applicable discounts should be included in computing the bid submitted. Every effort will be made to process payments within 30 days of satisfactory receipt of goods or services. The City Purchasing Officer shall be the final determination of satisfactory receipt of goods or services.

5. TAXES

The contractor is responsible for paying all taxes applicable. The city is exempt from gross receipts tax on tangible personal property. A tax exempt certificate will be issued upon written request.

6. INVOICING

(A) The vendor's revenue sheet shall be submitted monthly and shall contain the following information: invoice number and date, name of customer, description of the supplies or services, quantities, tax, unit prices and extended totals, total of revenues received for contractor and fee owed to Santa Fe Trails.

(B) Invoice must be submitted Santa Fe Trails.

7. METHOD OF REVENUE

Every effort will be made to process revenues within 30 days of receipt of a detailed invoice and proof of delivery and acceptance of the products hereby contracted or as otherwise specified in the compensation portion of the contract documents.

8. **DEFAULT**

The city reserves the right to cancel all or any part of this order without cost to the city if the vendor fails to meet the provisions for this order, and except as otherwise provided herein, to hold the vendor liable for any excess cost occasioned by the city due to the vendor's default. The vendor shall not be liable for any excess cost if failure to perform the order arises out of causes beyond the control and with the fault or negligence of the Vendor and these causes have been made known to the City of Santa Fe in written form within five working days of the vendor becoming aware of a cause which may create any delay; such causes include, but are not limited to, acts of God or the public enemy, acts of the State or of the Federal Government, fires, floods, epidemics, quarantine restrictions, strikes, freight embargoes, unusually severe weather and defaults of sub-contractors due to any of the above unless the city shall determine that the suppliers or services to be furnished by the sub-contractor are obtainable from other sources in sufficient time to permit the vendor to meet the required delivery schedule. The rights and remedies of the city are not limited to those provided for in this paragraph and are in addition to any other rights provided for by law.

9. **NON-DISCRIMINATION**

By signing this City of Santa Fe bid or proposal, the vendor agrees to comply with the Presidents Executive Order No. 11246 as amended.

10. **NON-COLLUSION**

In signing this bid or proposal, the vendor certifies they have not, either directly or indirectly, entered into action in restraint of full competition in connection with this bid or proposal submittal to the City of Santa Fe.

GENERAL INFORMATION

The purpose of the Request for Proposal is to generate revenue for the City of Santa Fe's Transit Division by selecting a firm to sell, design, manage, install, maintain, and remove exterior/interior bus advertising on Santa Fe Trails' (THE TRANSIT DIVISION) fixed-route buses, shelters and benches. The City of Santa Fe's intent is to maximize the revenue received from such advertising to help off-set marketing and operational expenses.

At present, a system-wide upgrade of benches and shelters is underway. It is an ongoing project. As existing benches and shelters are to be replaced with new "art shelters and benches" in either existing or new locations, advertising will no longer be allowed to be sold and placed on such facilities. However, advertising on existing factory produced shelters and benches will continue to be allowed until such time that such facilities are upgraded. For purposes of this proposal, however, estimates of revenues from the sale of advertisements on existing shelters and benches *shall not be included in proposal responses* as such conditions are temporary and will be phased-out during the term of the subsequent agreement.

The City of Santa Transit Division also operates a free shuttle service, in the downtown and museum hill area, called the Santa Fe Pick-Up. Vehicles used in the Santa Fe Pick-Up Program exclusively serve the downtown, Canyon Road and Museum Hill area of the city and connect with passengers from the final Rail Runner station at the Rail Yard. Currently, there aren't any ads being placed on Santa Fe Pick Up shuttles or on Santa Fe Ride Paratransit vehicles.

SANTA FE TRAILS/SANTA FE RIDE/SANTA FE PICK-UP COMPONENT

THE CITY OF SANTA FE's TRANSIT DIVISION provides public transportation services in Santa Fe, New Mexico. Transit is a division of the Public Works Department of the City of Santa Fe and operates fixed-route bus service (Santa Fe Trails), door-to-door paratransit service (Santa Fe Ride), and free shuttle service in the downtown area, Canyon Road and Museum Hill from the Santa Fe Pick-Up shuttles. All operations are manned by city employees. Equipment, facilities, and vehicles are owned by the city.

Funding for the Transit Division comes from a variety of federal, state and local sources, fare-box revenues, and various other sources.

The Mayor appoints the nine-member City of Santa Fe Transit Advisory Board (TAB) as an advisory committee. The TAB, among its other duties, will review the contract and forward a recommendation to the City Council. Final City Council approval is required to execute the contract.

SERVICES PROVIDED

The variety of services the Transit Division provides help to meet the transportation needs of the citizens of the City of Santa Fe. These services are outlined below:

The Transit Division serves the city of Santa Fe with fixed-routes running from 6:00 a.m. to 10:00 p.m., Monday through Friday, 8:00 a.m. to 8:00 p.m. on Saturday, and abbreviated routes on Sunday from 8:30 a.m. to 6:30 p.m. The routes operate every 15 minutes on Cerrillos Road during peak times and are designed to give passengers the opportunity to transfer to other routes at the downtown Transit Center on Sheridan Street and at the South Side Transit Center. A bus schedule link is provided (Attachment 2) that details all routes and service schedules. The complimentary paratransit system provides service seven days per week during the same operating hours as the fixed-route buses.

The regular fixed-route fare for adults is \$1.00 one-way. There are reduced fares available for youth, senior and disabled passengers. For monthly passes adults pay \$20.00 and seniors, youth and disabled pay \$10.00 per month.

In 2012, THE TRANSIT DIVISION's fixed routes delivered over one-million trips for the first time in the history of the bus system.

Advertising available on an estimated:

- Eighteen (18) twenty-nine (29) foot buses
- Twelve (12) thirty-five (35) foot buses
- Bus shelters (12 +/-) and benches (10 +/-). Exact amount of benches and shelters will be available after inventory check.

Notwithstanding the expectations that the above-referenced number of buses, shelters and benches shall be available, the City reserves the right to at any time reduce or increase the size of its fleet or the types of buses, shelters and benches provided for any reason.

In accordance with the American and Disabilities Act, THE TRANSIT DIVISION provides a demand-response service for qualifying individuals. This service, known as Santa Fe Ride Paratransit Program, operates the same service hours as the fixed-route bus system.

SCOPE OF SERVICES

The Contractor shall provide the following services for the City:

A. Program tasks: The advertising Program shall consist of the design, sale, placement, management, installation, maintenance, removal of advertisement on the exterior buses, shelters and benches for the City of Santa Fe Public Transit System, and collection of revenues and transmission of revenues to the City. All services necessary to conduct a revenue-producing advertising Program for the City of Santa Fe Public Transit System, shall be provided in a reputable manner to ensure the highest quality possible.

B. Advertising media: Durable advertising signs produced in a process subject to the approval by the City. Placement of commercial advertising on the City buses exterior, shelters and benches may be accomplished by means of bus displays and/or vinyl wraps and decals.

C. Rates: The Contractor agrees to charge advertisers in accordance with the rate cards negotiated and approved which includes up to fifteen percent (15%) discount for bargaining purposes. Exceptions for special, seasonal, and city department promotions will be handled on a case by case basis with prior written approval by the City

D. Reserved rights to advertising space: The City retains exclusive rights to unsold exterior space on all City buses, shelters and benches to be used by Santa Fe Trails to advertise events or promotions

E. Advertising contracts: The Contractor shall enter into contracts with advertisers in accordance with the terms of this agreement. Within fifteen (15) days of signing a contract with an advertiser, the Contractor shall provide the City with a copy of signed contracts with advertisers (“Contracts”).

F. Payment Due: Revenues from the contracts are due to the City within thirty (30) days following the end of the month in which the revenue activity occurred, (i.e., if activity is June 1st through June 30th, payment is due July 30th).

G. Restrictions on production: Advertisers are not required to use the production services of the selected Contractor for the production of advertising. The Contractor shall notify all advertisers that they are free to utilize the services of any company to produce their advertising as long as the City advertising standards, as specified in the City Advertising Policy, are met.

H. Contractor shall be responsible for all costs: The City shall not be obligated to pay any production or other costs incurred by the Contractor in the administration of the advertising Program.

I. Installation, maintenance and removal of advertising: The Contractor shall be responsible for all liability for installation, maintenance and removal of advertisements on all City buses, shelters and benches and areas that are the subject of Contracts, and shall remove all ads within fifteen (15) working days after the ads have expired or have become obsolete.

J. Times of ad installation or removal: The Contractor shall be responsible for the installation and removal of exterior ads on City buses, shelters and benches on a mutually agreed time.

K. Workspace: The City shall provide a workspace of adequate size and make this workspace accessible to the Contractor for the sole purpose of installing, maintaining, or removing advertising media on the City buses.

L. No guarantee for particular routes: When soliciting Contracts, the Contractor shall notify the potential advertiser that the City does not guarantee the particular bus on which the advertiser's advertising appears will be used on any particular route or in any particular service.

M. Adherence to law and policies: The Contractor and advertiser shall comply with all applicable Federal, State, County and City ordinances, regulations, and policies regarding advertising and shall have this term in all Contracts.

N. No City endorsement: Advertisements that express an opinion or point of view are to contain in large, clear, and visible type the statement "No City Endorsement Implied." The City shall specify and approve the size, placement, and color of this statement prior to production of such advertisements.

O. Graffiti removal: The Contractor is responsible for removal of any graffiti tagged on advertising media installed on the City buses, shelters and benches. Graffiti removal must occur within ten (10) calendar days of discovery by the City or Contractor, whichever occurs first; however, a goal of seven calendar days or sooner is recommended. City staff will notify the Contractor of each occurrence. In addition, Contractor shall also inspect for graffiti bi-monthly and remove within the above stated time-frame. Failure to comply with this requirement may result in cancellation of this Agreement.

P. UV Protected: The Contractor shall be required to ensure that all advertising media installed on City buses, shelters and benches, withstand the sun without fading and maintain a professional appearance

throughout the duration of their showing. If signs or decals become faded or unattractive the Contractor shall inform the advertiser to replace them.

Q. Art Shelters: No advertising is permitted on shelters commissioned and contracted by the City's Art Commission as "Art in Public Places" projects. These locations are as follows: Guadalupe and Cerrillos Road, Airport Road by McDonalds, Santa Fe Community College and Agua Fria and Kathryn. Concrete shelters on Cerrillos Road are not considered part of the "Art in Public Places" program; however, Contractor must communicate with the state Transportation Department to ascertain whether or not advertising at these bus stops would be acceptable. A shelter upgrade program, which has commenced, will result in all shelters and benches being classified as Art Shelters and advertising will no longer be allowed.

R. Project meetings: The Contractor shall meet with City representatives, community representatives and in regularly scheduled meetings on an as-needed basis. Contractor shall be available at reasonable times and intervals to plan work and review work in progress and fully coordinate all activities with staff. Contractor will obtain approval from the City before placing any advertising.

S. Public information: The City agrees to make available public information, in accordance with the Inspection of Public Records Act, which may include: background information, fleet roster, route timetables, ridership data and other pertinent information available.

T. Activity report: A report on the effectiveness of the advertisement sales efforts shall be submitted to the City on a monthly basis. The report shall include at a minimum the detail of sales calls, leads, ads placed, sales, payments, expenses, and other financial data.

U. Contract termination requirement: Following termination of Agreement, the Contractor shall leave the advertising space on exterior of buses, shelters and benches, in the same condition as it existed at the beginning of the Agreement, excepting reasonable wear and tear.

SUBMITTAL REQUIREMENTS

One cd, one original and 6 copies of the written proposal should be submitted by 2:00 p.m. on October 3, 2016. The evaluation committee will review the written submittals and select a maximum of three top-rated agencies to give oral presentations to the review committee. For agencies that are selected to give an oral presentation, up to one hour will be allowed.

Proposal Content

The proposal shall include a description of how the company will accomplish the sale of advertising and servicing of the account. At a minimum it should include the following items in order.

1. A statement regarding why the company would be the most qualified to handle this account that includes past experiences in serving transit companies and other public agencies.
2. Résumés of key staff members to be assigned to this account in order to support the agency's qualifications and abilities to perform this service. Total number of personnel, including indication of number of employees expected to work on this account, contact person, organizational chart, and office location.
3. A statement of financial condition of the company including at least one bank reference, and two supplier references, including contact names, addresses and telephone numbers.
4. A sample portfolio of advertisements produced and placed by your firm on buses, shelters and benches of transit clients for whom your company manages a revenue generating advertising program.
5. A complete listing of transit clients for whom the company provides similar service, with contact names, addresses and telephone numbers. Please include photographs and copies of sample ads.
6. A list of awards received in the last three years for advertisements created by the agency for transit operations.
7. A comprehensive plan that describes the approach, implementation, action plan, time-frames and follow-up that would be taken to sell advertising on the exterior of buses, shelters and benches.
8. A detailed program budget forecast for fiscal year 20120187, including estimated revenues from advertising sales and estimated costs involved in production, printing, and maintenance of advertising media etc. Be certain to clearly state the minimum annual guarantee payment to the City:
9. A detailed description of agency billing practices and standard/customary charges for service such as standard rates for layout, design, production, installation, maintenance, etc.
10. A list of supplier(s) that will design, produce, and/or install advertising signs.

11. A proposed rate card and sample sales contract.
12. Suggested method for considering/arranging media trade outs, if any opportunities should arise.

ORAL PRESENTATION

An evaluation committee will rank all proposals that are submitted; this ranking will be based on the evaluation criteria shown on pages twenty and twenty-one. In addition, this review will include verifying that all required documentation has been included.

The selection committee will then recommend up to three agencies to give oral presentations to the review committee. All oral presentations should include all material that the agency feels necessary to support their ideas. The presentation is a good representation of the agency's creativity, organization, and motivation, and will be a critical component in the review committee's decision.

The review committee will use the following evaluation criteria to rank both the written and oral information presented by each agency. The four evaluation criteria are very important and are weighted differently in determining the qualifications of each agency. The total scores for each agency will be the average score of ranking points assigned on each category.

**EVALUATION CRITERIA
&
WEIGHTED VALUES**

EVALUATION COMMITTEE MEMBERS

At its discretion, the City reserves the right to alter the membership and size of the committee.

Scores of the evaluation committee members will be totaled to determine the top rated firms.

If interviews are conducted for the top three rated firms, those scores totaled from the evaluation committee members from the interview evaluations will determine the final top rated firm, unless other tangible extenuating circumstances are documented.

Unless noted elsewhere in this RFP, the same evaluation form will be used to separate the interview scores.

RFP Review Committee:

1. Santa Fe Trails Interim Operations Manager or Representative
2. Transit Administrative Supervisor or Representative
3. Transit Grants Administrator or Representative
4. Transit Maintenance Supervisor or Representative
5. City of Santa Fe Purchasing Officer or Representative

A designee may be assigned if needed.

Evaluation Criteria

All proposals will be evaluated and rated in accordance with the following criteria and the indicated weighted value of the criteria:

Weighted Value

Criteria

50%

Minimum Sales Guarantee. This component is based on the annual payment amount guaranteed by the proponent to the City of Santa Fe.

25%

Sales Plan and Program Administration. This component will measure each agency's sales plan, sales drivers, follow-up and proposed incentives for businesses to do bus advertising and the materials used in this work.

15% **Experience.** Experience requirement is a minimum of five years. However, experience does not mean only the longest tenure in the field and the effectiveness in clearly communicating the submittal requirements. It also includes the types of successful campaigns implemented by each agency. Provide letters of recommendation, organizational chart, resumes of personnel, and campaign samples to show evidence of experience. The agency must provide, at a minimum, a local account executive that will be responsible for the day-to-day administration of the account.

10% **Creativity and Content.** This component will measure each agency's campaign with regard to competitive advantage achieved through creative ideas and content. Provide examples of advertising design on bus wraps (full and partial), bus bill boards, interior ads, and shelters. The information presented in the proposal is an indication of what may be expected from each agency. Note: Although ideas may be very creative, they may not be suitable for mass transportation advertising or in keeping with the City of Santa Fe's advertising policy (Attachment 4).

100% **Total**

Evaluation Points:

1. Poorly addressed, not adequate
2. Insufficiently addressed, capabilities questionable
3. Adequate response, capable
4. Good response, capabilities more than adequate
5. Exceeds expectations, superior response

Attachment 1
Draft Professional Services Agreement

CITY OF SANTA FE
PROFESSIONAL SERVICES AGREEMENT

THIS AGREEMENT is made and entered into by and between the City of Santa Fe (the "City") and _____ (the "Contractor"). The date of this Agreement shall be the date when it is executed by the City and the Contractor, whichever occurs last.

1. SCOPE OF SERVICES

The Contractor shall provide the following services for the City to administer the Santa Fe public transit system advertisement program ("Program"):

A. Program tasks: The advertising Program shall consist of the design, sale, placement, management, installation, maintenance, removal of advertisement on the exterior buses, shelters and benches for the City of Santa Fe Public Transit System, and collection of revenues and transmission of revenues to the City. All services necessary to conduct a revenue-producing advertising Program for the City of Santa Fe Public Transit System, shall be provided in a reputable manner to ensure the highest quality possible.

B. Advertising media: Durable advertising signs produced in a process subject to the approval by the City. Placement of commercial advertising on the City buses exterior, shelters and benches may be accomplished by means of bus displays and/or vinyl wraps and decals.

C. Rates: The Contractor agrees to charge advertisers in accordance with the rate cards negotiated and approved which includes up to fifteen percent (15%) discount for bargaining purposes. Exceptions for special, seasonal, and city

department promotions will be handled on a case by case basis with prior written approval by the City

D. Reserved rights to advertising space: The City retains exclusive rights to unsold exterior space on all City buses, shelters and benches to be used by Santa Fe Trails to advertise events or promotions

E. Advertising contracts: The Contractor shall enter into contracts with advertisers in accordance with the terms of this Agreement. Within fifteen (15) days of signing a contract with an advertiser, the Contractor shall provide the City with a copy of signed contracts with advertisers (“Contracts”).

F. Payment Due: Revenues from the Contracts are due to the City within thirty (30) days following the end of the month in which the revenue activity occurred, (i.e., if activity is June 1st through June 30th, payment is due July 30th).

G. Restrictions on production: Advertisers are not required to use the production services of the selected Contractor for the production of advertising. The Contractor shall notify all advertisers that they are free to utilize the services of any company to produce their advertising as long as the City advertising standards, as specified in the City Advertising Policy, are met.

H. Contractor shall be responsible for all costs: The City shall not be obligated to pay any production or other costs incurred by the Contractor in the administration of the advertising Program.

I. Installation, maintenance and removal of advertising: The Contractor shall be responsible for all liability for installation, maintenance and removal of advertisements on all City buses, shelters and benches and areas that are the subject of Contracts, and shall remove all ads within fifteen (15) working days

after the ads have expired or have become obsolete.

J. Times of ad installation or removal: The Contractor shall be responsible for the installation and removal of exterior ads on City buses, shelters and benches on a mutually agreed time.

K. Workspace: The City shall provide a workspace of adequate size and make this workspace accessible to the Contractor for the sole purpose of installing, maintaining, or removing advertising media on the City buses.

L. No guarantee for particular routes: When soliciting Contracts, the Contractor shall notify the potential advertiser that the City does not guarantee the particular bus, shelters and benches on which the advertiser's advertising appears will be used on any particular route or in any particular service.

M. Adherence to law and policies: The Contractor and advertiser shall comply with all applicable Federal, State, County and City ordinances and regulations regarding advertising and shall have this term in all Contracts.

N. No City endorsement: Advertisements that express an opinion or point of view are to contain in large, clear, and visible type the statement "No City Endorsement Implied." The City shall specify and approve the size, placement, and color of this statement prior to production of such advertisements.

O. Graffiti removal: The Contractor is responsible for removal of any graffiti tagged on advertising media installed on the City buses, shelters and benches. Graffiti removal must occur within ten (10) calendar days of discovery by the City or Contractor, whichever occurs first; however, a goal of seven calendar days or sooner is recommended. City staff will notify the Contractor of each occurrence. In addition, Contractor shall also inspect for graffiti bi-monthly and remove within the above stated

stated time-frame. Failure to comply with this requirement may result in cancellation of this Agreement.

P. UV Protected: The Contractor shall be required to ensure that all advertising media installed on City buses, shelters and benches withstand the sun without fading and maintain a professional appearance throughout the duration of their showing. If signs or decals become faded or unattractive the Contractor shall inform the advertiser to replace them.

Q. Art Shelters: No advertising is permitted on shelters commissioned and contracted by the City's Art Commission as "Art in Public Places" projects. These locations are as follows: Guadalupe and Cerrillos Road, Airport Road by McDonalds, Santa Fe Community College and Agua Fria and Kathryn. Concrete shelters on Cerrillos Road are not considered part of the "Art in Public Places" program; however, Contractor must communicate with the state Transportation Department to ascertain whether or not advertising at these bus stops would be acceptable. A shelter upgrade program commenced and is ongoing. This will result in all shelters and benches being classified as Art Shelters and advertising will no longer be allowed.

R. Project meetings: The Contractor shall meet with City representatives, community representatives and in regularly scheduled meetings on an as-needed basis. Contractor shall be available at reasonable times and intervals to plan work and review work in progress and fully coordinate all activities with staff. Contractor will obtain approval from the City before placing any advertising.

S. Public information: The City agrees to make available public information, in accordance with the Inspection of Public Records Act.

T. Activity report: A report on the effectiveness of the advertisement sales efforts shall be submitted to the City on a monthly basis. The report shall include at a minimum the detail of sales calls, leads, ads placed, sales, payments, expenses, and other financial data.

U. Contract termination requirement: Following termination of Agreement, the Contractor shall leave the advertising space on exterior of buses, shelters and benches in the same condition as it existed at the beginning of the Agreement, excepting reasonable wear and tear.

2. STANDARD OF PERFORMANCE; LICENSES

A. The Contractor represents that it possesses the personnel, experience and knowledge necessary to perform the services described under this Agreement.

B. The Contractor agrees to obtain and maintain throughout the term of this Agreement, all applicable professional and business licenses required by law, for itself, its employees, agents, representatives and subcontractors.

3. COMPENSATION

A. The Contractor agrees to pay the City a minimum guaranteed annual payment in the amount of _____ (\$_____), or fifty percent (50%) of Contract revenues received each year, whichever is greater on a monthly basis as follows: The Contractor shall pay a minimum of _____ (\$_____) monthly regardless of whether revenues received from sales are sufficient to cover the minimum guarantee payment. The Contractor is entitled to return the difference between the City's monthly payment and the actual revenues as compensation for services

rendered.

B. The Contractor shall submit monthly reports detailing Contract revenues received, and shall submit monthly payments to the City for fifty percent (50%) of revenues received each month, or a payment equal to one-twelfth of the minimum guaranteed annual payment shown above, whichever is greater.

C. The Contractor shall be responsible for payment of gross receipts taxes levied by the State of New Mexico on the sums paid under this Agreement.

D. Payment shall be made upon receipt, approval and acceptance by the City of detailed statements containing a report of services completed. Compensation shall be paid only for services actually performed and accepted by the City.

4. APPROPRIATIONS

The terms of this Agreement are contingent upon sufficient appropriations and authorization being made by the City for the performance of this Agreement. If sufficient appropriations and authorization are not made by the City, this Agreement shall terminate upon written notice being given by the City to the Contractor. The City's decision as to whether sufficient appropriations are available shall be accepted by the Contractor and shall be final.

5. TERM AND EFFECTIVE DATE

This Agreement shall be effective when signed by the City and the Contractor, whichever occurs last, and shall terminate on _____ unless sooner pursuant to Article 6 below.

6. TERMINATION

A. This Agreement may be terminated by the City upon 90 days written notice to the Contractor.

B. Contractor will have exclusive rights to bill the Advertiser for the remaining term of the advertising Contract between Contractor and the advertiser with a commitment to split 50% of any revenues with the City.

7. STATUS OF CONTRACTOR; RESPONSIBILITY FOR PAYMENT OF EMPLOYEES AND SUBCONTRACTORS

A. The Contractor, the advertisers, and its agents and employees are independent contractors performing professional services for the City and are not employees of the City. The Contractor, and its agents and employees, shall not accrue leave, retirement, insurance, bonding, use of City vehicles, or any other benefits afforded to employees of the City as a result of this Agreement.

B. Contractor shall be solely responsible for payment of wages, salaries and benefits to any and all employees or subcontractors retained by Contractor in the performance of the services under this Agreement.

C. The Contractor shall comply with City of Santa Fe Minimum Wage, Article 28-1-SFCC 1987, as well as any subsequent changes to such article throughout the term of this Agreement.

8. CONFIDENTIALITY

Any confidential information provided to or developed by the Contractor in the performance of this Agreement shall be kept confidential and shall not be made available to any individual or organization by the Contractor without the prior written approval of the City.

9. CONFLICT OF INTEREST

The Contractor warrants that it presently has no interest and shall not acquire any interest, direct or indirect, which would conflict in any manner or degree with

the performance of services required under this Agreement. Contractor further agrees that in the performance of this Agreement no persons having any such interests shall be employed.

10. ASSIGNMENT; SUBCONTRACTING

The Contractor shall not assign or transfer any rights, privileges, obligations or other interest under this Agreement, including any claims for money due, without the prior written consent of the City. The Contractor shall not subcontract any portion of the services to be performed under this Agreement without the prior written approval of the City.

11. RELEASE

The Contractor, upon acceptance of final payment of the amount due under this Agreement, releases the City, its officers and employees, from all liabilities, claims and obligations whatsoever arising from or under this Agreement. The Contractor agrees not to purport to bind the City to any obligation not assumed herein by the City unless the Contractor has express written authority to do so, and then only within the strict limits of that authority.

12. INSURANCE

A. The Contractor, at its own cost and expense, shall carry and maintain in full force and effect during the term of this Agreement, comprehensive general liability insurance covering bodily injury and property damage liability, in a form and with an insurance company acceptable to the City, with limits of coverage in the maximum amount which the City could be held liable under the New Mexico Tort Claims Act for each person injured and for each accident resulting in damage to property. Such insurance shall provide that the City is named as an additional insured

and that the City is notified no less than 30 days in advance of cancellation for any reason. The Contractor shall furnish the City with a copy of a Certificate of Insurance as a condition prior to performing services under this Agreement.

B. Contractor shall also obtain and maintain Workers' Compensation insurance, required by law, to provide coverage for Contractor's employees throughout the term of this Agreement. Contractor shall provide the City with evidence of its compliance with such requirement.

C. Contractor shall maintain professional liability insurance throughout the term of this Agreement providing a minimum coverage in the amount required under the New Mexico Tort Claims Act. The Contractor shall furnish the City with proof of insurance of Contractor's compliance with the provisions of this section as a condition prior to performing services under this Agreement.

13. LIABILITY

The Contractor shall acknowledge full liability and responsibility for any claim for damages resulting from the services performed under this Agreement. The Contractor shall assume full liability and responsibility for any damages resulting to City buses, shelters and benches when bus wraps or pressure sensitive vinyl advertising is removed. Any damage repair or repainting to any City bus, shelters and benches caused by removing advertising is to be paid by the Contractor.

14. INDEMNIFICATION

The Contractor shall indemnify, hold harmless and defend the City from all losses, damages, claims or judgments, including payments of all attorneys' fees and costs on account of any suit, judgment, execution, claim, action or demand whatsoever arising from Contractor's performance under this Agreement as well as the performance

of Contractor's employees, agents, representatives and subcontractors.

15. NEW MEXICO TORT CLAIMS ACT

Any liability incurred by the City of Santa Fe in connection with this Agreement is subject to the immunities and limitations of the New Mexico Tort Claims Act, Section 41-4-1, et. seq. NMSA 1978, as amended. The City and its "public employees" as defined in the New Mexico Tort Claims Act, do not waive sovereign immunity, do not waive any defense and do not waive any limitation of liability pursuant to law. No provision in this Agreement modifies or waives any provision of the New Mexico Tort Claims Act.

16. THIRD PARTY BENEFICIARIES

By entering into this Agreement, the parties do not intend to create any right, title or interest in or for the benefit of any person other than the City and the Contractor. No person shall claim any right, title or interest under this Agreement or seek to enforce this Agreement as a third party beneficiary of this Agreement.

17. RECORDS AND AUDIT

The Contractor shall maintain, throughout the term of this Agreement and for a period of three years thereafter, detailed records that indicate the date, time and nature of services rendered. These records shall be subject to inspection by the City, the Department of Finance and Administration, and the State Auditor. The City shall have the right to audit the billing both before and after payment. Payment under this Agreement shall not foreclose the right of the City to recover excessive or illegal payments.

18. APPLICABLE LAW; CHOICE OF LAW; VENUE

Contractor shall abide by all applicable federal and state laws and regulations, and all ordinances, rules and regulations of the City of Santa Fe. In any action, suit or legal dispute arising from this Agreement, the Contractor agrees that the

laws of the State of New Mexico shall govern. The parties agree that any action or suit arising from this Agreement shall be commenced in a federal or state court of competent jurisdiction in New Mexico. Any action or suit commenced in the courts of the State of New Mexico shall be brought in the First Judicial District Court.

19. AMENDMENT

This Agreement shall not be altered, changed or modified except by an amendment in writing executed by the parties hereto.

20. SCOPE OF AGREEMENT

This Agreement incorporates all the agreements, covenants, and understandings between the parties hereto concerning the services to be performed hereunder, and all such agreements, covenants and understandings have been merged into this Agreement. This Agreement expresses the entire Agreement and understanding between the parties with respect to said services. No prior agreement or understanding, verbal or otherwise, of the parties or their agents shall be valid or enforceable unless embodied in this Agreement.

21. NON-DISCRIMINATION

During the term of this Agreement, Contractor shall not discriminate against any employee or applicant for an employment position to be used in the performance of services by Contractor hereunder, on the basis of ethnicity, race, age, religion, creed, color, national origin, ancestry, sex, gender, sexual orientation, physical or mental disability, medical condition, or citizenship status.

22. SEVERABILITY

In case any one or more of the provisions contained in this Agreement or any application thereof shall be invalid, illegal or unenforceable in any respect, the

validity, legality, and enforceability of the remaining provisions contained herein and any other application thereof shall not in any way be affected or impaired thereby.

23. NOTICES

Any notices required to be given under this Agreement shall be in writing and served by personal delivery or by mail, postage prepaid, to the parties at the following addresses:

CITY OF SANTA FE:
Public Works/Transit Division
Attn: Ike Pino
P.O. Box 909
Santa Fe, NM 87504

CONTRACTOR:

IN WITNESS WHEREOF, the parties have executed this Agreement on the date set forth below.

CITY OF SANTA FE:

CONTRACTOR:

JAVIER M. GONZALES, MAYOR

NAME AND TITLE

DATE: _____

DATE: _____

CRS# _____
City of Santa Fe Business
Registration # _____

ATTEST:

YOLANDA Y. VIGIL
CITY CLERK

Attachment 2
Santa Fe Trails Bus Schedule and Map

http://www.santafenm.gov/media/files/transportation/transit/maps_and_schedules/2015_sys_map.jpg

Attachment 3
Santa Fe Pick-Up Map and Hours

http://www.santafenm.gov/santa_fe_pickup_shuttle

Attachment 4
City of Santa Fe Advertising Policy

CITY OF SANTA FE ADMINISTRATIVE MANUAL

Originating Business Unit: **City Manager**



SUBJECT

Advertising Policy	Policy Number 0000-1-1	# Pages 03
	Effective Date 10/17/02	Revision Date 08/15/05

1.0 PURPOSE:

- 1.1 To create opportunities to strengthen the partnership among the city of Santa Fe (the City), the public at large, and private enterprise by developing professional promotion, marketing, sponsorship and advertising programs for the City in order *to raise revenues* for the City.

2.0 APPLICABLE TO:

- 2.1 The city of Santa Fe; general public; private enterprise seeking to advertise on city property.

3.0 REFERENCES:

- 3.1 None.

4.0 DEFINITIONS:

- 4.1 "Advertising" means the purchase of space on city property to propose a commercial transaction for goods or services.
- 4.2 "Sponsorship" means financial or in-kind support for specific events.
- 4.3 "Commission" means financial compensation paid to the City calculated as a lump sum, per-unit, or percentage of the amount received from sale of goods or services related to specific events at city-owned property.
- 4.4 "Trade-out" means exchanging goods and services on a dollar-for-dollar basis.

5.0 POLICY:

- 5.1 The subject matter of all advertising shall be limited to speech which proposes solely a commercial transaction for goods and *services*. The advertisements must contain only expressions related to the economic interest of the advertiser and its audience. Non-commercial advertisements that add an offer to purchase some item containing a non-commercial message are not permitted pursuant to this policy.
- 5.2 The following standards for advertising and advertising copy shall apply to any ads on city property. No advertising will be permitted which:
 - 5.2.1 Is false, misleading, libelous, or *deceptive*;
 - 5.2.2 Relates to an illegal activity;
 - 5.2.3 Contain obscene material as determined by community standards;
 - 5.2.4 Advertise alcohol or tobacco products;

- 5.2.5 Includes language which is obscene, vulgar or profane:
 - 5.2.6 Implies an endorsement by the City of Santa Fe for the product or service; and
 - 5.2.7 Promotes a commercial transaction that is expressly prohibited by federal, state or local law or regulations.
- 5.3 To generate revenue to support the activities offered by the City, the City may offer space on city-owned property for local, regional, and national advertising opportunities.
 - 5.4 Funds raised by the sale of sponsorships for events shall be used only for expenses directly attributable to the specific event, unless specified otherwise and previously approved by the sponsor.
 - 5.5 The City recognizes that nonprofit organizations whose purpose is to support the activities of the various recreational facilities have been and may be formed as vehicles to supplement service delivery, e.g. through provision of scholarships for the use of the recreational facilities and purchase of equipment for the facilities. Each division director may designate space in the facilities under his or her management to allow such nonprofit organizations to recognize donors and contributors to those organizations.
 - 5.6 This policy does not require that the City grant all requests to advertise programs. Selection is solely at the discretion and determination of the City of Santa Fe.
 - 5.7 An exchange for services such as passes and memberships for advertising spaces, commercials, and partnerships will be allowed upon the approval of the department director, division director and the City Manager. Trade-outs for advertising will be allowed on a dollar-for-dollar value basis

6.0 PROCEDURES:

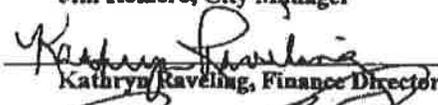
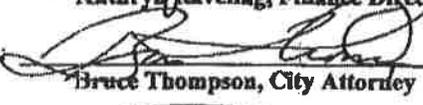
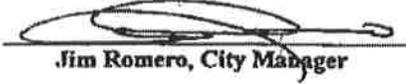
- 6.1 Each division director may designate sponsorship and trade-out opportunities on city owned property under his or her management if deemed to be in the best interest of the City.
- 6.2 Each division director may designate space appropriate and available on city-owned property under his or her management for advertising and the value of the space.
- 6.3 Each division director may designate space appropriate and available on city-owned property under his or her management for sponsor, donor, and contributor recognition by associated organizations.
- 6.4 Each division director may identify and recommend to his or her department director opportunities for commission revenues for the property under his or her management.
- 6.5 Agreements and contracts for advertising space, sponsorships, trade-outs, and commissions must follow existing procedures as specified in the City of Santa Fe Purchasing Manual.
- 6.6 Revenue from advertisements, sponsorships, and commissions shall be reflected as revenue for budget and actual receipt of funds for applicable enterprise funds and General Fund operations. Budget may be established during the budget cycle with the amount to be estimated or established with Finance Committee and City Council approval when the definitive commitments are made (increase of revenue and increase of expenses/expenditures). Funds must be deposited within twenty-four (24) hours of receipt.

6.7 If equipment with a value of more than \$1,000 is received in exchange for such sponsorship the Finance Department shall be notified so that the equipment is appropriately recorded on the City's fixed assets inventory.

7.0 APPENDICES:

7.1 None.

8.0 REVIEW AND APPROVALS:

8.1	PREPARED BY:	 Jim Romero, City Manager	10/02 DATE
8.2	REVIEWED BY:	 Kathryn Raveling, Finance Director	10/14/02 DATE
8.3	REVIEWED BY:	 Bruce Thompson, City Attorney	10/11/02 DATE
8.4	APPROVED BY:	 Jim Romero, City Manager	10/17/02 DATE

CITY OF SANTA FE LIVING WAGE ORDINANCE



PURSUANT TO THE CITY OF SANTA FE
LIVING WAGE ORDINANCE, SECTION 28-1 SFCC 1987
EFFECTIVE MARCH 1, 2016 ALL WORKERS WITHIN THE
CITY OF SANTA FE
SHALL BE PAID A LIVING WAGE OF

\$10.91
PER HOUR

Santa Fe's Living Wage

-  The Santa Fe Living Wage Ordinance establishes minimum hourly wages.
-  The March Living Wage increase corresponds to the increase in the Consumer Price Index (CPI).
-  All employers required to have a business license or registration from the City of Santa Fe ("City") must pay at least the adjusted Living Wage to employees for all hours worked within the Santa Fe city limits.

Who is Required to Pay the Living Wage?

-  The City to all full-time permanent workers employed by the City;
-  Contractors for the City, that have a contract requiring the performance of a service but excluding purchases of goods;
-  Businesses receiving assistance relating to economic development in the form of grants, subsidies, loan guarantees or industrial revenue bonds in excess of twenty-five thousand dollars (\$25,000) for the duration of the City grant or subsidy;
-  Businesses required to have a business license or registration from the City; and
-  Nonprofit organizations, except for those whose primary source of funds is from Medicaid waivers.
-  For workers who customarily receive more than one hundred dollars (\$100) per month in tips or commissions, any tips or commissions received and retained by a worker shall be counted as wages and credited towards satisfaction of the Living Wage provided that, for tipped workers, all tips received by such workers are retained by the workers, except that the pooling of tips among workers shall be permitted.

More Information, including the Living Wage Ordinance, is available at
<http://www.santafenm.gov>
(Click on Hot Topics/Living Wage)



City of Santa Fe Living Wage Ordinance

EFFECTIVO DESDE EL DÍA PRIMERO DE MARZO DE 2016
PARA TODOS LOS TRABAJADORES QUE LABOREN
DENTRO DE LOS LÍMITES DE LA CIUDAD DE SANTA FE
EL SALARIO MÍNIMO ESTABLECIDO QUE DEBERÁ SER
PAGADO ES DE

\$10.91
POR HORA

Salario Mínimo para la ciudad de Santa Fe

- La ciudad de Santa Fe establece salario mínimo por hora.
- Desde el Marzo el incremento de salario, corresponde con el aumento en el índice de precios al consumidor (IPC).
- Todos los empleadores requieren, por ley, tener una licencia o registro de la ciudad de Santa Fe, deben pagar al menos el salario ajustado a los empleados de todas las horas trabajadas dentro de los límites de la ciudad de Santa Fe.

¿Quién está obligado a pagar el salario?

- La ciudad a todos los trabajadores a tiempo completo permanentes contratados por la ciudad;
- Contratistas para la ciudad, tiene un contrato que requiere la prestación de un servicio, pero excluyendo las compras de mercancías;
- Empresas reciben asistencia en relación con el desarrollo económico en forma de becas, subsidios, garantías de préstamos o bonos industriales de ingresos superiores a 25 mil dólares (\$25,000) para la duración de la beca de ciudad o de subvención;
- Empresas requieren contar con la licencia o el registro de la ciudad; y
- Organizaciones sin fines de lucro, con excepción de aquellos cuya principal fuente de fondos es de exenciones de Medicaid.
- Para los trabajadores que habitualmente reciben más de cien dólares (\$100) por mes en consejos o comisiones, consejos o comisiones recibidas y retenida por un trabajador serán contados como salarios y acreditados hacia la satisfacción de los salario siempre que, para los trabajadores reciben propinas, todos los consejos recibidos por estos trabajadores son retenidos por los trabajadores, salvo que se permitirá la puesta en común de consejos entre los trabajadores.

Más información, incluyendo la ordenanza del salario, está disponible en
<http://www.santafenm.gov>
(haga clic en Hot Topics/Living Wage)

Attachment 5

Federal Forms

Form 1	Energy Conservation Requirements
Form 2	Lobbying (three pages)
Form 3	Federal Changes
Form 4	No Government Obligation to Third Parties
Form 5	Program Fraud and False or Fraudulent Statements (2 pages)
Form 6	Termination (5 pages)
Form 7	Government-Wide Debarment and Suspension (Non-procurement) (2 pages)
Form 8	Privacy Act
Form 9	Civil Rights Requirements (2 pages)
Form 10	Disadvantaged Business Enterprise (DBE) (2 pages)
Form 11	Incorporation of Federal Transit Administration (FTA) Terms

6. ENERGY CONSERVATION REQUIREMENTS
42 U.S.C. 6321 et seq.
49 CFR Part 18

Applicability to Contracts

The Energy Conservation requirements are applicable to all contracts.

Flow Down

The Energy Conservation requirements extend to all third party contractors and their contracts at every tier and subrecipients and their subagreements at every tier.

Model Clause/Language

No specific clause is recommended in the regulations because the Energy Conservation requirements are so dependent on the state energy conservation plan. The following language has been developed by FTA:

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 Energy Policy and Conservation Act.

_____ Signature of Contractor's Authorized Official

_____ Name and Title of Contractor's Authorized Official

_____ Date

10. LOBBYING
31 U.S.C. 1352
49 CFR Part 19
49 CFR Part 20

Applicability to Contracts

The Lobbying requirements apply to Construction/Architectural and Engineering/Acquisition of Rolling Stock/Professional Service Contract/Operational Service Contract/Turnkey contracts.

Flow Down

The Lobbying requirements mandate the maximum flow down, pursuant to Byrd Anti-Lobbying Amendment, 31 U.S.C. § 1352(b)(5) and 49 C.F.R. Part 19, Appendix A, Section 7.

Mandatory Clause/Language

Clause and specific language therein are mandated by 49 CFR Part 19, Appendix A.

Modifications have been made to the Clause pursuant to Section 10 of the Lobbying Disclosure Act of 1995, P.L. 104-65 [to be codified at 2 U.S.C. § 1601, *et seq.*]

- Lobbying Certification and Disclosure of Lobbying Activities for third party contractors are mandated by 31 U.S.C. 1352(b)(5), as amended by Section 10 of the Lobbying Disclosure Act of 1995, and DOT implementing regulation, "New Restrictions on Lobbying," at 49 CFR § 20.110(d)

- Language in Lobbying Certification is mandated by 49 CFR Part 19, Appendix A, Section 7, which provides that contractors file the certification required by 49 CFR Part 20, Appendix A.

Modifications have been made to the Lobbying Certification pursuant to Section 10 of the Lobbying Disclosure Act of 1995.

- Use of "Disclosure of Lobbying Activities," Standard Form-LLL set forth in Appendix B of 49 CFR Part 20, as amended by "Government wide Guidance For New Restrictions on Lobbying," 61 Fed. Reg. 1413 (1/19/96) is mandated by 49 CFR Part 20, Appendix A.

Byrd Anti-Lobbying Amendment, 31 U.S.C. 1352, as amended by the Lobbying Disclosure Act of 1995, P.L. 104-65 [to be codified at 2 U.S.C. § 1601, *et seq.*] - Contractors who apply or bid for an award of \$100,000 or more shall file the certification required by 49 CFR part 20, "New Restrictions on Lobbying." Each tier certifies to the tier above that it will not and has not used Federal appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee of any agency, a member of Congress, officer or employee of Congress, or an employee of a member of Congress in connection with obtaining any Federal contract, grant or any other award covered by 31 U.S.C. 1352. Each tier shall also disclose the name of any

10. LOBBYING

Page 2

registrant under the Lobbying Disclosure Act of 1995 who has made lobbying contacts on its behalf with non-Federal funds with respect to that Federal contract, grant or award covered by 31 U.S.C. 1352. Such disclosures are forwarded from tier to tier up to the City of Santa Fe.

APPENDIX A, 49 CFR PART 20--CERTIFICATION REGARDING LOBBYING

Certification for Contracts, Grants, Loans, and Cooperative Agreements

(To be submitted with each bid or offer exceeding \$100,000)

The undersigned [Contractor] certifies, to the best of his or her knowledge and belief, that:

(1) No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of an agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.

(2) If any funds other than Federal appropriated funds have been paid or will be paid to any person for making lobbying contacts to an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form--LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions [as amended by "Government wide Guidance for New Restrictions on Lobbying," 61 Fed. Reg. 1413 (1/19/96). Note: Language in paragraph (2) herein has been modified in accordance with Section 10 of the Lobbying Disclosure Act of 1995 (P.L. 104-65, to be codified at 2 U.S.C. 1601, *et seq.*)]

(3) The undersigned shall require that the language of this certification be included in the award documents for all subawards at all tiers (including subcontracts, subgrants, and contracts under grants, loans, and cooperative agreements) and that all subrecipients shall certify and disclose accordingly.

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

10. LOBBYING

Page 3

[Note: Pursuant to 31 U.S.C. § 1352(c)(1)-(2)(A), any person who makes a prohibited expenditure or fails to file or amend a required certification or disclosure form shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such expenditure or failure.]

The Contractor, _____, certifies or affirms the truthfulness and accuracy of each statement of its certification and disclosure, if any. In addition, the Contractor understands and agrees that the provisions of 31 U.S.C. A 3801, *et seq.*, apply to this certification and disclosure, if any.

_____ Signature of Contractor's Authorized Official

_____ Name and Title of Contractor's Authorized Official

_____ Date

12. FEDERAL CHANGES
49 CFR Part 18

Applicability to Contracts

The Federal Changes requirement applies to all contracts.

Flow Down

The Federal Changes requirement flows down appropriately to each applicable changed requirement.

Model Clause/Language

No specific language is mandated. The following language has been developed by FTA.

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

_____ Signature of Contractor's Authorized Official

_____ Name and Title of Contractor's Authorized Official

_____ Date

19. NO GOVERNMENT OBLIGATION TO THIRD PARTIES

Applicability to Contracts

Applicable to all contracts.

Flow Down

Not required by statute or regulation for either primary contractors or subcontractors, this concept should flow down to all levels to clarify, to all parties to the contract, that the Federal Government does not have contractual liability to third parties, absent specific written consent.

Model Clause/Language

While no specific language is required, FTA has developed the following language.

No Obligation by the Federal Government.

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

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

_____ Signature of Contractor's Authorized Official

_____ Name and Title of Contractor's Authorized Official

_____ Date

**20. PROGRAM FRAUD AND FALSE OR FRAUDULENT STATEMENTS
AND RELATED ACTS**
31 U.S.C. 3801 et seq.
49 CFR Part 31 18 U.S.C. 1001
49 U.S.C. 5307

Applicability to Contracts

These requirements are applicable to all contracts.

Flow Down

These requirements flow down to contractors and subcontractors who make, present, or submit covered claims and statements.

Model Clause/Language

These requirements have no specified language, so FTA proffers the following language.

Program Fraud and False or Fraudulent Statements or Related Acts.

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

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

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

**20. PROGRAM FRAUD AND FALSE OR FRAUDULENT STATEMENTS
AND RELATED ACTS**

Page 2

_____ Signature of Contractor's Authorized Official

_____ Name and Title of Contractor's Authorized Official

_____ Date

21. TERMINATION
49 U.S.C. Part 18
FTA Circular 4220.1E

Applicability to Contracts

All contracts (with the exception of contracts with nonprofit organizations and institutions of higher education,) in excess of \$10,000 shall contain suitable provisions for termination by the grantee including the manner by which it will be effected and the basis for settlement. (For contracts with nonprofit organizations and institutions of higher education the threshold is \$100,000.) In addition, such contracts shall describe conditions under which the contract may be terminated for default as well as conditions where the contract may be terminated because of circumstances beyond the control of the contractor.

Flow Down

The termination requirements flow down to all contracts in excess of \$10,000, with the exception of contracts with nonprofit organizations and institutions of higher learning.

Model Clause/Language

FTA does not prescribe the form or content of such clauses. The following are suggestions of clauses to be used in different types of contracts:

a. Termination for Convenience (General Provision) The City of Santa Fe may terminate this contract, in whole or in part, at any time by written notice to the Contractor when it is in the Government's best interest. The Contractor shall be paid its costs, including contract close-out costs, and profit on work performed up to the time of termination. The Contractor shall promptly submit its termination claim to City of Santa Fe to be paid the Contractor. If the Contractor has any property in its possession belonging to the City of Santa Fe, the Contractor will account for the same, and dispose of it in the manner the City of Santa Fe directs.

b. Termination for Default [Breach or Cause] (General Provision) If the Contractor does not deliver supplies in accordance with the contract delivery schedule, or, if the contract is for services, the Contractor fails to perform in the manner called for in the contract, or if the Contractor fails to comply with any other provisions of the contract, the City of Santa Fe may terminate this contract for default. Termination shall be effected by serving a notice of termination on the contractor setting forth the manner in which the Contractor is in default. The contractor will only be paid the contract price for supplies delivered and accepted, or services performed in accordance with the manner of performance set forth in the contract.

If it is later determined by the City of Santa Fe that the Contractor had an excusable reason for not performing, such as a strike, fire, or flood, events which are not the fault of or are beyond the control of the Contractor, the City of Santa Fe, after setting up a new delivery of performance schedule, may allow the Contractor to continue work, or treat the termination as a termination for convenience.

21. TERMINATION

Page 2

c. Opportunity to Cure (General Provision) The City of Santa Fe in its sole discretion may, in the case of a termination for breach or default, allow the Contractor [an appropriately short period of time] in which to cure the defect. In such case, the notice of termination will state the time period in which cure is permitted and other appropriate conditions

If Contractor fails to remedy to City of Santa Fe's satisfaction the breach or default of any of the terms, covenants, or conditions of this Contract within [ten (10) days] after receipt by Contractor of written notice from City of Santa Fe setting forth the nature of said breach or default, City of Santa Fe shall have the right to terminate the Contract without any further obligation to Contractor. Any such termination for default shall not in any way operate to preclude City of Santa Fe from also pursuing all available remedies against Contractor and its sureties for said breach or default.

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

e. Termination for Convenience (Professional or Transit Service Contracts) The City of Santa Fe, by written notice, may terminate this contract, in whole or in part, when it is in the Government's interest. If this contract is terminated, the City of Santa Fe shall be liable only for payment under the payment provisions of this contract for services rendered before the effective date of termination.

f. Termination for Default (Supplies and Service) If the Contractor fails to deliver supplies or to perform the services within the time specified in this contract or any extension or if the Contractor fails to comply with any other provisions of this contract, the City of Santa Fe may terminate this contract for default. The City of Santa Fe shall terminate by delivering to the Contractor a Notice of Termination specifying the nature of the default. The Contractor will only be paid the contract price for supplies delivered and accepted, or services performed in accordance with the manner or performance set forth in this contract.

If, after termination for failure to fulfill contract obligations, it is determined that the Contractor was not in default, the rights and obligations of the parties shall be the same as if the termination had been issued for the convenience of the City of Santa Fe.

g. Termination for Default (Transportation Services) If the Contractor fails to pick up the commodities or to perform the services, including delivery services, within the time specified in this contract or any extension or if the Contractor fails to comply with any other provisions of this contract, the City of Santa Fe may terminate this contract for default. The City of Santa Fe shall terminate by delivering to the Contractor a Notice of

21. TERMINATION

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Termination specifying the nature of default. The Contractor will only be paid the contract price for services performed in accordance with the manner of performance set forth in this contract.

If this contract is terminated while the Contractor has possession of City of Santa Fe goods, the Contractor shall, upon direction of the City of Santa Fe, protect and preserve the goods until surrendered to the City of Santa Fe or its agent. The Contractor and City of Santa Fe shall agree on payment for the preservation and protection of goods. Failure to agree on an amount will be resolved under the Dispute clause.

If, after termination for failure to fulfill contract obligations, it is determined that the Contractor was not in default, the rights and obligations of the parties shall be the same as if the termination had been issued for the convenience of the City of Santa Fe.

h. Termination for Default (Construction) If the Contractor refuses or fails to prosecute the work or any separable part, with the diligence that will insure its completion within the time specified in this contract or any extension or fails to complete the work within this time, or if the Contractor fails to comply with any other provisions of this contract, the City of Santa Fe may terminate this contract for default. The City of Santa Fe shall terminate by delivering to the Contractor a Notice of Termination specifying the nature of the default. In this event, the City of Santa Fe may take over the work and complete it by contract or otherwise, and may take possession of and use any materials, appliances, and plant on the work site necessary for completing the work. The Contractor and its sureties shall be liable for any damage to the City of Santa Fe resulting from the Contractor's refusal or failure to complete the work within specified time, whether or not the Contractor's right to proceed with the work is terminated. This liability includes any increased costs incurred by the City of Santa Fe in completing the work.

The Contractor's right to proceed shall not be terminated nor the Contractor charged with damages under this clause if-

1. The delay in completing the work arises from unforeseeable causes beyond the control and without the fault or negligence of the Contractor. Examples of such causes include: acts of God, acts of the City of Santa Fe, acts of another Contractor in the performance of a contract with the City of Santa Fe, epidemics, quarantine restrictions, strikes, freight embargoes; and
2. The contractor, within [10] days from the beginning of any delay, notifies the City of Santa Fe in writing of the causes of delay. If in the judgment of the City of Santa Fe, the delay is excusable, the time for completing the work shall be extended. The judgment of the City of Santa Fe shall be final and conclusive on the parties, but subject to appeal under the Disputes clauses.

21. TERMINATION

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If, after termination of the Contractor's right to proceed, it is determined that the Contractor was not in default, or that the delay was excusable, the rights and obligations of the parties will be the same as if the termination had been issued for the convenience of the City of Santa Fe.

i. Termination for Convenience or Default (Architect and Engineering) The City of Santa Fe may terminate this contract in whole or in part, for the City of Santa Fe's convenience or because of the failure of the Contractor to fulfill the contract obligations. The City of Santa Fe shall terminate by delivering to the Contractor a Notice of Termination specifying the nature, extent, and effective date of the termination. Upon receipt of the notice, the Contractor shall (1) immediately discontinue all services affected (unless the notice directs otherwise), and (2) deliver to the Contracting Officer all data, drawings, specifications, reports, estimates, summaries, and other information and materials accumulated in performing this contract, whether completed or in process.

If the termination is for the convenience of the City of Santa Fe, the Contracting Officer shall make an equitable adjustment in the contract price but shall allow no anticipated profit on unperformed services.

If the termination is for failure of the Contractor to fulfill the contract obligations, the City of Santa Fe may complete the work by contract or otherwise and the Contractor shall be liable for any additional cost incurred by the City of Santa Fe.

If, after termination for failure to fulfill contract obligations, it is determined that the Contractor was not in default, the rights and obligations of the parties shall be the same as if the termination had been issued for the convenience of the City of Santa Fe.

j. Termination for Convenience or Default (Cost-Type Contracts) The City of Santa Fe may terminate this contract, or any portion of it, by serving a notice of termination on the Contractor. The notice shall state whether the termination is for convenience of the City of Santa Fe or for the default of the Contractor. If the termination is for default, the notice shall state the manner in which the contractor has failed to perform the requirements of the contract. The Contractor shall account for any property in its possession paid for from funds received from the City of Santa Fe, or property supplied to the Contractor by the City of Santa Fe. If the termination is for default, the City of Santa Fe may fix the fee, if the contract provides for a fee, to be paid the contractor in proportion to the value, if any, of work performed up to the time of termination. The Contractor shall promptly submit its termination claim to the City of Santa Fe and the parties shall negotiate the termination settlement to be paid the Contractor.

If the termination is for the convenience of the City of Santa Fe, the Contractor shall be paid its contract close-out costs, and a fee, if the contract provided for payment of a fee, in proportion to the work performed up to the time of termination.

21. TERMINATION

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If, after serving a notice of termination for default, the City of Santa Fe determines that the Contractor has an excusable reason for not performing, such as strike, fire, flood, events which are not the fault of and are beyond the control of the contractor, the City of Santa Fe, after setting up a new work schedule, may allow the Contractor to continue work, or treat the termination as a termination for convenience.

_____ Signature of Contractor's Authorized Official

_____ Name and Title of Contractor's Authorized Official

_____ Date

FORM 7

22. GOVERNMENT-WIDE DEBARMENT AND SUSPENSION (NONPROCUREMENT)

Background and Applicability

In conjunction with the Office of Management and Budget and other affected Federal agencies, DOT published an update to 49 CFR Part 29 on November 26, 2003. This government-wide regulation implements Executive Order 12549, *Debarment and Suspension*, Executive Order 12689, *Debarment and Suspension*, and 31 U.S.C. 6101 note (Section 2455, Public Law 103-355, 108 Stat. 3327).

The provisions of Part 29 apply to all grantee contracts and subcontracts at any level expected to equal or exceed \$25,000 as well as any contract or subcontract (at any level) for Federally required auditing services. 49 CFR 29.220(b). This represents a change from prior practice in that the dollar threshold for application of these rules has been lowered from \$100,000 to \$25,000. These are contracts and subcontracts referred to in the regulation as “covered transactions.”

Grantees, contractors, and subcontractors (at any level) that enter into covered transactions are required to verify that the entity (as well as its principals and affiliates) they propose to contract or subcontract with is not excluded or disqualified. They do this by (a) Checking the Excluded Parties List System, (b) Collecting a certification from that person, or (c) Adding a clause or condition to the contract or subcontract. This represents a change from prior practice in that certification is still acceptable but is no longer required. 49 CFR 29.300.

Grantees, contractors, and subcontractors who enter into covered transactions also must require the entities they contract with to comply with 49 CFR 29, subpart C and include this requirement in their own subsequent covered transactions (i.e., the requirement flows down to subcontracts at all levels).

Clause Language

The following clause language is suggested, not mandatory. It incorporates the optional method of verifying that contractors are not excluded or disqualified by certification.

Suspension and Debarment

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

The contractor is required to comply with 49 CFR 29, Subpart C and must include the requirement to comply with 49 CFR 29, Subpart C in any lower tier covered transaction it enters into.

By signing and submitting its bid or proposal, the bidder or proposer certifies as follows:

22. GOVERNMENT-WIDE DEBARMENT AND SUSPENSION (NONPROCUREMENT)

Page 2

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

_____ Signature of Contractor's Authorized Official

_____ Name and Title of Contractor's Authorized Official

_____ Date

23. PRIVACY ACT
5 U.S.C. 552

Applicability to Contracts

When a grantee maintains files on drug and alcohol enforcement activities for FTA, and those files are organized so that information could be retrieved by personal identifier, the Privacy Act requirements apply to all contracts.

Flow Down

The Federal Privacy Act requirements flow down to each third party contractor and their contracts at every tier.

Model Clause/Language

The text of the following clause has not been mandated by statute or specific regulation, but has been developed by FTA.

Contracts Involving Federal Privacy Act Requirements - The following requirements apply to the Contractor and its employees that administer any system of records on behalf of the Federal Government under any contract:

(1) The Contractor agrees to comply with, and assures the compliance of its employees with, the information restrictions and other applicable requirements of the Privacy Act of 1974,

5 U.S.C. § 552a. Among other things, the Contractor agrees to obtain the express consent of the Federal Government before the Contractor or its employees operate a system of records on behalf of the Federal Government. The Contractor understands that the requirements of the Privacy Act, including the civil and criminal penalties for violation of that Act, apply to those individuals involved, and that failure to comply with the terms of the Privacy Act may result in termination of the underlying contract.

(2) The Contractor also agrees to include these requirements in each subcontract to administer any system of records on behalf of the Federal Government financed in whole or in part with Federal assistance provided by FTA.

_____ Signature of Contractor's Authorized Official

_____ Name and Title of Contractor's Authorized Official

_____ Date

FORM 9

24. CIVIL RIGHTS REQUIREMENTS

**29 U.S.C. § 623, 42 U.S.C. § 2000
42 U.S.C. § 6102, 42 U.S.C. § 12112
42 U.S.C. § 12132, 49 U.S.C. § 5332
29 CFR Part 1630, 41 CFR Parts 60 et seq.**

Applicability to Contracts

The Civil Rights Requirements apply to all contracts.

Flow Down

The Civil Rights requirements flow down to all third party contractors and their contracts at every tier.

Model Clause/Language

The following clause was predicated on language contained at 49 CFR Part 19, Appendix A, but FTA has shortened the lengthy text.

Civil Rights - The following requirements apply to the underlying 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 the underlying 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," 41 C.F.R. Parts 60 et seq., (which implement Executive Order No. 11246, "Equal Employment Opportunity," as amended by Executive Order No. 11375, "Amending Executive Order 11246 Relating to Equal Employment Opportunity," 42 U.S.C. § 2000e note), and with any applicable Federal statutes, executive orders, regulations, and Federal policies that may in the future affect construction activities undertaken in the course of the Project. The Contractor agrees to take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, color, creed, national origin, sex, or age. Such action shall include, but not be limited to, the following: employment, upgrading, demotion or transfer, recruitment or recruitment advertising, layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. In addition, the

24. CIVIL RIGHTS REQUIREMENTS

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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) The Contractor also agrees to include these requirements in each subcontract financed in whole or in part with Federal assistance provided by FTA, modified only if necessary to identify the affected parties.

_____ Signature of Contractor's Authorized Official

_____ Name and Title of Contractor's Authorized Official

_____ Date

28. DISADVANTAGED BUSINESS ENTERPRISE (DBE)
49 CFR Part 26

Background and Applicability

The newest version on the Department of Transportation's Disadvantaged Business Enterprise (DBE) program became effective July 16, 2003. The rule provides guidance to grantees on the use of overall and contract goals, requirement to include DBE provisions in subcontracts, evaluating DBE participation where specific contract goals have been set, reporting requirements, and replacement of DBE subcontractors. Additionally, the DBE program dictates payment terms and conditions (including limitations on retainage) applicable to all subcontractors regardless of whether they are DBE firms or not.

The DBE program applies to all DOT-assisted contracting activities. A formal clause such as that below must be included in all contracts above the micro-purchase level. The requirements of clause subsection b flow down to subcontracts.

A substantial change to the payment provisions in this newest version of Part 26 concerns retainage (see section 26.29). Grantee choices concerning retainage should be reflected in the language choices in clause subsection d.

Clause Language

The following clause language is suggested, not mandatory. It incorporates the payment terms and conditions applicable to all subcontractors based in Part 26 as well as those related only to DBE subcontractors. The suggested language allows for the options available to grantees concerning retainage, specific contract goals, and evaluation of DBE subcontracting participation when specific contract goals have been established.

Disadvantaged Business Enterprises

a. This contract is subject to the requirements of Title 49, Code of Federal Regulations, Part 26, *Participation by Disadvantaged Business Enterprises in Department of Transportation Financial Assistance Programs*. The national goal for participation of Disadvantaged Business Enterprises (DBE) is 10%. The agency's overall goal for DBE participation is 7.49%. A separate contract goal has not been established for this procurement.

b. The contractor 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 this DOT-assisted contract. 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 City of Santa Fe deems appropriate. Each subcontract the contractor signs with a subcontractor must include the assurance in this paragraph (see 49 CFR 26.13(b)).

28. DISADVANTAGED BUSINESS ENTERPRISE (DBE)

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c. The contractor is required to pay its subcontractors performing work related to this contract for satisfactory performance of that work no later than 30 days after the contractor's receipt of payment for that work from the City of Santa Fe. In addition, the contractor may not hold retainage from its subcontractors.

d. The contractor must promptly notify the City of Santa Fe whenever a DBE subcontractor performing work related to this contract is terminated or fails to complete its work, and must make good faith efforts to engage another DBE subcontractor to perform at least the same amount of work. The contractor may not terminate any DBE subcontractor and perform that work through its own forces or those of an affiliate without prior written consent of the City of Santa Fe.

_____ Signature of Contractor's Authorized Official

_____ Name and Title of Contractor's Authorized Official

_____ Date

30. INCORPORATION OF FEDERAL TRANSIT ADMINISTRATION (FTA) TERMS
FTA Circular 4220.1E

Applicability to Contracts

The incorporation of FTA terms applies to all contracts.

Flow Down

The incorporation of FTA terms has unlimited flow down.

Model Clause/Language

FTA has developed the following incorporation of terms language:

Incorporation of Federal Transit Administration (FTA) Terms - The preceding provisions include, in part, certain Standard Terms and Conditions required by DOT, whether or not expressly set forth in the preceding contract provisions. All contractual provisions required by DOT, as set forth in FTA Circular 4220.1E, are hereby incorporated by reference. Anything to the contrary herein notwithstanding, all FTA mandated terms shall be deemed to control in the event of a conflict with other provisions contained in this Agreement. The Contractor shall not perform any act, fail to perform any act, or refuse to comply with any City of Santa Fe requests which would cause City of Santa Fe to be in violation of the FTA terms and conditions.

_____ Signature of Contractor's Authorized Official

_____ Name and Title of Contractor's Authorized Official

_____ Date