



**ACTION SHEET  
CITY COUNCIL COMMITTEE MEETING OF 06/11/14  
ITEM FROM FINANCE COMMITTEE MEETING OF 06/02/14**

**ISSUE:**

16. Request for Approval of **Amendment No. 1** to Memorandum of Agreement and Grant Award – Bus and Bus Facilities Program for Santa Fe Trails; New Mexico Department of Transportation, Transit & Rail Division. (Ken Smithson)

A. Request for Approval of Budget Increase – Grant Fund

**FINANCE COMMITTEE ACTION: APPROVED AS CONSENT ITEM**

Requested approval of amendment no. 1 to memorandum of agreement and grant award for bus and bus facilities program for Santa Fe Trails with New Mexico Department of Transportation, Transit & Rail Division in the amount of \$318,082 and a local match of \$79,520.50 for a total amount of \$397,602.50.

**SPECIAL CONDITIONS OR AMENDMENTS**

**STAFF FOLLOW-UP:**

<b>VOTE</b>	<b>FOR</b>	<b>AGAINST</b>	<b>ABSTAIN</b>
COUNCILOR TRUJILLO	X		
COUNCILOR RIVERA	X		
COUNCILOR LINDELL	X		
COUNCILOR MAESTAS	Excused		
CHAIRPERSON DOMINGUEZ			

3-17/14/FCMissue

**ACTION SHEET  
ITEM FROM THE  
PUBLIC WORKS/CIP AND LAND USE COMMITTEE MEETING  
OF  
TUESDAY, MAY 27, 2014**

**ITEM 8**

REQUEST OF APPROVAL OF AMENDMENT NO. 1 TO MEMORANDUM OF AGREEMENT AND GRANT AWARD FOR BUS AND BUS FACILITIES PROGRAM FOR SANTA FE TRAILS WITH THE NEW MEXICO DEPARTMENT OF TRANSPORTATION; TRANSIT & RAIL DIVISION

- REQUEST FOR APPROVAL OF A BUDGET INCREASE – GRANT FUND (KEN SMITHSON)

**PUBLIC WORKS COMMITTEE ACTION:** Approved to consent

**SPECIAL CONDITIONS OR AMENDMENTS:**

**STAFF FOLLOW UP:**

VOTE	FOR	AGAINST	ABSTAIN
CHAIRPERSON TRUJILLO			
COUNCILOR BUSHEE	X		
COUNCILOR DIMAS	X		
COUNCILOR DOMINGUEZ	X		
COUNCILOR RIVERA	X		

# City of Santa Fe, New Mexico

## memo

DATE: May 19, 2014

TO: Public Works Committee

THRU: Jon Bulthuis, Transit Division Director

FROM: Ken Smithson, Director of Operations and Maintenance *KS*

SUBJECT: Request for Approval of Amendment #1 to Memorandum of Agreement and Grant Award - Bus and Bus Facilities Program for Santa Fe Trails; New Mexico Department of Transportation, Transit & Rail Division

1) Request for Approval of Budget Increase – Grant Fund

### ITEM

On November 13, 2013, the Governing Body approved a Memorandum of Agreement with the New Mexico Department of Transportation (NMDOT) for \$162,055 in Federal Transit Administration (FTA) Section 5339 funds, for Phase II of the project to upgrade existing Santa Fe Trails bus stops with new shelters and signage. This amount represents the Federal Fiscal Year (FFY) 2013 appropriation to the City of Santa Fe.

The FFY 2014 appropriation to the City of Santa Fe in the amount of \$156,027 is now available from FTA through NMDOT. Amendment #1 to the original agreement combines the two years of funding, for a total of \$318,082, which represents 80 percent of the total project cost. Local share in the amount of \$79,520 will be provided by the City of Santa Fe from the ¼ cent gross receipts tax dedicated to transit, for a total project cost of \$397,602.

### ACTION REQUESTED

Recommend to the Finance Committee to approve Amendment #1 to the Memorandum of Agreement with NMDOT, and corresponding budget increase totaling \$397,602.

### ATTACHMENTS

First Amendment  
Original Agreement  
Summary of Contracts, Agreements & Amendments

FISCAL YEAR 2014 (FY 14)  
FIRST AMENDMENT TO MEMORANDUM OF AGREEMENT  
BETWEEN  
THE NEW MEXICO DEPARTMENT OF TRANSPORTATION  
AND  
CITY OF SANTA FE

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This First Amendment is to the Memorandum of Agreement, between the STATE OF NEW MEXICO, acting through its DEPARTMENT OF TRANSPORTATION, ("Department") and the CITY OF SANTA FE ("Subgrantee"). This first amendment is effective as of the date of the last party to sign it on the signature page below.

**Recitals**

Whereas, the Department and the Subgrantee entered into a Memorandum of Agreement designated as Contract No. M01292, on December 03, 2013; and

Whereas, Section 45 allows the parties to alter the Agreement by written consent of both parties hereto; and

Whereas, additional 49 USC Section 5339 funds are available to assist the Subgrantee in the replacement, rehabilitation and purchase of buses and transit-related equipment and to construct bus-related facilities; and,

Whereas, the Department and Subgrantee agree to increase the amount of federal funding by \$156,027.00

Now, Therefore, the parties agree as follows:

1. Replace original Section 2. Cost of Program with the following:

**2. Cost of Program.**

The Department shall provide partial funding to the Subgrantee to cover capital expenses of the Program in the amount not to exceed \$318,082.00 as described below.

**Category/Match Ratio FY 14**

	TOTAL	FEDERAL	LOCAL
TOTAL CAPITAL (80/20)	\$397,602.50	\$318,082.00	\$79,520.50

This program is funded with grants provided by the FTA, Catalog of Federal Domestic Assistance number 20.526. The Department's share of Program expenses shall be obtained from the federal government. State funds will not be earmarked or disbursed to fund the Program. The Department shall not be responsible for any other costs incurred by the Subgrantee. The Subgrantee shall take all actions necessary to fund its share of the Program..

All other obligations set forth in the Original Agreement shall remain in full force and effect unless expressly amended or modified by this First Amendment.

**In witness whereof**, each party is signing this Agreement on the date stated below that party's signature.

**New Mexico Department of  
Transportation**

**CITY OF SANTA FE**

\_\_\_\_\_  
Tom Church, Cabinet Secretary

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Name/Title (please print)

\_\_\_\_\_  
Date

\_\_\_\_\_  
Date

Approved as to Form and Legal Sufficiency by the Department's Office of General Counsel.

*Cynthia A. Christ*  
\_\_\_\_\_  
Cynthia Christ, Assistant General Counsel

*5-14-14*  
\_\_\_\_\_  
Date

CITY OF SANTA FE:

ATTEST:

\_\_\_\_\_  
YOLANDA Y. VIGIL, CITY CLERK

APPROVED AS TO FORM:

*Judith Arner for*  
\_\_\_\_\_  
KELLEY A. BRENNAN,  
INTERIM CITY ATTORNEY      5/21/14

APPROVED:

\_\_\_\_\_  
MARCOS A. TAPIA, FINANCE DIRECTOR

Business Unit/Line Item:

\_\_\_\_\_

Copy to Martha  
12-9-13

ITEM # 13-1135

Contract No: 1101292  
Vendor No. 54360

FISCAL YEAR 2014(FY 14)  
MEMORANDUM OF AGREEMENT  
BETWEEN  
THE NEW MEXICO DEPARTMENT OF TRANSPORTATION  
AND  
CITY OF SANTA FE

This Agreement is between the STATE OF NEW MEXICO, acting through its DEPARTMENT OF TRANSPORTATION, Transit and Rail Division, (Department), and the CITY OF SANTA FE, (Subgrantee). This Agreement is effective as of the date of the last party to sign it on the signature page below.

Whereas, 49 U.S.C. §5339 provides federal capital assistance for public transit agencies in small urbanized areas to replace, rehabilitate and purchase buses and transit-related equipment and to construct bus-related facilities; and,

Whereas, the State of New Mexico participates in the 49 U.S.C. §5339 Bus and Bus Facilities Program (Program); and,

Whereas, the Governor of the State of New Mexico designated the Department to administer the Program funds; and,

Whereas, the Designated Recipient must apply to the Federal Transit Administration (FTA) for Program funds on behalf of the small urban public transit agencies; and,

Whereas, the Subgrantee is a current provider of urbanized public transit service in the State of New Mexico with a currently executed FTA Certifications and Assurances; and,

Whereas, the Department applied for financial assistance available under the Program, which was approved by the Department and (FTA).

Now, therefore, pursuant to Section 67-3-28 NMSA 1978, the parties agree as follows:

1. Scope of Program.

A. Use of Capital Equipment

The Subgrantee agrees that any capital equipment purchased or facilities constructed under this Agreement, shall be used to provide a wide range of public transportation or multimodal alternatives services. If the equipment and/or facilities are not used in this manner or withdrawn from service, the Subgrantee shall notify the Department verbally and in writing, either hand-delivered or send by U.S. Certified Mail, five (5) working days of such event, and shall return the Program equipment and facilities in accordance with Section 15. Use of Program Equipment and Facilities.

2. Cost of Program.

The Department shall provide partial funding to the Subgrantee to cover capital expenses of the Program in an amount not to exceed \$162,055.00 as described below:

Category/Match Ratio FY 14

	TOTAL	FEDERAL	LOCAL
TOTAL CAPITAL (80/20)	\$202,569.00	\$162,055.00	\$40,514.00



This program is funded with grants provided by the FTA, Catalog of Federal Domestic Assistance number 20.526. The Department's share of Program expenses shall be obtained from the federal government. State funds will not be earmarked or disbursed to fund the Program. The Department shall not be responsible for any other costs incurred by the Subgrantee. The Subgrantee shall take all actions necessary to fund its share of the Program.

**3. Method of Payment.**

The Department shall reimburse the Subgrantee for the Department's share of the Program costs upon receipt of invoices, with sufficient supporting documentation as determined and/or approved by the Department, indicating that expenses have been paid. All expenses must be actual and listed on the invoice as charged. Rounding up or down, other than the total, is not permitted. Only those expenses or percentage thereof, properly documented and deemed eligible, shall be reimbursed. The Department may withhold payment of invoices that are incorrect and/or incomplete.

**4. Eligible Costs.**

Eligible Costs are those costs attributable to and allowed under the Program and the provisions of:

- A. Office of Management and Budget (OMB) Circular A-87, relocated to 2 CFR 225, "Cost Principles Applicable to Grants and Contracts with State and Local Governments."
- B. OMB Circular A-102, "Uniform Administrative Requirements for Grants-in-Aid to State and Local Governments."
- C. OMB Circular A-102, Attachment O, "Standards Governing State and Local Grantee Procurement."
- D. OMB Circular A-133, "Audit Requirements", Audits of States, Local Governments and Non-Profit Organizations."
- E. Executive Order 12372 "Intergovernmental Review of Federal Programs."

Capital costs incurred by the Subgrantee prior to the effective date of this Agreement or after termination are not eligible for reimbursement. However, capital cost incurred retroactive when the Agreement is signed and the federal funds obligation date are eligible for reimbursement.

Subgrantee shall have the twenty percent (20%) matching capital funds encumbered at the time the vehicle order is placed with the vendor and a copy of the Purchase Order must to be sent to the Department under this active Agreement. The Subgrantee's twenty percent (20%) match for capital expenses shall be provided in cash from sources other than federal funds.

**5. State General Appropriation Funds Not Obligated.**

Nothing in this Agreement shall be construed as obligating state general appropriation funds for payment of any debt or liability arising under this Agreement. The parties expressly acknowledge that all payments made under this Agreement are from federal funds appropriated for these purposes.

**6. Term.**

This Agreement becomes effective upon signature of all parties. The effective date is the date when the last party signed the Agreement on the signature page below. Only eligible costs incurred under this Agreement from October 1, 2013 to September 30, 2015 may be reimbursed. This Agreement shall expire September 30, 2015, or when Federal funding is expended, whichever occurs first. Federal funds not expended by September 30, 2015, shall revert to the Department.

**7. Termination for Cause.**

The Department has the option to terminate this Agreement if the Subgrantee fails to comply with any provision. A written notice of termination shall be given at least thirty (30) days prior to the intended date of termination and shall identify all of the Subgrantees breaches on which the termination is based.

The Department may provide the Subgrantee a reasonable opportunity to correct the breach. If within ten (10) days after receipt of a written notice of termination, the Subgrantee has not corrected the breach or, in the case of a breach which cannot be corrected in ten (10) days, the Subgrantee has not begun and proceeded in good faith to correct the breach, the Department may declare the Subgrantee in default and terminate the Agreement. The Department shall retain any and all other remedies available to it under the law. Upon termination of this Agreement, the Subgrantee shall return the Program equipment as specified in *Section 1. Scope of the Program.*

**8. Appropriations.**

The terms of this Agreement are contingent upon sufficient appropriations and authorizations being made by the Congress of the United States. If sufficient appropriations and authorizations are not made, this Agreement shall terminate upon written notice from the Department to the Subgrantee. The Department's decision as to whether sufficient appropriations are available shall be accepted by the Subgrantee and shall be final.

**9. Termination Management, Allowable Costs.**

In the event of termination, neither party may nullify obligations already incurred for performance or failure to perform. The Subgrantee shall be paid for all the allowable costs incurred prior to the date of termination, subject to audit verification by the Department or its duly authorized representative. The Subgrantee shall not be paid for any costs incurred that are inconsistent with, or contrary to, the terms and conditions of this Agreement.

**10. Breach and dispute resolution.**

Disputes which cannot be resolved informally by the parties shall be decided in writing by a representative of the Department's Transit and Rail Division. The Subgrantee has ten (10) days from receipt of the decision to file a written appeal with the Transit and Rail Division. Upon appeal, the Subgrantee will be afforded an opportunity to be heard and to offer evidence in support of its position. The decision of the Transit and Rail Division on appeal shall be binding.

**11. Procurement Requirements and Buy America.**

The Subgrantee shall purchase Program equipment pursuant to procedures established by the United States Department of Transportation (U.S. DOT), the FTA, applicable New Mexico State Law, and the standards set forth in: Third Party Contracting Guidance, FTA Circular 4220.1F; Americans with Disabilities Act of 1990, Pub. L. No. 101-336; and Pre-Award and Post-Delivery Audits of Rolling Stock Purchases, 49 C.F.R. Part 663.

The Subgrantee agrees to comply with 49 U.S.C. §5323(j) as amended by MAP-21 and FTA regulations, "Buy America Requirements," 49 C.F.R. Part 661 to the extent those regulations are consistent with MAP-21 provisions, and subsequent amendments to those regulations that may be promulgated.

Prior to awarding a bid award or execution of a contract for services or capital equipment in excess of \$2,500, the Subgrantee shall seek concurrence in writing from the Department.

**12. Rolling Stock.**

In acquiring rolling stock, the Subgrantee agrees as follows:

- A. **Method of Acquisition.** In compliance with 49 U.S.C. § 5325(f), the Recipient agrees that any third party contract award it makes for rolling stock will be based on initial capital costs, or on performance, standardization, life cycle costs, and other factors, or on a competitive procurement process.
- B. **Multi-year Options.** In accordance with 49 U.S.C. § 5325(e)(1), a Recipient procuring rolling stock financed with Federal assistance under 49 U.S.C. chapter 53 may not enter into a multiyear contract with options, exceeding five (5) years after the date of the original contract, to purchase additional rolling stock and replacement parts.
- C. **Pre-Award and Post-Delivery Audits.** The Recipient agrees to comply with the requirements of 49 U.S.C. § 5323(m) and FTA regulations, "Pre Award and Post Delivery Audits of Rolling Stock Purchases," 49 C.F.R. Part 663, and any amendments to those regulations that may be promulgated.
- D. **Bus Testing.** To the extent applicable, the Recipient agrees to comply with the requirements of 49 U.S.C. § 5318(e) and FTA regulations, "Bus Testing," 49 C.F.R. Part 665, and any amendments to those regulations that may be promulgated.

**13. Insurance.**

The Subgrantee shall, as appropriate, maintain satisfactory to the Department, liability, comprehensive, collision, and uninsured motorist insurance adequate to protect the Program equipment and facilities. The Department is to be named as an additional insured and a loss payee on Subgrantee's policy for each vehicle on which the Department has a lien and under a general liability policy. A certificate of insurance must be

provided to the Department and it shall state that coverage provided under the policy is primary over any other valid insurance. The Subgrantee shall provide the Department documentation of subsequent renewals and shall keep on file a copy of the insurance policy, which shall be accessible to the Department.

The Subgrantee shall require contractors hired to perform the services under this Agreement to have a commercial general liability insurance policy. The Department is to be named as an additional insured on the contractor's policy and a certificate of insurance must be provided to the Department and it shall state that coverage provided under the policy is primary over any other valid insurance.

The Subgrantee shall require contractors hired to perform services under this Agreement to indemnify, defend and hold harmless the State of New Mexico, the Department, its officers, agents and employees from and against all suits, actions or claims of any character brought because of any injury, including death or damages arising out of contractors' construction or maintenance activities pursuant to this Agreement, as memorialized herein and subject to any additional permit that may be required of the contractor to perform said activities.

**14. New Mexico Tort Claims Act.**

As between the Department and the Subgrantee, neither party shall be responsible for liability incurred as a result of the other party's acts or omissions in connection with this agreement. Any liability incurred 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. This paragraph is intended only to define the liabilities between the parties and it is not intended to modify, in any way, the parties' liabilities as governed by the common law of the New Mexico Tort Claims Act.

**15. Use of Program Equipment and Facilities.**

- A. A Program Vehicle Inventory must be completed for each for each vehicle that will be used in the Program. The Program Vehicle Inventory shall be returned with the signed Agreement.
- B. Each vehicle must contain a fire extinguisher, first aid kit (including a blood borne/biohazard kit), fluorescent triangles and/or safety flares, reflective vests for drivers, flashlights, and webcutters/seat belt cutters.
- C. The Program equipment and facilities shall be used to provide public transportation service within the described service area and in the manner described in *Section 1. Scope of Program*.
- D. Failure to use the equipment and facilities as described in *Section 1. Scope of Program* shall be considered a material breach of contract subject to the provisions of *Section 7. Termination for Cause*.
- E. The Subgrantee shall notify the Department immediately of vehicular accidents, thefts, or vandalism involving Program equipment and facilities. Failure to notify the Department shall be considered a material breach of contract subject to the provisions of *Section 7. Termination for Cause*.
- F. The Department may require that Program equipment purchased under FTA programs, on which liens are held, be returned to the Department. Such Program equipment shall be returned in good working condition within ten (10) working days or as stipulated by the Department. If the Subgrantee fails to return the equipment, the Department, as the recorded lien holder, shall have the right to immediately repossess the vehicle(s) by whatever means available to it under New Mexico law.
- G. Upon termination of the Agreement under *Section 7. Termination for Cause*, the Subgrantee shall not be eligible for reimbursement of any costs associated with the vehicle(s) purchase or be entitled to damages arising from Program operations, except that the Subgrantee shall be reimbursed for its pro-rata share of the Program equipment's depreciated value as determined by the Straight Line Depreciation method.
- H. The Subgrantee agrees that no modifications will be made to Program vehicle(s) with liens held by the Department without prior written approval of the Department. If unapproved modifications are made, the Subgrantee is responsible for the cost of restoring the vehicle(s) to its original condition.

- I. If the Subgrantee wants to remove any Program equipment or facilities from service or dispose of such equipment either as a result of planned withdrawal or casualty loss, the Subgrantee shall contact the Department to obtain specific disposition instructions.
- J. The Subgrantee shall follow the equipment manufacturer's minimum standards and recommended preventive maintenance schedules. The Subgrantee shall maintain the equipment and facilities in a clean, safe, and mechanically sound condition. The Department or its authorized representative has the right to conduct periodic inspections during normal business hours for the purpose of confirming maintenance pursuant to this clause. The Subgrantee shall prepare reports describing usage, any modifications, and other related information for such periods of time and frequency as may be prescribed by the Department.

**16. Charter Bus Requirements.**

The Subgrantee agrees to comply with 49 U.S.C. §5323(d) and 49 C.F.R. Part 604, which provides that recipients and sub recipients of FTA assistance are prohibited from providing charter service using federally funded equipment or facilities if there is at least one private charter operator willing and able to provide the service, except under one of the exceptions at 49 C.F.R. Part 604.9. Any charter service provided under one of the exceptions must be "incidental." (For example, it must not interfere with or detract from the provision of mass transportation).

**17. School Bus Requirements.**

Pursuant to 49 U.S.C. §5323(f) and 49 C.F.R. Part 605, recipients and sub recipients of FTA assistance may not engage in school bus operations exclusively for the transportation of students and school personnel in competition with private school bus operators unless qualified under specified exemptions. When operating exclusive school bus service under an allowable exemption, recipients and sub recipients may not use federally funded equipment, vehicles, or facilities.

**18. Certificate of Title for Vehicles.**

Any title to capital equipment the Subgrantee purchases will reflect in a lien in favor of the Department. The liens will remain in effect as listed below in the text box.

Category	Typical Characteristics				Minimum Life (whichever comes first)	
	Length	Approx. GVW	Seats	Average Cost	Years	Miles
Heavy-Duty Large Bus	35 to 48 ft. and 60 ft. artic.	33,000 to 40,000	27 to 40	\$325,000 to over \$600,000	12	500,000
Heavy-Duty Small Bus	30 ft.	26,000 to 33,000	26 to 35	\$200,000 to \$325,000	10	350,000
Medium-Duty and Purpose-Built Bus	30 ft.	16,000 to 26,000	22 to 30	\$75,000 to \$175,000	7	200,000
Light-Duty Mid-Sized Bus	25 to 35 ft.	10,000 to 16,000	16 to 25	\$50,000 to \$65,000	5	150,000
Light-Duty Small Bus, Cutaways, and Modified Van	16 to 28 ft.	6,000 to 14,000	10 to 22	\$30,000 to \$40,000	4	100,000

The Subgrantee shall pay all costs associated with obtaining, securing, and maintaining titles and liens, including the payment of all applicable taxes and fees.

**19. Duration of Lien.**

The Subgrantee shall not pledge or collateralize any vehicles purchased under this Agreement without written authorization from the Department. This restriction is in effect from the date a title certificate is issued to when the Department releases the lien pursuant to *Section 18. Certificate of Title for Vehicles*. For specifics on disposition of vehicles after title lien is released, please refer to the Vehicle Title Release and Disposition sections of the *New Mexico State Management Plan for the Administration of Federal Transit Grants*.

**20. Reporting Requirements.**

- A. Daily Pre/Post Trip Inspection Records — The Subgrantee shall keep daily Pre/Post Trip Inspection Records on the use of each transit vehicle and shall submit to the Department, upon request, such information.
- B. Annual Reporting — A certification that the Program equipment will be used in accordance with the terms of the Agreement shall be submitted to the Department by submitting the annual FTA Certifications and Assurances.

The Subgrantee's failure to submit reports in a timely manner on the dates specified shall be a material breach of this Agreement and shall be subject to termination as provided in *Section 7. Termination for Cause.*

**21. Retention of Records.**

The Subgrantee shall maintain all books, documents, papers, accounting records, reports and other evidence pertaining to costs incurred in the Program for five (5) years after the date of termination or expiration of this Agreement.

**22. Access to Records.**

The Subgrantee shall grant authorized representatives of the Department, the state and the federal government access to books, documents, papers, reports, and records of the Subgrantee or its subcontractors, which are directly pertinent to this Agreement, for the purpose of making audits, examination excerpts, and transcriptions. The Subgrantee agrees to permit any of the foregoing parties to reproduce by any means whatsoever or to copy excerpts and transcriptions as reasonably needed. The Subgrantee shall reimburse the Department for any expenditure for which it received payment or reimbursement, as applicable, which is disallowed by an audit exception by the Department, the state or federal government.

**23. Audit.**

The Subgrantee shall ensure that an annual audit of the Program based on the Subgrantee's fiscal year shall be conducted pursuant to OMB Circular No. A-133. The Subgrantee, prior to initiation of the audit, shall seek written approval from the Department of the auditing firm. The Subgrantee agrees to provide the Department with a copy of the audit report concerning any portion of the Agreement period as soon as it is released, but in no case later than six months following the close of the local fiscal year. Audit costs are an eligible administrative expense. Should the Subgrantee fail to produce the annual audit, the Department may, at its option, commission such an audit payable out of Program funds.

**24. Audit Exceptions.**

If federal or state audit exceptions are made, the Subgrantee shall reimburse all costs incurred by the State and the Department associated with defending against the exceptions, which includes but is not limited to costs of performing a new audit or a follow-up audit, court costs, attorney's fees, travel costs, penalty assessments.

Immediately upon notification from the Department, the Subgrantee shall reimburse the amount of the audit exception and any other related costs directly to the Department. In the notification, the Department may inform the Subgrantee of the Department's election to withhold an amount equal to the payment owed under this Section from any future distribution owed to Subgrantee under this Agreement.

**25. Third Party Beneficiaries.**

It is not intended by any of the provisions of any part of this Agreement to create in the public or any member thereof a third party beneficiary or to authorize anyone not a party to the Agreement to maintain a suit(s) for wrongful death(s), bodily and/or personal injury(ies) to person(s), damage(s) to property(ies), and/or any other claim(s) whatsoever pursuant to the provisions of this Agreement.

**26. Contracting and Assignment.**

The Subgrantee shall not contract any portion of this Agreement without prior written approval of the Department. No such contracting shall relieve the Subgrantee from its obligations and liabilities under this Agreement, nor shall any subcontracting obligate payment from the Department.

Except to a successor in kind, the Subgrantee shall not assign or transfer any interest in this Agreement or assign any claim for money due or to become due under this Agreement without the prior written approval of the Department.

Should subcontract(s) or an assignment be authorized by the Department, the subcontractor(s) and assignor(s) shall be subject to all provisions of this Agreement. It shall be the Subgrantee's responsibility to duly inform the subcontractor(s) and assignor(s) by means of a contract or other legally binding document stipulating responsibility to this Agreement.

Subcontractors and Assignors of FTA funds must meet applicable Disadvantaged Business Enterprise (DBE) Program requirements when funds are used in whole or in part to finance procurements for applicable products and services. To that end, Subcontractors with contracting opportunities must sign and submit a *Disadvantaged Business Enterprise Race-Neutral Implementation Agreement for Federal Transit Administration Subgrantees*, which is attached as Certification 1.

**27. No Federal Government Obligation to Third Parties.**

- A. The Department and Subgrantee 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 Department, Subgrantee, or any other party (whether or not a party to that contract) pertaining to any matter resulting from the underlying contract.
- B. The Subgrantee agrees to include the above clause in each subcontract financed in whole or in part with federal assistance provided by FTA. It further agrees that the clause shall not be modified, except to identify the subcontractor who will be subject to its provisions.

**28. Training.**

The Subgrantee shall ensure that all drivers described in the Operations Profile are trained in the following programs: first aid, cardiopulmonary resuscitation, blood borne pathogens, defensive driving, use of wheelchairs, passenger safety, sensitivity and crisis management. The Department's approved contractor will provide training in passenger safety, sensitivity and crisis management. All new drivers must be trained and certified in the above listed areas within six (6) months of their date of hire. All full time, part time, substitute/fill-in, or volunteer vehicle operators shall have in their possession valid certifications while operating a public transportation vehicle.

In addition, the Department may require specific training for the Subgrantee. Attendance is required and failure to attend shall result in a deduction in from the Subgrantee's next invoice. This deduction will be an amount equal to the Subgrantees's pro-rata share: total cost of training incurred by the Department divided by the total number of all individuals scheduled for training and multiplied by the total number of Subgrantee employees failing to attend the scheduled training.

Should the Subgrantee fail to satisfy the terms and conditions as outlined, the Subgrantee may be found to be in breach of contract and subject to the provisions of *Section 7. Termination for Cause*.

**29. Transit Employee Protection Guidelines.**

The Subgrantee agrees to protect transit employees pursuant to Section 5333(b) of Title 49 U.S. Code (formerly Section 13(c) of the Federal Transit Act). The Subgrantee shall provide for the preservation of rights and benefits of employees under existing collective bargaining agreements, continuation of collective bargaining rights, protection of individual employees against a worsening of their positions in relation to their employment, assurances of employment to employees of acquired transit systems, priority of reemployment, and paid training or retraining programs.

**30. Civil Rights Laws and Regulations Compliance.**

The Subgrantee shall comply with all federal, state and local laws and ordinances applicable to the work called for under this Agreement.

- A. Nondiscrimination - In accordance with Title VI of the Civil Rights Act, 42 U.S.C. § 2000d, Section 303 of the Age Discrimination Act of 1975, 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 Subgrantee shall not discriminate against any employee or applicant for employment because of race, color, creed, national origin, sex, age, or disability. The Subgrantee shall comply with applicable Federal implementing regulations and such other implementing requirements FTA may issue.

- B. Equal Employment Opportunity - The following equal employment opportunity requirements apply to this Agreement:
1. Race, Color, Creed, National Origin, Sex - In accordance with Title VII of the Civil Rights Act, 42 U.S.C. § 2000e, and Federal transit laws at 49 U.S.C. § 5332, the Subgrantee 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 Subgrantee 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 awarded contractor shall comply with any implementing requirements FTA may issue.
  2. Age - In accordance with Section 4 of the Age Discrimination in Employment Act of 1967, 29 U.S.C. § § 623 and Federal transit law at 49 U.S.C. § 5332, the Subgrantee agrees to refrain from discrimination against present and prospective employees for reason of age. In addition, the Subgrantee shall comply with any implementing requirements FTA may issue.
  3. Disabilities - In accordance with Section 102 of the Americans with Disabilities Act, 42 U.S.C. § 12112, the Subgrantee 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 awarded contractor shall comply with any implementing requirements FTA may issue.
- C. The Subgrantee shall 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.
- D. For assistance with a contract clause incorporating the requirements of the new DBE rule in 49 CFR Part 26, contact the FTA HelpLine at [www.ftahelpline.com](http://www.ftahelpline.com).
- E. The Subgrantee also agrees to include these requirements in each contract financed in whole or in part with federal assistance provided by FTA, modified only if necessary to identify the affected parties.
31. **Disadvantaged Business Enterprise (DBE) Policy.**
- A. This Agreement is subject to the requirements of 49 CFR Part 26, Participation by Disadvantaged Business Enterprises in Department of Transportation Financial Assistance Programs. The Department's overall goal for DBE participation is 8%, through race neutral means. A goal has not been established for this Agreement.
  - B. The Subgrantee shall not discriminate on the basis of race, color, national origin, or sex in the performance of the Agreement. The Subgrantee shall carry out applicable requirements of 49 CFR Part 26 in the administration of the Program. Failure by the Subgrantee to carry out these requirements is a material breach of the Agreement, which may result in the termination or other such remedy as the Department deems appropriate. Each contract the Subgrantee signs with a contractor must include the assurance in this paragraph (see 49 CFR 26.13(b)).
  - C. The Subgrantee agrees to ensure that Disadvantaged Business Enterprises as defined in 49 CFR Part 26 have the maximum opportunity to participate in the performance of Contracts and subcontracts financed in whole or in part with Federal funds. In this regard, all recipients or contractors shall take all necessary and reasonable steps in accordance with 49 CFR Part 26 to ensure that Disadvantaged Business Enterprises

have the maximum opportunity to compete for and perform contracts. Recipients and their contractors shall not discriminate on the basis of race, color, national origin, or sex in the award and performance of U.S. DOT assisted contracts. The Subgrantee will be required to report its DBE participation obtained through race-neutral means throughout the period of performance.

- D. The Subgrantee is required to pay its contractors performing work related to this contract for satisfactory performance of that work no later than 30 days after the awarded contractor's receipt of payment for that work from the Department.
- E. The Subgrantee must promptly notify the Department, whenever a DBE contractor is terminated or fails to complete its work, and must make good faith efforts to engage another DBE contractor to perform at least the same amount of work. The Subgrantee 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 Department.

A Subgrantee of FTA funds must meet applicable DBE requirements when funds are used in whole or in part to finance procurements of and contracts for applicable products and services. A Subgrantee with contracting opportunities must sign and submit a *Disadvantaged Business Enterprise Race-Neutral Implementation Agreement for Federal Transit Administration Subgrantees*, which is attached as Certification 1.

**32. ADA Access.**

The Subgrantee shall comply with 49 U.S.C. § 5301(d), which states the Federal policy that elderly individuals and individuals with disabilities have the same right as other individuals to use public transportation services and facilities, and that special efforts shall be made in planning and designing those services and facilities to implement transportation accessibility rights for elderly individuals and individuals with disabilities. The Subgrantee also agrees to comply with all applicable provisions of section 504 of the Rehabilitation Act of 1973, with 29 U.S.C. § 794, which prohibits discrimination on the basis of disability; with the Americans with Disabilities Act of 1990 (ADA), 42 U.S.C. §§ 12101 et seq., which requires that accessible facilities and services be made available to individuals with disabilities; and with the Architectural Barriers Act of 1968, 42 U.S.C. §§ 4151 et seq., which requires that buildings and public accommodations be accessible to individuals with disabilities.

**33. Program Fraud and False or Fraudulent Statements or Related Acts.**

- A. The Subgrantee acknowledges that the provisions of the Program Fraud Civil Remedies Act of 1986, 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 program. The Subgrantee certifies or affirms the truthfulness and accuracy of any statement it makes pertaining to the resultant contract or the FTA assisted program for which this work is being performed. The Subgrantee 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 Subgrantee to the extent the federal government deems appropriate.
- B. The Subgrantee 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 program 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 federal government reserves the right to impose the penalties of 18 U.S.C. §1001 and 49 U.S.C. §5307(n)(1) on the Subgrantee, to the extent the federal government deems appropriate.
- C. The Subgrantee certifies to abide by these clauses and include the clauses in each subcontract financed in whole or in part with Federal Transit Administration funds. Subgrantee further agrees that these clauses shall not be modified, except to identify the subcontractor subject to its provisions.
- D. All claims for compensation reimbursement and payment of any amounts due pursuant to this Agreement are governed by the Fraud Against Taxpayers Act, §§ 44-9-1 through 44-9-14 NMSA 1978.

**34. Lobbying.**

A Subgrantee receiving \$100,000 or more of 49 U.S.C. §5339 funds shall file the Lobbying Certification required by 49 C.F.R. Part 20, "New Restrictions on Lobbying." The Lobbying Certification is attached as



Certification 2. The Subgrantee must certify that it has not used federal appropriated funds to pay any person or organization for influencing or attempting to influence an officer or 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.

If the Subgrantee hires a contractor, the contractor must provide the Lobbying Certification to the Subgrantee. Each tier below the contractor shall also provide a Lobbying Certification. Such disclosures are forwarded from tier to tier up to the Subgrantee.

**35. Officials Not to Benefit.**

Neither any member of the New Mexico Legislature nor any member of or delegate to Congress shall be admitted to any share or part of this Agreement or to any benefit that may arise therefrom. The provisions of this clause shall be extended to all public employees, officers, or tribal council members.

**36. Energy Conservation.**

The Subgrantee 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.

**37. Clean Water and Air Requirements.**

A. The Subgrantee agrees to comply with all applicable standards, orders or regulations issued pursuant to the Federal Water Pollution Control Act, 33U.S.C. §§1251 et seq., and the Clean Air Act, 42 U.S.C. §§7401 et seq. The Subgrantee agrees to report each violation to the Department and understands and agrees that the Department will, in turn, report each violation as required to assure notification to FTA and the appropriate United States Environmental Protection Agency Regional Office.

B. The Subgrantee agrees to include these requirements in each subcontract exceeding \$100,000.00 and financed in whole or in part with federal assistance provided by the FTA.

**38. Debarment and Suspension.**

Executive Order 12549, as implemented by 49 C.F.R. Part 29, prohibits FTA Subgrantees from contracting for goods and services from organizations that have been suspended or debarred from receiving federally-assisted contracts. Subgrantees shall include the certification and instruction language contained at 29 C.F.R. Part 29, Appendix B, in all Invitations for Bids and Requests for Proposals (for inclusion by contractors in their bids or proposals) for all contracts expected to equal or exceed \$25,000.00, regardless of the type of contract to be awarded.

The Subgrantee is required to verify that none of the Subgrantee's principals, as defined at 49 C.F.R. Part 29.995, or affiliates, as defined at 49 C.F.R. Part 29.905, are excluded or disqualified as defined at 49 C.F.R. Parts 29.940 and 29.945. By signing and submitting this Agreement, the Subgrantee certifies as follows:

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

**39. Central Contractor Registration Requirements.**

Prior to payment of invoices and receipt of vehicles and equipment, Subgrantees must register and maintain current registration in the Central Contractor Registration website, <http://www.ccr.gov>. Registration requires having a Dun and Bradstreet Data Universal Number (DUNS), see <http://www.dnb.com>. The Department will not provide vehicles, or make payments, until the Subgrantee demonstrates that it is registered with the CCR website.

**40. Federal Grant Reporting Requirements.**

Under the Federal Funding Accountability and Transparency Act, the Department is required to report on projects or activities, which are awarded federal grants of \$25,000 or more. This information will be made available to the public on [www.USASpending.gov](http://www.USASpending.gov).

The type of information the Department is required to report includes:

- Name of Subgrantee receiving the award
- Amount of Award
- Funding Agency
- NAICS code for contracts or the Catalog of Federal Domestic Assistance program number for grants
- Program source
- Award title descriptive of the purpose of the funding action
- Location of the Subgrantee, which includes the Congressional District
- Place of performance of the program or activity, which includes the Congressional District
- Unique identifier—DUNS—of the Subgrantee and its parent organization, if one exists
- Total compensation and names of the top five executives of the Subgrantee. This information is required, if the Subgrantee in the preceding year received eighty (80) percent or more of its annual gross revenues in federal awards, which exceeds \$25 million annually, and the public has no access to this information under the Securities Exchange Act or the Internal Revenue Code.

The Department will extract as much information as possible from the Subgrantee's grant application and standard reports. However, the Subgrantee will be required to provide additional information, which includes the total compensation and names of the Subgrantee's top five executives, if applicable. As specified earlier in Section 50, "Registration Requirements," of this Agreement, the Subgrantee shall register with [www.ccr.gov](http://www.ccr.gov) and DUNS and provide that information to the Department.

**41. Severability.**

In the event that any portion of this Agreement is determined to be void, unconstitutional or otherwise unenforceable, the remainder of this Agreement shall remain in full force and effect.

**42. Scope of Agreement.**

This Agreement incorporates all of the agreements, covenants, and understandings between the parties concerning the subject matter. All such covenants, agreements, and understandings have been merged into this written Agreement. No prior agreements or understandings, verbal or otherwise, of the parties or their agents shall become valid or enforceable unless embodied in this Agreement.

**43. Applicable Law and Venue; Federal Changes.**

The Subgrantee shall comply with all federal, state and local laws, ordinances, rules, warranties, assurances, and regulations applicable to the performance of this Agreement and as they may be amended or promulgated from time to time during the term of this contract. This includes all applicable FTA regulations, policies, procedures and directives, including without limitation those listed directly or by reference in the Master Agreement (From FTA MA (19) dated October 1, 2012) between the Department and FTA. The Subgrantee shall make as part of this Agreement between the Department and the Subgrantee the assurances and warranties which were signed as part of the grant award. Venue shall be proper only in a New Mexico court of competent jurisdiction in accordance with NMSA 1978, Section 38-3-1(G).

**44. Incorporation of FTA Terms.**

Provisions of this Agreement include, in part, certain Standard Terms and Conditions required by the U.S. DOT. All contractual provisions required by the U.S. DOT, as set forth in FTA Circulars 4220.1F, and 9040.1F, are 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 Subgrantee shall not perform any act, fail to perform any act, or refuse to comply with any Department request, which would cause the Department to be in violation of FTA terms and conditions, as referenced in the current Federal Transit Administration Master Agreement shall prevail and be the instrument governing the receipt of Federal assistance from the Federal Transit Administration. The Master Agreement can be viewed on the web at <http://www.fta.dot.gov/>.

**45. Amendment.** The terms of this Agreement may be amended by an instrument in writing executed by the parties.

In witness whereof, each party is signing this Agreement on the date stated below that party's signature.

New Mexico Department of Transportation

Kathryn Bender  
Kathryn Bender, Deputy Secretary  
of Programs and Infrastructure

CITY OF SANTA FE

David Coss  
Signature

David Coss/Mayor  
Name/Title (please print)

12/13/13  
Date

11-26-13  
Date

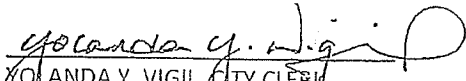
Approved as to Form and Legal Sufficiency by the Department's Office of General Counsel.

Cynthia A. Christ  
Cynthia A. Christ, Assistant General Counsel

10-1-13  
Date

CITY OF SANTA FE:

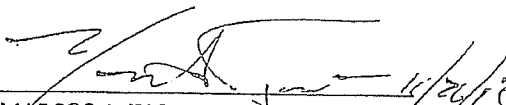
ATTEST:

  
YOLANDA Y. VIGIL, CITY CLERK  
11/23/13

APPROVED AS TO FORM:

  
GENO ZAMORA, CITY ATTORNEY  
11/23/13

APPROVED:

  
MARCOS A. TAPIA, FINANCE DEPARTMENT  
11/20/13



**City of Santa Fe  
Summary of Contracts, Agreements, & Amendments**

**Section to be completed by department for each contract or contract amendment**

**FOR: ORIGINAL CONTRACT** or **CONTRACT AMENDMENT**

2 Name of Contractor City of Santa Fe

Complete information requested Plus GRT

Original Contract Amount: \$162,055.00 x Inclusive of GRT

Termination Date: September 30, 2015

Approved by Council Date: November 13, 2013

or by City Manager Date: \_\_\_\_\_

**Contract is for:** FFY 2013 FTA appropriation to City of Santa Fe for Bus and Bus Facilities Program

Amendment # 1 to the Original Contract# MO1292

Increase/(Decrease) Amount \$ 156,027

Extend Termination Date to: \_\_\_\_\_

Approved by Council Date: June 11, 2014

or by City Manager Date: \_\_\_\_\_

**Amendment is for:** Add FFY 2014 FTA appropriation to City of Santa Fe for Bus and Bus Facilities Program

**History of Contract & Amendments:** (option: attach spreadsheet if multiple amendments) Plus GRT

Inclusive of GRT

Amount \$ \_\_\_\_\_ of original Contract# \_\_\_\_\_ Termination Date: \_\_\_\_\_

Reason: \_\_\_\_\_

Amount \$ \_\_\_\_\_ amendment # \_\_\_\_\_ Termination Date: \_\_\_\_\_

Reason: \_\_\_\_\_

Amount \$ \_\_\_\_\_ amendment # \_\_\_\_\_ Termination Date: \_\_\_\_\_

Reason: \_\_\_\_\_

Amount \$ \_\_\_\_\_ amendment # \_\_\_\_\_ Termination Date: \_\_\_\_\_

Reason: \_\_\_\_\_

Total of Original Contract plus all amendments: \$ 318,082



# City of Santa Fe Summary of Contracts, Agreements, & Amendments

**5 Procurement Method of Original Contract:** (complete one of the lines)

RFP# \_\_\_\_\_ Date: \_\_\_\_\_

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

Sole Source \_\_\_\_\_ Date: \_\_\_\_\_

Other N/A

**6 Procurement History:** N/A  
example: (First year of 4 year contract)

**7 Funding Source:** N/A **BU/Line Item:** N/A

**8 Any out-of-the ordinary or unusual issues or concerns:**  
None  
(Memo may be attached to explain detail.)

**9 Staff Contact who completed this form:** Ken Smithson, Director of Operations & Maintenance

Phone # Ext. 2223

Certificate of Insurance attached. (if original Contract)

Submit to City Attorney for review/signature  
Forward to Finance Director for review/signature  
Return to originating Department for Committee(s) review or forward to City Manager for review and approval (depending on dollar level).

To be recorded by City Clerk:

Contract # \_\_\_\_\_

Date of contract Executed (i.e., signed by all parties): \_\_\_\_\_

Note: If further information needs to be included, attach a separate memo.

**Comments:**

