RESOLUTION NO. 07 -223

A RESOLUTION OF THE CITY COUNCIL
OF THE CITY OF EL PASO DE ROBLES
APPROVING UPDATES TO THE CITY POLICIES & PROGRAMS
FOR FEDERAL TRANSPORTATION ADMINISTRATION AUDIT COMPLIANCE

WHEREAS, the Federal Transportation Administration (FTA) auditors conducted the triennial review of the City's transit operations 5307 funds, August 2007; and

WHEREAS, the FTA auditors determined the City was not in compliance in some areas and reported these findings and corrective actions in their August 2007 report; and

WHEREAS, the report detailed the corrective actions to be taken by the City and the timeframe to complete those actions in order to remain in good standing to receive 5307 funds; and

WHEREAS, FTA requires the City Council to have in place specific policies for transit related purchases which will be contained in a Transit Procurement Policies and Procedures Manual; and

WHEREAS, FTA requires the City to have a Drug Free Workplace policy in place which contains specific federal notification procedures in the event of workplace drug use violations; and

WHEREAS, FTA requires the City to have and implement an independent Drug & Alcohol Testing Program that would establish a separate testing pool for transit service support workers; and

WHEREAS, the City has met and conferred with its respective labor groups regarding introduction of the updated city-wide Drug Free Workplace policy and the independent Federal Drug & Alcohol Testing Program.

THEREFORE BE IT HEREBY RESOLVED by the City Council of the City of El Paso de Robles that the Transit Procurement Policies and Procedures Manual attached herewith as Exhibit "A" is hereby approved; and

THEREFORE BE IT FURTHER RESOLVED by the City Council of the City of El Paso de Robles that the updated City-wide Drug Free Workplace Policy attached herewith as Exhibit "B" is hereby approved; and

THEREFORE BE IT FURTHER RESOLVED by the City Council of the City of El Paso de Robles that the independent Federal Drug & Alcohol Testing Program for transit support workers, attached as Exhibit "C" is hereby approved.

PASSED AND ADOPTED by the City Council of the City of Paso Robles this 6th day of November 2007 by the following vote:

AYES: Hamon, Nemeth, Picanco, Strong, and Mecham
NOES:
ABSTAIN:
ABSENT:

_____
Frank R. Mecham, Mayor

ATTEST:

_____
Deborah Robinson, Deputy City Clerk

CITY OF PASO ROBLES

TRANSIT PROCUREMENT POLICIES & PROCEDURES

October 2007

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INTRODUCTION AND PURPOSE

The Administrative Services Office of the City of Paso Robles (the CITY) has major responsibilities, which include the operation of a public transportation system and the planning, design and programming of transportation projects. The Administrative office of the CITY has the responsibility for identifying the needs of the CITY and originating the procurement package for supplying those needs.

The CITY receives funding from both the federal government and the state. Therefore, the CITY adopts procurement policies and procedures that are consistent with federal regulations and the laws of the state of California. Additional guidance on specific contractual actions is provided by OMB Circular A-102, Attachment O and FTA Circular 4220.1E.

The purpose of these policies and procedures is to provide standards for the CITY and its employees in the procurement of supplies, equipment, construction and other services. These standards have been developed and will be adopted by the CITY to ensure that such materials and services are obtained in an effective manner and in compliance with the provisions of all applicable federal, state, and local laws and regulations. These procedures include guidelines for the solicitation, award and administration of formally advertised contracts.

These procurement policies and procedures are also designed to:

- Instill public confidence in the procurement process of the CITY.
- Ensure fair and equitable treatment for all vendors who seek to do business with the CITY, with particular emphasis toward Disadvantaged Business Enterprise (DBE).
- Ensure maximum open and free competition in the expenditure of public funds.
- Provide safeguards to maintain a procurement system of quality and integrity.
- Ensure that the CITY obtains beneficial pricing from qualified vendors.

1.0 STANDARDS

1.1 Competition

The CITY recognizes that fairness and justice are important to the development of good vendor relations and should be primary objectives in the procurement process. All technical and price information received from a vendor will be treated as confidential during the bid/quotation period. These documents will become public information only after the bid/purchase has been awarded. During the bidding/quotation period extreme care will be taken to avoid giving one bidder an advantage over another through an unequal exchange of information. The process of disclosing bid/quotation details for the purpose of securing further reduction in competitive prices (bid shopping) is unfair and unethical. Vendors should be informed that it is the CITY's practice to make competitive choices on the basis of the first price submitted and no revised prices will be solicited or accepted.

The CITY believes that natural free market pressures are an effective determinant of fair and reasonable prices, and therefore encourages the application of competitive methods of procurement in all possible cases. The CITY also recognizes that a blind application of the "low bidder" principle is not always consistent with the best interest. Consequently, the competitive comparison must be qualified by an intelligent analysis of technical, delivery, quality, service and past performance factors.

In cases where competitive procurement methods cannot be applied, the CITY will follow good purchasing practices, such as comparing and negotiating prices, to ensure reasonableness of price.

In all competitive procurement situations, the CITY will exercise diligent care to ensure that bidders are treated fairly and are given equal opportunity. The CITY will avoid practices that unduly restrict competition. Description of bid items may include a statement about the qualitative nature of the material, product, or service to be procured, and, when appropriate, those minimum essential characteristics and standards necessary for its intended use. Detailed product specifications should be avoided, if possible.

However, when it is impractical or uneconomical to make a clear and accurate description of the technical requirements, a "brand name or equal" description may be used. The CITY shall use a "brand name or equal" description only when it cannot provide an adequate specification or more detailed description, other than by inspection and analysis, in time for the acquisition under consideration.

The CITY will ensure that all pre-qualified lists of persons, firms, or products that are used in acquiring goods and services are current and include enough qualified sources to ensure maximum open and free competition. The CITY will not preclude potential bidders from qualifying during the solicitation period.

1.2 Oversight

The City is developing a FTA Grant Management Guide Third Party Oversight document to outline the role of Paso Robles as it relates to the oversight of third party contracting to ensure compliance with FTA requirements. This document is available under separate cover.

It is Paso Robles' responsibility to monitor the activities of the third party contractors as necessary to ensure that Federal awards are used for authorized purposes in compliance with laws, regulations and the provisions of contracts or grant agreements and that contract performance goals are achieved.

Under the direction and supervision of the Director of Administrative Services, the necessary oversight to meet federal compliance will be completed and properly documented.

1.3 Written Procurement History

The City and subgrantees will maintain records sufficient to detail the significant history of a procurement. At a minimum, such records will include rationale for the method of procurement, selection of contract type, contractor selection or rejection, and the basis for the contract price.

1.4 ITS Architecture

The National Intelligent Transportation System (ITS) Architecture defines the framework for ensuring compatibility of information exchange and interface of ITS applications. Examples of ITS applications include integrated traffic signal systems, automatic vehicle location systems, traveler information systems, traffic management systems, etc.

The policy provides flexibility to local areas in determining what agencies or organizations take the lead in developing the Regional ITS Architecture. The policy requires the regional ITS Architecture must be part of the local planning process and be consistent with and be reflected in the Transportation Plan, TIP, and STIP. The lead agency may be the COG or the State Department of Transportation.

The City would be an active participant in the Regional ITS Architecture if the City is implementing ITS projects. The City's ITS projects must be included in the locally approved Regional ITS Architecture.

1.5 Imposed Geographic Preference

The City does not impose geographic preferences in the evaluation of bids or proposals for supplies or for architectural and engineering (A&E) services.

2.0 CODE OF CONDUCT

2.1 Purpose and Applicability

As a recipient of public funds, the CITY must be vigilant in its protection of the public trust. Toward that end, employees, officers, directors, and agents of the CITY must conduct themselves in a manner that will foster public confidence in the integrity of the procurement system. Section 2.0 is intended to prescribe standards of conduct designed to ensure honesty and integrity in all CITY procurements.

The standards established herein shall apply to all activities associated with the procurement of goods and services.

2.2 Conflict of Interest

Conflict of interest, whether real or apparent, may arise when any of the following has a financial or other interest in the firm(s) considered or selected for award:

a) An employee, officer, director, or agent of the CITY;
b) Any member of his/her immediate family, including but not limited to, husband, wife, father, mother, brother, sister, son, daughter, father-in-law, mother-in-law, son-in-law, and daughter-in-law
c) His/her business associate; or
d) A company or organization, which is about to employ any of the above.

Employees, officers, directors, and agents of the CITY shall be subject to the laws of the State of California concerning conflicts of interest. Anyone found to violate the standards established by such laws may be subject to the penalties, sanctions, or other disciplinary actions provided for therein.

In cases where an employee, officer, director, or agent of the CITY may have a conflict or potential conflict of interest, the CITY's policy is that such individual(s) must promptly report the conflict in writing to the Director of Administrative Services or City Manager. Failure to adhere to this requirement shall constitute a violation of policy and may subject the violator to disciplinary action, up to and including discharge.

2.3 Gifts and Gratuities

No employee, officer, director, or agent of the CITY may solicit or accept, either directly or indirectly, any gift, gratuity, loan, or other item or service of value if:

a) The discharge of his/her official duties could be influenced; or
b) He/she has been, is presently, or may be involved in the near future in any official act or action affecting the donor or lender.

Invitations for business lunches, parties, or similar functions shall be declined if received from bidders or other parties involved in a pending procurement. This policy is intended to avoid any situation, which may give an appearance of improper influence in the CITY procurement activities.

Notwithstanding the above, this section shall not apply to the following:

a) An occasional non-monetary gift of nominal value accepted in the ordinary course of a business meeting;
b) Unsolicited advertising or promotional material of nominal value;
c) A gift, gratuity, favor, loan, or other item of value when circumstances make it clear that an obvious long-standing social or family relationship, rather than a business relationship, is the motivating factor.

Failure to adhere to the provisions of this section shall constitute a violation of the CITY policy and may subject the violator to disciplinary action, up to and including discharge.

2.4 Contacts with Vendor, Bidders and Proposers

Prior to the issuance of a procurement solicitation, informational and research contacts with prospective vendors may be made for the purpose of gathering data. However, in making such contacts, employees, officers, directors, and agents shall avoid any commitment, or implication thereof, of a possible future award.

Accordingly, requests for substantial complimentary services or supplies, which may imply an obligation on the part of the CITY, shall be avoided. Requests for testing services, product samples, or demonstrations, for which the CITY shall have no obligations to purchase said items or services can be allowed.

Whenever procurement is in process (e.g., during the solicitation, evaluation, negotiation, and award phases) all contacts with potential contractors or vendors shall be made through the Director of Administrative Services or City Manager.

2.5 Releases and Use of Information

With the exception of formally advertised sealed bid procurements (i.e., Invitations for bid (IFB)) all cost and pricing information received by the CITY in negotiated procurements is to be treated as confidential. Similar treatment shall be afforded to all technical data received in response to Requests for Proposals (RFPs), with the exception of data contained in any contracts awarded by the CITY.

No employee, officer, director, or agent of the CITY shall use such confidential information for the actual or anticipated benefit for themselves, their relatives, or persons with whom they have a common financial interest.

3.0 DISADVANTAGED BUSINESS ENTERPRISE (DBE) POLICY

The Federal Transit Administration (FTA) requires that recipients of FTA grant assistance take necessary and reasonable steps to ensure that Disadvantaged Business Enterprises (DBEs) are afforded the maximum opportunity to participate in the performance of contracts, which are financed in whole or in part with federal funds. As evidence of compliance, the CITY must, on an annual basis, set goals for DBE participation in such contracts, which are expected to be awarded during the following fiscal year and describe efforts from the previous fiscal year. The CITY has on file, as prescribed by law, a DBE program that should be consulted for a more in depth discussion of the CITY's procedures and obligations regarding DBEs.

For the purpose of this program, a DBE is defined as a small business concern, which is both owned and controlled by socially and economically disadvantaged persons. This means that disadvantaged individuals must own at least 51% of the business and control the management and daily operations of the business. Included in the classification of disadvantaged individuals are

United States citizens who are Black Americans, Hispanic Americans, Native Americans, Asian-Pacific Americans, Asian-Indian Americans, women or members of other groups or individuals who the small Business Administration (SBA) has determined are economically and socially disadvantaged under 49 CFR Part 26.

The following affirmative steps shall be taken to assure that small and minority businesses are utilized when possible as sources of supplies, equipment, construction and services:

a) Including qualified small and minority businesses on solicitation lists;
b) Assuring that small and minority businesses are solicited whenever they are potential sources;
c) When economically feasible, dividing total requirements into smaller tasks or quantities so as to permit maximum small and minority business participation;
d) Where the requirement permits, establishing delivery schedules which will encourage participation by small and minority businesses;
e) Using the services and assistance of the Small Business Administration the office of Minority Business Enterprises of the Department of Commerce and the Community Services Administration as required or
f) If any subcontracts are to be let, requiring the prime contractor to take the affirmative steps listed above.

4.0 EQUAL EMPLOYMENT OPPORTUNITY (EEO) POLICY

The CITY has adopted the Equal Employment Opportunity (EEO) Policy, which applies to both internal hiring and promotion practices as well as to vendors who do business with the CITY. All invitations for Bids and Requests for Proposal issued by the CITY require the Bidder of Proposer to certify that:

a) It does not discriminate against any employee or applicant for employment, because of race, religion, sex, age, creed, color, disability, or national origin;
b) It is in compliance with all Executive Orders and federal, state and local laws regarding fair employment practices and non-discrimination in employment; and
c) It agrees to demonstrate positively and aggressively the principle of equal opportunity in employment.

5.0 GENERAL GUIDELINES DEFINITIONS

5.1 Applicability

The threshold requirements as outlined in section 6.1 apply to the total purchase amount of the goods or services.

5.2 Dividing Procurements Prohibited

The Requirements outlined herein apply to the total purchase amount of supplies, equipment, materials, construction or services. Related parts of procurement are not to be divided for the express purpose of avoiding bidding requirements.

5.3 Sole Source Procurement

The CITY may without prior FTA approval, procure an associated capital maintenance item eligible under Section 9 (j) of the Federal Transit Act, as amended, 49 U.S.C. App. Section 1607a(j), and contract directly with the original manufacturer or supplier of the item to be replaced, provided the CITY first certifies in writing to the FTA that:

a) Such manufacturer or supplier is the only source of such item;
b) The price of such item is no higher than the price paid for such item by like customers; and
c) Provided that the grant recipient complies with applicable Buy America statutory and regulatory requirements.

5.4 Capital Purchases

For financial purposes, items over **$5,000.00** with a useful life of over one (1) year are defined as capital purchases. Such expenditures must be charged against capital accounts, rather than operating accounts. The City Council must approve all budgeted grant expenditures for the current fiscal year along with the operating budget. In addition to all other procurement requirements listed in Section 4 or 5, the City Manager must approve purchase orders for capital purchases.

5.5 State Cooperative Purchase Program

By California State legislation, the Department of General Services, State Office of Procurement, may act as the buying agent for political subdivisions of the state. The purpose of the State Cooperative Purchase Program is to enable government entities to take advantage of discount prices available through volume purchases.

6.0 INFORMAL PROCUREMENT PROCEDURES

This section of the City's Transit Procurement Policies and Procedures describes the informal procurement process in detail.

6.1 Bid Thresholds

5.1.1 $2,500.00 and under

Purchases of $2,500 or less may be made without obtaining competitive quotations if the authorized purchaser considers the price to be fair and reasonable. Such purchases are exempt from Buy America requirements. There should be equitable distribution among qualified suppliers in the local area and no splitting of procurements to avoid competition. The Davis-Bacon Act applies to construction contracts between $2000

and $2,500. Minimum documentation is required: a determination that the price is fair and reasonable and how this determination was derived.

5.1.2 $2500.01 - $100,000

Purchases in this range require written price or rate quotes from at least three (3) Vendors if possible. This process is to be documented on the bid record contained in the Purchase Order (PO). Capital procurements over $10,000 must be approved by the City Manager.

5.1.3 $100,000.01 – and Over

Purchases of this amount require an appropriate formal competitive procurement process and must have the approval of City Manager. Technical specifications and requirements will be prepared by the appropriate Project Manager and submitted to the City Manager for approval. The City Manager with the Project Manager assistance will draft the appropriate Invitations for Bids (IFBs) or Request for Proposals (RFPs). The Director of Administrative Services will review the IFB or RFP for FTA compliance and accuracy before returning to City Manager for release.

6.2 Purchase Orders (POs)

Purchase Order (PO) numbers are assigned by the Department or designee.

For small purchases under $2,500 where a common vendor will be used, the responsible person shall prepare and submit appropriate documentation to the Project Manager.

Common vendors are those local vendors that the CITY has found from experience to be

a) fair and reasonable in price
b) willing to invoice the CITY at established periods

The CITY has established common vendors for such things as office supplies and handy man services. It is the CITY's policy to rotate through the list of established vendors.

For informal procurement purchases of more than $2,500.01, the responsible person must give the Project Manager a Price Quote summary sheet with at least three possible vendors and their contract information. It is the responsibility of the Project Manager to solicit quotes from the vendors and determine if the price is fair and reasonable. Appropriate documentation, including a list of the vendors contacted and the quotes received, must be attached to the P.O. and forwarded to the City Manager for his approval.

A properly completed PO includes a description of the item to be procured, the quantity needed, unit cost, and total cost.

The description section shall provide detailed specifications regarding the item to be purchased. When applicable, where the service will be performed or when and where the items will be delivered. For the purchase of services, the department must include any relevant documentation (e.g., a contract or letter of agreement) with the Purchase Order
.
The Director of Administrative Services will review the Purchase Order and all documentation to ensure its completeness, accuracy and compliance with FTA regulations.

The Project Manager shall determine which account will be expensed when the PO is invoiced and provide that account number. If the procurement is to be expensed against more than one account code, all accounts must be listed.

6.3 Purchase Order Approval

Purchase Orders of $2,500.00 or less may be approved by the Transit Coordinator. Purchase Orders for $2,500.01 or greater must be approved by the City Manager.

Purchase Orders are not required for medical, legal, insurance, payroll, petty cash, travel reimbursements, utility payments, postage, temporary help, conferences and subscription renewals.

6.4 Purchase Order Approval

The Project Manager may either fax or verbally notify the vendor of the approved Purchase Order number. A copy of the approved purchase order shall be sent to the vendor along with any FTA terms and conditions. The method of purchase shall be specified on the Purchase Order.

Vendors shall be told to include the Purchase Order number on all correspondence, including packages, invoices, credit memos, etc.

6.5 Receiving/Approval to Pay

Only authorized persons may receive goods. Upon receipt, the packing slip is compared to the goods received. If correct, the packing slip is signed and dated as received.

If the packing slip is also an invoice, these documents will be sent to Accounts Payable and will constitute approval to pay as received.

When the invoice has been received, it should be matched against the packing slip. If it does not match the vendor should be notified. When a correct invoice is received, it should be attached to the procurement documentation and paid.

The Project Manager is responsible for approving the receipt of services. Upon completion of the service, all documents confirming the proper completion of services should be signed and forwarded to Accounts Payable.

6.7 Blanket Purchase Orders

The purpose of this procedure is to define how and when to use blanket purchase order (BPO). BPOs are to be used, except in the issuance of POs for small item purchases when history shows that materials, services, or supplies are available through a local vendor who is willing to invoice at established periods, when the agency will:

a) Purchase repetitive, specified services, items, or categories of items from the same vendor.

b) Order standard materials or maintenance supplies, which require numerous shipments.
c) Obtain more favorable pricing through volume commitments.

All BPOs shall have:

a) Period to be covered (not to exceed 12 months)
b) A cancellation clause
c) Items or categories included
d) Personnel authorized to order and/or pick up items

After services have been performed and/or items have been received, all documents are to be signed/approved by the appropriate Project Manager. Doing so will attest to the fact that the goods or services were actually received by the CITY. Signed documents shall be sent to Accounts Payable for matching to invoice and processed as approval for payment.

6.8 Releasing Purchase Order Numbers

The practice of giving Purchase Order numbers to vendors over the telephone prior to appropriate approvals is potentially damaging to the CITY for the following reasons:

a) The practice is contrary to good purchasing procedures. History shows that these types of orders proceed less smoothly than order using the previously described procedures.
b) The practice violates good internal controls. When PO numbers are given out in this way, every element of administrative approval and control is bypassed.
c) The practice constitutes to be a danger to the Federal Transit Administration (FTA) stamp of approval the Financial Officer currently enjoys. If this approval should be withdrawn, the CITY may no longer be acceptable to FTA as a recipient of Federal funds. For these reasons, it is the policy of the CITY not to give PO numbers to vendors over the telephone except in an emergency as determined by the City Manager or designee and as defined in Section 6.11.

6.9 Check Request Policy

When a check is required in advance of receipt of goods or services, the CITY's needs shall be noted on a Warrant Request Form. A properly completed Warrant Request Form includes the Department Manager's approval, vendor (company) name, items needed, exact costs (including all taxes, freight charges and any other fees), contact person, date of delivery, department name, and account number.

The responsible person must sign the Warrant Request Form and forward it to the appropriate department or his/her authorized designee for approval.

6.10 Petty Cash Policy

Purchases of up to $100.00 may be made through petty cash. However, this is a privilege that should never be used to circumvent the procurement procedures. A petty cash voucher shall be obtained from Accounts Payable and approved by the Transit Coordinator. All receipts, and any change received in the transaction, shall be returned to Accounts Payable immediately upon return to the facility.

6.11 Emergency Acquisitions

For internal control purposes, deviations from the process outlined in this section are permitted only in emergency situations, as determined by the City Manager or his/her designee. Emergency procurements are those which, due to unusual circumstances beyond the control of the responsible person, cannot be foreseen or otherwise provided for in the routine manner, but which must be accomplished without delay. Emergencies usually involve urgent repair of revenue vehicles, facilities or utilities, correction of unsafe conditions, which if left uncorrected would result in immediate financial loss and the like.

When a purchase order is issued in an emergency situation, a properly executed and approved Purchase Order must be provided in order to complete the transaction.

When an emergency arises, the responsible person may inform the Director of Administrative Services or his/her authorized designee of the requirements, including the vendor's name and the approximate amount of the procurement. It is then the responsibility of the responsible person to coordinate completion of the confirming Purchase Order. If the responsible person does not know which vendor will be used, the Director of Administrative Services or his/her authorized designee shall be notified as soon as a vendor is located.

In instances where a valid emergency exists and material may be obtained after normal working hours, the responsible person may follow one of several options:

a) Make the purchase from a firm willing to accept an verbal Purchase Order,
b) Pay cash and be reimbursed from petty cash (if less than $100.00), or by check, the following warrant disbursement date, or
c) Charge the purchase and present the sales slip the following day to AP for payment.

6.12 Service Contracts and/or Maintenance Agreements

Service contracts and maintenance agreements are legally binding documents stating that a particular vendor will perform the specified services on equipment as agreed upon and described. Bids should be solicited in the same manner as for other informal purchases.

Repairs of equipment not covered by service contracts or maintenance agreements must have Department Approval before the equipment can be repaired. If the equipment is to be shipped or hand carried for repair, a Purchase Order should be prepared (including estimates) for proper record keeping prior to shipment.

For all repairs, the following information is required:

a) Make, model and serial number of equipment;
b) Inventory tag number, Equipment number if applicable
c) Department where equipment is located;
d) Hourly or flat rate to be charged, and;
e) If the item being repaired is an accessory to a major piece of equipment, provide the above information from the equipment to which it is an accessory.

6.0 COMPETITIVE PROCUREMENT PROCEDURES

Formal competitive procurement procedures must be followed when the dollar value of the procurement exceeds $100,000.

There are three (3) basic methods of conducting formal procurements:

a) Competitive bidding
b) Competitive proposal
c) Non-competitive negotiation

7.1 When to use Competitive Bidding

Competitive Bidding is the preferred method for procurement when:

a) A fair and reasonable price can be established (a fair and reasonable price may be assumed when three or more firms submit independent, competing bids)
b) Reasonably definite, design or performance specifications can be written
c) Adequate competition can be anticipated or
d) Reasonable estimate of costs can be made

Procedures for competitive bidding are described in Section 7.4.

7.2 When to use Competitive Proposal

Competitive proposals are the preferred method for procurement when:

a) The items desired cannot be precisely defined, described or standardized
b) The contract is for research and development with an end product that may be conceptual in nature
c) The technical aspects and price will be negotiated
d) Bidders will have the opportunity to revise the price or technical aspects of their proposals
e) Quantity and contractual factors must be considered along with price; or
f) Artistic and aesthetic value are more important considerations in evaluating the proposal than the price

The procedures for competitive proposal are described in Section 7.5.

7.3 When to Use Non-Competitive Negotiation

By California statute, formal procurements by Non-Competitive Negotiation are permitted only under one of the following circumstances:

a) If, after rejecting bids, the City Council determines and declares by resolution approved by a two-thirds vote of all its members that in its opinion the supplies, equipment and materials may be purchased at a lower price in the open market, the City Council may authorize the purchase of the supplies, equipment and materials in the open market without further observance of the provisions requiring contracts, bids or notices. In order to utilize this provision, the specifications for the procurement must remain the same and the bid, which is ultimately accepted, must be less than the lowest monetary bid received through the formal procurement process.

b) In case of great public calamity, such as extraordinary fire, flood earth quake, storm, epidemic or other disaster, the City Council may, by resolution passed by a two-thirds vote of all its members, declare and determine that the public interest and necessity demand the immediate expenditure of public money to safeguard life, health or property, and thereupon proceed to expend or enter into a contract involving the expenditure of any sum needed in such emergency without observance of the provisions requiring contracts, bids or notice.

Additionally, federal regulations require that one or more of the following conditions be met:

a) There is a public exigency or emergency that does not allow time for competitive negotiation.

b) The Federal Transit Administration (FTA) authorizes a non-competitive negotiation.

c) The item(s) is available only from a single source, as a matter of fact and not as a matter of preference or convenience.

d) After solicitation of a number of sources, competition is determined to be inadequate.

e) The item to be procured is an associated capital maintenance item as defined in section 9(j) of the UMT Act that is procured directly from the original manufacturer or supplier or the item is to be replaced after written certification to FTA that:
   - The manufacturer or supplier is the only source for the item, and
   - The price of the item is no higher than the price paid by other similar customers.

f) A contract amendment or change order is needed that is not within the scope of the original contract.

The procedure for non-competitive negotiation is described in Section 7.6.

7.4 Procedures for Competitive Bidding

The following steps are taken in the competitive bidding process.

7.4.1 Prepare Invitations for Bid (IFBs)

Invitations for Bid (IFBs) consist of a number of provisions, some of which are general depending on the type of solicitation and some of which are project specific. In general, the department initiating the procurement prepares project specific provisions of an IFB and the general provisions are prepared by the Project Manager. The Director of Administrative Services is ultimately responsible for assembly of the IFB and ensuring that it meets all procurement policies and is consistent with all applicable federal, State and local procurement rules and regulations.

Examples of some of the project specific provisions of an IFB include:

a) Contract specifications, which describe requirements for the supplies, equipment, construction or services to be delivered under the terms of the contract. It indicates to prospective contractors precisely what the CITY requires.
b) The specifications also establish the procedures by which it will be determined that all requirements of the contract have been met.
c) Design specifications, which describe in detail the data necessary to produce an item such as the size and dimensions, physical characteristics, quality test, etc.
d) Performance specifications, which express the desired performance characteristics in terms of output, function or operation of items and equipment.

(NOTE: Combinations of the above are also used to meet the requirements of a purchase transaction. The exact combination of specifications should be fashioned to meet the needs of each purchase.)

e) A statement of work, which defines the work required of a contractor, either to develop the equipment being delivered to satisfy the prime mission of the CITY, or to compliment the procured items being delivered, or to provide services being procured without a portion of the total procurement being delivered.

The basic distinction between the specification and the statement of work is that the specification defines minimum standards of the item to be procured, while the statement of work defines minimum work to be accomplished by the contractor under the contract.

IFBs shall be worded as precisely as possible. Ambiguous or incomplete specifications can result in unnecessary delays and costly errors. Special care must be taken to ensure that the specifications are not exclusionary or overly restrictive.

The specification may include a statement of the qualitative nature of the material, product or service to be procured and when necessary, shall set forth those minimum essential characteristics and standards to which it must conform if it is to satisfy its intended use. When it is impractical or uneconomical to make a precise description of the technical requirements, a "brand name of approved equal" description may be used.

7.4.2 Develop Bidders List

The Project Manager initiating the procurement shall develop a list of prospective bidders. In addition, the Director of Administrative Services shall maintain a file of bidders interested in particular types of contracts. Prospective contractors shall possess the ability to perform successfully, a good record of past performance, integrity, adequate financial and technical resources, and any other factors relevant to the specific item being contracted.

The Bidders List shall be developed with consideration of the CITY's DBE program.

7.4.3 Methods and Timing of Soliciting Bids

As a goal, the CITY will attempt to provide at least 14 days for standard procurements and not less than 30 calendar days when procuring non-standard items.

Invitations for Bids shall be sent to at least three financially and technically qualified prospective bidders, if possible. Every effort will be made to solicit a sufficient number of prospective bidders so as to elicit adequate competition.

Notices inviting bids shall be published (invitations for bids and Request for Proposals are on purchases over $100,000) at least once in a newspaper of general circulation at least ten (10) days prior to bid opening and may be published in trade journals and magazines as deemed necessary or appropriate.

7.4.4 Pre-Bid Conference

A pre-bid conference may be used as a means of briefing prospective bidders and explaining complicated specifications and requirements to them as early as possible after the invitation has been issued and before the bids are opened. The pre-bid conference will not be used as a substitute for amending a defective or ambiguous invitation. Attendance by potential bidders or proposers may either be voluntary or mandatory.

7.4.5 Amendments of IFBs

If after issuance of invitations for bids, but before the time set for opening of bids, it becomes necessary to make changes in quantities, specifications, delivery schedules, opening dates, etc. or to correct or clarify a defective or ambiguous invitation, such changes shall be accomplished by issuance, in writing, of an amendment to the invitation for bids. The amendment shall be sent to each prospective bidder to whom the invitation for bids has been furnished.

Each amendment issued during an invitation for bid shall

a) Be serially numbered and dated.
b) Include the number, date and a description of the original invitation for bids concerned.
c) Clearly state the changes made in the invitation for bids and the extension of the opening date, if any.
d) Include instructions to bidders for acknowledging receipt of the amendment and information concerning the effect of failure to acknowledge and return the amendment.
e) Before issuing an amendment to an invitation for bids the period of time remaining until the time set for opening and the need for extending the time set of opening must be considered. Where only a short time remains before the time set for opening, consideration shall be given to

notifying bidders of an extension of time by telephone, email an/or fax. Such notification should be confirmed in the amendment.

f) Any information given to a prospective bidder concerning an invitation for bids shall be furnished promptly to all other prospective bidders as an amendment to the invitation. If such information is necessary to bidders in submitting bids on the invitation or if the lack of such information would be prejudicial to uninformed bidders. No award shall be made on the invitation unless such amendment has been issued in sufficient time to permit all prospective bidders to consider such information in submitting or modifying their bids.

7.4.6 Cancellation of IFBs

Invitations for bids shall not be cancelled unless cancellation is clearly in the CITY's interest (e.g., where there is no longer a requirement for the material or service, or where amendments to the invitation would be of such magnitude that a new invitation is desirable). When an invitation is cancelled, bids that have been received, shall be returned unopened to the bidders and a notice of cancellation shall be sent to all prospective bidders to whom invitations for bids were issued.

The notice of cancellation shall

a) identify the IFB
b) briefly explain the reason the invitation is being cancelled
c) where appropriate, assure prospective bidders that they will be given an opportunity to bid on any re-solicitation of bids or any further requirements for the type of material or service involved

If the invitation for bids is cancelled before the time for bid openings, this fact shall be recorded in the file, with a statement of the number of concerns invited to bid and the number of bids received.

7.4.7 Receipt of Bids

Bids shall be submitted so as to be received in the office designated in the IFB not later than the exact time set for the receipt of bids. The only acceptable evidence to establish the time of receipt at the CITY offices is the CITY's date stamp that shall be placed on the bid wrapper immediately upon receipt. The CITY staff person receiving the bid shall verify the date received. The timeliness of bids is the sole responsibility of the bidder.

7.4.8 Withdrawal of Bids

At any time prior to the time fixed for the receipt of the bids, a Bidder may withdraw its bid by written request to the CITY. Negligence on the part of Bidders in preparing their bid confers no right of withdrawal of their bid after such bid has been opened. No bid may be withdrawn for a period of sixty (60) days following bid opening.

7.4.9 Bid Opening

All bids received prior to the time set for opening shall be recorded and kept unopened, except as state below, and kept secured.

Prior to bid opening, information concerning the identity and number of bids received shall be made available only to the CITY employees who have the proper need for such information. When bids are submitted, they shall be handled with sufficient care to prevent disclosure of characteristics before bid opening.

Unidentified bids may be opened solely for the purpose of identification and then only by an authorized official of the CITY. If a sealed bid is opened by mistake or for purposes of identification, the official shall immediately write on the envelope an explanation of the opening, the date opened, the invitation for bid number and their signature. Bids opened by mistake or for identification purposes shall be resealed in the envelope and no information contained therein shall be disclosed prior to the public bid opening.

The Project Manager or designee shall decide when the time set for bid opening has arrived and shall so declare to those present.

All bids received at the time set for receipt shall be publicly opened, and when practical, read aloud by the Project Manager to the persons present. The bids received shall be recorded. If it is impractical to read the entire bid, as where many items are involved, the total amount of the bid shall be read if feasible.

A second CITY employee shall be present to witness the opening and reading of the bids and shall sign an abstract to verify its accuracy.
The original of each bid shall be carefully safeguarded, particularly until the abstract of bids has been made and its accuracy verified.

Performance of the bid opening procedure may be delegated to an assistant, but the Project Manager remains fully responsible for the actions of such assistant.

Examination and evaluation of original bids by other interested individuals may be made only under the immediate supervision of the Project Manager or his/her designee and under conditions that preclude the possibility of a substitution,

addition, deletion, or alteration in the bids. Copies may be distributed to interested CITY officials for evaluation.

The original bid form shall not be allowed to pass out of the hands of the City Manager or his/her designee. Normally, the CITY'S Counsel may not remove original bids from the office except for official review and evaluation. A copy of each bid must be maintained in the CITY's procurement files in lieu of such originals for the interim period.

All bids, including attachments and envelopes, shall be retained for the official files.

7.4.10 Recording of Bids

The Invitation for Bid (IFB) number, bid opening dates and time, general description of the procurement item, names of bidders, prices bid and any other information required for bid evaluation, shall be entered on the official record of abstract form and shall be available for public inspection. When the items are too numerous to warrant the recording of all bids completely, an entry shall be made of the invitation number, opening date and time, general description of the procurement items, and the total price bid where definite quantities are involved.

The official record or abstract shall be completed as soon as practical after bids have been opened and read aloud. The Director of Administrative Services and the Project Manager shall certify that accuracy of the record of abstract. The Project Manager shall be responsible for maintaining files for these records and abstracts.

The file of the IFB shall show the distribution, which was made and the date thereof. The names and addresses of prospective bidders requesting the invitation for bids that were not included on the original solicitation list shall be added and made a part of the record.

7.4.11 Tabulation of Bids

Bids shall be evaluated on the basis of responsiveness and responsibility indicated in the invitation for Bids. Award shall be made to the bidder submitting the lowest bid, unless the CITY determines that the bid is not responsive and/or the bidder is found to be not responsible.

7.4.12 Analysis of Limited Bid Response

If less than three bids have been received, the Project Manager in charge of the solicitation may examine the reasons for the small number of bids received. The purpose of this examination is to ascertain whether the small number of responses is attributable to an absence of any of the perquisites of formal advertising. A price or cost analysis may be performed to establish the

reasonableness of the bid price before an award is made.

7.4.13 Price and Cost Analysis

In the event a single bid is received, a price/cost analysis may be used to determine the reasonableness of the bid price.

The Project Manager in charge of the solicitation may conduct a price analysis in evaluating a bid price. If a valid price analysis cannot be completed, audit personnel may be requested to conduct a cost analysis of the bid price.

Price analysis is the process of examining and evaluating a bid price without evaluation of the separate cost elements and proposed profit of the individual prospective supplier whose price is being evaluated. Normally, price analysis may be accomplished through one or more of the following activities:

a) The comparison of prior quotations and contract prices with current quotations for the same or similar end items (to provide a suitable basis for comparison, appropriate allowances must be made or differences in such factors as specifications, quantities ordered, time for delivery, etc.);
b) The use of "yardsticks" (such as dollars per pound, per horsepower, or other units) to point up apparent gross inconsistencies which should be subjected to greater pricing inquiry;
c) The comparison of prices set forth in published price lists issued on a competitive basis, published market prices or commodities, and similar indicators, together with discount or rebate arrangements;
d) The comparison of proposed prices with estimates of cost independently developed by personnel with the CITY; or
e) The comparison of prices paid by others (government or commercial) of the same or similar items to the proposed prices.

If only one bid is received, the sole bidder must cooperate with the CITY as necessary in order for its bid to be considered for award. A new solicitation of bids may be made if the single bid price appears unreasonable or if no determination is made as to the reasonableness of cost of the single bid.

If only one bid is received for a contract that exceeds $100,000, approval of FTA may be required (refer to FTA Circular.1E).

7.4.14 Responsible Bidder Evaluation

Before awarding the contract, the CITY shall determine that a prospective contractor is responsible and the prices are reasonable. A responsible prospective contractor is one who meets the standards forth below:

a) Has adequate financial resources, or the ability to obtain such resources as required during the performance of the contract;

b) Is able to comply with the required or proposed delivery or performance schedule, taking into consideration all existing business commitments, commercial as well as governmental;
c) Has a satisfactory record of performance. Contractors who are, or have been seriously deficient in current or recent contract performance, when the number of contracts and the extent of deficiency of each are considered, will be considered non-responsive.
d) Has a satisfactory record of integrity and business ethics;
e) Is otherwise qualified and eligible to receive an award under applicable laws and regulations;
f) Has the necessary organizational, experience, operational controls; and technical skills, or the ability to obtain them; or
g) Has the necessary production, construction, and technical equipment and facilities, or the ability to obtain them.

Evaluation of the responsibility of prospective contractors may be made based upon the following sources:

a) A list of debarred, suspended or ineligible firms or individuals;
b) From the prospective contractor's bids and proposals, replies to questionnaires, financial data such as balance sheets, profits & loss statements, cash forecasts, and financial histories of the contractor and affiliated concerns; current and past production records, list of tolls, equipment, and facilities, written statements of commitments concerning financial assistance and subcontracting arrangements.
c) Publications, including credit ratings, trade and financial journals, and business directories may also be used;
d) References such as suppliers, subcontractors, customers or the prospective contractor, banks and financial institutions, commercial credit agencies, other government agencies, purchasing and trade associations, and better business bureaus and chamber of commerce; or
e) Documented past performance on contracts with the CITY.

7.4.15 Rejection of all Bids

Preservation of the integrity of the competitive bid system dictates that after bids have been opened, award must be made to that responsible bidder who submitted the lowest responsive bid, unless there is compelling reason to reject all bids and cancel the invitation.
Every effort shall be made to anticipate changes in a requirement prior to the date of bid opening and to notify all prospective bidders of any resulting modification or cancellation, thereby permitting bidders to change their bids and preventing unnecessary exposure of bid prices.

As a general rule after opening bids, an Invitation for Bid should not be cancelled and re-advertised due solely to increased requirements for the items being

procured. Award should be made on the invitation for bids and the additional quantity should be treated as a new procurement.

Invitations for bids may be cancelled after opening but prior to award and rejection of all bids, if such cancellation is consistent with Federal, State, and local procurement regulations. A written determination must be included in the Invitation for Bid file stating that cancellation is in the best interest of the CITY for reasons such as the following:

a) Inadequate, ambiguous, or otherwise deficient specifications were cited in the invitation for bids;
b) The supplies or services are no longer required;
c) The invitation for bids did not provide for consideration of all factors of cost to the CITY;
d) Bids received indicate that the needs of the CITY can be satisfied by a less expensive item differing from that on which bids were received;
e) All otherwise acceptable bids received are at unreasonable prices;
f) The bids were not independently arrived at in open competition, were collusive, or were submitted in bad faith. Such situation must be substantiated and reported to the CITY counsel; or
g) The bids received did not provide competition, which was adequate to ensure reasonable prices. A price or cost analysis may be used to establish the reasonableness of price.

The CITY may reject bids received and proceed to purchase supplies, equipment or materials in the open market without further observance of the provisions regarding contracts, bids or notice if it is determined that the supplies, equipment or materials may be purchased at a lower price in the open market. Such an action must be approved by a two-thirds vote of all members of the CITY Council. If the purchase amount is $25,000 or greater, this policy may be in conflict with Federal purchasing requirements (refer to FTA Circular 4220.1E in such event, the Federal purchasing requirements shall prevail.)

If administrative difficulties are encountered after bid opening that may delay award beyond the Bidder's 60 day acceptance period, the several lowest bidders shall be requested, before expiration of their bids, to extend the bid acceptance period (with consent of sureties, if necessary) in order to avoid the need for a re-advertisement.

When it is determined to reject all bids, the CITY shall notify each bidder that all bids have been rejected and the reasons for such action.

7.4.16 Rejection of Individual Bids

Normally, any bid which fails to conform to the essential requirements of the invitation for bids, such as specifications, delivery schedule, warranty, or the required bid documents, shall be rejected as non-responsive.

A bid shall be rejected where the bidder imposes conditions, which modify requirements of the invitation for bids. For example, bids may be rejected in which the bidder:

a) Attempts to protect himself against future changes in conditions such as increased costs, if a total price to the CITY cannot be determined for bid evaluation;
b) Fails to state a price and in lieu thereof states that price shall be "price in effect at the time of delivery";
c) States a price but qualifies such price as being subject to "price in effect at time of delivery";
d) Where not authorized by the invitation for bid, conditions or qualifies his/her bid by stipulating that the bid is to be considered only if, prior to date of award, bidder received () or does not receive) award under a separate procurement.
e) Limits rights of the CITY under any contract clause;
f) Fails to comply with all of the requirements of the IFB.

Bids received from any person or firm debarred or ineligible shall be rejected if the period of debarment or ineligibility has not expired.

Low bids received from firms determined to be not responsible pursuant to Federal, State or local procurement regulations shall be rejected in accordance with the procedures set forth in Section 7.4.17.

A bid may be rejected if a bid guarantee is required and a bidder fails to furnish it in accordance with the requirement of the invitation for bids.

The originals of all rejected bids, and any written findings with respect to such rejections, shall be preserved in the file relating to the procurement.

After submitting a bid, if a bidder transfers all of his/her assets or that part of his/her assets related to the bid during the period between the bid opening and the award, the transferee may not take over the bid, thus the CITY may reject the bid.

7.4.17 Award of Contract

Unless all bids are rejected, award shall be made by the CITY by written notice, within the time for acceptance specified in the bid or extension thereof, to that responsible and responsive bidder whose bid, conforming to the IFB, will be most advantages to the CITY, price and other factors considered.

When award is made to other than the lowest bidder, the lowest bidder will be notified in writing by the Project Manager of any evidence reflecting upon the responsibility of the bidder and affording the bidder the opportunity to rebut such evidence and present evidence of qualifications to perform the contract.

When an award is made to a bidder for less than all of the items which may be awarded to that bidder and additional items are being withheld for subsequent award, the first award to that bidder shall state that the CITY may make subsequent awards on those additional items within the bidders' acceptance period.

Award shall be made by mail or personal delivery to the successful bidder of a notice of award and the proper contract documents. The successful bidder shall complete and execute the contract documents and return them to the CITY within the time specified. The CITY will finalize the execution of the contract and send a copy to the successful bidder.

7.5 Procedures for Competitive Proposal

The following steps are taken in competitive proposal procurements.

7.5.1 Prepare Request for Proposals (RFPs)

A Request for Proposal consists of a number of provisions, both project specific and general. The Project Manager initiating the procurement should prepare project specific provisions of the RFP. The Director of Administrative Services is responsible for general provisions and for assembly of the RFP and ensuring that it meets all procurement policies and is consistent with all-applicable Federal, State and local procurement rules and regulations.

The project specific sections of the RFP shall describe

a) The actual minimum materials and/or services needed
b) The time for providing same
c) The procedure by which a prospective bidder may examine plans and specifications, if any
d) The criteria by which proposals will be evaluated and the relative importance of each factor
e) The closing date for submission of proposals which must give sufficient time to permit a proper response

7.5.2 Develop Bidders List

The Project Manager initiating the procurement shall develop a list of prospective bidders. Prospective contractors should possess the potential ability to perform successfully, a good record of past performance, integrity adequate financial and technical resources, and any other relevant factors.

The Bidders List shall be developed with consideration of the CITY's DBE program.

7.5.3 Methods and Timing of Soliciting Proposals

As a goal, the CITY will attempt to provide not less than 30 calendar days for preparation of proposals in competitive proposal procurements.

Requests for Proposals shall be sent to at least three (3) financially and technically qualified prospective bidders, if possible. Pre-invitation notices may be furnished to a sufficient number of prospective bidders so as to elicit adequate competition.

Notices inviting proposals shall be displayed at the CITY office, on the CITY's web page or at other appropriate public places and shall be published no less than one time at least 10 days prior to bid opening in a newspaper of general circulation and may be published in trade journals and magazines as deemed necessary or appropriate.

7.5.4 Pre-Bid Conference

A pre-bid conference may be used as a means of briefing prospective bidders and explaining complicated specifications and requirements to them as early as possible after the RFP has been issued and before the proposals are opened. The pre-bid conference shall never be used as a substitute for amending a defective or ambiguous request. Attendance by potential bidders or proposers may either be voluntary or mandatory.

7.5.5 Amendments of RFPs

If after issuance of RFPs, but before the time set for opening of proposals, it becomes necessary to make changes in quantities, specifications, delivery schedules, opening dates, etc. or to correct or clarify a defective or ambiguous RFP, the period of time remaining until the time set for proposal submittal and the need for extending this time must be considered. Where only a short time remains, consideration should be give to notifying bidders of an extension of time by fax, e-mail or telephone. Such notification should be confirmed in the amendment.

Any information given to a prospective bidder concerning an RFP shall be furnished promptly to all other prospective proposers as an amendment to the RFP if

a) such information is necessary for proposers in submitting proposals
b) or if the lack of such information would be prejudicial to uninformed proposers in submitting or modifying their proposals

The amendment shall be sent to each individual or business to which the RFP has been furnished.

Each amendment issued to a request for proposals shall:

a) Be serially numbered and dated;
b) Include the number, date and a description of the original RFP concerned;
c) Clearly state the changes made in the RFP and the extension of the due date, if any; and
d) Include instructions to bidders for acknowledging receipt of the amendment and information concerning the effect of failure to acknowledge or return the amendment.

7.5.6 Cancellation of RFPs

Requests for Proposals should not be cancelled unless cancellation is clearly in the CITY's interest (e.g., such as where there is no longer a requirement of the material or service or where amendments to the request would be of such magnitude that a new request is desirable). When a request is cancelled, proposals that have been received shall be returned unopened to the proposers and a notice of cancellation shall be sent to all prospective proposers to whom RFPs were issued.

The notice of cancellation shall

a) Identify the RFP
b) Briefly explain the reason the request is being cancelled
c) Where appropriate, assure prospective proposers that they will be given an opportunity to compete on any re-solicitation of proposals or any further requirements for the type of material or service involved

If the RFP is cancelled before the time set for proposal submittal, this fact shall be recorded in the file, together with a statement of the number of concerns invited to submit proposals and the number of proposals received.

7.5.7 Receipt of Proposals

Proposals shall be submitted so as to be received in the office designated in the RFP not later than the exact time set in the request for proposals. The only acceptable evidence to establish the time of receipt at the CITY's office is the date stamp of the CITY, which shall be placed on the proposal wrapper immediately upon receipt. The CITY staff person receiving the proposal shall verify the date received. The timeliness of proposals is the sole responsibility of the proposer.

7.5.8 Modification or Withdrawal of Proposals

Any Bidder may withdraw its proposal by written request to the CITY. Notice of intent to withdraw must be received by the CITY any time prior to the time fixed for the receipt of the proposals. Negligence on the part of Bidders in preparing their proposal confers no right of withdrawal of their proposal after such proposal has been opened. No proposal may be withdrawn for a period of 60 days following proposal opening.

7.5.9 When to Conduct Negotiations

Subject to the exceptions below, after receipt of initial proposals, written or oral discussions may be conducted with all responsible and responsive Bidders who submit proposals within a competitive price range and other factors considered. If discussions are conducted with one Bidder, discussions must be conducted with all Bidders within the competitive range.

Discussion after receipt of initial proposals is not required in the following cases:

a) Procurement is for supplies for which prices or rates are fixed by law or regulation.
b) Time for delivery will not permit discussions;
c) The procurement is for a product and, due to the existence of adequate competition or accurate prior cost experience, it can be clearly demonstrated that acceptance of an initial proposal would result in a fair and reasonable price;

7.5.10 Subject Matter of Negotiations

Restrictions on the information that may be revealed to Bidders by CITY personnel during the course of negotiations include;

a) Contracting personnel shall not furnish information to a potential supplier that may afford it an advantage over other suppliers
b) After receipt of initial proposals, no information contained in any proposal or information regarding the number or identity of Bidders shall be made available

c) When it is necessary to rectify ambiguities, mistakes or omissions, an appropriate amendment shall be furnished to all Bidders in a timely manner

d) "Auction techniques", such as advising Bidders of their price relationship with others, are prohibited

Whenever negotiations are conducted with several Bidders, all Bidders selected to participate in such negotiations shall be offered an equitable opportunity to submit such price, technical, or other data necessary as a result of the negotiations. Such negotiations may be conducted successively. All such Bidders shall be informed of the specified date and time of the closing of negotiations. Revisions to proposals must be submitted by such date.

Where the RFP sets forth one requirement and, after receipt of proposals, either due to change or innovation by a Bidder, it becomes apparent that the project needs may be better fulfilled in another manner, all Bidders shall be appropriately advised in writing by an amendment that further discussions or negotiations shall follow.

7.5.11 Conduct of Negotiations

Evaluation of proposals, price revision proposals and subsequent negotiations with the Bidder shall be completed expeditiously by appropriate personnel.

Complete agreement of the parties on all basic issues shall be the objective of the contract negotiations.

Oral discussions or written communications shall be conducted with Bidders to the extent necessary to resolve uncertainties relating to the purchase or to the price to be paid. Basic questions should not be left for later agreement during price revision or other supplemental proceedings.

Cost or profit figures of one Bidder shall not be revealed to others Bidders.

Some form of price or cost analysis should be made in connection with every negotiated procurement action including contract modifications.

7.5.12 Notice Closing Negotiations

Such notice shall advise Bidders that:

a) Negotiations are being conducted
b) Bidders are being asked for their "best and final" offer, not merely to confirm or reconfirm prior offers
c) Any revision or modification of proposals must be submitted by the date specified

7.5.13 Determining Reasonableness of Price

Price analysis is the process of examining and evaluating a prospective price without evaluation of the separate cost elements or proposed profit of the prospective supplier.

Cost analysis is the review and analysis of a contractor's cost or pricing data and of the factors applied in projection from the data to the estimated costs, in order to form an opinion on the degree to which the contractor's proposed costs represent what performance of the contract should cost, assuming reasonable economy and efficiency.

As compared to price analysis, cost analysis involves a more detailed review of the Bidder's proposal and is used where the CITY has less assurance of a fair and reasonable price.

The following procedure for cost analysis is to be followed:

a) Verify contractor's cost data
b) Evaluate specific elements of costs and project these data to determine the effect on prices of such factors as
    1. The necessity for certain costs
    2. The reasonableness of amounts estimated for the necessary costs.
    3. Allowances for contingencies
    4. The basis used for allocations of particular overhead costs to the proposed contract
c) When the necessary data is available, compare the contractor's estimated cost with:
    5. Actual costs previously incurred by the contractor
    6. The contractor's last prior cost estimate for the same or similar estimates
    7. Current cost estimates from other possible sources
    8. Prior estimates or historical costs of other contractors manufacturing the same or similar items;
d) Forecasting future trends in costs from historical experience:
    1. In periods of either rising or declining costs, an adequate cost analysis must include some evaluation of the trends

2. In cases involving recently developed, complex, equipment, even in periods of relative stability, trend analysis of basic labor and materials costs should be undertaken

In performing a cost analysis, there are three questions that should be asked in the examination of costs, particularly overhead costs:

a) Is the cost allowable in accordance with guidelines in Section 15 of the Federal Acquisition Regulars (FAR)?
b) Is the cost allocable to the particular project?
c) Is the cost reasonable?

7.5.14 Basis of Award

After evaluations of proposals in accordance with the criteria set forth in the RFP, the contract shall be awarded to the submitter of the proposal most advantageous to the CITY, price and other factors considered.

Contracts shall be made only with responsible and responsive Bidders that possess the potential ability to perform successfully under the terms and conditions of the proposed procurement. As is the case with procurements made by competitive bid, consideration shall be given to such matters as contractor integrity, record of past performance, financial and technical resources, or accessibility to other technical resources.

Negotiated procurement records or files should provide at least the following pertinent information:
a) Justification for the use of negotiations in lieu of competitive bidding
b) Contractor selection
c) Justification for contract type
d) Determination and findings
e) Records of negotiations
f) Cost or price analysis

7.5.15 Special Procedures for Architect/Engineering Services

FTA Circular 4220.1E requires that the CITY use competitive negotiation procedures for qualification-based procurement of architectural and engineering ("A/E") services and related services such as program management, construction management, feasibility studies, preliminary engineering, design, surveying, mapping, or related services. Following this method competitors qualifications are evaluated and the most qualified competitor is selected subject to negotiation of fair and reasonable compensation. Under this method, the CITY may not consider price as an evaluation factor in determining the most qualified Bidder. Negotiation is conducted with only the most qualified Bidder. This method where price cannot be used as an evaluation factor and negotiations are conducted with only the most qualified Bidder, can only be used in procurement

of the above services even though a firm that provides the above type of services also is potentially able to perform other servi

The steps to be used for proposal evaluation and contract negotiations for Architect/Engineering contractors are as follows:

a) Evaluation team is assigned by the Department Manager to review eligible firms and all responses to RFP;
b) Team evaluates the firms based on:
    1) Professional qualifications for performance of the required services;
    2) Specialized experience and technical competence in the type work required,
    3) Capacity to accomplish the work in the required time.
    4) Past performance in terms of cost control, quality of work and compliance with performance schedules.
c) Evaluation team holds discussions with the most highly qualified firms ("short list");
d) Evaluation team prepares a selection report for the Department Manager recommending, in order of preference, those firms that is considered to be the most highly qualified to perform the required services. The report should include a description of the discussions and evaluations by the team to allow the Department Manager to review the basis upon which the recommendations were made. If recommended firms are deemed to be unqualified or the report is inadequate, the Department Manager shall document the reasons therefore and return the report to the evaluation team for appropriate revision;
e) The Department Manager shall make the final selection from a list of the most highly qualified firms prepared by the evaluation team. The City Council will list those firms in order of preference for negotiating a contract;
f) After the final selection has taken place, the Department Manager may release information identifying only the A/E firm with which an attempt will be made to negotiate a contract. If negotiations are terminated without awarding a contract to the highest rated firm, the CITY may release information that negotiations will take place with the next highest rated firm;
g) The final selection by City Council authorizes negotiations to begin with the most qualified firm, which will be requested to submit a proposal that includes fees and cost estimates;
h) The negotiation of compensation to the contractor should represent a fair and equitable payment for the services performed. At this stage, negotiations must take place not only on the amount of compensation, but also the method of payment;
i) In determining the amount of compensation and the method of payment, consideration shall be given to:
    1) Scope and complexity of designs, surveys and other work and the skills necessary for these services,
    2) Quality and quantity of data provided to the A/E by the CITY.
    3) Location of, and conditions under which, the services will be performed.

4) Date services to begin and time allowed for performance;

j) Costs should be negotiated taking into consideration:
   1) Direct labor
   2) Overhead
   3) General and administrative expenses
   4) Materials
   5) Other direst costs
   6) Profit, which is further influenced by:
      a. Degree of A/E's risk,
      b. Level of effort,
      c. Level of talent or expertise the A/E must furnish
      d. Amount of subcontracting,
      e. Amount of top level A/E management involved,
      f. Subcontracts, and
      g. Contractors investment:

k) When the contract is negotiated and signed, the negotiations are documented and placed in the file:

l) The contract shall be monitored to ensure that expenditures and payments therefore are commensurate with performance and that both have met all the terms of the contract; and

m) The contractor is responsible for the professional quality, technical accuracy and coordination of all services under the contract. The contractor may be liable to the CITY for costs resulting from errors or deficiencies in design furnished under the terms of the A/E contract.

7.6 Procedures for Non-Competitive Negotiation

Non-competitive negotiation is procurement through solicitation of a proposal from only one source, or after solicitation of a number of sources, competition is determined inadequate. Previously described procedures for competitive bidding and competitive proposal describe the procedures to be used for non-competitive negotiations. Circumstances under which a contract may be awarded by non-competitive negotiation are limited to those listed in Section 7.3

In the event the CITY's Council rejects all bids and determines and declares by a resolution approved by a two-thirds vote of all its members, that in its opinion the supplies, equipment and materials may be purchased at a lower price in the open market, the Council may authorize the purchase of supplies, equipment and materials in the open market without further observance of the provisions requiring contracts, bids or notices. In order to utilize this provision, the specifications for the procurement must remain the same and the bid, which is ultimately accepted, must be less than the lowest monetary bid received through the formal procurement process.

8.0 RECEIVING/APPROVAL TO PAY

8.1 Receipt of Goods

The Project Manager or his/her designee are the only CITY employees authorized to receive goods. Upon receipt, the packing slip is compared to the goods received. If correct, the packing slip is signed and dated. Items received, date received, packing slip number, and back order quantities are to be noted in the record keeping system. These documents will then be sent to Accounts Payable and will support the invoice when approved for payment.

8.2 Receipt of Services

The Project Manager is responsible for the receipt of services. Upon completion of services, the Project Manager will sign all documents confirming the proper completion of services and forward the documents to Accounts Payable to constitute approval to pay.

9.0 PROTEST POLICIES AND PROCEDURES

The City Manager shall make every effort to award contracts in compliance with state, Federal and local regulations. Bidders who feel that a contract has been or may be awarded improperly shall have the right to protest the specifications and/or contract award in compliance with applicable local state and Federal regulations.

9.1 Filing Protest

Protests dealing with restrictive specifications or alleged improprieties in the solicitation must be filed no later than five (5) working days prior to bid opening or closing date for receipt of proposals. Any other protest must be filed no later than five (5) working days after award of contract.

Protests shall be in writing and addressed to the City Manager or his designee.

The protest shall contain a statement describing the reasons for the protest and any supporting documentation. Additional materials in support of the initial protest will only be considered if filed within the time limit specified in paragraph 9.1. The protest shall indicate the ruling or relief desired from the CITY.

9.2 Confidentiality

Materials submitted by a protester would not be withheld from any interested party, except to the extent that the withholding of information is permitted or required by law or regulation. If the protest contains proprietary material, a statement advising of this fact may be affixed to the front page of the protest document and the alleged proprietary information must be so identified wherever it appears.

9.3 Withholding of Award

When a protest is filed before opening of bids, the bids will not be opened prior to resolution of the protest, and when the protest is filed before award, the award will not be made prior to resolution of the protest, unless the CITY determines that:

a) Items to be procured are urgently needed, or delivery or performance will be unduly delayed by failure to make award promptly; or
b) Failure to make award will cause undue harm to the CITY.

In the event an award is to be made while a protest is pending, the Federal Transit Administration shall be notified if Federal funding is involved.

9.4 Processing the Protest

a) The CITY shall respond to the protestor within five (5) working days of receiving the protest. A conference on the merits of the protest may be held with the protester.
b) Any additional information required by the CITY from the protester shall be submitted as expeditiously as possible, but no later than three (3) days after receipt of such request.

9.5 Notification

The CITY shall notify the protester of its decision no later than ten (10) days following receipt of all relevant information.

9.6 Appeal

If a protester is not satisfied with the decision made by the CITY, and Federal funds are involved, the protester may file protest with the Federal Transit Administration. Review by FTA will be limited to:

a) Violation of Federal law or regulations.
b) Violation of the CITY's protests procedures described herein, or failure by the CITY to review protest.

Protests must be filed with FTA (with a concurrent copy to the CITY) within five (5) days after the CITY renders a final decision, or five (5) days after the protester knows, or has reason to know, that the CITY failed to render a final decision. After five (5) days, the CITY will confirm with FTA that FTA has not received protest on the contract in question.

Circular 4220.1E is available for review at the CITY offices; a copy may be obtained for FTA at the following address:

Federal Transit Administration
Region IX
201 Mission Street – Suite 1650
San Francisco, California 94105-1839

The CITY shall not be responsible for any protests not filed in a timely manner with FTA.

10.0 PURCHASING PROCEDURE AMENDMENT

From time to time, the U.S. Department of Transportation, FTA or other governing bodies may set forth-new procurement standards, issue supplementary directives, or revise certain procurement regulations or procedures. As these changes, revisions or applicable guidance are determined necessary for proper procurement administration, the CITY will prepare a summary of the proposed changes for the review and approval by the City Council. The amended policy or procedures will then be incorporated into the CITY's Procurement Policies and Procedures.

11.0 CONTRACTS AND CONTRACTOR RESPONSIBILITY

11.1 Compensation Arrangements

Contracts are divided into specific types of compensation arrangements reflecting the CITY's varying responsibility, as the buyer, to pay the allowable cost incurred by the contractor, as the seller. The following list includes the most commonly used compensation arrangements. It is up to the CITY to decide which compensation arrangement is most appropriate for a specific procurement.

The CITY's adopted procurement policy prohibits use of a cost-plus-a-percentage-of-cost contract. The following are definitions of allowable compensation arrangements:

a) Firm Fixed-Price
This arrangement is characterized by a lump-sum price not subject to adjustment. The adjustment referred to in these discussions does not include contract modifications or change orders. The risk of performance falls on the contractor. This type of arrangement should be used where competition is present and detailed specifications are available.

b) Fixed-Price Incentive
This type of lump-sum arrangement is characterized by an adjustment formula in the contract, which relates to the efficiency of the contractor. A target profit and target cost is negotiated, along with a profit formula. The contractors profit increases or decreases according to the formula, as the actual costs are less or more, respectively, than the target cost. The fixed-price incentive arrangement is distinguished from the cost

incentive arrangement by the inclusion of a ceiling price. Costs in excess of the ceiling price are borne entirely by the contractor.

c) Fixed-Price with Price Redetermination
This is essentially a lump-sum arrangement with adjustments within specified limits negotiated, as actual costs become known. As in fixed-price escalation arrangements, the CITY assumes the risk of contingencies, which may occur. The price redetermination may be made either at specified times during performance or after completion of performance. This type of arrangement should be used in limited instances only.

d) Cost-Reimbursement
The contractor is reimbursed for costs only and receives no fee. This type of contract is used for facilities contracts, and research and development contracts with non-profit organizations.

e) Cost-Sharing
The contractor receives no fee and is reimbursed for only a portion of his/her costs. This type of contract is used where the benefits of a research and development contract accrue to both parties.

f) Cost-Plus-Incentive-Fee
This type of contract is similar to the fixed-price incentive contract, discussed above, except there is no ceiling price.

g) Cost-Plus-A-Fixed-Fee
The contractor receives a set fee and is reimbursed for all costs allowable under established cost principles.

h) Time-and-Materials/Labor-Hour
These are contracts provided for supplies or services on the basis of direct-labor hours at specified fixed hourly rates and materials at cost. This type of contract should be used with caution. It is the least preferred method of contracting.

11.2 Contract Provisions

The main purpose of a written contract is to capture all the essential information regarding an agreement between two parties so that both sides are clear about their roles and responsibilities. The contract should also describe procedures to be followed in case of a disagreement between the parties or in case one or other of them fails to perform as agreed.

The basis elements of a contract are as follows:

a) Scope of work/goods to be delivered
b) Contract amount / method of payment
c) Term of contract / schedule
d) Provisions for amendment / termination
e) Legal and administrative obligations

The elements of the contract describing the service or goods to be delivered, the contract

amount and schedule will normally be unique to the particular circumstances and can be tailored by the CITY to suit particular needs. Federal, state or the CITY regulations, may govern the other elements of the contract. For example, FTA grantees are regulated in the type of payments they can make since FTA does not allow grantees to make advance payments and requires them to follow specific standards in the use of progress payments (See FTA Circular 4220.1E).

To find out which provisions should be included in the contract, refer to the applicable Federal, state and local legislation and policies. At the end of this section are the FTA required contract clauses.

11.2.1 General Contract Provisions

The following provisions, briefly described below, are typical examples found in most types of contracts:

a) Scope of Work / Specifications
The scope of work included in the contract shall be the same as the scope of work included in the Request for Proposals or Invitation for Bids documents and it should reflect any changes that have been made as a result of negotiation. It is often convenient to attach the scope of work or specifications to the contract as an exhibit and incorporate in into the contract be reference.

b) Contract Amount
For fixed price and cost plus fixed fee agreements, the contract shall identify the lump sum and the maximum amount that will be paid (if different) and describe any allowable costs that will be reimbursed. For a fixed unit cost contract, the agreement shall include the amount that will be paid per unit of service and how the units will be measured. For incentive-based contracts, the contract shall identify the lump sum amount and the system of penalties and bonuses that are tied to performance. In the user side subsidy type of contract, the contract amount provision may include a limit on the number of trips.

c) Payment Schedule / Method of Payment
Payment may be related to progress made under the contract and tied to certain milestones or the submission of deliverables. In these cases, a schedule of payments may be attached to the contract and incorporated by reference.

The contract shall indicate when the contractor is to submit invoices and what information the invoices shall include. This provision shall also describe any supporting documentation that must be submitted with the invoice, for example, progress reports and invoices.

This provision shall describe any provisions for retaining a portion of the invoice and the procedure for making the last payment under the contract. A small percentage of each progress payment shall be retained

under a cost plus fixed fee contract where the contractor has to deliver a product, such as a report, to the CITY. Payment of the retained amount shall be made only after the CITY has reviewed and accepted the final product.

The contract shall also indicate when the contractor can expect payment, for example, within three weeks of submitting an invoice.

d) Contract Term

The contract shall include the effective date of the contract, which is usually the date of execution. The date is especially important with cost plus fixed fee contracts since contractor costs are not usually reimbursable until the effective date. If contract execution is delayed beyond the required project start date, a written notice to proceed may be issued and incorporated in the contract. The contract shall also indicate when its term expires. The term of the contract may be expressed in years, calendar months or days.

e) Independent Contractor Provision

An independent contractor provision is often included in service contracts. Its purpose is to make it clear that the contractor is an independent contractor and that all the individuals working for or under the direction of the contractors are employees of the contractor and not employees of the CITY. Additional language is sometimes included to indicate that the contractor is responsible for its own acts and those of its subordinates, employees and subcontractors and that the contractor is responsible for all matter relating to the payment of its employees, including social security and unemployment compensation.

f) Insurance

Federal, State, Local government and the CITY policies often set minimum insurance requirements. In most cases, contractors are required to obtain general and automobile liability insurance and workers compensation. Consultants providing professional services may be required to obtain professional liability insurance. At a minimum, the insurance section of the contract shall specify the following:

1) The types of insurance required (for example, general and automobile liability, workers compensation, professional liability);
2) The amount of insurance required (for example, $1,000,000 of professional liability insurance);
3) The minimum acceptable rating of the insurance carrier;
4) Whether the contractor is required to name the CITY as an additional insured on the policy;
5) That the insurance must remain in effect for the duration of the contract; and
6) Whether insurance certificates must be submitted to the CITY before the contract is executed or before work proceeds and, if so, to whom the insurance certificates should be sent.

g) Indemnification

This is a common clause under which the contractor agrees to hold the CITY and its governing body, offices and employees harmless from any liability or claims resulting from the contractor's negligence under the contract.

h) Non-assignability / Approval of Subcontractors
This clause states that the Contractor is not permitted to assign or transfer its interests in the contract or to subcontract any part of the work to any other party without prior written approval of the CITY and then only as permitted by law.

i) Amendment
This provision describes how the contract can be amended and often specifies who, in the CITY, must approve changes.

j) Provisions for Termination
There are two major types of termination provisions: termination for cause and termination for convenience.

Termination for cause means that the CITY can cancel the contract if the contractor fails to perform, if there is evidence of financial mismanagement or if there is continual substandard performance. The termination for cause provision shall make it clear who is responsible for making the final determination of the contractor's default, how much notice will be given to the contractor, whether there is a remedy period and how any final payments will be made.

Termination for convenience means the CITY may terminate the contract if it is in its best interest to do so. While there are some good reasons why the CITY may need to cancel a contract for convenience (e.g. budget cuts), this clause is often written in such a way that the CITY may cancel for any reason. The termination for convenience clause shall also include agreement as to how much notice should be given and how any final payment can be made. From the contractor's perspective, requiring the CITY to pay certain closeout costs can mitigate the termination for convenience clause.

k) Governing Law
This provision makes it clear that the agreement is to be interpreted or enforced under the laws of the state of California.

l) Authorized Signatures
The contract should include signature blocks for officials of both the CITY and the contractor authorized to execute the agreement. All contracts over $2,500.00 require the signature of the City Manager or his/her designee.

m) Other Common Contract provisions
The following are additional provisions commonly included in contracts for goods and services:

1) The contractor shall keep all business records relevant to the contract for a period of three years and permit the CITY to inspect or audit their records.
2) The contractor is required to comply with all Federal, state and local lows and to obtain any necessary permits or licenses.
3) The contractor shall comply with the CITY's policy on the participation of disadvantages businesses in contracts.
4) The contractor must not have used anyone other than a bona fide employee to obtain the contract.
5) The contractor must not have any conflict of interest in providing the service.
6) The contractor must represent and warrant that neither the City Council , not any manager, officer, director or employee of the CITY, is in any manner interested, directly or indirectly, in any contract which may be awarded or any profits expected to arise from a violation of the provisions of the Political Reform Act of 1974, as amended (commencing with Government Code 81,000).
7) No member, officer or employee of the CITY or of any local public body during his / her tenure or for one year thereafter shall have any interest, direct or indirect, in any contract of the proceeds thereof.

11.2.2 Contract Provisions for FTA Grantees

A number of general contract provisions are required by the Federal Transit Administration (FTA) for FTA funded contracts. These provisions are intended to establish minimum guidelines to which grantees must adhere when purchasing supplies, equipment and construction and professional services. The provisions and the types of contracts to which they apply are briefly described below.

Much of this material is taken from **Best Practices Procurement Manual**, guidance provided to grantees from the Federal Transit Administration. These requirements change from time to time. When drafting a contract, therefore, check the latest materials from FTA.

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

requirements of this section in all subcontracts that may involve international air transportation.

2. **Buy America** - The contractor agrees to comply with 49 U.S.C. 5323(j) and 49 CFR Part 661, which provide that Federal funds may not be obligated unless steel, iron, and manufactured products used in FTA-funded projects are produced in the United States, unless a waiver has been granted by FTA or the product is subject to a general waiver. General waivers are listed in 49 CFR 661.7, and include final assembly in the United States for 15 passenger vans and 15 passenger wagons produced by Chrysler Corporation, microcomputer equipment, software, and small purchases (currently less than $100,000) made with capital, operating, or planning funds. Separate requirements for rolling stock are set out at 5323(j)(2)(C) and 49 CFR 661.11. Rolling stock not subject to a general waiver must be manufactured in the United States and have a 60 percent domestic content.

   A bidder or offeror must submit to the FTA recipient the appropriate Buy America certification (below) with all bids on FTA-funded contracts, except those subject to a general waiver. Bids or offers that are not accompanied by a completed Buy America certification must be rejected as non-responsive. This requirement does not apply to lower tier subcontractors.

CERTIFICATION REQUIREMENT FOR PROCUREMENT OF STEEL, IRON, OR MANUFACTURED PRODUCTS.

Certificate of Compliance with 49 U.S.C. 5323(j)(1)

The bidder or offeror hereby certifies that it will meet the requirements of 49 U.S.C. 5323(j)(1) and the applicable regulations in 49 CFR Part 661.

Date _____

Signature_____

Company Name _____

Title _____

Certificate of Non-Compliance with 49 U.S.C. 5323(j)(1)

The bidder or offeror hereby certifies that it cannot comply with the requirements of 49 U.S.C. 5323(j)(1), but it may qualify for an exception pursuant to 49 U.S.C. 5323(j)(2)(B) or (j)(2)(D) and the regulations in 49 CFR 661.7.
the regulations in 49 CFR 661.7.

Date _____

Signature _____

Company Name _____

Title _____

CERTIFICATION REQUIREMENT FOR PROCUREMENT OF BUSES, OTHER ROLLING STOCK AND ASSOCIATED EQUIPMENT.

Certificate of Compliance with 49 U.S.C. 5323(j)(2)(C).

The bidder or offeror hereby certifies that it will comply with the requirements of 49 U.S.C. 5323(j)(2)(C) and the regulations at 49 CFR Part 661.

Date _____

Signature _____

Company Name _____

Title _____

Certificate of Non-Compliance with 49 U.S.C. 5323(j)(2)(C)

The bidder or offeror hereby certifies that it cannot comply with the requirements of 49 U.S.C. 5323(j)(2)(C), but may qualify for an exception pursuant to 49 U.S.C. 5323(j)(2)(B) or (j)(2)(D) and the regulations in 49 CFR 661.7.

Date _____

Signature _____

Company Name _____

Title _____

3. **Charter Service Operations -** The contractor agrees to comply with 49 U.S.C. 5323(d) and 49 CFR Part 604, which provides that recipients and subrecipients 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 CFR 604.9. Any charter service provided under one of the exceptions must be "incidental," i.e., it must not interfere with or detract from the provision of mass transportation.

4. **School Bus Operations -** Pursuant to 69 U.S.C. 5323(f) and 49 CFR Part 605, recipients and subrecipients 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 subrecipients may not use federally funded equipment, vehicles, or facilities.

5. **Cargo Preference - Use of United States-Flag Vessels -** The contractor agrees: a. to use privately owned United States-Flag commercial vessels to ship at least 50 percent of the gross tonnage (computed separately for dry bulk carriers, dry cargo liners, and tankers) involved, whenever shipping any equipment, material, or commodities pursuant to the underlying contract to the extent such vessels are available at fair and reasonable rates for United States-Flag commercial vessels; b. to furnish within 20 working days following the date of loading for shipments originating within the United States or within 30 working days following the date of leading for shipments originating outside the United States, a legible copy of a rated, "on-board" commercial ocean bill-of -lading in English for each shipment of cargo described in the preceding paragraph to the Division of National Cargo, Office of Market Development, Maritime Administration, Washington, DC 20590 and to the FTA recipient (through the contractor in the case of a subcontractor's bill-of-lading.) c. to include these requirements in all subcontracts issued pursuant to this contract when the subcontract may involve the transport of equipment, material, or commodities by ocean vessel.

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

7. **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.

8. **Clean Water - (1)** The Contractor agrees to comply with all applicable standards, orders or regulations issued pursuant to the Federal Water Pollution Control Act, as amended, 33 U.S.C. 1251 et seq . The Contractor agrees to report each violation to the Purchaser

and understands and agrees that the Purchaser will, in turn, report each violation as required to assure notification to FTA and the appropriate EPA Regional Office.

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

9. **Bus Testing -** The Contractor [Manufacturer] agrees to comply with 49 U.S.C. A 5323(c) and FTA's implementing regulation at 49 CFR Part 665 and shall perform the following:

1) A manufacturer of a new bus model or a bus produced with a major change in components or configuration shall provide a copy of the final test report to the recipient at a point in the procurement process specified by the recipient which will be prior to the recipient's final acceptance of the first vehicle.

2) A manufacturer who releases a report under paragraph 1 above shall provide notice to the operator of the testing facility that the report is available to the public.

3) If the manufacturer represents that the vehicle was previously tested, the vehicle being sold should have the identical configuration and major components as the vehicle in the test report, which must be provided to the recipient prior to recipient's final acceptance of the first vehicle. If the configuration or components are not identical, the manufacturer shall provide a description of the change and the manufacturer's basis for concluding that it is not a major change requiring additional testing.

4) If the manufacturer represents that the vehicle is "grandfathered" (has been used in mass transit service in the United States before October 1, 1988, and is currently being produced without a major change in configuration or components), the manufacturer shall provide the name and address of the recipient of such a vehicle and the details of that vehicle's configuration and major components.

CERTIFICATION OF COMPLIANCE WITH FTA'S BUS TESTING REQUIREMENTS

The undersigned [Contractor/Manufacturer] certifies that the vehicle offered in this procurement complies with 49 U.S.C. A 5323(c) and FTA's implementing regulation at 49 CFR Part 665.

The undersigned understands that misrepresenting the testing status of a vehicle acquired with Federal financial assistance may subject the undersigned to civil penalties as outlined in the Department of Transportation's regulation on Program Fraud Civil Remedies, 49 CFR Part 31. In addition, the undersigned understands that FTA may suspend or debar a manufacturer under the procedures in 49 CFR Part 29.

Date: _____

Signature: _____

Company Name: _____

Title: _____

10. **Pre-Award and Post-Delivery Audit Requirements -** The Contractor agrees to comply with 49 U.S.C. § 5323(l) and FTA's implementing regulation at 49 C.F.R. Part 663 and to submit the following certifications:

(1) Buy America Requirements: The Contractor shall complete and submit a declaration certifying either compliance or noncompliance with Buy America. If the Bidder/Offeror certifies compliance with Buy America, it shall submit documentation which lists 1) component and subcomponent parts of the rolling stock to be purchased identified by manufacturer of the parts, their country of origin and costs; and 2) the location of the final assembly point for the rolling stock, including a description of the activities that will take place at the final assembly point and the cost of final assembly.

(2) Solicitation Specification Requirements: The Contractor shall submit evidence that it will be capable of meeting the bid specifications.

(3) Federal Motor Vehicle Safety Standards (FMVSS): The Contractor shall submit 1) manufacturer's FMVSS self-certification sticker information that the vehicle complies with relevant FMVSS or 2) manufacturer's certified statement that the contracted buses will not be subject to FMVSS regulations.

BUY AMERICA CERTIFICATE OF COMPLIANCE WITH FTA REQUIREMENTS FOR BUSES, OTHER ROLLING STOCK, OR ASSOCIATED EQUIPMENT

(To be submitted with a bid or offer exceeding the small purchase threshold for Federal assistance programs, currently set at $100,000.)

Certificate of Compliance

The bidder hereby certifies that it will comply with the requirements of 49 U.S.C. Section 5323(j)(2)(C), Section 165(b)(3) of the Surface Transportation Assistance Act of 1982, as amended, and the regulations of 49 C.F.R. 661.11:

Date: _____

Signature: _____

Company Name: _____

Title: _____

Certificate of Non-Compliance

The bidder hereby certifies that it cannot comply with the requirements of 49 U.S.C. Section 5323(j)(2)(C) and Section 165(b)(3) of the Surface Transportation Assistance Act of 1982, as amended, but may qualify for an exception to the requirements consistent with 49 U.S.C. Sections 5323(j)(2)(B) or (j)(2)(D), Sections 165(b)(2) or (b)(4) of the Surface Transportation Assistance Act, as amended, and regulations in 49 C.F.R. 661.7.

Date: _____

Signature: _____

Company Name: _____

Title: _____

11. **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 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 recipient.

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 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. **Access to Records -** The following access to records requirements apply to this Contract:

1. Where the Purchaser is not a State but a local government and is the FTA Recipient or a subgrantee of the FTA Recipient in accordance with 49 C. F. R. 18.36(i), the Contractor agrees to provide the Purchaser, the FTA Administrator, the Comptroller General of the United States or any of their authorized representatives access to any books, documents, papers and records of the Contractor which are directly pertinent to this contract for the purposes of making audits, examinations, excerpts and transcriptions. Contractor also agrees, pursuant to 49 C. F. R. 633.17 to provide the FTA Administrator or his authorized representatives access to Contractor's records and construction sites pertaining to a major capital project, defined at 49 U.S.C. 5302(a)1, which is receiving federal financial assistance through the programs described at 49 U.S.C. 5307, 5309 or 5311.

2. Where the Purchaser is a State and is the FTA Recipient or a subgrantee of the FTA Recipient in accordance with 49 C.F.R. 633.17, Contractor agrees to provide the Purchaser, the FTA Administrator or his authorized representatives, access to the Contractor's records and construction sites pertaining to a major capital project, defined at 49 U.S.C. 5302(a)1, which is receiving federal financial assistance through the programs described at 49 U.S.C. 5307, 5309 or 5311. By definition, a major capital project excludes contracts of less than the simplified acquisition threshold currently set at $100,000.

3. Where the Purchaser enters into a negotiated contract for other than a small purchase or under the simplified acquisition threshold and is an institution of higher education, a hospital or other non-profit organization and is the FTA Recipient or a subgrantee of the FTA Recipient in accordance with 49 C.F.R. 19.48, Contractor agrees to provide the Purchaser, FTA Administrator, the Comptroller General of the United States or any of their duly authorized representatives with access to any books, documents, papers and record of the Contractor which are directly pertinent to this contract for the purposes of making audits, examinations, excerpts and transcriptions.

4. Where any Purchaser which is the FTA Recipient or a subgrantee of the FTA Recipient in accordance with 49 U.S.C. 5325(a) enters into a contract for a capital project or improvement (defined at 49 U.S.C. 5302(a)1) through other than competitive bidding, the Contractor shall make available records related to the contract to the Purchaser, the Secretary of Transportation and the Comptroller General or any authorized officer or employee of any of them for the purposes of conducting an audit and inspection.

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

6. The Contractor agrees to maintain all books, records, accounts and reports required under this contract for a period of not less than three years after the date of termination or expiration of this contract, except in the event of litigation or settlement of claims arising from the performance of this contract, in which case Contractor agrees to maintain same until the Purchaser, the FTA Administrator, the Comptroller General, or any of their duly

authorized representatives, have disposed of all such litigation, appeals, claims or exceptions related thereto. Reference 49 CFR 18.39(i)(11).

7. FTA does not require the inclusion of these requirements in subcontracts.

Requirements for Access to Records and Reports by Types of Contract

Contract Characteristics	Operational Service Contract	Turnkey	Construction	Architectural Engineering	Acquisition of Rolling Stock	Professional Services
I State Grantees a. Contracts below SAT ($100,000) b. Contracts above $100,000/ Capital Projects	None None unless[1] non-competitive award	Those imposed on state pass thru to Contractor	None Yes, if non-competitive award or if funded thru[2] 5307/5309/5311	None None unless non-competitive award	None None unless non-competitive award	None None unless non-competitive award
II Non State Grantees a. Contracts below SAT ($100,000) b. Contracts above $100,000/ Capital Projects	Yes[3] Yes[3]	Those imposed on non-state Grantee pass thru to Contractor	Yes Yes	Yes Yes	Yes Yes	Yes Yes

13. **Federal Changes -** Contractor shall at all times comply with all applicable FTA regulations, policies, procedures and directives, including without limitation those listed directly or by reference in the Agreement (Form FTA MA (6) dated October, 1999) 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.

14. **Varied Bonding requirements:**

Bid Bond Requirements (Construction)

(a) Bid Security

A Bid Bond must be issued by a fully qualified surety company acceptable to the CITY and listed as a company currently authorized under 31 CFR, Part 223 as possessing a Certificate of Authority as described thereunder.

(b) Rights Reserved

In submitting this Bid, it is understood and agreed by bidder that the right is reserved by the CITY to reject any and all bids, or part of any bid, and it is agreed that the Bid may not be withdrawn for a period of [ninety (90)] days subsequent to the opening of bids, without the written consent of the CITY.

It is also understood and agreed that if the undersigned bidder should withdraw any part or all of his bid within [ninety (90)] days after the bid opening without the written consent of the CITY, shall refuse or be unable to enter into this Contract, as provided above, or refuse or be unable to furnish adequate and acceptable Performance Bonds and Labor and Material Payments Bonds, as provided above, or refuse or be unable to furnish adequate and acceptable insurance, as provided above, he shall forfeit his bid security to the extent of (Recipient's) damages occasioned by such withdrawal, or refusal, or inability to enter into an agreement, or provide adequate security there for.

It is further understood and agreed that to the extent the defaulting bidder's Bid Bond, Certified Check, Cashier's Check, Treasurer's Check, and/or Official Bank Check (excluding any income generated thereby which has been retained by the CITY as provided in [Item x "Bid Security" of the Instructions to Bidders]) shall prove inadequate to fully recompense the CITY for the damages occasioned by default, then the undersigned bidder agrees to indemnify the CITY and pay over to the CITY the difference between the bid security and (Recipient's) total damages, so as to make the CITY whole.

The undersigned understands that any material alteration of any of the above or any of the material contained on this form, other than that requested, will render the bid unresponsive.

Performance and Payment Bonding Requirements (Construction)

The Contractor shall be required to obtain performance and payment bonds as follows:

(a) Performance bonds

1. The penal amount of performance bonds shall be 100 percent of the original contract price, unless the CITY determines that a lesser amount would be adequate for the protection of the CITY.

2. The CITY may require additional performance bond protection when a contract price is increased. The increase in protection shall generally equal 100 percent of the increase in contract price. The CITY may secure additional protection by directing the Contractor to increase the penal amount of the existing bond or to obtain an additional bond.

(b) Payment bonds

1. The penal amount of the payment bonds shall equal:

(i) Fifty percent of the contract price if the contract price is not more than $1 million.

(ii) Forty percent of the contract price if the contract price is more than $1 million but not more than $5 million; or

(iii) Two and one half million if the contract price is more than $5 million.

2. If the original contract price is $5 million or less, the CITY may require additional protection as required by subparagraph 1 if the contract price is increased.

Performance and Payment Bonding Requirements (Non-Construction)

The Contractor may be required to obtain performance and payment bonds when necessary to protect the CITY's interest.

(a) The following situations may warrant a performance bond:

1. The CITY property or funds are to be provided to the contractor for use in performing the contract or as partial compensation (as in retention of salvaged material).

2. A contractor sells assets to or merges with another concern, and the CITY, after recognizing the latter concern as the successor in interest, desires assurance that it is financially capable.

3. Substantial progress payments are made before delivery of end items starts.

4. Contracts are for dismantling, demolition, or removal of improvements.

(b) When it is determined that a performance bond is required, the Contractor shall be required to obtain performance bonds as follows:

1. The penal amount of performance bonds shall be 100 percent of the original contract price, unless the CITY determines that a lesser amount would be adequate for the protection of the CITY.

2. The CITY may require additional performance bond protection when a contract price is increased. The increase in protection shall generally equal 100 percent of the increase in contract price. The CITY may secure additional protection by directing the Contractor to increase the penal amount of the existing bond or to obtain an additional bond.

(c) A payment bond is required only when a performance bond is required, and if the use of payment bond is in the CITY's interest.

(d) When it is determined that a payment bond is required, the Contractor shall be required to obtain payment bonds as follows:

1. The penal amount of payment bonds shall equal:

(i) Fifty percent of the contract price if the contract price is not more than $1 million;

(ii) Forty percent of the contract price if the contract price is more than $1 million but not more than $5 million; or

(iii) Two and one half million if the contract price is increased.

Warranty of the Work and Maintenance Bonds

1. The Contractor warrants to the CITY, the Architect and/or Engineer that all materials and equipment furnished under this Contract will be of highest quality and new unless otherwise specified by the CITY, free from faults and defects and in conformance with the Contract Documents. All work not so conforming to these standards shall be considered defective. If required by the [Project Manager], the Contractor shall furnish satisfactory evidence as to the kind and quality of materials and equipment.

2. The Work furnished must be of first quality and the workmanship must be the best obtainable in the various trades. The Work must be of safe, substantial and durable construction in all respects. The Contractor hereby guarantees the Work against defective materials or faulty workmanship for a minimum period of one (1) year after Final Payment by the CITY and shall replace or repair any defective materials or equipment or faulty workmanship during the period of the guarantee at no cost to the CITY. As additional security for these guarantees, the Contractor shall, prior to the release of Final Payment [as provided in Item X below], furnish separate Maintenance (or Guarantee) Bonds in form acceptable to the CITY written by the same corporate surety that provides the Performance Bond and Labor and Material Payment Bond for this Contract. These bonds shall secure the Contractor's obligation to replace or repair defective materials and faulty workmanship for a minimum period of one (1) year after Final Payment and shall be written in an amount equal to ONE HUNDRED PERCENT (100%) of the CONTRACT SUM, as adjusted (if at all).

15. **Clean Air - (1)** The Contractor agrees to comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act, as amended, 42 U.S.C. §§ 7401 et seq . The Contractor agrees to report each violation to the Purchaser and understands and agrees that the Purchaser will, in turn, report each violation as required to assure notification to FTA and the appropriate EPA Regional Office.

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

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

17. **Davis-Bacon Act**

(1) **Minimum wages**

i. All laborers and mechanics employed or working upon the site of the work (or under the United States Housing Act of 1937 or under the Housing Act of 1949 in the construction or development of the project), will be paid unconditionally and not less often than once a week, and without subsequent deduction or rebate on any account (except such payroll deductions as are permitted by regulations issued by the Secretary of Labor under the Copeland Act (29 CFR part 3)), the full amount of wages and bona fide fringe benefits (or cash equivalents thereof) due at time of payment computed at rates not less than those contained in the wage determination of the Secretary of Labor which is attached hereto and made a part hereof, regardless of any contractual relationship which may be alleged to exist between the contractor and such laborers and mechanics.

Contributions made or costs reasonably anticipated for bona fide fringe benefits under section 1(b)(2) of the Davis-Bacon Act on behalf of laborers or mechanics are considered wages paid to such laborers or mechanics, subject to the provisions of paragraph (1)(iv) of this section; also, regular contributions made or costs incurred for more than a weekly period (but not less often than quarterly) under plans, funds, or programs which cover the particular weekly period, are deemed to be constructively made or incurred during such weekly period. Such laborers and mechanics shall be paid the appropriate wage rate and fringe benefits on the wage determination for the classification of work actually performed, without regard to skill, except as provided in 29 CFR Part 5.5(a)(4). Laborers or mechanics performing work in more than one classification may be compensated at the rate specified for each classification for the time actually worked therein: Provided, that the employer's payroll records accurately set forth the time spent in each classification in which work is performed. The wage determination and the Davis-Bacon poster (WH-1321) shall be posted at all times by the contractor and its subcontractors at the site of the work in a prominent and accessible place where it can be easily seen by the workers.

ii. Whenever the minimum wage rate prescribed in the contract for a class of laborers or mechanics includes a fringe benefit which is not expressed as an hourly rate, the contractor shall either pay the benefit as stated in the wage determination or shall pay another bona fide fringe benefit or an hourly cash equivalent thereof.

iii. If the contractor does not make payments to a trustee or other third person, the contractor may consider as part of the wages of any laborer or mechanic the amount of any costs reasonably anticipated in providing bona fide fringe benefits under a plan or program, Provided, That the Secretary of Labor has found, upon the written request of the contractor, that the applicable standards of the Davis-Bacon Act have been met. The Secretary of Labor may require the contractor to set aside in a separate account assets for the meeting of obligations under the plan or program.

iv. (A) The contracting officer shall require that any class of laborers or mechanics which is not listed in the wage determination and which is to be employed under the

contract shall be classified in conformance with the wage determination. The contracting officer shall approve an additional classification and wage rate and fringe benefits therefore only when the following criteria have been met:

(1) The work to be performed by the classification requested is not performed by a classification in the wage determination; and

(2) The classification is utilized in the area by the construction industry; and

(3) The proposed wage rate, including any bona fide fringe benefits, bears a reasonable relationship to the wage rates contained in the wage determination.

(B) If the contractor and the laborers and mechanics to be employed in the classification (if known), or their representatives, and the contracting officer agree on the classification and wage rate (including the amount designated for fringe benefits where appropriate), a report of the action taken shall be sent by the contracting officer to the Administrator of the Wage and Hour Division, Employment Standards Administration, Washington, DC 20210. The Administrator, or an authorized representative, will approve, modify, or disapprove every additional classification action within 30 days of receipt and so advise the contracting officer or will notify the contracting officer within the 30-day period that additional time is necessary.

(C) In the event the contractor, the laborers or mechanics to be employed in the classification or their representatives, and the contracting officer do not agree on the proposed classification and wage rate (including the amount designated for fringe benefits, where appropriate), the contracting officer shall refer the questions, including the views of all interested parties and the recommendation of the contracting officer, to the Administrator for determination. The Administrator, or an authorized representative, will issue a determination within 30 days of receipt and advise the contracting officer or will notify the contracting officer within the 30-day period that additional time is necessar

(D) The wage rate (including fringe benefits where appropriate) determined pursuant to paragraphs (1)(iv) (B) or (C) of this section, shall be paid to all workers performing work in the classification under this contract from the first day on which work is performed in the classification.

(2) **Withholding** – The City of Paso Robles shall upon its own action or upon written request of an authorized representative of the Department of Labor withhold or cause to be withheld from the contractor under this contract or any other Federal contract with the same prime contractor, or any other federally-assisted contract subject to Davis-Bacon prevailing wage requirements, which is held by the same prime contractor, so much of the accrued payments or advances as may be considered necessary to pay laborers and mechanics, including apprentices, trainees, and helpers, employed by the contractor or any subcontractor the full amount of wages required by the contract. In the event of failure to pay any laborer or mechanic, including any apprentice, trainee, or helper, employed or working on the site of the work (or under the United States Housing Act of

1937 or under the Housing Act of 1949 in the construction or development of the project), all or part of the wages required by the contract, The City of Paso Robles may, after written notice to the contractor, sponsor, applicant, or owner, take such action as may be necessary to cause the suspension of any further payment, advance, or guarantee of funds until such violations have ceased.

(3) **Payrolls and basic records**

i. Payrolls and basic records relating thereto shall be maintained by the contractor during the course of the work and preserved for a period of three years thereafter for all laborers and mechanics working at the site of the work (or under the United States Housing Act of 1937, or under the Housing Act of 1949, in the construction or development of the project). Such records shall contain the name, address, and social security number of each such worker, his or her correct classification, hourly rates of wages paid (including rates of contributions or costs anticipated for bona fide fringe benefits or cash equivalents thereof of the types described in section 1(b)(2)(B) of the Davis-Bacon Act), daily and weekly number of hours worked, deductions made and actual wages paid. Whenever the Secretary of Labor has found under 29 CFR 5.5(a)(1)(iv) that the wages of any laborer or mechanic include the amount of any costs reasonably anticipated in providing benefits under a plan or program described in section 1(b)(2)(B) of the Davis-Bacon Act, the contractor shall maintain records which show that the commitment to provide such benefits is enforceable, that the plan or program is financially responsible, and that the plan or program has been communicated in writing to the laborers or mechanics affected, and records which show the costs anticipated or the actual cost incurred in providing such benefits. Contractors employing apprentices or trainees under approved programs shall maintain written evidence of the registration of apprenticeship programs and certification of trainee programs, the registration of the apprentices and trainees, and the ratios and wage rates prescribed in the applicable programs.

ii. (A) The contractor shall submit weekly for each week in which any contract work is performed a copy of all payrolls to The City of Paso Robles for transmission to the Federal Transit Administration. The payrolls submitted shall set out accurately and completely all of the information required to be maintained under 29 CFR part 5. This information may be submitted in any form desired. Optional Form WH-347 is available for this purpose and may be purchased from the Superintendent of Documents (Federal Stock Number 029-005-00014-1), U.S. Government Printing Office, Washington, DC 20402. The prime contractor is responsible for the submission of copies of payrolls by all subcontractors.

(B) Each payroll submitted shall be accompanied by a "Statement of Compliance," signed by the contractor or subcontractor or his or her agent who pays or supervises the payment of the persons employed under the contract and shall certify the following:

(1) That the payroll for the payroll period contains the information required to be maintained under 29 CFR part 5 and that such information is correct and complete;

(2) That each laborer or mechanic (including each helper, apprentice, and trainee) employed on the contract during the payroll period has been paid the full weekly wages earned, without rebate, either directly or indirectly, and that no deductions have been made either directly or indirectly from the full wages earned, other than permissible deductions as set forth in Regulations, 29 CFR part 3;

(4) That each laborer or mechanic has been paid not less than the applicable wage rates and fringe benefits or cash equivalents for the classification of work performed, as specified in the applicable wage determination incorporated into the contract.

(C) The weekly submission of a properly executed certification set forth on the reverse side of Optional Form WH-347 shall satisfy the requirement for submission of the "Statement of Compliance" required by paragraph (3)(ii)(B) of this section.

(D) The falsification of any of the above certifications may subject the contractor or subcontractor to civil or criminal prosecution under section 1001 of title 18 and section 231 of title 31 of the United States Code.

(iii) The contractor or subcontractor shall make the records required under paragraph (3)(i) of this section available for inspection, copying, or transcription by authorized representatives of the Federal Transit Administration or the Department of Labor, and shall permit such representatives to interview employees during working hours on the job. If the contractor or subcontractor fails to submit the required records or to make them available, the Federal agency may, after written notice to the contractor, sponsor, applicant, or owner, take such action as may be necessary to cause the suspension of any further payment, advance, or guarantee of funds. Furthermore, failure to submit the required records upon request or to make such records available may be grounds for debarment action pursuant to 29 CFR 5.12.

(4) **Apprentices and trainees** - (i) Apprentices - Apprentices will be permitted to work at less than the predetermined rate for the work they performed when they are employed pursuant to and individually registered in a bona fide apprenticeship program registered with the U.S. Department of Labor, Employment and Training Administration, Bureau of Apprenticeship and Training, or with a State Apprenticeship Agency recognized by the Bureau, or if a person is employed in his or her first 90 days of probationary employment as an apprentice in such an apprenticeship program, who is not individually registered in the program, but who has been certified by the Bureau of Apprenticeship and Training or a State Apprenticeship Agency (where appropriate) to be eligible for probationary employment as an apprentice. The allowable ratio of apprentices to journeymen on the job site in any craft classification shall not be greater than the ratio permitted to the

contractor as to the entire work force under the registered program. Any worker listed on a payroll at an apprentice wage rate, who is not registered or otherwise employed as stated above, shall be paid not less than the applicable wage rate on the wage determination for the classification of work actually performed. In addition, any apprentice performing work on the job site in excess of the ratio permitted under the registered program shall be paid not less than the applicable wage rate on the wage determination for the work actually performed. Where a contractor is performing construction on a project in a locality other than that in which its program is registered, the ratios and wage rates (expressed in percentages of the journeyman's hourly rate) specified in the contractor's or subcontractor's registered program shall be observed. Every apprentice must be paid at not less than the rate specified in the registered program for the apprentice's level of progress, expressed as a percentage of the journeymen hourly rate specified in the applicable wage determination. Apprentices shall be paid fringe benefits in accordance with the provisions of the apprenticeship program. If the apprenticeship program does not specify fringe benefits, apprentices must be paid the full amount of fringe benefits listed on the wage determination for the applicable classification. If the Administrator of the Wage and Hour Division of the U.S. Department of Labor determines that a different practice prevails for the applicable apprentice classification, fringes shall be paid in accordance with that determination. In the event the Bureau of Apprenticeship and Training, or a State Apprenticeship Agency recognized by the Bureau, withdraws approval of an apprenticeship program, the contractor will no longer be permitted to utilize apprentices at less than the applicable predetermined rate for the work performed until an acceptable program is approved.

(ii) Trainees - Except as provided in 29 CFR 5.16, trainees will not be permitted to work at less than the predetermined rate for the work performed unless they are employed pursuant to and individually registered in a program which has received prior approval, evidenced by formal certification by the U.S. Department of Labor, Employment and Training Administration. The ratio of trainees to journeymen on the job site shall not be greater than permitted under the plan approved by the Employment and Training Administration. Every trainee must be paid at not less than the rate specified in the approved program for the trainee's level of progress, expressed as a percentage of the journeyman hourly rate specified in the applicable wage determination. Trainees shall be paid fringe benefits in accordance with the provisions of the trainee program. If the trainee program does not mention fringe benefits, trainees shall be paid the full amount of fringe benefits listed on the wage determination unless the Administrator of the Wage and Hour Division determines that there is an apprenticeship program associated with the corresponding journeyman wage rate on the wage determination which provides for less than full fringe benefits for apprentices. Any employee listed on the payroll at a trainee rate who is not registered and participating in a training plan approved by the Employment and Training Administration shall be paid not less than the applicable wage rate on the wage determination for the classification of work actually performed. In addition, any trainee performing work on the job site in excess of the ratio permitted under the registered program shall be paid not less than the applicable wage rate on the wage determination for the work actually performed. In the event the Employment and Training Administration withdraws approval of a training program, the contractor will no

longer be permitted to utilize trainees at less than the applicable predetermined rate for the work performed until an acceptable program is approved.

(iii) Equal employment opportunity - The utilization of apprentices, trainees and journeymen under this part shall be in conformity with the equal employment opportunity requirements of Executive Order 11246, as amended, and 29 CFR part 30.

(5) **Compliance with Copeland Act requirements** - The contractor shall comply with the requirements of 29 CFR part 3, which are incorporated by reference in this contract.

(6) **Subcontracts** - The contractor or subcontractor shall insert in any subcontracts the clauses contained in 29 CFR 5.5(a)(1) through (10) and such other clauses as the Federal Transit Administration may by appropriate instructions require, and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The prime contractor shall be responsible for the compliance by any subcontractor or lower tier subcontractor with all the contract clauses in 29 CFR 5.5.

(7) **Contract termination: debarment** - A breach of the contract clauses in 29 CFR 5.5 may be grounds for termination of the contract, and for debarment as a contractor and a subcontractor as provided in 29 CFR 5.12.

(8) **Compliance with Davis-Bacon and Related Act requirements** - All rulings and interpretations of the Davis-Bacon and Related Acts contained in 29 CFR parts 1, 3, and 5 are herein incorporated by reference in this contract.

(9) **Disputes concerning labor standards** - Disputes arising out of the labor standards provisions of this contract shall not be subject to the general disputes clause of this contract. Such disputes shall be resolved in accordance with the procedures of the Department of Labor set forth in 29 CFR parts 5, 6, and 7. Disputes within the meaning of this clause include disputes between the contractor (or any of its subcontractors) and the contracting agency, the U.S. Department of Labor, or the employees or their representatives.

(10) **Certification of eligibility** - (i) By entering into this contract, the contractor certifies that neither it (nor he or she) nor any person or firm who has an interest in the contractor's firm is a person or firm ineligible to be awarded Government contracts by virtue of section 3(a) of the Davis-Bacon Act or 29 CFR 5.12(a)(1).

(ii) No part of this contract shall be subcontracted to any person or firm ineligible for award of a Government contract by virtue of section 3(a) of the Davis-Bacon Act or 29 CFR 5.12(a)(1).

(iii) The penalty for making false statements is prescribed in the U.S. Criminal Code, 18 U.S.C. 1001.

18. **Contract Work hours & Safety Standards** - These clauses are specifically mandated under DOL regulation 29 C.F.R. § 5.5 and when preparing a construction contract in

excess of $2,000 these clauses should be used in conjunction with the Davis-Bacon Act clauses as discussed previously. For non-construction contracts, this is the only section required along with the payroll section.

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

(2) **Violation; liability for unpaid wages; liquidated damages** - In the event of any violation of the clause set forth in paragraph (1) of this section the contractor and any subcontractor responsible therefore shall be liable for the unpaid wages. In addition, such contractor and subcontractor shall be liable to the United States for liquidated damages. Such liquidated damages shall be computed with respect to each individual laborer or mechanic, including watchmen and guards, employed in violation of the clause set forth in paragraph (1) of this section, in the sum of $ 10 for each calendar day on which such individual was required or permitted to work in excess of the standard workweek of forty hours without payment of the overtime wages required by the clause set forth in paragraph (1) of this section.

(3) **Withholding for unpaid wages and liquidated damages** – The City of Paso Robles shall upon its own action or upon written request of an authorized representative of the Department of Labor withhold or cause to be withheld, from any moneys payable on account of work performed by the contractor or subcontractor under any such contract or any other Federal contract with the same prime contractor, or any other federally-assisted contract subject to the Contract Work Hours and Safety Standards Act, which is held by the same prime contractor, such sums as may be determined to be necessary to satisfy any liabilities of such contractor or subcontractor for unpaid wages and liquidated damages as provided in the clause set forth in paragraph (2) of this section.

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

(Section 102 non-construction contracts should also have the following provision:**)**

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

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

Section 107 (OSHA):

(This section is applicable to construction contracts only)

Contract Work Hours and Safety Standards Act - (i) The Contractor agrees to comply with section 107 of the Contract Work Hours and Safety Standards Act, 40 U.S.C. section 333, and applicable DOL regulations, "Safety and Health Regulations for Construction " 29 C.F.R. Part 1926. Among other things, the Contractor agrees that it will not require any laborer or mechanic to work in unsanitary, hazardous, or dangerous surroundings or working conditions.

(ii)**Subcontracts** - The Contractor also agrees to include the requirements of this section in each subcontract. The term "subcontract" under this section is considered to refer to a person who agrees to perform any part of the labor or material requirements of a contract for construction, alteration or repair. A person who undertakes to perform a portion of a contract involving the furnishing of supplies or materials will be considered a "subcontractor" under this section if the work in question involves the performance of construction work and is to be performed: (1) directly on or near the construction site, or (2) by the employer for the specific project on a customized basis. Thus, a supplier of materials which will become an integral part of the construction is a "subcontractor" if the supplier fabricates or assembles the goods or materials in question specifically for the construction project and the work involved may be said to be construction activity. If the goods or materials in question are ordinarily sold to other customers from regular inventory, the supplier is not a "subcontractor." The requirements of this section do not apply to contracts or subcontracts for the purchase of supplies or materials or articles normally available on the open market.

19. **Copeland Anti-Kickback Act –** This requirement is included in the Davis-Bacon Act language. No additional clause is required.

20. **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.

21. **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.

22. **Termination**

a. Termination for Convenience (General Provision) The CITY 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 the CITY to be paid the Contractor. If the Contractor has any property in its possession belonging to the CITY, the Contractor will account for the same, and dispose of it in the manner the CITY 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 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 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, 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.

c. Opportunity to Cure (General Provision) The CITY 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 the CITY's satisfaction the breach or default or any of the terms, covenants, or conditions of this Contract within [ten (10) days] after receipt by Contractor or written notice from the CITY setting forth the nature of said breach or default, the CITY 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 the CITY 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 the CITY elects to waive its remedies for any breach by Contractor of any covenant, term or condition of this Contract, such waiver by the CITY shall not limit the CITY'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, 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 Recipient 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 terminate this contract for default. The CITY 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.

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 may terminate this contract for default. The CITY shall terminate by delivering to the Contractor a Notice of 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 Recipient goods, the Contractor shall, upon direction of the CITY, protect and preserve the goods until surrendered to the Recipient or its agent. The Contractor and the CITY 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.

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 may terminate this contract for default. The CITY shall terminate by delivering to the Contractor a Notice of Termination specifying the nature of the default. In this event, the CITY may take over the work and compete 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 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 Recipient 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, acts of another Contractor in the performance of a contract with the CITY, epidemics, quarantine restrictions, strikes, freight embargoes; and

2. the contractor, within [10] days from the beginning of any delay, notifies the CITY in writing of the causes of delay. If in the judgment of the CITY, the delay is excusable, the time for completing the work shall be extended. The judgment of the CITY shall be final and conclusive on the parties, but subject to appeal under the Disputes clauses.

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.

Termination for Convenience or Default (Architect and Engineering) The CITY may terminate this contract in whole or in part, for the CITY's convenience or because of the failure of the Contractor to fulfill the contract obligations. The CITY 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, 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 may complete the work by contact or otherwise and the Contractor shall be liable for any additional cost incurred by the CITY.

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.

j. Termination for Convenience of Default (Cost-Type Contracts) The CITY may terminate this contract, or any portion of it, by serving a notice or termination on the Contractor. The notice shall state whether the termination is for convenience of the CITY 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, or property supplied to the Contractor by the CITY. If the termination is for default, the CITY 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 and the parties shall negotiate the termination settlement to be paid the Contractor.

If the termination is for the convenience of the CITY, 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.

If, after serving a notice of termination for default, the CITY 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, after setting up a new work schedule, may allow the Contractor to continue work, or treat the termination as a termination for convenience.

23. **Certification Regarding Debarment, Suspension, and Other Responsibility Matters**

Instructions for Certification

1. **By signing and submitting this bid or proposal, the prospective lower tier participant is providing the signed certification set out below** .

2. The certification in this clause is a material representation of fact upon which reliance was placed when this transaction was entered into. If it is later determined that the prospective lower tier participant knowingly rendered an erroneous certification, in addition to other remedies available to the Federal Government, the CITY may pursue available remedies, including suspension and/or debarment.

3. The prospective lower tier participant shall provide immediate written notice to the CITY if at any time the prospective lower tier participant learns that its certification was erroneous when submitted or has become erroneous by reason of changed circumstances.

4. The terms "covered transaction," "debarred," "suspended," "ineligible," "lower tier covered transaction," "participant," "persons," "lower tier covered transaction," "principal," "proposal," and "voluntarily excluded," as used in this clause, have the meanings set out in the Definitions and Coverage sections of rules implementing Executive Order 12549 [49 CFR Part 29]. You may contact the CITY for assistance in obtaining a copy of those regulations.

5. The prospective lower tier participant agrees by submitting this proposal that, should the proposed covered transaction be entered into, it shall not knowingly enter into any lower tier covered transaction with a person who is debarred, suspended, declared ineligible, or voluntarily excluded from participation in this covered transaction, unless authorized in writing by the CITY.

6. The prospective lower tier participant further agrees by submitting this proposal that it will include the clause titled "Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion - Lower Tier Covered Transaction", without modification, in all lower tier covered transactions and in all solicitations for lower tier covered transactions.

7. A participant in a covered transaction may rely upon a certification of a prospective participant in a lower tier covered transaction that it is not debarred, suspended, ineligible, or voluntarily excluded from the covered transaction, unless it knows that the certification is erroneous. A participant may decide the method and frequency by which it

determines the eligibility of its principals. Each participant may, but is not required to, check the Non-procurement List issued by U.S. General Service Administration.

8. Nothing contained in the foregoing shall be construed to require establishment of system of records in order to render in good faith the certification required by this clause. The knowledge and information of a participant is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.

9. Except for transactions authorized under Paragraph 5 of these instructions, if a participant in a covered transaction knowingly enters into a lower tier covered transaction with a person who is suspended, debarred, ineligible, or voluntarily excluded from participation in this transaction, in addition to all remedies available to the Federal Government, the CITY may pursue available remedies including suspension and/or debarment.

"Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion - Lower Tier Covered Transaction"

(1)The prospective lower tier participant certifies, by submission of this bid or proposal, that neither it nor its "principals" [as defined at 49 C.F.R. § 29.105(p)] is presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction by any Federal department or agency.

(2) When the prospective lower tier participant is unable to certify to the statements in this certification, such prospective participant shall attach an explanation to this proposal.

24. **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.

25. **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 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.

26. BREACHES AND DISPUTE RESOLUTION

Disputes - Disputes arising in the performance of this Contract which are not resolved by agreement of the parties shall be decided in writing by the authorized representative of the CITY's City Manager. This decision shall be final and conclusive unless within [ten (10)] days from the date of receipt of its copy, the Contractor mails or otherwise furnishes a written appeal to the City Manager. In connection with any such appeal, the Contractor shall be afforded an opportunity to be heard and to offer evidence in support of its position. The decision of the City Manager shall be binding upon the Contractor and the Contractor shall abide be the decision.

Performance During Dispute - Unless otherwise directed by the CITY, Contractor shall continue performance under this Contract while matters in dispute are being resolved.

Claims for Damages - Should either party to the Contract suffer injury or damage to person or property because of any act or omission of the party or of any of his employees, agents or others for whose acts he is legally liable, a claim for damages therefore shall be made in writing to such other party within a reasonable time after the first observance of such injury of damage.

Remedies - Unless this contract provides otherwise, all claims, counterclaims, disputes and other matters in question between the CITY and the Contractor arising out of or relating to this agreement or its breach will be decided by arbitration if the parties mutually agree, or in a court of competent jurisdiction within the State of California in which the CITY is located.

Rights and Remedies - The duties and obligations imposed by the Contract Documents and the rights and remedies available there under shall be in addition to and not a limitation of any duties, obligations, rights and remedies otherwise imposed or available by law. No action or failure to act by the CITY or Contractor shall constitute a waiver of any right or duty afforded any of them under the Contract, nor shall any such action or failure to act constitute an approval of or acquiescence in any breach there under, except as may be specifically agreed in writing.

27. PATENT AND RIGHTS IN DATA

A. **Rights in Data** - these following requirements apply to each contract involving experimental, developmental or research work:

(1) The term "subject data" used in this clause means recorded information, whether or not copyrighted, that is delivered or specified to be delivered under the contract. The term includes graphic or pictorial delineation in media such as drawings or photographs; text

in specifications or related performance or design-type documents; machine forms such as punched cards, magnetic tape, or computer memory printouts; and information retained in computer memory. Examples include, but are not limited to: computer software, engineering drawings and associated lists, specifications, standards, process sheets, manuals, technical reports, catalog item identifications, and related information. The term "subject data" does not include financial reports, cost analyses, and similar information incidental to contract administration.
(2) The following restrictions apply to all subject data first produced in the performance of the contract to which this Attachment has been added:

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

(b) In accordance with 49 C.F.R. § 18.34 and 49 C.F.R. § 19.36, the Federal Government reserves a royalty-free, non-exclusive and irrevocable license to reproduce, publish, or otherwise use, and to authorize others to use, for "Federal Government purposes," any subject data or copyright described in subsections (2)(b)1 and (2)(b)2 of this clause below. As used in the previous sentence, "for Federal Government purposes," means use only for the direct purposes of the Federal Government. Without the copyright owner's consent, the Federal Government may not extend its Federal license to any other party.

1. Any subject data developed under that contract, whether or not a copyright has been obtained; and

2. Any rights of copyright purchased by the Purchaser or Contractor using Federal assistance in whole or in part provided by FTA.

(c) When FTA awards Federal assistance for experimental, developmental, or research work, it is FTA's general intention to increase transportation knowledge available to the public, rather than to restrict the benefits resulting from the work to participants in that work. Therefore, unless FTA determines otherwise, the Purchaser and the Contractor performing experimental, developmental, or research work required by the underlying contract to which this Attachment is added agrees to permit FTA to make available to the public, either FTA's license in the copyright to any subject data developed in the course of that contract, or a copy of the subject data first produced under the contract for which a copyright has not been obtained. If the experimental, developmental, or research work, which is the subject of the underlying contract, is not completed for any reason whatsoever, all data developed under that contract shall become subject data as defined in subsection (a) of this clause and shall be delivered as the Federal Government may direct. This subsection (c) , however, does not apply to adaptations of automatic data processing equipment or programs for the Purchaser or Contractor's use whose costs are financed in whole or in part with Federal assistance provided by FTA for transportation capital projects.

(d) Unless prohibited by state law, upon request by the Federal Government, the Purchaser and the Contractor agree to indemnify, save, and hold harmless the Federal Government, its officers, agents, and employees acting within the scope of their official duties against any liability, including costs and expenses, resulting from any willful or intentional violation by the Purchaser or Contractor of proprietary rights, copyrights, or right of privacy, arising out of the publication, translation, reproduction, delivery, use, or disposition of any data furnished under that contract. Neither the Purchaser nor the Contractor shall be required to indemnify the Federal Government for any such liability arising out of the wrongful act of any employee, official, or agents of the Federal Government.

(e) Nothing contained in this clause on rights in data shall imply a license to the Federal Government under any patent or be construed as affecting the scope of any license or other right otherwise granted to the Federal Government under any patent.

(f) Data developed by the Purchaser or Contractor and financed entirely without using Federal assistance provided by the Federal Government that has been incorporated into work required by the underlying contract to which this Attachment has been added is exempt from the requirements of subsections (b), (c), and (d) of this clause , provided that the Purchaser or Contractor identifies that data in writing at the time of delivery of the contract work.

(g) Unless FTA determines otherwise, the Contractor agrees to include these requirements in each subcontract for experimental, developmental, or research work financed in whole or in part with Federal assistance provided by FTA.

(3) Unless the Federal Government later makes a contrary determination in writing, irrespective of the Contractor's status (i.e. , a large business, small business, state government or state instrumentality, local government, nonprofit organization, institution of higher education, individual, etc.), the Purchaser and the Contractor agree to take the necessary actions to provide, through FTA, those rights in that invention due the Federal Government as described in

U.S. Department of Commerce regulations, "Rights to Inventions Made by Nonprofit Organizations and Small Business Firms Under Government Grants, Contracts and Cooperative Agreements," 37 C.F.R. Part 401.

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

B. **Patent Rights** - these following requirements apply to each contract involving experimental, developmental, or research work:

(1) General - If any invention, improvement, or discovery is conceived or first actually reduced to practice in the course of or under the contract to which this Attachment has

been added, and that invention, improvement, or discovery is patentable under the laws of the United States of America or any foreign country, the Purchaser and Contractor agree to take actions necessary to provide immediate notice and a detailed report to the party at a higher tier until FTA is ultimately notified.

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

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

28. **TRANSIT EMPLOYEE PROTECTIVE AGREEMENTS**

Employee Protective Provisions. (1) The Contractor agrees to comply with applicable transit employee protective requirements as follows:

(a) General Transit Employee Protective Requirements - To the extent that FTA determines that transit operations are involved, the Contractor agrees to carry out the transit operations work on the underlying contract in compliance with terms and conditions determined by the U.S. Secretary of Labor to be fair and equitable to protect the interests of employees employed under this contract and to meet the employee protective requirements of 49 U.S.C. A 5333(b), and U.S. DOL guidelines at 29 C.F.R. Part 215, and any amendments thereto. These terms and conditions are identified in the letter of certification from the U.S. DOL to FTA applicable to the FTA Recipient's project from which Federal assistance is provided to support work on the underlying contract. The Contractor agrees to carry out that work in compliance with the conditions stated in that U.S. DOL letter. The requirements of this subsection (1), however, do not apply to any contract financed with Federal assistance provided by FTA either for projects for elderly individuals and individuals with disabilities authorized by 49 U.S.C. § 5310(a)(2), or for projects for non-urbanized areas authorized by 49 U.S.C. § 5311. Alternate provisions for those projects are set forth in subsections (b) and (c) of this clause.

(b) Transit Employee Protective Requirements for Projects Authorized by 49 U.S.C. § 5310(a)(2) for Elderly Individuals and Individuals with Disabilities - If the contract involves transit operations financed in whole or in part with Federal assistance authorized by 49 U.S.C. § 5310(a)(2), and if the U.S. Secretary of Transportation has determined or determines in the future that the employee protective requirements of 49 U.S.C. § 5333(b) are necessary or appropriate for the state and the public body subrecipient for which work is performed on the underlying contract, the Contractor agrees to carry out

the Project in compliance with the terms and conditions determined by the U.S. Secretary of Labor to meet the requirements of 49 U.S.C. § 5333(b), U.S. DOL guidelines at 29 C.F.R. Part 215, and any amendments thereto. These terms and conditions are identified in the U.S. DOL's letter of certification to FTA, the date of which is set forth Grant Agreement or Cooperative Agreement with the state. The Contractor agrees to perform transit operations in connection with the underlying contract in compliance with the conditions stated in that U.S. DOL letter.

(c) Transit Employee Protective Requirements for Projects Authorized by 49 U.S.C. § 5311 in Non-urbanized Areas - If the contract involves transit operations financed in whole or in part with Federal assistance authorized by 49 U.S.C. § 5311, the Contractor agrees to comply with the terms and conditions of the Special Warranty for the Non-urbanized Area Program agreed to by the U.S. Secretaries of Transportation and Labor, dated May 31, 1979, and the procedures implemented by U.S. DOL or any revision thereto.
(2) The Contractor also agrees to include the any applicable requirements in each subcontract involving transit operations financed in whole or in part with Federal assistance provided by FTA.

29. **Disadvantaged Business Enterprise (DBE) 49 CFR Part 26**

This section is being developed to reflect the new rule in 49 CFR Part 26. See City DBE Program under separate cover.

30. **State and Local Law Disclaimer -** The use of many of the suggested clauses are not governed by Federal law, but are significantly affected by State law. The language of the suggested clauses may need to be modified depending on state law, and that before the suggested clauses are used in the grantees procurement documents, the grantees should consult with their local attorney.

31. **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, issued June 19, 2003, 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 the CITY requests, which would cause the CITY to be in violation of the FTA terms and conditions.

32. **Drug and Alcohol Testing**

Introduction

FTA's drug and alcohol rules, 49 CFR 653 and 654, respectively, are unique among the regulations issued by FTA. First, they require recipients to ensure that any entity performing a safety-sensitive function on the recipient's behalf (usually subrecipients and/or contractors) implement a complex drug and alcohol testing program that complies with Parts 653 and 654. Second, the rules condition the receipt of certain kinds of FTA funding on the recipient's compliance with the rules; thus, the recipient is not in compliance with the rules unless every entity that performs a safety-sensitive function on the recipient's behalf is in compliance with the rules. Third, the rules do not specify how a recipient ensures that its subrecipients and/or contractors comply with them.

How a recipient does so depends on several factors, including whether the contractor is covered independently by the drug and alcohol rules of another Department of Transportation operating administration, the nature of the relationship that the recipient has with the contractor, and the financial resources available to the recipient to oversee the contractor's drug and alcohol testing program. In short, there are a variety of ways a recipient can ensure that its subrecipients and contractors comply with the rules.

Therefore, FTA has developed three model contract provisions for recipients to use "as is" or to modify to fit their particular situations.

Explanation of Model Contract Clauses

Under Option 1, the recipient ensures the contractor's compliance with the rules by requiring the contractor to participate in a drug and alcohol program administered by the recipient. The advantages of doing this are obvious: the recipient maintains total control over its compliance with 49 CFR 653 and 654. The disadvantage is that the recipient, which may not directly employ any safety-sensitive employees, has to implement a complex testing program. Therefore, this may be a practical option only for those recipients which have a testing program for their employees, and can add the contractor's safety-sensitive employees to that program.

Under Option 2, the recipient relies on the contractor to implement a drug and alcohol testing program that complies with 49 CFR 653 and 654, but retains the ability to monitor the contractor's testing program; thus, the recipient has less control over its compliance with the drug and alcohol testing rules than it does under option 1. The advantage of this approach is that it places the responsibility for complying with the rules on the entity that is actually performing the safety-sensitive function. Moreover, it reserves to the recipient the power to ensure that the contractor complies with the program. The disadvantage of Option 2 is that without adequate monitoring of the contractor's program, the recipient may find itself out of compliance with the rules.

Under option 3, the recipient specifies some or all of the specific features of a contractor's drug and alcohol compliance program. Thus, it requires the recipient to decide what it wants to do and how it wants to do it. The advantage of this option is that the recipient has more control over the contractor's drug and alcohol testing program, yet it is not actually administering the testing program. The disadvantage is that the recipient has to specify and understand clearly what it wants to do and why.

Drug and Alcohol Testing
Option 1

The contractor agrees to:

(a) participate in (grantee's or recipient's) drug and alcohol program established in compliance with 49 CFR 653 and 654.

Drug and Alcohol Testing
Option 2

The contractor agrees to establish and implement a drug and alcohol testing program that complies with 49 CFR Parts 653 and 654, produce any documentation necessary to establish its compliance with Parts 653 and 654, and permit any authorized representative of the United States Department of Transportation or its operating administrations, the State Oversight Agency of California, or the City of Paso Robles, to inspect the facilities and records associated with the implementation of the drug and alcohol testing program as required under 49 CFR Parts 653 and 654 and review the testing process. The contractor agrees further to certify annually its compliance with Parts 653 and 654 before July 31 and to submit the Management Information System (MIS) reports before March 15 to the Transit Coordinator. To certify compliance the contractor shall use the "Substance Abuse Certifications" in the "Annual List of Certifications and Assurances for Federal Transit Administration Grants and Cooperative Agreements," which is published annually in the Federal Register.

Drug and Alcohol Testing
Option 3

The contractor agrees to establish and implement a drug and alcohol testing program that complies with 49 CFR Parts 653 and 654, produce any documentation necessary to establish its compliance with Parts 653 and 654, and permit any authorized representative of the United States Department of Transportation or its operating administrations, the State Oversight Agency of California, or the CITY, to inspect the facilities and records associated with the implementation of the drug and alcohol testing program as required under 49 CFR Parts 653 and 654 and review the testing process. The contractor agrees further to certify annually its compliance with Parts 653 and 654 before July 31 and to submit the Management Information System (MIS) reports before March 15 to the Transit Coordinator. To certify compliance the contractor shall use the "Substance Abuse Certifications" in the "Annual List of Certifications and Assurances for Federal Transit Administration Grants and Cooperative Agreements," which is published annually in the Federal Register. The Contractor agrees further to [Select a, b, or c] (a) submit before (July 31, or upon request) a copy of the Policy Statement developed to implement its drug and alcohol testing program; OR (b) adopt its policy statement as required under 49 CFR 653 and 654; OR (c) submit for review and approval before (July 31 or upon request) a copy of its Policy Statement developed to implement its drug and alcohol testing program. In addition, the contractor agrees to mutually agreed oversight for Drug and Alcohol program and testing data.

CLAUSE	RESTRICTIVE CONDITION	THRESHOLD
Fly America Requirements	If appropriate	Transportation of persons or property by air
Buy America Requirements	Construction Contracts, purchase of goods & rolling stock	Over $100,000.00
Charter Bus & School Bus		Operational services contracts
Cargo Preference		All contracts involving transport by ocean vessels
Seismic Safety		Construction of new building and additions of buildings
Energy Conservation		All contracts
Clean Water		Over $100,000.00
Bus Testing		Rolling stock/Turnkey only
Pre-Award & Post Delivery Audit		Rolling stock/Turnkey only
Lobbying		Over $100,000.00
Access to Records & Reports	See table at end of clauses	
Federal Changes		All contracts
Bonding		Construction or facility improvement contracts over $100,000.00
Clean Air		Over $100,000.00
Recycled Products		All contracts for items designated by the EPA, over $10,000.00
Davis-Bacon Act		Construction over $2,000.00
Contract Work hours & Safety standards		All construction over $2,000.00, all turnkey, rolling stock and operational contracts (excluding contracts for transportation services) over $2,500.00
Copeland Anti-Kickback Act	Included in Davis-Bacon. No additional clauses needed.	Construction over $2,000.00
No Government Obligation to Third Party		All Contracts
Program Fraud & False or Fraudulent Statements & Related Acts		All Contracts
Termination	Except nonprofits organization & institutions of higher education	All Contracts
Government-wide Debarment & Suspension	Nonprocurement	Over $100,000.00
Privacy Act		All Contracts
Civil Rights		All Contracts
Breaches & Dispute Resolutions		Over $100,000.00
Patent & Rights in Data		Research projects
Transit Employee Protective Agreement		All transit operation contracts
Disadvantaged Business Enterprise (DBE)		
Incorporation of FTA terms		All Contracts
Drug & Alcohol Testing		Operational Service Contracts

INVITATION FOR BID (IFB)
DESCRIPTION OF PROCUREMENT METHOD

- Most common procurement method used by small operators
- Composed of detailed design specifications, describing exact minimum or maximum criteria that bidders must meet
- Always awarded to lowest responsible and responsive bidder – the IFB does not allow for agency negotiation with the potential contractor over price or technical content
- The IFB is made up of two components (opened at the same time): the technical portions and the financial portion. The technical portion is evaluated for adherence to specifications. The financial portion of bidders deemed responsive is then evaluated to determine lowest bidder.
- These specifications must be matched precisely by bidders; deviations result in the exclusion of the proposal
- Two or more bidders must be involved, or the entire process must be terminated, and begun again
- The IFB is used to obtain cost proposals for providing identical goods or services

Steps in the IFB Method

1.0 Develop the IFB document

- Consult with the department for whom the procurement is being made to obtain detailed design specifications describing the terms and conditions under which the procurement is taking place
- Identify all applicable Federal, State, and Local requirements, and write them into the IFB
- Identify the agency resources necessary to manage the IFB process, and designate responsibilities accordingly
- Establish evaluation committee that contains representatives from all of the departments affected by the IFB
- Work toward developing a standard IFB document that meets all necessary legal and administrative requirements of the agency and can be adopted to meet the specific requirements of goods/services requirements

2.0 Advertise the IFB, and distribute it to potential contractors

- Small agencies bidders list
- Database of qualified contractors
- Local Newspapers
- Transportation trade press (Passenger Transport, Urban Transportation Monitor, etc.)

3.0 Conduct pre-bid conference

- Provide bidders with the opportunity to ask questions
- Revise the IFB as necessary

4.0 Evaluate the bids received

- Perform technical evaluation to determine whether the bidder meets the agency's specifications
- Select the firm with the lowest bid meeting the technical requirements of the agency

REQUEST FOR PROPOSAL (RFP)
DESCRIPTION OF PROCUREMENT METHOD

- A competitive procurement method that allows an agency to procure goods and services without the use of detailed design specifications
- Potential contractors have some flexibility in proposing how a service will be provided or how a good will be produced
- Bidders are asked to submit technical and cost proposals in response to the agency's solicitation, referred to as the 'Statement of Work"
- Price and scope of services/goods are subject to negotiation

Steps in the RFP Method

1.0 Develop the RFP document

- Establish the goals and objectives for the good or service to be procured.
- Develop guidelines that describe the service or goods desired in the agency's timetable; these guidelines are not as detailed as those developed for an IFB and should be summarized in the Statement of Work.
- Identify the agency resources necessary to manage the RFP process, and designate responsibilities accordingly.
- Establish evaluation committee that contains representatives from all of the departments affected by the RFP.
- Work toward developing a standard RFP document that meets all necessary legal and administrative requirements of the agency and can be adopted to meet the specific requirements of goods/services.
- Develop the evaluation criteria to be used and the conditions and terms under which the procurement will take place – these should be included in the RFP

2.0 Advertise the RFP, and distribute it to potential contractors

- Small agencies bidders list.
- Database of qualified contractors.
  Local Newspapers.
- Transportation trade press (Passenger Transport, Urban Transportation Monitor).

3.0 Conduct pre-bid conference after an RFP has been issued

- Allows potential contractors to ask questions of the agency.
- Make any necessary revisions to the RFP.

4.0 Evaluate the bids received

- Evaluate the technical portion based upon the criteria listed in the RFP. (Strong proposals usually contain the best combination of company qualifications and technical quality).
- Evaluate the cost portion based upon the cost effectiveness of the technical proposal (not strictly on low bid as with the IFB).
- Request that require two or three qualified bidders to make presentations before the evaluation committee.

- Following the presentations, the evaluation committee may begin evaluations with one or more bidders.
- During these negotiations, the agency asks the bidder to submit their best and final offer.
- Award the contract.

SOLE SOURCE PROCUREMENT
DESCRIPTION OF PROCUREMENT METHOD

- Accomplished through solicitation or acceptance of a proposal from only one source, or, if after solicitation from a number of sources, the competition is considered inadequate
- Also accomplished through a contract amendment or change order that is not within the scope of an original contract
- May be used only when: (1) the award of a contract is not feasible under small purchase procedures, through the use of IFB or RFP methods, and (2) at least one of the following circumstances apply:
  - The item is available only from a single source (i.e., brand name)
  - A public exigency or emergency for the requirement will not permit a delay resulting from competitive solicitation
  - FTA authorizes the sole source procurement
  - Only one bid was received
  - Replacements parts

1.0 Steps in the Sole Source Method

- The small operator must ***identify <u>all</u> Federal, State, and Local requirements*** relating to sole source procurement
- The agency must ***evaluate its ability to administer sole source procurements*** and determine if it can sustain the necessary administrative burden to implement such a procurement
- If the agency determines that it can undertake the procurement, the small operator must develop a uniform process for identifying potential single source procurement, including the following:
  - Brand-name items
  - Replacement parts
  - Emergency purchases
  - Items deemed necessary under conditions of inadequate competition or the receipt of only one bid
- The agency then must ***enter into negotiations with the sole source provider*** to secure the desired services or goods (unless the sole source procurement is the result of a non-competitive IFB, then the sole provider must meet the requirements of the proposal)

SMALL PURCHASE AGREEMENT
DESCRIPTION OF PROCUREMENT METHOD

- If the procurement for a good or service is under $25,000, then the small operator may enter into a small purchase agreement
- Relatively simple and informal procurement methods may be used
- To utilize a small purchase agreement, the agency must solicit qualifications from interested contractors and maintain a list of potential, qualified firms to be contracted in the event that a small purchase agreement is used

1.0 Steps in the Small Purchase Method

- Develop the Small Purchase Agreement Policy
- Evaluate agency resources to determine if a small purchase agreement can be managed effectively; also, the agency should determine if a greater portion of agency procurement can be accomplished through small purchase orders
- Identify all Federal, State, and Local requirements concerning small purchase agreements – make certain that agency policy is in compliance
- Establish a consistent policy for managing small purchase agreements, including a procedure for identifying potential contractors and maintaining a bidders list
- Consult with the department for whom the small purchase agreement is being made to obtain specifications describing the terms and conditions under which the procurement is taking place
- Request cost quotes from several (at least three) potential contractors on the agency's bidders list
- Evaluate the quotes that are received; negotiate with potential contractors as appropriate
- Award small purchase agreement

CHECKLIST: CHOOSING THE CORRECT PROCUREMENT METHOD FOR YOUR PURCHASE

INVITATION FOR BID is the desired method when all of the following are true:

- A complete and adequate specification or purchase description is available/can be developed
- Two or more responsible bidders are willing and able to compete for the business
- A fair and reasonable award can be made principally on the basis of price
- Adequate time is available to carry out the necessary procedures for an IFB
- A firm fixed-price contract or a fixed price with escalation contract is appropriate

REQUEST FOR PROPOSAL should be used when the following are true:

- A general description of service/goods specifications in the solicitation documents is preferred
- The primary consideration need not be price
- Oral/written discussions with proposers are needed to obtain the best mix of price and quality
- For professional services (mandatory for architectural and engineering services)
- The award will be based on an evaluation of price, quality, technical, and contractual factors

Sole Source may be used when the procurement is not feasible under small purchase procedures and at least one of the following is true:

- The item is available only from a single source
- A public exigency (immediate need) or emergency for the requirement will not permit a delay resulting from competitive solicitation
- FTA authorizes sole source procurements
- After the solicitation of a number of sources, competition is determined to be inadequate
- Only one bid was received
- The item is an associated capital maintenance item (as defined in Section 9(j) of the UMT Act)

SMALL PURCHASE AGREEMENT

- Purchases that do not cost more than $25,000

"Exhibit B"

CITY OF PASO ROBLES
DRUG-FREE WORKPLACE STATEMENT OF POLICY

PURPOSE

It is the policy of the City of Paso Robles to maintain a safe, healthful and productive work environment for all employees. To that end, the City will act to eliminate the unlawful use of drugs and other controlled substances including, but not limited to, alcohol and prescription drugs, which could impair an employee's ability to safely and effectively perform the functions of their job. In addition, the use or possession of these substances on the job constitutes a potential danger to the welfare and safety of other employees and exposes the City to the risks of property loss or damage, or injury to other persons. All City employees, regardless of their employment status (i.e. regular, temporary, contract, etc.), are subject to this policy.

POLICY

1. Employees are expected and required to report to work in appropriate mental and physical condition to perform their jobs. The unlawful manufacture, distribution, dispensation, possession or use of drugs or other controlled substances, including alcohol, on City premises, during the workday (including meals and rest periods), or while conducting City business off premises is absolutely prohibited.

2. This policy is intended to assure that no employee with an alcohol or drug problem will have his or her job security or promotional opportunities jeopardized by a request for help.

3. The City will make an employee assistance program available, if requested, to employees whose personal problems, including drug or alcohol dependency, adversely affects their ability to perform their duties.

4. Employees will, as a condition of employment, abide by the terms of this policy and will notify the City, within five (5) days, of any criminal drug statute conviction which he/she receives for a violation occurring in the workplace.

5. The City shall notify any appropriate federal granting agency of any criminal convictions of an employee for illegal drug activity in the workplace within ten (10) days of the City's notification of such conviction. Otherwise, the individual's rights to privacy are recognized. The pertinent information and records of employees with an alcohol or drug problem will be preserved in the same manner as all other confidential records.

6. The City shall initiate action after receiving notice of conviction of an employee which may result in required participation in a treatment program and/or disciplinary action, up to and including termination.

"Exhibit B"

DRUG-FREE WORKPLACE
STATEMENT OF POLICY
ACKNOWLEDGEMENT AND CONSENT

I acknowledge that I have been given a copy of the City's Drug-Free Workplace Statement of Policy.

I understand it is a violation of the City of Paso Robles Drug-Free Workplace Policy for any employee at the workplace to unlawfully manufacture, distribute, dispense, possess or use any narcotic drug, hallucinogenic drug, amphetamine, barbiturate, marijuana or other controlled substance including, but not limited to, alcohol and prescription drugs, as defined in the Drug-Free Workplace Act of 1988.

I understand that that violations of this policy by employees may result in discipline, up to and including termination.

I understand that "Workplace" is defined as any place where City work is performed, including a City building or site, or any City-owned vehicle.

I understand that the City of Paso Robles intends to have a drug-free workplace and can make assistance available to an employee, if needed.

I understand that as a condition of my employment, I will abide by the terms of the statement of policy and I will notify my employer of any criminal drug statute conviction for a violation occurring in the workplace no later than five (5) calendar days after such conviction.

City of Paso Robles Employee Assistance Program	(800) 327-0556
San Luis Obispo County Drug Program	(805) 781-4753
San Luis Obispo County Alcohol Services	(805) 781-4275
Narcotics Anonymous	(805) 549-7730
Alcoholics Anonymous	(805) 541-3211

Name (Print)

Signature

Date

Exhibit C

CITY OF PASO ROBLES

DRUG AND ALCOHOL TESTING POLICY

ADOPTED

NOVEMBER [ ], 2007

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1.0 POLICY

The City of Paso Robles is dedicated to providing safe, dependable, and economical transportation services to our passengers. It is our goal to provide a healthy, satisfying, and safe working environment. In meeting this goal, it is our policy

- Assure that covered employees are not impaired in their ability to perform assigned duties in a safe, productive, and healthy manner;
- Create a workplace environment free from the adverse effects of drug and alcohol substance abuse or misuse
- Prohibit the unlawful manufacture, distribution, dispensing, possession, or use of controlled substances
- Encourage covered employees to seek professional assistance anytime alcohol or drug dependency, adversely affects their ability to perform their assigned duties.

2.0 PURPOSE

The purpose of this policy is to assure worker fitness for duty and to protect our covered employees, passengers, and the public from risks posed by the misuse of alcohol and use of prohibited drugs. This policy is also intended to comply with all applicable Federal regulations governing workplace anti-drug programs in the transit industry. The Federal Transit Administration (FTA) of the U.S. Department of Transportation (DOT) has enacted Title 49 – Transportation, Code of Federal Regulations (CFR) Part 655 that mandates urine drug testing and breathalyzer alcohol testing for safety-sensitive positions and prohibits performance of safety-sensitive functions when there is a positive test result. The DOT has also enacted 49 CFR Part 40 that sets standards for the collection and testing of urine and breath specimens.

3.0 APPLICABILITY

This policy applies to all applicants and employees of The City of Paso Robles, who will or do perform safety-sensitive functions of the positions specified in Appendix A, which may be amended from time to time and is incorporated herein, contracted employees who perform safety-sensitive functions when they are on City property or when performing any transit-related business, and volunteers when required to hold a commercial driver's license to operate the vehicle or who perform a safety-sensitive function and receive remuneration in excess of his or her actual expenses incurred while engaged in the volunteer activity, collectively referred to hereinafter as covered employees. This policy applies to off-site lunch periods or breaks when a covered employee is scheduled to return to work.

A safety-sensitive function is any duty related to the safe operation of transit service including the operation, dispatch, and maintenance of a revenue service vehicle (whether or not the vehicle is in revenue service) and any other employee who operates a non-revenue service vehicle when required to hold a Commercial Driver's License (CDL). Supervisors are safety sensitive only if

they perform a safety-sensitive function. Covered employees who will or do perform safety-sensitive functions are subject to testing as specified in this policy. The City has reviewed the actual duties performed by covered employees to determine the performance of safety-sensitive functions and which job functions may require the performance of safety-sensitive duties.

Annual testing rates are equivalent to 50% of the number of covered employees for drug testing and 10% of the number of covered employees for alcohol testing or as may be annually required by the DOT, FTA.

4.0 DEFINITIONS

Appendix B, Glossary of Terms, defines specific terms governing this policy and is incorporated herein.

5.0 PROHIBITED SUBSTANCES

"Prohibited substances" addressed by this policy include the following:

5.1 Illegally-Used Controlled Substances or Drugs

Any illegal drug or any substance identified in Schedules I through V of the Controlled Substance Act (21 U. S. C. 812), and as further defined by 21 CFR 1308.11 through 1308.15 is a prohibited substance. This includes, but is not limited to: marijuana, amphetamines, opiates, phencyclidine (PCP), and cocaine, as well as any drug not approved for medical use by the U. S. Drug Enforcement Administration (DEA) or the U. S. Food and Drug Administration (FDA). Illegal use includes use of any illegal drug, misuse of legally prescribed drugs, and use of illegally obtained prescription drugs.

5.2 Legal Drugs

Legally prescribed drugs and non-prescription medications are not prohibited when used appropriately. However, the use of any substance which carries a warning label that indicates that mental functioning, motor skills, or judgment may be adversely affected should be reported by a covered employee to supervisory personnel, and medical advice should be sought, as appropriate, before performing work-related duties.

A legally prescribed drug means that the covered employee has a prescription or other written approval from a physician for the use of a drug in the course of medical treatment. It must include the patient's name, the name of the substance, quantity/amount to be taken, and the period of authorization. Legal drugs misused or abused while performing transit business are prohibited substances.

5.3 Alcohol

Beverages containing alcohol or substances, including any medication or other preparation such that alcohol is present in the body, that are used while performing transit business, are prohibited substances. The concentration of alcohol is expressed in terms of grams of alcohol per 210 liters of breath as measured by an evidential breath-testing (EBT) instrument.

6.0 PROHIBITED CONDUCT

"Prohibited conduct" by a covered employee as addressed in this policy includes the following:

6.1 Manufacture, Trafficking, Possession, and Use

Engaging in the manufacture, distribution, dispensation, possession, or use of prohibited substances on City premises, in transit vehicles, in uniform, or while on transit business is prohibited conduct as prohibited by the Drug Free Workplace Act of 1988. Law enforcement may be notified, as appropriate.

6.2 Intoxication/Using Prohibited Substances

Intoxication from, impairment by, or use of a prohibited substance while performing transit business is prohibited conduct. A drug or alcohol test is considered positive if the individual is found to have a quantifiable presence of a prohibited substance in the body above minimum thresholds defined in 49 CFR Part 40.

6.3 Alcohol Misuse

Reporting for duty within four hours of using alcohol; remaining on duty while adversely affected by alcohol or with a blood alcohol concentration of 0.04 or greater; using alcohol while on duty; or using alcohol up to eight hours following an accident or until undergoing a post/accident test, whichever occurs first, is prohibited conduct. Covered on-call employees are considered on-duty throughout their specified on-call hours. The consumption of alcohol for the specified on-call hours of each covered employee is prohibited. On-call covered employees shall have: 1) the opportunity to acknowledge the use of alcohol at the time he or she is called to report to duty and the inability to perform his or her safety-sensitive function; and 2) the requirement to take an alcohol test if the covered employee has acknowledged the use of alcohol but claims ability to perform his or her safety-sensitive function.

6.4 Compliance with Testing Requirements

A covered employee has refused to take a drug test if he or she:

1) Fails to appear for any test (except a pre-employment test) within a reasonable time, as determined by the City, consistent with applicable DOT agency regulations, after being directed to do so by the City ;
2) Fails to remain at the testing site until the testing process is complete; provided,

that a covered employee who leaves the testing site before the testing process commences for a pre-employment test is not deemed to have refused to test;

3) Fails to provide a urine specimen for any drug test required by 49 CFR Part 40 or DOT agency regulation, provided that a covered employee who does not provide a urine specimen because he or she has left the testing site before the testing process commences for a pre-employment is not deemed to have refused to test.
4) In the case of a directly observed or monitored collection in a drug test, fails to permit the observation or monitoring of the provision of a specimen;
5) Fails to provide a sufficient amount of urine when directed, and it has been determined, through a required medical evaluation, that there was no adequate medical explanation for the failure;
6) Fails, or declines, to take a second test the City or collector has directed a covered employee to take;
7) A medical review officer verifies adulterated or substituted sample;
8) Fails to remain at the scene of an accident without just cause prior to submitting to a test;
9) Fails to undergo a medical examination or evaluation, as directed by the Medical Review Officer (MRO) as part of the verification process, or as directed by the Designated Employer Representative (DER) under 49 CFR Part 40. In the case of a pre-employment drug test, the covered employee is deemed to have refused to test on this basis only if the pre-employment test is conducted following a contingent offer of employment; or
10) Fails to cooperate with any part of the testing process (e.g. refusal to empty pockets when so directed by the collector, behaving in a confrontational way that disrupts the collection process).

Such a refusal constitutes a verified positive drug test result, and is prohibited conduct.

A covered employee is considered to have refused an alcohol test if he or she:

1) Fails to appear for any test (except a pre-employment test) within a reasonable time, as determined by the City, consistent with applicable DOT agency regulations, after being directed to do so by the City ;
2) Fails to remain at the testing site until the testing process is complete; provided, that a covered employee who leaves the testing site before the testing process commences for a pre-employment test is not deemed to have refused to test;
3) Fails to provide an adequate amount of breath for any alcohol test required by 49 CFR Part 40 or DOT agency regulation provided that a covered employee who does not provide an adequate amount of breath because he or she has left the testing site before the testing process commences for a pre-employment is not deemed to have refused to test
4) Fails to provide a sufficient breath specimen, and the physician has determined, through a required medical evaluation, that there was no adequate medical explanation for the failure;
5) Fails to undergo a medical examination or evaluation, as directed by the City as part of the insufficient breath procedures outlined in 49 CFR Part 40;
6) Fails to sign the certification at Step 2 of the Alcohol Testing Form; or

7) Fails to cooperate with any part of the testing process.

Such a refusal constitutes a verified positive alcohol test result, and is prohibited conduct.

6.5 Treatment Requirements

Refusal or failure to comply with treatment, after care, or return-to-duty requirements of this policy is prohibited conduct. All covered employees are encouraged to make use of the available resources for treatment for alcohol and substance abuse problems. Under certain circumstances, covered employees may be required to undergo treatment for substance abuse.

6.6 Notifying the City of Paso Robles, of Criminal Drug Conviction

Failure to provide written notification to the Program Manager within five calendar days of any criminal drug-statute conviction for a violation occurring in the workplace is prohibited conduct.

7.0 TESTING FOR PROHIBITED SUBSTANCES

Analytical urine drug testing and breath testing for alcohol may be conducted while the covered employee is performing safety-sensitive functions, just before performing safety-sensitive functions, or just after ceasing performance of such functions, and as required by federal regulations. All covered employees shall be subject to testing prior to employment, for reasonable suspicion, and following an accident as defined in Section 7.3.1, 7.3.2**,** 7.3.3 and 7.3.4 of this policy. Covered employees will be tested prior to and after return-to-duty from having failed a drug test and/or after completion of rehabilitation treatment. Covered employees shall also be subject to testing on a random, unannounced basis.

Testing shall be conducted in a manner that has been approved by the U. S. Department of Health and Human Services (DHHS). All testing will be conducted consistent with the procedures put forth in 49 CFR Part 40. Periodic reviews are conducted by the City to ensure that the laboratory utilized is DHHS certified and the evidential breath testing instruments utilized are on the National Highway Traffic Safety Administration's (NHTSA) Conforming Products List for Alcohol Screening Devices. The City has contracted for urine analysis services with a DHHS-certified laboratory. The laboratory is identified in Appendix D of this policy as may be amended from time to time and which is incorporated herein. A clear and well-documented procedure for collection, shipment, and accessioning of urine specimens is developed and maintained. The City affirms the need to protect individual dignity, privacy and confidentiality throughout the testing process. The drug testing laboratory utilized by the City is secure at all times. It has in place sufficient security measures to control access to the premises and to ensure that no unauthorized personnel handle specimens or gain access to the laboratory process or to areas where records are stored. The laboratory uses chain-of-custody procedures to maintain control and accountability of specimens from receipt through completion of testing, reporting of results during storage, and continuing until final disposition of specimens. The medical review officer utilized by the City keeps all records pertaining to results of drug and alcohol testing in a secure location at all times

and ensures only authorized personnel have access. City copies of drug and alcohol test results are kept in a secure location at all times with access limited only to authorized personnel.

The drugs that will be tested for include

- Marijuana
- Cocaine
- Opiates
- Amphetamines
- Phencyclidine

The collector will ensure that the donor is positively identified as the covered employee selected for urine drug testing (e.g., through presentation of photo identification or identification by the employer representative). A US DOT Chain of Custody and Control Form with a unique identification number will be utilized. Clean, single-use, securely wrapped specimen bottles will be unwrapped in the presence of the donor. The sample's temperature will be checked. The collector, in the presence of the donor, will pour 15 ml. of urine from the specimen bottle into the split specimen bottle, leaving the remaining 30 ml. or more in the collection bottle that will then be considered the primary specimen. The bottles will be sealed with tamperproof sealing and labeled with the Chain of Custody and Control Form unique identification number which the donor must initial. The bottles will be placed in the shipping container with a copy of the Chain of Custody and Control Form and sealed with tamperproof tape.

An initial drug screen will be conducted on the primary specimen. The initial test shall use an immunoassay which meets the requirements of the Food and Drug Administration for commercial distribution. For those specimens that are not negative on the initial test, as determined by a medical review officer, a confirmatory Gas Chromatography/Mass Spectrometry test will be performed on the primary specimen. The test will be considered positive if the amounts present are above minimum thresholds established in 49 CFR Part 40. Current cutoff limits for the screening and confirmation tests are attached in Appendix C of this policy as may be amended from time to time and which is incorporated herein.

This policy does not prohibit performing procedures reasonably incidental to analysis of the specimen for controlled substances (e.g., determination of PH levels or tests for specific gravity, creatinine concentration, or presence of adulterants). Laboratories may conduct specimen validity testing which is the evaluation of the specimen to determine if it is consistent with normal human urine. The purpose of validity testing is to determine whether certain adulterants or foreign substances were added to the urine, if the urine was diluted, or if the specimen was substituted. Any dilute positive drug test as reported by the medical review officer will be treated as a verified positive test. Any dilute negative drug test with a creatinine level greater than 5 mg/dl as reported by the medical review officer will not require a retest per City policy. Any dilute negative drug test with a creatinine level between 2 – 5 mg/dl as reported by the medical review officer will require a retest under direct observation. An analysis of the split specimen is described in Section 7.6 of this policy, *Employee-Requested Testing*.

Testing for alcohol concentration will be conducted utilizing an evidential breath testing instrument approved by the National Highway Traffic Safety Administration (NHTSA) and

operated by a trained breath alcohol technician. The breath alcohol technician will ensure that the donor is positively identified as the covered employee selected for breath alcohol testing (e.g., through presentation of photo identification or identification by the City representative). The breath alcohol technician will utilize the US DOT Breath Alcohol Testing Form. The breath alcohol technician will select an individually sealed mouthpiece and will open it in full view of the covered employee and attach it to the evidential breath-testing instrument in accordance with the manufacturer's instructions.

The breath alcohol technician will instruct the covered employee to blow forcefully into the mouthpiece for at least six seconds or until the evidential breath testing instrument indicates that an adequate amount of breath has been obtained. The breath alcohol technician will affix the test result printout to the Breath Alcohol Test Form in the designated space. The result will be secured in such a manner that will provide clear evidence of removal, such as the use of tamper-evident tape. If the initial test indicates an alcohol concentration of 0.02 or greater, a second test will be performed to confirm the results of the initial test. A covered employee who has a confirmed alcohol concentration of greater than 0.02 but less than 0.04 will be removed from his or her position for eight hours unless a retest results in a concentration measure of less than 0.02. An alcohol concentration of 0.04 or greater will be considered a positive alcohol test and a violation of this policy.

The services of a medical review officer have been secured by the City. The medical review officer is identified in Appendix D of this policy as may be amended from time to time and which is incorporated herein. The medical review officer is a licensed physician responsible for receiving laboratory results generated by the City's drug testing program and who has knowledge of substance abuse disorders and has appropriate medical training to interpret and evaluate an individual's confirmed positive test result together with his or her medical history and any other relevant biomedical information.

If the laboratory results are confirmed positive the medical review officer will interview the covered employee and review all information provided by the covered employee to determine whether the results are indicative of illegal drug usage. If the covered employee provides an adequate explanation, the medical review officer will verify the test as negative with the Substance Abuse Program Manager and take no further actions.

In drug testing, a canceled test is a drug test that has been declared invalid by a medical review officer. A canceled test is neither a positive nor a negative test. For purposes of this part, a sample that has been rejected for testing by a laboratory is treated the same as a canceled test.

In alcohol testing a canceled test is a test that is deemed to be invalid under the following circumstances:

1) The next external calibration check of an evidential breath testing device produces a result that differs by more than the tolerance stated in the quality assurance plan from the known value of the test standard. In this event, every test result of 0.02 or above obtained on the device since the last valid external calibration check shall be invalid
2) The breath alcohol technician does not observe the minimum 15-minute waiting

period prior to the confirmation test

3) The breath alcohol technician does not perform an air blank of the evidential breath testing device before the confirmation test, or an air blank does not result in a reading of 0.00 prior to the administration of the test
4) The breath alcohol technician does not sign the form as required
5) The breath alcohol technician has failed to note on the remarks section of the form that the covered employee has failed or refused to sign the form following the recording or printing on or attachment to the form of the test result
6) On a confirmation test and, where applicable, on a screening test, the sequential test number or alcohol concentration displayed on the evidential breath test is not the same as the sequential test number or alcohol concentration on the printed result. A canceled test is neither a positive nor a negative test.

Any covered employee who has a confirmed positive drug or alcohol test will be removed from his or her position, informed of educational and rehabilitation programs available, and evaluated by a substance abuse professional (SAP). The City provides a list of resources available in evaluating and resolving problems associated with prohibited drug use, including the names, addresses and telephone numbers of substance abuse professionals and counseling and treatment programs, which is identified in Appendix D of this policy as may be amended from time to time and which is incorporated herein. If a covered employee chooses to use the information provided, he or she must first contact a substance abuse professional who will perform an evaluation to determine whether the covered employee is in need of assistance in resolving problems associated with prohibited drug use. The substance abuse professional will then refer the covered employee to a counseling and treatment program. A positive drug and/or alcohol test will also result in disciplinary action, up to and including termination pursuant to Section 8.0 of this policy, *Consequences of Engaging in Prohibited Conduct*.

7.1 Pre-Employment Testing

All covered applicants and transfers for covered positions shall undergo urine drug testing prior to performing a safety-sensitive function. Receipt by the City of a verified negative test result is required prior to employment and failure of a drug test will disqualify an applicant for employment. If a pre-employment drug test is cancelled as determined by the medical review officer, the covered applicant is required to submit to and pass another test.

An employee transferring from a non-safety sensitive position to a safety-sensitive position will undergo urine drug testing with a verified negative test result prior to performing a safety sensitive function.

When a covered employee or applicant has previously failed or refused a pre-employment drug test administered under 49 CFR Part 655, the covered employee or applicant must provide the City proof of having successfully completed a referral, evaluation and treatment plan as described in Section 10.0 of this policy, *Substance Abuse Evaluation and Assessment.*

When a covered employee or applicant has not performed a safety-sensitive function for

90 consecutive calendar days regardless of the reason, and the covered employee has not been in the City's random selection pool, the City shall ensure that the covered employee takes a pre-employment test with a verified negative result. Applicants who have a DOT drug and alcohol regulation violation will be provided with a listing of substance abuse counseling and treatment resources.

7.2 Reasonable Suspicion Testing

All covered employees may be subject to a fitness for duty evaluation, to include appropriate urine and/or breath testing when a supervisor(s) or other City official(s) who is trained in detecting the signs and symptoms of prohibited drug use and alcohol misuse makes the required observations.

A trained supervisor's reasonable suspicion referral for testing will be made on the basis of documented specific, contemporaneous, articulable observations concerning the appearance, behavior, speech, and/or body odor(s) of the covered employee which are consistent with the long- or short-term effects of substance abuse. Examples of reasonable suspicion include, but are not limited to, the following:

1) Adequate documentation of unsatisfactory work performance or on-the-job behavior
2) Physical signs and symptoms consistent with prohibited substance use
3) Evidence of the manufacture, distribution, dispensing, possession, or use of controlled substances, drug, alcohol, or other prohibited substances
4) Occurrence of a serious or potentially serious accident that may have been caused by human error
5) Physical or verbal assaults, and/or flagrant disregard or violations of established safety, security, or other operating procedures.

Alcohol testing as required by 49 CFR Part 655.43 *Reasonable Suspicion Testing* is authorized only if the required observations are made during, just preceding, or just after the period of the workday that a covered employee is required to be in compliance. The City may direct a covered employee to undergo reasonable suspicion testing for alcohol only while the covered employee is performing safety-sensitive functions; just before the covered employee is to perform safety-sensitive functions; or just after the covered employee has ceased performing such functions.

If a required alcohol test is not administered within two hours following the determination, the City shall prepare and maintain on file a record stating the reasons the alcohol test was not promptly administered. If a required alcohol test is not administered within eight hours following the determination, the City shall cease attempts to administer an alcohol test and shall state in the record the reasons for not administering the test.

7.3 Post-Accident Testing

7.3.1 When a Fatality Occurs

All surviving covered employees operating the vehicle will be required to undergo drug and alcohol testing if they are involved in an accident that results in a fatality with a City vehicle (regardless of whether or not the vehicle is in revenue service). The City shall also drug and alcohol test any other covered employee whose performance could have contributed to the accident as determined by the City using the best information available at the time of the decision.

7.3.2 Under Other Circumstances

Post-accident drug and alcohol tests will be conducted if an accident results in injuries requiring immediate transportation to a medical treatment facility or in which one or more vehicles incur disabling damage and require towing (unable to proceed in route after minor repairs) from the site unless the operator's conduct can be completely discounted as determined by the City using the best information available at the time of the decision. This includes all covered employees who are operating the vehicles, and any other covered employees whose performance could have contributed to the accident as determined by the City using the best information available at the time of the decision.

The decision not to administer a drug and/or alcohol test shall be based on the City's determination, using the best available information at the time of the determination that the covered employee's performance could not have contributed to the accident. Such a decision must be documented in detail, including the decision-making process used to reach the decision not to test.

7.3.3 Post-accident Procedures

When post-accident testing is required following an accident, the covered employee will be tested as soon as possible, but not to exceed eight hours for alcohol testing and 32 hours for drug testing.

The City will attempt to complete the alcohol test within two hours of the accident. If the City is not able to obtain a specimen within two hours, it will document why a specimen was not obtained and continue attempts. After eight hours, attempts will cease and the two-hour documentation will be updated.

Any covered employee involved in an accident must refrain from alcohol use for eight hours following the accident or until he or she undergoes a post-accident alcohol test whichever occurs first. Any covered employee who leaves the scene of an accident without appropriate authorization prior to submission to drug and alcohol testing will be considered to have refused the test. Accident drug and alcohol testing will be stayed while the covered employee assists in resolution of the accident or receives medical attention following the accident.

The results of a blood, urine, or breath test for the use of prohibited drugs or alcohol misuse, conducted by Federal, State, or local officials having independent authority for the test, shall be considered to meet the requirements of 49 CFR Part 655 provided such test conforms to the applicable Federal, State, or local testing requirements, and that the test results are obtained by the City. Such test results may be used only when the City is unable to perform a post-accident test within the required period noted in this section.

7.4 Random Testing

Covered employees will be subjected to random, unannounced immediate testing. The selection of covered employees shall be made by a scientifically valid method, such as a random-number table or a computer-based random number generator that is matched with covered employees' social security numbers, payroll identification numbers, or other comparable identifying numbers. Under the selection process used, each covered employee shall have an equal chance of being tested each time selections are made. There will be no discretion on the part of the City in the selection and notification of individuals for testing.

Covered employees will be notified of selection by the Program Manager or his or her designee and directed to the specimen collector. The City shall require that each covered employee who is notified of selection for random drug or random alcohol testing proceed to the test site immediately. If the covered employee is performing a safety-sensitive function at the time of notification, the City shall instead ensure that the covered employee ceases to perform the safety-sensitive function and proceeds to the testing site immediately. A covered employee shall only be randomly tested for alcohol misuse while the covered employee is performing safety-sensitive functions; just before the covered employee is to perform safety-sensitive functions; or just after the covered employee has ceased performing such functions. A covered employee may be randomly tested for prohibited drug use anytime while on duty. Testing will be continuous throughout the year on all days and hours during which the City is in operation.

7.5 Return-to-Duty Following a Positive Test Result and Follow-Up Testing

Covered employees who previously tested positive on a drug or alcohol test must test negative and be evaluated at their own expense and released to duty by an approved substance abuse professional pursuant to Section 10.0 of this policy, *Substance Abuse Evaluation and Assessment,* before a one-time return-to-employment opportunity may be considered. Such one-time opportunity is at the sole discretion of the City. If approved for return to work by the City, covered employees will be required to undergo frequent unannounced follow-up and random urine and breath tests during the period of their re-entry contract. Such follow-up tests will be subject to the minimums described in Section 10.0 of this policy, *Substance Abuse Evaluation and Assessment.*

7.6 Employee-Requested Testing

Any covered employee who questions the results of a required drug test under Sections 7.1 through 7.5 of this section may request that an additional test be conducted. This test must be conducted at a different testing laboratory. The test must be conducted on the split sample that was provided at the same time as the original sample. All costs for such testing shall be paid by the covered employee, unless the second test invalidates the original test. The method of collecting, storing, and testing the split sample will be consistent with the procedures set forth in 49 CFR Part 40. The covered employee's request for a re-test must be made to the medical review officer within 72 hours of notice of the initial test result. Requests after 72 hours will only be accepted by the medical review officer if the delay was due to documentable facts that were beyond the control of the covered employee. If the analysis of the split specimen fails to reconfirm the presence of the drug(s) or drug metabolites(s) found in the primary specimen, or if the split specimen is unavailable, inadequate for testing or untestable, the medical review officer shall cancel the test and report the cancellation and the reasons for it to the DOT, the City, and the covered employee. If the analysis of the split specimen is reconfirmed by the second laboratory for the presence of the drug(s) or drug metabolites(s), the medical review officer shall notify the City and covered employee of the results of the test.

8.0 CONSEQUENCES OF ENGAGING IN PROHIBITED CONDUCT

Per City policy, the consequence of engaging in conduct addressed in Section 6.0 of this policy, *Prohibited Conduct*, is termination from employment with the City. Prior to termination, a covered employee will be informed of educational and rehabilitation programs available and a list of substance abuse professionals. The covered employee has the right to review his or her drug and alcohol testing records, provide information to dispute the results, and have access to any pertinent records such as equipment calibration records and records of laboratory certification.

Subject to all provisions of Section 10.0 of this policy, *Substance Abuse Evaluation and Assessment*, and Section 11.0 of this policy, *Re-Entry Contracts*, the City may rehire a terminated covered employee who at its sole discretion the City has determined will contribute to the mission, goals, cohesion, productivity, and esprit de corp of the City.

9.0 INFORMATION DISCLOSURE

Except as required by law, or expressly authorized or required below by 49 CFR Part 655.73 Access to Facilities and Records, the City may not release information pertaining to a covered employee that is contained in records required to be maintained.

1) A covered employee is entitled, upon written request, to obtain copies of any records pertaining to the covered employee's use of prohibited drugs or misuse of alcohol, including any records pertaining to his or her drug or alcohol tests;
2) The City shall permit access to all facilities utilized and records compiled in complying with the requirements of Part 655 to the Secretary of Transportation or any DOT agency with regulatory authority over the City or any of its covered

employees or to a State oversight agency authorized to oversee rail fixed guideway systems;

3) The City shall disclose data for its drug and alcohol testing programs, and any other information pertaining to the City's anti-drug and alcohol misuse programs required to be maintained by this part to the Secretary of Transportation or any DOT agency with regulatory authority over the City or any of its covered employees or to a State oversight agency authorized to oversee rail fixed guideway systems, upon the Secretary's request or the respective agency's request;
4) When requested by the National Transportation Safety Board as part of an accident investigation, the City shall disclose information related to its drug or alcohol testing related to the accident under investigation;
5) Records shall be made available to a subsequent employer upon receipt of a written request from a covered employee. Subsequent disclosure by the City is permitted only as expressly authorized by the terms of the covered employee's request;
6) The City may disclose information required to be maintained under Part 655 pertaining to a covered employee to the decision-maker in a lawsuit, grievance, or other proceeding initiated by or on behalf of the covered employee, and arising from the results of a drug or alcohol test under this part (including, but not limited to, a worker's compensation, unemployment compensation, or other proceeding relating to a benefit sought by the covered employee);
7) The City shall release information regarding a covered employee's record as directed by the specific, written consent of the covered employee authorizing release of the information to an identified person.
8) The City may disclose drug and alcohol testing information required to be maintained under Part 655, pertaining to a covered employee, to the State oversight agency or grantee required to certify to FTA compliance with the drug and alcohol testing procedures of 49 CFR Parts 40 and 655.

10.0 SUBSTANCE ABUSE EVALUATION AND ASSESSMENT

Any covered employee who tests positive for the presence of illegal drugs or alcohol above the minimum thresholds set forth in 49 CFR Part 40 shall be evaluated by an approved substance abuse professional before returning to duty. The substance abuse professional will evaluate each covered employee to determine what assistance, if any, the covered employee needs in resolving problems associated with prohibited substance abuse or misuse. The substance abuse evaluation and assessment will be paid for by the covered employee. Assessment by a substance abuse professional does not shield a covered employee from disciplinary action or guarantee employment, reinstatement, or consideration for reinstatement. The City will determine the penalty for performance-based infractions and violation of policy provisions. Refer to Section 8 of this policy, *Consequences of Engaging in Prohibited Conduct*, for guidance on disciplinary measures associated with violations of this policy.

Prior to consideration to return to duty, a covered employee must properly follow and complete the rehabilitation program prescribed by the substance abuse professional, and pass a return-to-

duty drug and/or alcohol test.

The substance abuse professional will recommend to the City the frequency and duration of follow-up testing. Federal regulations require a minimum of six unannounced follow-up tests with a verified negative result during the first 12 months after the covered employee returns to duty. The covered employee may be subject to follow-up testing for as long as 60 months after he or she returns to duty (labor agreements notwithstanding). The cost of any treatment or rehabilitation services will be paid directly by the covered employee or his or her insurance provider. Covered employees will be allowed to take accumulated sick leave and vacation leave to participate in the prescribed rehabilitation program.

11.0 RE-ENTRY CONTRACTS

Per City policy, covered employees approved by the City for a one-time opportunity to re-enter the workforce must agree to a re-entry contract. A refusal to test precludes a covered employee from this one-time opportunity. The re-entry contract shall include (but is not limited to):

1) A release to work statement from an approved substance abuse professional;
2) A negative test for drugs and/or alcohol;
3) A statement of expected work-related behaviors;
4) An agreement to unannounced frequent follow-up testing complying with this policy;
5) An agreement to follow specified after-care requirements prescribed by the approved substance abuse professional; and
6) An agreement that violation of any terms of the re-entry contract is grounds for immediate termination with no further reinstatement opportunities.

12.0 EDUCATION AND TRAINING

The City of Paso Robles has established a covered education and training program including:

- Education which includes display and distribution to every covered employee of informational material and a list of telephone numbers for assistance; and

- Training for:

    1) Covered employees which includes at least 60 minutes of training on the effects and consequences of prohibited drug use on personal health, safety, and the work environment, and on the signs and symptoms which may indicate prohibited drug use; and,
    2) Supervisors and/or other City officers authorized by the City to make reasonable suspicion determinations which includes at least 60 minutes of training on 1) the physical, behavioral, and performance indicators of probable drug use and at least 60 minutes of training on the physical, behavioral, speech, and performance indicators of probable alcohol misuse**,** and 2) initiating, substantiating and documenting the referral, and covered employee intervention.

13.0 EFFECTS, SIGNS AND SYMPTOMS OF ALCOHOL MISUSE AND METHODS OF INTERVENTION

13.1 Effects on Health, Work and Personal Life:

1) Nutritional deficiencies and sleeping difficulty
2) Impaired short-term memory
3) Inability to concentrate
4) Physical and psychological dependence
5) Brain and nervous system damage
6) Liver damage
7) Digestive problems (gastric ulcer)
8) Higher likelihood of stroke, coronary problems in general, and several forms of cancer
9) Disease of pancreas and kidneys
10) Birth defects in children of heavy drinking women
11) Impaired reaction time and motor skills
12) Tendency to take unnecessary risks
13) Possibility of reacting with anger toward other motorists
14) Euphoric high followed by a period of stuporous inactivity
15) Impairment in social functioning
16) Low frustration tolerance
17) Anxiety
18) Isolation
19) Violent mood swings
20) Manipulation of others
21) Over-sensitivity

13.2 Signs and Symptoms:

1) Alcohol odor on breath
2) Initial stimulation followed by depressed nervous system
3) Flushed skin
4) Glazed appearance of eyes
5) Slowed reaction time
6) Confused or slurred speech
7) Swayed or staggered gait
8) Absenteeism, particularly at the beginning of the week

13.3 Methods of Intervention:

Supervisors are responsible and accountable for assuring that covered employees under their supervision are fit to perform their duties safely. Supervisors are trained to intervene by:

1) Identifying patterns of deteriorating job performance by the presence of

progressive violations of policy
2) Documenting, in writing, the observed signs of change in a covered employee's work pattern as it relates to policy violations
3) Confirming a pattern of impaired judgment or performance over a period of time—all of which is documented
4) Confronting the covered employee by addressing his or her unacceptable work performance in a constructive way

Constructive confrontation includes the following and provides the covered employee with an opportunity to become productive again:

1) Documentation of what constitutes an acceptable level of performance
2) The amount of time to achieve improvement before disciplinary action is taken
3) A list of resources for the covered employee to use at his or her discretion which may provide assistance in improving performance
4) A progress review date

14.0 PROGRAM MANAGER

Anyone with questions regarding this policy should contact the following City representative who functions as the Program Manager and Designated Employer Representative (DER) for purposes of implementing and administering this policy:

Marlaine Sanders
Human Resources Manager
City of Paso Robles
1000 Spring Street
Paso Robles, CA 93446
Telephone: (805) 237-3962

15.0 CERTIFICATION OF TRAINING

The City of Paso Robles certifies that training conducted under the Federal Transit Administration (FTA) Drug and Alcohol Testing Regulations 49 CFR Parts 40 and 655 complies with the requirements for that training which includes:

- Education which includes display and distribution to every covered employee of informational material and a list of telephone numbers for employee assistance; and

- Training for:

1. Covered Employees. The training shall include at least 60 minutes of training on:
   a) The effects and consequences of prohibited drug use on personal health, safety, and

the work environment

b) The signs and symptoms which may indicate prohibited drug use

2. Supervisors and/or other City officers authorized by the City to make reasonable suspicion determinations. The training shall include:

   a) At least 60 minutes of training on the physical, behavioral, and performance indicators of probable drug use
   b) At least 60 minutes of training on the physical, behavioral, speech, and performance indicators of probable alcohol misuse
   c) Initiating, substantiating and documenting the referral, and employee intervention.

ACKNOWLEDGEMENT OF RECEIPT AND UNDERSTANDING

I understand that my signature below indicates that I have received a copy of the City of Paso Robles Drug and Alcohol Testing Policy dated October _____, 2007. Further, I understand and acknowledge that it is my responsibility to read and understand the policies and procedures set forth.

_____ _____

Print Name Date

_____

Signature

APPENDIX A

Safety-Sensitive Positions

- Fleet Supervisor
- Equipment Mechanics
- Transit Coordinator

APPENDIX B

Glossary of Terms

ACCIDENT: An occurrence associated with the operation of a vehicle, if as a result:

1. An individual dies

2. An individual suffers bodily injury and immediately receives medical treatment away from the scene of the accident

3. With respect to an occurrence in which the mass transit vehicle involved is a bus, electric bus, van, or automobile, one or more vehicles (including non-FTA funded vehicles) incurs disabling damage as the result of the occurrence and such vehicle or vehicles are transported away from the scene by a tow truck or other vehicle

4. With respect to an occurrence in which the mass transit vehicle involved is a rail car, trolley car, trolley bus, or vessel, the mass transit vehicle is removed from operation.

ADULTERATED SPECIMEN: A specimen that contains a substance that is not expected to be present in human urine, or contains a substance expected to be present but is at a concentration so high that it is not consistent with human urine.

ALCOHOL: The intoxicating agent in beverage alcohol, ethyl alcohol, or other low molecular weight alcohols including methyl or isopropyl alcohol.

ALCOHOL CONCENTRATION: The alcohol in a volume of breath expressed in terms of grams of alcohol per 210 liters of breath as indicated by a breath test.

ALCOHOL CONFIRMATION TEST: A subsequent test using an EBT, following a screening test with a result of 0.02 or greater, that provides quantitative data about the alcohol concentration.

ALCOHOL SCREENING TEST: An analytic procedure to determine whether a covered employee may have a prohibited concentration of alcohol in a breath specimen.

ALCOHOL USE: The consumption of any beverage, mixture, or preparation, including any medication, containing alcohol.

BREATH ALCOHOL TECHNICIAN (BAT): The breath alcohol technician shall be trained to proficiency in the operation of the Evidentiary Breath Test (EBT) instrument he or she is using, and in the alcohol testing procedures. BATs are the qualified personnel to administer the EBT test on covered employees.

CANCELLED TEST: A drug or alcohol test that has a problem identified that cannot be or has

not been corrected, or which 49 CFR Part 40 otherwise requires to be cancelled. A cancelled test is neither a positive nor a negative test.

CHAIN OF CUSTODY: Procedures to account for the integrity of each urine specimen by tracking its handling and storage from point of collection to final disposition.

COLLECTION SITE: A place designated by the City where individuals present themselves for the purpose of providing a specimen of either urine and/or breath. The collection site shall have all necessary personnel, materials, equipment, facilities and supervision to provide for the collection, security, temporary storage, and shipping or transportation of urine specimens to a certified drug testing laboratory.

CONFIRMATION DRUG TEST: A second analytical procedure performed on a urine specimen to identify and quantify the presence of a specific drug or drug metabolite.

CONFIRMED DRUG TEST: A confirmation test result received by a medical review officer from a laboratory.

CONFIRMATION VALIDITY TEST: A second test performed on a urine specimen to further support a validity test result.

COVERED EMPLOYEE: Any person, including a volunteer, applicant, or transferee, who is designated in a DOT agency regulation as subject to drug testing and/or alcohol testing. The term includes individuals currently performing safety-sensitive functions designated in DOT agency regulations and applicants for employment subject to pre-employment testing. A volunteer is a covered employee if: 1) the volunteer is required to hold a commercial driver's license to operate the vehicle; or 2) the volunteer performs a safety-sensitive function for an entity subject to 49 CFR Parts 40 and 655 and receives remuneration in excess of his or her actual expenses incurred while engaged in the volunteer activity.

DEPARTMENT OF TRANSPORTATION (DOT): This term encompasses all DOT agencies, including, but not limited to, the United States Coast Guard, the Federal Aviation Administration, the Federal Railroad Administration, the Federal Motor Carrier Safety Administration, the Federal Transit Administration, the National Highway Traffic Safety Administration, the Research and Special Programs Administration, and the Office of the Secretary. These terms include any designee of a DOT agency.

DESIGNATED EMPLOYER REPRESENTATIVE (DER): An employee authorized by the City to take immediate action(s) to remove covered employees from safety-sensitive duties or cause covered employees to be removed from these covered duties, and to make required decisions in the testing and evaluation process. The DER also receives test results and other communications for the City, consistent with the requirements of 49 CFR Parts 40 and 655.

DILUTE SPECIMEN: A specimen with creatinine and specific gravity values that are lower than expected for human urine.

DISABLING DAMAGE: Damage that precludes departure of a motor vehicle from the scene of the accident in its usual manner in daylight after simple repairs.

1. Inclusion: Damage to a motor vehicle where the motor vehicle could have been driven, but would have been further damaged if so driven.
2. Exclusions:
   a. Damage that can be remedied temporarily at the scene of the accident without special tools or parts.
   b. Tire disablement without damage even if no spare tire is available.
   c. Headlamp or tail light damage.
   d. Damage to turn signals, horn or windshield wipers, which makes the vehicle inoperable

DRUG METABOLITE: The specific substance produced when the human body metabolizes a given prohibited drug as it passes through the body and is excreted in urine.

EVIDENTIAL BREATH TESTING INSTRUMENT (EBT): A device approved by the National Highway Traffic Safety Administration for the evidential testing of breath at the 0.02 and 0.04 alcohol concentrations, placed on NHTSA's Conforming Products List (CPL) for "Evidential Breath Measurement Devices" and identified on the CPL as conforming with the model specifications available from NHTSA's Traffic Safety Program.

FEDERAL TRANSIT ADMINISTRATION (FTA): An agency of the U. S. Department of Transportation.

FOLLOW-UP TEST: A minimum of six unannounced drug and/or alcohol tests in a 12-month period, as directed by a substance abuse professional, are required of each employee who returns to duty after a required evaluation. After that period of time, the substance abuse professional may recommend to the City the frequency and duration of follow-up testing, provided that the follow-up testing period ends 60 months after the covered employee returns to duty.

INITIAL DRUG TEST: The test used to differentiate a negative specimen from one that requires further testing for drugs or drug metabolites.

INITIAL VALIDITY TEST: The first test used to determine if a specimen is adulterated, diluted, or substituted.

INVALID DRUG TEST: The result of a drug test for a urine specimen that contains an unidentified adulterant or an unidentified interfering substance, has abnormal physical characteristics, or has an endogenous substance at an abnormal concentration that prevents the laboratory from completing or obtaining a valid drug test result.

LABORATORY: A U. S. Department of Health and Human Services (DHHS) place where urine specimens are tested that shall have a quality assurance program which encompasses all aspects of the testing process including but not limited to specimen acquisition, chain-of-custody security and reporting of results, initial and confirmatory testing and validation of analytical procedures.

MEDICAL REVIEW OFFICER (MRO): A licensed physician responsible for receiving laboratory results generated by the City's drug testing program that has knowledge of substance abuse disorders and has appropriate medical training to interpret and evaluate an individual's confirmed positive test result together with his or her medical history and any other relevant biomedical information.

POST ACCIDENT TEST: A prohibited substance test administered to a covered employee when a motor vehicle accident has occurred and the covered employee performed a function which either contributed to the accident or could not be completely discounted as a contributing factor in the accident.

PRE-EMPLOYMENT TEST: A prohibited substance test given to an applicant or a non covered employee who is being considered for a safety-sensitive position. The applicant or non covered employee must be informed of the purpose for the test prior to the actual event.

PRIMARY SPECIMEN: In drug testing, the urine specimen bottle that is opened and tested by a first laboratory to determine whether the covered employee has a drug or drug metabolite in his or her system, and for the purpose of validity testing. The primary specimen is distinguished from the split specimen.

PROGRAM MANAGER: The person designated by the City to answer covered employee questions about the anti-drug and alcohol misuse program.

PROHIBITED DRUG: Marijuana, cocaine, opiates, amphetamines, or phencyclidine.

PROHIBITED SUBSTANCE: Under this program "prohibited substance" shall be used synonymous to drug abuse and/or alcohol misuse and refers to the definition of the foregoing terms "Alcohol" and "Prohibited Drug."

RANDOM TEST: A prohibited substance test given annually to a predetermined percentage of covered employees who perform in safety-sensitive functions and who are selected on a scientifically-defensible random and unannounced basis.

REASONABLE SUSPICION TEST: A prohibited substance test given to a current covered employee who is reasonably suspected by a trained supervisory employee of using prohibited drug or misusing alcohol.

RETURN-TO-DUTY TEST: An initial drug and/or alcohol test prior to return to duty given to eligible covered employees who previously tested positive. This test is also required prior to return to duty of an individual who has refused to take a test required by the FTA rule.

SAFETY-SENSITIVE EMPLOYEES: Those employees who perform safety-sensitive functions for the City.

SAFETY-SENSITIVE FUNCTION: Any of the following duties:

1) Operating a revenue service vehicle, including when not in revenue service
2) Operating a non-revenue service vehicle when required to be operated by a holder of a commercial driver's license
3) Controlling dispatch or movement of a revenue service vehicle
4) Maintaining a revenue service vehicle or equipment used in revenue service, unless the recipient receives FTA section 18 funding and contracts out such services

SPLIT SPECIMEN: In drug testing, a part of the urine specimen that is sent to a first laboratory and retained unopened, and which is transported to a second laboratory in the event that the covered employee requests that it be tested following a verified positive test of the primary specimen or a verified adulterated or substituted test result.

SUBSTITUTED SPECIMEN: A specimen with creatinine and specific gravity values that are so diminished that they are not consistent with human urine.

SUBSTANCE ABUSE PROFESSIONAL (SAP): A licensed physician (medical doctor or doctor of osteopathy)*;* or a licensed or certified psychologist, social worker, or employee assistance professional; or addiction counselor (certified by the National Association of Alcoholism and Drug Abuse Counselors Certification Commission or by the International Certification Reciprocity Consortium/Alcohol and Other Drug Abuse.) All must have knowledge of and clinical experience in the diagnosis and treatment of alcohol and controlled substance-related disorders.

VERIFIED TEST: A drug test result or validity testing result from an HHS-certified laboratory that has undergone review and final determination by the Medical Review Officer.

APPENDIX C

Minimum Threshold Levels

The Department of Health and Human Services establishes the minimum threshold levels for each of the five drugs tested for under USDOT testing programs including the FTA. Minimum levels are established for both the initial screening test and for the confirmatory test. The current cutoff levels are as follows:

Type of Drug or Metabolite	Initial Test	Confirmatory Test
Marijuana Metabolite	50	
Delta-9-tetrahydrocanna-binol-9-carboxylic acid (THC)	…….	15
Cocaine Metabolites (Benzoylecgonine)	300	150
Phencyclidine (PCP)	25	25
Amphetamines Amphetamine Methamphetamine	1000 …… ……	– 500 500 (Specimen must also contain amphetamine at a concentration of greater than or equal to 200 ng/ml.)
Opiate metabolites	2000	
Codeine	……	2000
Morphine	……	2000
6-acetylmorphine (6-AM)	……	10 (test for 6-AM in the specimen. Conduct this test only when specimen contains morphine at a concentration greater than or equal to 2000 ng/ml.)

These cutoff levels are subject to change by the Department of Health and Human Services as advances in technology or other considerations warrant identification of these substances at other concentrations.

APPENDIX D
Resources

MEDICAL REVIEW OFFICER

Dr. Bruce Heischober
P.O. Box 8878
Redlands, California 92375
(909) 307-8200

LABORATORY

Addiction Medicine Consultants, Inc.
P.O. Box 8878
Redlands, California 92375
(909) 307-8200

Star Drug Testing
3850 Ramada Drive
Paso Robles, California 93446
(805) 434-1477

SUBSTANCE ABUSE PROFESSIONAL(S)

Dale Lewis
SLO County Drug & Alcohol Services
2945 McMillan Ave.
San Luis Obispo, CA 93401
(805) 788-2057

Dominick Lacovara
11549 Los Osos Valley Road, Ste. 202
San Luis Obispo, CA 93405
(805) 543-7040

HOTLINES, SUPPORT GROUPS

Narcotics Information Helpline
(800) 248-6299

Alcoholics Anonymous
(805) 466-8175, 541-3211, or 927-0347

Al-Anon
(805) 534-9204, 549-8989, or 541-3211

National Institute on Drug Abuse Hotline
National Cocaine Hotline
(800) 662-HELP

SLO County Drug and Alcohol Services
2945 McMillan Ave.
San Luis Obispo, California 93401
(805) 781-4275

Narconon – Drug Addictions
(800) 556-8885

SUBSTANCE ABUSE COUNSELING AND TREATMENT RESOURCES

City of Paso Robles Employee Assistance Program (EAP)
MHN
(800) 327-0556

SLO County Drug & Alcohol Services
3556 El Camino Real
Atascadero, CA 93422

North County Connection
8600 Atascadero Ave.
Atascadero, CA 93422
(805) 462-8600

Lifestyle Recovery Center
715 24th Street
Paso Robles, CA 93446
(805) 238-2290

Cottage Outpatient Center of SLO
1035 Peach Street
San Luis Obispo, CA 93401
(805) 541-9113