

City of Yakima
Transit



Request for Proposals
11405-P

Interior and Exterior Transit Bus Advertising Services

Located at: 2301 Fruitvale Blvd.
YAKIMA, WASHINGTON 98902



Notice to Proposer, Proposal Form, Contractor Qualification
Statement and Questionnaire, Sample Contract,
And Other Proposal Documents

City of Yakima/Yakima County Purchasing Division
129 North Second Street
Yakima, Washington 98901
(509) 575-6093

March 6, 2014
Notice to Proposers
Request for Proposals No. 11405-P

Notice is hereby given by the undersigned that sealed Requests for Proposals will be accepted in the office of the Yakima City Clerk, Yakima City Hall, 129 N. 2nd Street, Yakima, Washington 98901 until the hour of **2:00 p.m., March 27, 2014** and Proposer names will be publicly read for:

Interior and Exterior Transit Bus Advertising

Above per specifications.

The City of Yakima has established a Disadvantaged Business Enterprise (DBE) program in accordance with regulations of the Department of Transportation (DOT) 49 CFR Part 26. It is the policy of the City to ensure that DBE's, as defined in 49 CFR Part 26, have an equal opportunity to receive and participate in DOT-assisted contracts. The City's current goal proposes that <1% of all DOT funds expended in DOT-assisted contracts will be let to certified DBE firms that are available, willing, and able. The City of Yakima hereby notifies all proposers that it will affirmatively ensure that in any contract entered into pursuant to this advertisement, disadvantaged business enterprises will be afforded full opportunity to submit proposals in response to this invitation and will not be discriminated against on the grounds of race, color, sex, sexual orientation, or national origin in consideration for an award.

Proposal forms and specifications are available in the office of the Purchasing Manager, City Hall, Yakima, Washington. 509-575-6093 and online at www.yakimawa.gov/services/purchasing Click on Bid Openings.

The City of Yakima reserves the right to reject any and all proposals.

Dated this 6th day of March, 2014

(Seal)

Christina Payer
Buyer I

**Request for Proposals No. 11405-P
Interior and Exterior Transit Bus Advertising**

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SECTION I - PROPOSAL TERMS

PROPOSAL SCHEDULE

- | | |
|-------------------------------|----------------------------|
| 1. Request for Proposals: | March 6, 2014 |
| 2. Site Meeting: | 10:00 a.m., March 20, 2014 |
| 3. Questions Due By: | March 17, 2014 |
| 4. Proposals Returned By: | 2:00 p.m., March 27, 2014 |
| 5. Proposal Opening: | 2:00 p.m., March 27, 2014 |
| 6. Evaluation and Interviews: | April 3, 2014 |
| 7. Contract Award: | April 24, 2014 |

TIMELINE: Provided above is the proposed procurement timeline. Unexpected events may cause the timeline to change, particularly as it relates to the schedule of the City.

PROPOSER'S ACKNOWLEDGEMENTS

All Proposers will acknowledge their total familiarity with the entire RFP package to include instructions for Proposers, specifications, and all compliance forms, by virtue of the submission of a proposal. The City will not consider claims for additional compensation based upon a Proposer's lack of knowledge of the RFP documents, statutes, regulations or resolutions pertaining to the purchasing policies of the City.

Proposals must be submitted on forms provided by the City. Proposals submitted in any other form or on any other document may be declared non-responsive and may not receive consideration. All proposal documents requiring a signature contained within the RFP package must be returned to the City. Failure to return all required documents may cause the proposal to be declared non-responsive.

Proposers are sometimes referred to in the Contract Documents, including this RFP, as a "Proposer," a "Vendor," or a "Contractor" as the context requires or as is appropriate.

DOCUMENTS TO BE RETURNED (CONTRACT DOCUMENTS)

Proposer must submit one (1) original and three (3) copies, and one (1) CD of the following documents and return with his/her submitted proposal:

- A. Proposal Form, page 24
- B. E-Verify Form, page 25
- C. Proposer Qualification Statement/Questionnaire, pages 28-31
- D. FTA Sections Requiring Signature
 - 1. Lobbying, pages 41-42

The following documents will be executed after an awardee is selected:

- A. Contract, page(s) 32-38
- B. Certificate of Insurance, page(s) 55-56

The foregoing documents together with this RFP to the extent not subsequently amended or superseded by agreement of the City, and all other documents required to be, or actually, submitted by a Proposer are collectively referred to as the "Contract Documents." Proposals may be rejected if a Proposer substitutes its' own forms for those provided.

FEDERAL CLAUSES

All Federal Clauses where indicated shall be signed by the appropriate person and returned with the original proposal and are part of the Contract Documents. Proposals may be rejected if one or more Federal Clauses are not returned.

CONTRACT

The appropriate Contract Documents included in the RFP Package must be signed by the Proposer. The contract, in the form accompanying this RFP, shall be executed with the successful Proposer.

INDEMNIFICATION/HOLD HARMLESS

1. _____ agrees to protect, defend, indemnify and hold harmless the City, its elected officials, officers, employees, agents, and volunteers from any and all claims, demands, losses, liens, liabilities, penalties, fines, lawsuits, and other proceedings and all judgments, awards, costs and expenses (including reasonable costs and attorney fees)

resulting from death or bodily injury to any person or damage or destruction to a third party or third parties to the extent caused by any negligent act and/or omission of _____, its officers, employees, agents, volunteers and/or subcontractors, arising out of the performance of this Contract.

2. If the negligence or willful misconduct of both _____ and the City (or a person identified above for whom each is liable) is a cause of such third party claim, the loss, cost, or expense shall be shared between _____ and the City in proportion to their relative degrees of negligence or willful misconduct and the right of indemnity will apply for such proportion.

3. Nothing contained in this Section or this Contract shall be construed to create a liability or a right of indemnification in any third party.

Without limiting the foregoing in any way, any and all Claims relating to personal injury, death, damage to property, defects in materials or workmanship, failure to comply with environmental rules, regulations, laws, responsibility to clean up any environmental contamination or any actual or alleged violation of any applicable statute, ordinance, administrative order, rule, regulation or decree of any court shall be included in the indemnity set out above.

SINGLE PROPOSAL

In the event that there is only one proposal, the City reserves the right to negotiate a purchase price with the single Proposer.

TERM OF CONTRACT

The period of this contract shall be for five (5) years from date of award. At its option the City may extend this contract on a year-to-year basis, for up to a period of five (5) additional years. The City may, at its option, choose to renegotiate the terms of the contract on the anniversary date of each contract year.

PROPOSAL SUBMITTAL

Proposals shall be returned to the City no later than 2:00 PM (PST), March 20, 2014 (the "Submittal Deadline") at the following address:

City of Yakima
Clerks Office
129 N Second Street
Yakima, WA 98901

Proposals shall be sealed and have the above address and Proposal No. 11405-P – Transit Bus Advertising clearly marked on the outside. It is the responsibility of the Proposer to see that the Proposal is received by the City no later than the Submittal Deadline. The City will return any proposals received after that time, unopened to the Proposer. The proposed pricing shall include all costs that are to be charged to the City. The City will not cover any costs to the Proposer in preparing their Proposal. Proposal opening will be at 2:00 PM, (PST) March 20, 2014 at Yakima City Hall, Council Chambers, 129 N 2nd Street, Yakima, WA 98901. Once submitted, any Proposal not withdrawn by the Submittal Deadline is valid and not subject to amendment or withdrawal for thirty sixty (60) days after the Submittal Deadline.

SITE MEETING:

A site meeting to conduct vehicle inspections will be held at 10:00 a.m. on March 20, 2014, at City of Yakima Transit Center, 2301 Fruitvale Blvd., Yakima WA 98902. The site meeting is not mandatory however Contractors are strongly urged to attend.

RFP COORDINATOR

All clarifications or questions regarding the specifications outlined in this RFP package must be made in writing to the RFP Coordinator, Christina Payer, City of Yakima Purchasing at christina.payer@yakimawa.gov. All questions should be received by March, 13th, 2014 COB.

The RFP Coordinator is:

Christina Payer
Purchasing Buyer I
City of Yakima/Yakima County
129 No. 2nd Street
Yakima, WA 98901
Ph: 509-576-6696

EXTENSION OF PROPOSAL OPENING

The City reserves the right to extend the proposal opening at any time prior to the announced proposal opening date.

CHANGES BY THE CITY OF YAKIMA

The City may at any time, by written order, and without notice to the sureties, if any, make changes within the general scope of this Contract including, but not limited to, project specifications and operations.

If any such change causes an increase or decrease in the cost of or the time required for, performance of any part of the work under this Contract, whether or not changed by the order, the City and Proposer shall make an equitable adjustment in the Contract and shall modify the Contract.

The Contractor must submit any proposal for adjustment under this provision within thirty (30) days from the date of receipt of the written order. The proposal shall fully document in detail the basis for the adjustment and provide complete supporting documentation for any requested adjustment in the Contract. Failure to submit a proposal within the thirty-day period or to fully document a proposal shall constitute a waiver of any right to an equitable adjustment in Contract. If the City decides that the facts justify it, the City may receive and act upon a proposal for adjustment submitted before final payment under the Contract. The Contractor shall not be entitled to an equitable adjustment if an increase in cost or time required is due to acts or omissions of the Contractor or its subcontractors or suppliers.

Failure to agree to any adjustment shall be considered a dispute under the following provisions. However, nothing in this provision shall excuse the Contractor from proceeding with the Contract as changed.

CHANGE ORDER PROCEDURE

Within thirty (30) days after receipt of a request for a contract change by the City or the Contractor, the Contractor shall submit to the City a detailed proposal for the work to be performed or omitted. This proposal shall include the elements of the estimated revenue changes supported by cost or pricing data, together with a certification that, to the best of the

Contractor's knowledge and belief; the data are accurate, complete and current at the time the change order proposal is submitted. This proposal may be accepted, rejected or modified after appropriate negotiations between the Contractor and the City. Agreed written modifications shall be executed in writing by both parties. If an agreed modification cannot be reached by negotiation and the City requires it to be done, then the City shall have the right to direct the work be accomplished on a time and materials basis with a single markup only on the Contractor's actual direct costs of twenty percent (20%) to cover all profit, overhead and any other indirect or consequential impacts, costs and damages.

In addition to the right to direct work to be accomplished, if an agreed modification cannot be reached by negotiation, the City shall have the right to immediately audit all of the Contractor's records and accounts to establish the actual direct cost impact of the changes ordered and the Contractor shall fully cooperate to provide access to such records and accounts in whatever form they then exist, including computerized information. The audit would be performed by an auditor selected and paid by the City. Failure to cooperate in such an audit shall constitute a material breach of this Contract.

COMMUNICATIONS

Communications in connection with this Contract shall be in writing and shall be delivered personally; or by facsimile, e-mail; or regular, registered, or certified mail addressed to the City Purchasing Manager or designee or to the Contractor designated to receive such communications. Telephone calls may be used to expedite communications but shall not be official communication unless confirmed in writing.

EFFECT OF EXTENSION OF TIME OR CHANGE ORDERS

Granting, or acceptance of extensions of time to complete agreed upon work or furnish the labor, supplies, materials, or equipment, or approval of change orders will not operate as a release of Contractor's Surety from its obligations under the performance bond or any other guarantees of the Contract Documents or at law.

ADDITIONAL SURETIES

If at any time during the continuance of the Contract, the Contractor's Surety, shall, in the opinion of the City become irresponsible, incompetent or unqualified, or if a Surety claims discharge, the City shall have the right to require additional and sufficient Sureties which Contractor shall furnish to the satisfaction of the City within ten (10) days after notice.

QUALITY CONTROL AND INSPECTION

All work done and all advertising displays posted on Yakima Transit buses shall be subject to inspection. The inspection of the work or materials shall not relieve the Contractor of any of his obligations to fulfill the contract as prescribed.

PRICE ADJUSTMENT FOR REGULATORY CHANGES

If price adjustment is indicated, either upward or downward, due to regulatory changes, it shall be negotiated between the City and the Contractor for changes that are mandatory as a result of legislation or regulations that are promulgated and become effective between the date of bid opening and the date of manufacture. Such price adjustment may be audited, where required.

INDEMNITY/CONTRACTOR'S LIABILITY INSURANCE

(A) The Service Provider agrees to indemnify and save harmless the City/County, its officers, agents and employees against and from any and all actions, suits, claims, demands or liability of any character whatsoever brought or asserted for injuries to or death of any person or

persons, or damages to property arising out of, result from or occurring in connection with the performance or any service hereunder.

(B) The Service Provider shall take all necessary precautions in performing the work hereunder to prevent injury to persons and property.

(C) **Contractors Liability Insurance:** The contractor shall obtain and maintain in full force and effect during the term of the contract, commercial general liability coverage with insurance carriers admitted to do business in the State of Washington. The insurance companies must carry a Best's Rating of A- VII or better. At all times during the life of this contract, Contractor agrees to maintain, on a primary and non-contributory basis and at its sole expense, the insurance coverages, limits, and endorsements noted below. All such insurance shall not be subject to any deductible or self-insured retention (SIR). There shall be no cancellation, material change, reduction in limits or intent not to renew the insurance coverage(s) without 30 days written notice from the contractor or its insurer(s) to the City of Yakima/Yakima County. The requirements contained herein, as well as the City/County's review or acceptance of insurance maintained by Contractor is not intended to and shall not in any manner limit or qualify the liabilities or obligations assumed by Contractor under this contract. The policies will be written on an occurrence basis, subject to the following minimum limits of liability:

Commercial General Liability: Combined Single Limit: \$1,000,000 Per Occurrence
\$2,000,000 Annual Aggregate

Auto Liability: Combined Single Limit: \$1,000,000 Per Occurrence

Garage Liability: \$1,000,000 Minimum Limit

Garage Keepers Liability: \$200,000 Minimum Limit

The City of Yakima/Yakima County, its agents, employees, authorized volunteers, elected and appointed officials are included as Primary/Non-Contributory additional insureds.

The Contractors' insurance coverage shall be primary insurance as respects those who are Additional Insureds under this agreement. Any insurance, self-insurance or insurance pool coverage maintained by the City/County shall be in excess of the Contractor's insurance and shall not contribute to it.

The contractor will provide a Certificate of Insurance to the City/County as evidence of coverage. A copy of the additional insured endorsement attached to the policy will be included with the certificate. This Certificate of insurance shall be provided to the Purchasing Manager, prior to commencement of this work.

If at any time during the life of the contract or any extension, the contractor fails to maintain the required insurance in full force and effect, all work under the contract shall be discontinued immediately. Any failure to maintain the required insurance may be sufficient cause for the City/County to terminate the contract.

The contractor shall also maintain workers compensation through the State of Washington.

(D) **Contractor's Waiver of Employer's Immunity under Title 51 RCW.** Contractor intends that its indemnification, defense, and hold harmless obligations set forth above in section 10.1 shall operate with full effect regardless of any provision to the contrary in Title 51 RCW,

Washington's Industrial Insurance Act. Accordingly, to the extent necessary to fully satisfy the Contractor's indemnification, defense, and hold harmless obligations set forth above in section 10.1, Contractor specifically waives any immunity granted under Title 51 RCW, and specifically assumes all potential liability for actions brought by employees of the Contractor against the City/County and its officers, employees, agents, and volunteers. The parties have mutually negotiated this waiver. Contractor shall similarly require that its subcontractors, and anyone directly or indirectly employed or hired by Contractor, and anyone for whose acts Contractor may be liable in connection with its performance of this Agreement to comply with the terms of this paragraph, waive any immunity granted under Title 51 RCW, and assume all potential liability for actions brought their respective employees. The provisions of this section shall survive the expiration or termination of this Agreement.

(E) Should a court of competent jurisdiction determine that this Agreement is subject to RCW 4.24.115, then, in the event of liability for damages arising out of bodily injury to persons or damages to property caused by or resulting from the concurrent negligence of the Contractor and the City/County, its officers, officials, employees, and volunteers, the Contractor's liability hereunder shall be only to the extent of the Contractor's negligence.

***PLEASE NOTE:**

Garage Liability, other than auto, is an acceptable substitute for Commercial General Liability and Garage Liability, any auto, is an acceptable substitute for Automobile Liability as long as it is at the required limits.

WA Stop Gap is not required for owner/operator firms with no employees

*****Certificate of Insurance sample is included at the end of this document*****

LIABILITY OF CONTRACTOR

Any specific duty or liability imposed upon the Contractor herein shall not be construed as a limitation or restriction on any general liability or duty imposed upon the Contractor by law or by the Contract terms. References to any specific duty or liability stated herein is inclusive, not limiting as to the Contractor's duties and liabilities. The Contractor shall be completely and solely responsible for the health and safety of its employees, subcontractors and suppliers engaged in the performance of the work. The Contractor shall maintain all work sites so as to comply with applicable laws, codes and safety regulations.

SUCCESSFUL PROPOSER

The successful Proposer shall immediately, upon notice of award, proceed to secure any equipment and disburse any information or data necessary to proceed with the execution of the contractual services of its proposal.

SECTION II - SCOPE OF SERVICES REQUIRED

GENERAL INFORMATION

As the public transportation division for the City of Yakima, Yakima Transit is seeking proposals from qualified advertising professionals and/or firms to perform sales, production, installation, and maintenance of advertising space on its transit revenue fleet. It is the intent of these specifications to describe interior and exterior transit bus advertising services in sufficient detail to secure proposals from qualified proposers to administer and conduct the daily functions associated with interior and exterior advertising on City of Yakima Transit vehicles for the next five (5) years with five (5) one year extensions possible. The City of Yakima shall lease to the contractor, all advertising spaces provided by the City in, upon and

about Yakima Transit buses owned or operated by the City. This advertising includes only fixed route Transit service.

SERVICES REQUIRED AND GENERAL CONDITIONS

The selected proposer must demonstrate its ability to manage all tasks related to the execution of this agreement. Responsibilities of the selected contractor shall include:

- contacting potential clients to place advertising on the City fixed route transit vehicles
- maintaining client relationships
- performing all sales duties
- maintaining internal procedures for screening content
- maintenance of inventory of posted advertisements
- design and production of all advertising media
- installation, removal, and disposal off site from the City property of all advertising media and related materials
- paying revenue to the City, as set forth within.
- billing, collecting revenues from clients, providing appropriate reports to the City of Yakima, and other necessary or customary practices.

All costs of fulfilling these responsibilities will be borne by the Contractor. The Contractor, subject to terms and conditions set forth herein, shall have the exclusive right to sell advertising to be placed in and on the City buses. Contractor shall solicit advertising at the maximum feasible published rates in an effort to completely utilize all available advertising space authorized by this contract, and to secure the maximum revenue return for the City. Any variance from the specifications or standards of quality must be clearly pointed out in writing by the Proposer.

Proposers are advised that vehicles used by the City will be operated on all routes and cannot be confined to specific geographic locations. Therefore, advertising cannot be "targeted" for certain areas. Advertising purchasers should not be led to believe, under any circumstances, that their advertising may be "route specific".

The City has a varied fleet with buses in sizes varying between 30 and 40 feet.

An additional small fleet of vehicles operated by a separate contractor, operates the Yakima-Ellensburg Commuter, a bus route between the cities of Yakima and Ellensburg. These vehicles may be available for advertising displays also. This will be determined at a later time.

ADVERTISING DISPLAYS ALLOWED

Virtually all sizes of advertising displays are being allowed. These include but are not limited to:

- Full wraps
- Full side advertisements
- King displays
- Queen displays
- Other displays are possible but require approval from the City Transit Manager
- Half sides
- Headliners
- Full backs
- Interior cards and interior ceiling direct vinyl displays

Proposers are encouraged to provide revenue estimates which may be realized from increasing the length of the contract, a less restrictive advertising content policy, and any other reasonable adjustments that will increase the revenue for the City.

POSSIBLE ADDITIONAL REVENUE OPPORTUNITIES

The opportunity may exist for enhanced revenue by the expansion of this contract to include utilization of interior video monitors in the Yakima Transit buses displaying bus stop information and making audio bus stop announcements that could also include video advertising. It has yet to be determined whether this possible additional opportunity will be handled through a separate Request for Proposals and Contract or addendum to this existing Contract. This possible expansion is still in the early planning stages and may, or may not, not develop into a viable or functioning project.

CITY FLEET CHARACTERISTICS

Following is a current list of the City revenue vehicles suitable for advertising and available exterior advertising space:

Type of Bus/Year	Qty	Driver Side Space Available	Curb Side Space Available	Rear Space Available
Gillig 35'/04	3	14' x 38"	7' 9"x 33"	7' x 29"
Gillig 35'/06	4	14' x 38"	11' 9" x 33"	7" x 18"
Gillig 35'/08	3	14' x 38"	7' 9" x 33"	7' x 18"
Gillig 35'/10	5	15'1" x 38"	7'10" x 33"	7' x 22"
Gillig 40'/06	3	18' x 38"	11' 9" x 33"	7' x 18"

Sizes listed are approximate. The City will not be held to these size specifications. Interested proposers will determine exact sizes, and determine sizes for advertising displays. Direct application advertising displays will require cutting vinyl around obstructions on the vehicles and careful placement of advertising copy or images.

DIRECT VINYL APPLICATIONS

Direct vinyl will be permitted on all vehicles. The Contractor shall submit all designs for full-wrap and other large-sized displays on buses to the City for review and approval, as provided in "Review of Advertising" page 13 below, prior to installation. Direct application materials shall not damage paint during application or removal. Contractor shall be responsible for the labor and materials expense of reapplying any paint or applied graphics that have peeled away due to the advertising removal. Materials used in the partial covering of windows shall be transparent from the inside allowing passengers to see out. Vinyl applications covering windows must allow a minimum of 40% light to pass through. Advertising shall not interfere with or obstruct the operation of emergency exit windows or other windows.

There shall be no extension of vinyl over the windows of the Coach Operator area including driver side windows, two front windows or front passenger door windows. Vinyl applications shall also be cut out or include the vehicle number on them in the same places bus numbers are displayed regularly. Example- On a vinyl wrap full back display, the 9 1/2" vehicle number is displayed in the upper left corner.

INTERIOR ADVERTISING SPACE

The City will make all transit revenue vehicles available for interior advertising purposes. The City reserves, for its own use, space for up to five interior car cards measuring 11 inches high by a maximum of 24 inches wide in each vehicle. Cards promoting transit services or providing

City information may be produced by the City, or by the contractor at fair market value. The contractor will post these cards at no cost to the City.

Contractor's duty to replace interior car cards shall exist regardless of whether the car cards were negligently or intentionally damaged or otherwise subject to malicious mischief or acts of vandalism. Contractor's obligation to replace damaged car cards is absolute, and is not dependent upon any notification by the City; however, Contractor agrees to replace any damaged or dirty car cards immediately upon receipt of written notice from the City, and in any event, no later than one week (seven days) after receipt of such notice. Contractor is to remain alert to the condition of car cards on display and act proactively to replace dirty or damaged cards. Contractor will remove dated car cards from buses within ten (10) working days of expiration.

In the rare occasions that a card is damaged and requires replacement, Yakima Transit staff will assist with replacing damaged cards if the replacement card is shipped to Yakima Transit, Attn: Operations Supervisor. Transit staff will place the new card in the frame to expedite replacement.

Contractor shall have the right to include space inside the transit vehicles, especially the ceilings, for direct vinyl applications. Such applications must also be approved by the City prior to application.

Below is the amount of lineal feet of interior space available, including space reserved for Yakima Transit self promotional use.

Type of Bus	Qty	Seating Capacity	Lineal Feet Available
Gillig 35'	15	32	26'6"
Gillig 40'	3	40	31'

RESERVED FREE YAKIMA TRANSIT ADVERTISING SPACE

The City shall retain free advertising space on and in its vehicles in the following quantities: five interior car cards per bus, all brochure racks on board buses, and one bus of exterior space each year of the contract if the City chooses to exercise that option. If the City does not choose to utilize the reserved bus space it may be considered as regular advertising inventory space. However, if the City chooses later to exercise the display option, the space must be made available in no more than sixty (60) days from the notification date. The City will pay the cost for producing the advertising materials. Application of the display will be performed by the Contractor without charge. Unless Contractor is notified in writing, any postings of unsold advertising displays shall be subject to preemption for paying advertisers, except for the one bus of self-promotional space reserved for Yakima Transit. Every effort will be made by both parties to ensure that the City advertising remains posted for as long as necessary.

REVIEW OF ADVERTISING

The City shall review all display advertising (full sides, Kings, Queens, Backs, Interior Ceilings, etc.) placed on the City vehicles and the City will provide written approval of each advertisement, which complies with rules established by the City within three (3) working days of design receipt. It shall be the Contractor's responsibility to transport, or have the designs delivered to the City Project Manager's office. Electronic transmission via e-mail is allowed. If the advertisement is deemed questionable, the review process may require additional

approvals. This can extend the timeline to up to ten (10) working days upon written notification to Contractor.

REMOVAL OF ADVERTISING

Any advertising displays that do not comply with the rules set forth below in “Advertising Content,”- page 14 and the rules and conditions set out elsewhere in the contract documents, are not allowed on the City vehicles.

If advertisements are approved and placed on vehicles but later determined not to be acceptable by the City, they shall be immediately removed by Contractor upon receiving notice from the City to do so. In this instance the City will reimburse the costs of the ad production, initial posting and removal. The City will not pay damages to Contractor for lost revenue from that advertising. The Contractor operates as part of a partnership between the City and the Contractor to make transit more attractive, valued and respected within the conservative Yakima community. The Contractor agrees to maintain high advertising industry standards relative to advertising copy and graphic design.

ADVERTISING CONTENT

It is the policy of the City to allow commercial and non-commercial advertising on the exterior and interior of the Yakima Transit buses. All forms of advertising on bus stop shelters and benches and other City facilities are prohibited.

The following advertising is PROHIBITED on all Yakima Transit buses:

- A. False, misleading, or deceptive;
- B. Promotes unlawful or illegal goods, services, or activities;
- C. Implies or declares an endorsement by the City of any goods, services, or activities;
- D. Contains any lewd or obscene matter as those terms are defined by RCW 7.48.A.010(2) and as such law may be amended, modified, or supplemented;
- E. Contains an image or description which, if furnished, exhibited, or sent to a minor would give rise to a violation of RCW 9.68.060, as such laws may be amended, modified, or supplemented;
- F. Contains an image or description which would give rise to a violation of RCW 9.68.130 or be the basis of an injunction pursuant to RCW 7.42.010, as such laws may be amended, modified, or supplemented;
- G. Is libelous;
- H. Promotes the sale of tobacco, tobacco-related or marijuana products;
- I. Promotes the sale of liquor, wine, beer, or distilled spirits;
- J. Displays any word, phrase, character or symbol likely to interfere with, mislead, or distract traffic, or conflict with any traffic control device, i.e: arrows, stop signs, etc.
- K. Incorporates any protruding, flapping, loose or not fully attached to the vehicle pieces or parts, or rotating, revolving, flashing devices or any other moving parts;

Promotional materials and informational materials for Yakima Transit service may be placed on the inside and outside of the City buses.

Yakima reserves the right to change the rules related to the type and location of advertising, which is prohibited or allowed on the City vehicles and property, by giving written notice to Contractor of such change. The change shall be applicable to all advertising for which a binding commitment for display has not been entered into at the time Contractor receives notice of the change.

SCHEDULE OF RATES

The rates for various advertising mediums are the prerogative of the Contractor and shall be published. A current copy of these rates shall be kept on file at the City throughout the term of the agreement. The Contractor shall submit its rate schedule to the City with its proposal. The rate schedule shall include the method and amount for charges for labor and materials to be deducted from gross billings, as set out in Section "Financial Compensation", below. The Contractor shall provide written notice of any advertising rate change prior to the effective date of the rate changes. The charges for labor and materials shall not change during the contract term. Additionally, the contractor shall provide to the City in writing all details of agreements involving variation from the posted rates, as well as justification for that variation.

TERM OF AGREEMENT

Contractor shall not be entitled to revenue generated from any contract or agreement with advertisers for ads placed on Yakima Transit property ("Advertising Contract") after three (3) months from the Contract end, including any renewal term if the Contract is renewed.

TRANSITION PROVISIONS

Upon the expiration or termination of this Agreement, Contractor agrees to assign to the City or to its successor advertising contractor, all advertising contracts on the City buses and such contracts shall thereupon become the property of the City. For a period of 12 months following the expiry or termination of this Agreement, the City or its assigns agrees to pay Contractor 15% of the gross advertising space revenue from such contracts that extend beyond the expiry or termination of the Agreement, plus all unamortized production charges of such advertising contracts.

REPAIR OF DAMAGE TO CITY VEHICLES

Any physical damage occurring to City vehicles as a result of advertising shall be repaired by the Contractor prior to either (a) installation of subsequent advertisements, or (b) at the discretion of the Transit Operations Supervisor, the termination or expiration of the existing advertising contract. This includes, but is not limited to: damaged paint, windows, window frames, or any other component of a bus damaged from the removal of direct vinyl application. Since general liability insurance excludes property damage, the Contractor shall carry Garage Keepers' coverage to cover its responsibility and liability. The preparation and painting shall be completed under the supervision of the City Operations Supervisor and performed by the City Maintenance staff at a rate of \$70.00 per hour, or by a paint contractor if approved in writing by the Transit Manager. In the event an existing City name and/or logo interferes with proposed advertising material, the City will consider its relocation. If the City agrees to the relocation of its name and/or logo, it will provide new materials to be applied, but it shall be the responsibility of the Contractor to remove the old material, restore the surface of the bus and reinstall any new graphics in a mutually agreeable location, as determined by the Transit Operations Manager/or his designee.

POSTING, MAINTENANCE, STOCKING, REMOVAL AND DISPOSAL OF DISPLAYS

Except as provided above for removal of dirty or damaged vinyl displays or car cards, the Contractor shall remove dated advertisements within ten (10) working days of their expiration. Advertisements which have exceeded the period for which they are paid to be posted shall be removed within ten (10) working days unless otherwise approved by the City. It shall be the responsibility of the Contractor to pull outdated ad material.

Removed advertising materials, supplies, and other items related to the advertising for which Contractor is responsible shall be disposed of in compliance with law off of the City's premises.

Posted advertisements shall be maintained in satisfactory, presentable condition. Any advertisement that is peeling, faded, torn or in other state of disrepair shall be promptly repaired or replaced by the Contractor at their expense.

Contractor shall install and maintain the City information/promotion and the City partnership advertising at no cost to the City. The City will give at least ten (10) working days notice of installation and posting requirements.

The Contractor shall be allowed reasonable access to the vehicles for the purposes of providing its services. The Contractor's employees shall obey all speed limit signs, directional arrows, safety and other regulatory signs while on City property and shall notify the City Maintenance personnel on duty at the maintenance base when they arrive on the City property. Contractor personnel shall wear easily identifiable clothing or ID badge. Contractor vehicles shall be clearly marked, have working marker lights and flashers, and be in safe operating condition.

Contractor's employees shall not operate the City vehicles at any time. Should a City vehicle need to be moved during the installation/maintenance activity, a City supervisor shall be informed and he shall facilitate the move at the Contractor's request. On these occasions, if excessive assistance is necessary, the Contractor may be billed for the City personnel time and direct operating costs at a minimum of one hour.

SHOP AND STORAGE SPACE

No storage space at the City facilities shall be made available to the Contractor under the terms of this agreement. Contractor shall give the City Transit Operations Supervisor, or his designee, twenty-four (24) hour advance notice for the installation or maintenance of advertising material. City Transit Operations personnel shall be informed at that time, by bus number, the vehicles required for service and the type of access required. In this manner, the City staff will know where to arrange parking on City premises for optimum required access. This notification shall be conducted Monday - Friday (excluding holidays), from 8 AM to 5 PM.

Inside shop space will be available at the City Maintenance facility for installation or maintenance of advertising material, between the hours of 8 AM to 5 PM, Monday through Friday, excluding holidays. The Contractor shall request such space a minimum of twenty-four (24) hours in advance. Requests for inside shop space should be made through the City Transit Operations Supervisor, or his designee, Monday - Friday (excluding holidays), from 8 AM to 5 PM.

FINANCIAL COMPENSATION

By the 20th day of each month, the Contractor shall pay the City the agreed upon percent of the previous months' net billings, or 1/12 of the annual minimum guaranteed contract amount, whichever is greater, plus any charges due the City. For example: 35 percent of January net billings or one-twelfth (1/12) of the annual minimum guaranteed contract amount, whichever is greater, is payable to the City on February 20th, and so on.

"Net billing" shall mean the gross billing less: (1) a single commission (if any) paid by an advertiser to a bona fide advertising agency retained by the advertiser; and (2) any labor and material charges made by the Contractor under the declared schedule of rates and charges. The deduction from gross billings permitted for agency commission shall not exceed 15 percent. If the advertiser did not retain an advertising agency, no commission may be

deducted in calculating the net billing. No deduction shall be permitted for “rep commissions” or “finder fees.” The Contractor may not charge a commission to an advertiser. In no case shall the Contractor pay a commission to or retain a person or firm in which the Contractor is in any way financially interested. All net billings shall be considered “received by the Contractor” at the time of billing and no deduction shall be made due to any bad debt.

TRADES

Contractor shall not place advertising on City vehicles on a “trade” basis, which shall include but not be limited to advertising offered to restaurants, media or other advertisers or advertising media for barter (i.e. non-cash food or beverage, goods, services, things of value) or in exchange for promotional advertising or reduced cost advertising.

AUDITS

The Contractor will provide a monthly and annual accounting of total sales and revenue collections including a statement of size and type of display contracted for each advertiser. Any payment not made when due is subject to a late charge of one percent (1%) net thirty (30).

The Contractor shall keep complete and accurate accounting records of its sales, revenue and collections and make those records available for inspection or audit by the City, or its authorized agent, in order to verify monthly and annual statements at any time throughout the period of the agreement, and for a period of three (3) years after termination of this agreement. Audits shall be conducted in accordance with generally accepted auditing standards and/or audit procedures and guidelines of the City. The Contractor shall fully cooperate with the City or its auditor(s) during audits and inspections, and shall provide all requested documentation in a timely manner. If an audit discloses discrepancies in the amounts due the City, the Contractor shall be responsible for the additional amounts due within thirty (30) days of the audit findings.

The City, or its designated auditor, may conduct unscheduled and unannounced audits of Contractor’s records for the purpose of monitoring the Contractor’s performance and compliance with the terms and conditions of the agreement. The Contractor shall, at any time requested, submit to the City properly authenticated documents or other satisfactory proof as to the Contractor’s compliance with such requirements.

The Contractor shall demonstrate its financial ability to perform under the proposed agreement. Information such as audited financial statements, Lines of Credit, etc. shall be submitted for review, if requested.

In the event the Contractor chooses to pay the City using a minimum guarantee rather than a set percentage of revenues generated, Contractor shall supply an irrevocable, unconditional Letter of Credit, from a commercial bank or banks authorized to do business in the State of Washington in a form acceptable to the City, in the amount of fifty percent (50%) of the minimum guarantee for three (3) months set forth in the proposal. The Letter of Credit shall be maintained and effective through December 30, 2016, and shall be presentable at a bank satisfactory to the City. If the City chooses to extend this agreement an additional two years, this Letter of Credit shall be extended likewise.

CITY RESPONSIBILITY AND PROJECT MANAGER

The City will be responsible for providing direction to the Contractor. Formal and informal communication following the contract award shall be directed to Karen Allen, Marketing and Contract Administrator, p: (509) 576-6423, e: karen.allen@yakimawa.gov, who will serve as the Project Manager, or other such person as may be designated by the City Transit Manager.

TIME OF PERFORMANCE

Contractor shall provide services from the time of contract execution (anticipated May 1, 2014) through April 30, 2019. Yakima may renew this contract, on the same terms and conditions unless the parties otherwise agree in writing, for an additional five (5) one (1) year periods, through April 30, 2024, by giving Contractor written notice of the renewal on or before March 31, 2014. At the request of the City of Yakima, the parties shall meet prior to March 31, 2014, to discuss any changes to the contract for the renewal term.

LICENSES, CERTIFICATES AND PERMITS

The Contractor shall secure and maintain at its sole expense such licenses and permits as may be required to provide the services or supplies under this contract, including but not limited to a license to do business in the State of Washington. If, for any reason, the Contractor's required licenses or certificates are terminated, suspended, revoked or in any manner modified from their status at the time this contract becomes effective, the Contractor shall notify the City immediately of such condition in writing.

TAXES AND FEES

The Contractor shall be liable for all taxes, fees, and costs as may be required by federal, state and local laws and regulations for the conduct of business by the Contractor and any sub-contractor, including but not limited to any leasehold excise taxes due under Chapter 82.29 RCW. Within sixty (60) days after entering into this Agreement, the Contractor shall obtain from the Washington State Department of Revenue a written determination of the amount and type of taxes owing under state law and regulations as a result of the work of this Agreement. This determination shall also specify the manner and schedule for payment as agreed to by the Department of Revenue. The written determination shall be obtained at the beginning of each year of this Agreement and a copy shall be provided to the City no later than January 31, 2014.

TERMINATION OF CONTRACT

The City may terminate this contract, in whole or in part, at any time by thirty (30) days written notice to the Contractor effective as of the date of termination set out in the notice.

The Contractor shall be entitled to its compensation for advertising sold pursuant to the contract up to the time of termination. The Contractor promptly shall submit its accounting to the City for the amount of money Contractor is entitled to through the date of termination. If the Contractor has any property in its possession belonging to the City, the Contractor shall account for the same and dispose of it in the manner the City directs. Unless otherwise agreed by the parties, Contractor shall cease all sales efforts immediately upon receipt of the letter of termination. All advertising displays on and in the buses at the time of the notice of termination will continue to remain in place through the expiration of the terms of the applicable contracts.

Refer to section 21 of the Federal Transit Administration Federally Required Clauses in EXHIBIT G, page 45.

CITY'S RIGHT TO CHANGE OPERATION OF TRANSIT SERVICES AND ADVERTISING

It is expressly understood that advertising is only incidental to the transportation business of the City Transit Division. The successful proposer shall have no claim because of any changes in methods or extent of operations or of styles, kinds, or numbers of buses or routes operated; and that the rights, powers, and privileges herein granted to the successful proposer relate only to such revenue vehicles as may be designated from time-to-time by the City. The City reserves the right to change the Scope of Services to add other advertising opportunities

or to reduce the number of revenue vehicles available for advertising space or the hours of operation of such revenue vehicles, in the future.

The Scope of Services may be expanded by the City adding new advertising space or opportunities by Change Order to the Contract, or the City may seek a separate RFP from the public for a new contract for the new advertising space or opportunities. Such changes shall be in writing and per change order procedure on page 8.

Reduction or increase in the number or hours of operation of revenue vehicles by more than five percent (5%) shall result in a pro rata reduction or increase in the minimum annual guaranty based on the type and size of the advertising space reduction or increase and the cost of such space.

Further, the City shall be allowed to review the Agreement and Contractor's performance at any period wherein Contractor's remittance to the City shall fall below 15% of the similar period in the prior year. If upon said review, the City finds that such reduction in revenues are due to neglect on the part of the Contractor, the City may find the Contractor as having failed to carry out the terms, conditions, promise or agreement set forth, and may exercise its option to terminate, per Termination of Contract on page 18 and Section 21 of the Federal Transit Administration Federally Required Clauses, EXHIBIT G, page 45.

SECTION III - PROPOSAL SUBMITTAL REQUIREMENTS/FORMAT

Each proposal shall contain the following items:

GENERAL REQUIREMENTS

- a. A Letter of Transmittal signed by the party authorized to execute contracts on behalf of the Proposer. This letter shall contain a statement that the Proposer has received, read, and understands all terms and conditions of this RFP. The letter shall also state that the Proposer has the scheduling capability to perform the work within the required time line and that the Proposer has the proper certifications and licenses to legally perform the duties required. The cover letter shall state that the proposal remains in effect for at least ninety (90) days after the date of submission.
- b. Table of Contents
- c. Summary of Proposal, Exhibits A, B, C, D, E, F, G, H and I

UNDERSTANDING OF PROJECT

The proposal shall include a narrative demonstrating the Proposer's understanding of the project requirements and provide an overview of the elements involved in carrying out the Scope of Work.

PROPOSED TECHNICAL APPROACH

By presentation of a well-conceived work plan, this section of the proposal should establish the Proposer's understanding of the City's objectives and work requirements and substantiate the Proposer's ability to satisfy those objectives and requirements. This proposal section should include the following:

Succinctly describe the proposed approach, which explains how the advertising services will be accomplished. The Proposer may also suggest technical or procedural innovations that it has used successfully on other contracts. Identify anticipated involvement of City staff. Demonstrate Contractor's ability to minimize impact on City staff who have the responsibility of managing, monitoring and administrating the advertising program.

Describe the approach the Proposer will take in dealing with requests for advertising space from non-profit or other public agencies, and what percentage of space this typically utilizes.

Describe the approach the Proposer will take in allowing the City access to advertising space, and what percentage of space this typically utilizes.

Describe the approach the Proposer may take to use space for promoting the availability of such advertising space on transit vehicles, and what percentage of space this typically utilizes.

QUALIFICATIONS, RELATED EXPERIENCE AND REFERENCE OF FIRM

This section of the proposal should establish the ability of the Proposer to satisfactorily perform the required work by reasons of: demonstrated competence in the services to be provided; the nature and relevance of similar work currently being performed; staffing capability, and work load; strength and stability as a business concern; and a list of all public transportation clients for the last 3 years.

Provide a brief profile of the firm, including the types of services offered, the year founded, form of organization (corporation, partnership, sole proprietorship), number, size and location of offices, number of employees, and a general description of the firm's financial condition. Identify any conditions (e.g., bankruptcy, pending litigation, planned office closures, impending merger) that may impede the Proposer's ability to complete the project.

Describe the firm's experience in performing work of a similar nature to that solicited in this RFP, particular emphasis should be placed on all client accounts in transit advertising sales, and highlight the participation in such work by the key personnel proposed for assignment to this project. Indicate any clients lost in the last three years by the firm, including reasons for the loss. Particular emphasis should be placed on experience with transit advertising sales with agencies and markets similar to those described in the RFP.

If available, include at least three (3) but no more than five (5) photographs or other reproductions of transit vehicles that display the product of the Proposer's company. One of these should depict a full bus wrap.

PROPOSED STAFFING AND PROJECT ORGANIZATION

This section of the proposal should establish the qualifications of the proposed project staff in terms of education, experience and professional credentials and the adequacy of labor resources as evidenced by the proposed distribution of labor hours.

Identify key personnel proposed to perform work on the City's transit advertising account, and include areas of subcontracted work, if any. Furnish a table projecting the Proposer's level of effort (expressed in person hours) for each key personnel identified. If more than two people will be assigned to this project, include a project organization chart, which clearly delineates communication/reporting relationships among the project staff and among the various firms involved.

Furnish brief resumes (not more than two (2) pages each) for the proposed key personnel. Resumes must feature experience most directly relevant to the work proposed for such key personnel on this project. Include a statement that key personnel will be available to the extent proposed for the duration of the project, and acknowledging that no person designated as "key" to the project shall be removed or replaced by the Proposer without the prior written notification and approval of the City.

If subcontractors are proposed for this project, they must provide a Certificate of Insurance naming the City of Yakima/Yakima County as additional insured, the identification and qualifications of all proposed subcontractors shall be disclosed. Each subcontractor must be identified in the proposal along with a brief statement listing the specific qualifications of the subcontractor for this project and the way in which the subcontractor will augment the Proposer's in-house expertise. If subcontractors are selected by the Proposer after award of the contract, such subcontractors will be subject to approval by the City. The prime contractor will be required to perform at least fifty percent (50%) of the contracted work.

AVAILABILITY

The proposal shall include a statement of other work currently under way or anticipated to be in progress during the time frame of this project and show how the Proposer intends to schedule projects so this project is accomplished as well.

The Proposer shall also develop, and include with proposal, a time line that indicates when major elements of this Scope of Work will be accomplished.

EXCEPTIONS/DEVIATIONS:

State any exception to or deviations from the requirements of this RFP, segregating "technical" exceptions from "contractual" exceptions. Where the Proposer wishes to propose alternative approaches to meeting the City's technical or contractual requirements, these should be thoroughly explained.

OTHER INFORMATION

A. Withdrawal/Supplement of Proposals: Applicants may withdraw or supplement their responses at any time prior to the response closing date and time. To accomplish this, a written request signed by an authorized representative of the applicant must be submitted to the RFQ Coordinator.

B. Applicant's Cost to Develop Qualification Packet: Costs for developing qualification packets in response to the RFQ are entirely the obligation of the Applicant and shall not be chargeable in any manner to the City.

The Proposer is free to include other information that may assist the City in determining the Proposer's qualifications to undertake the work described, including:

- a list of principal current accounts
- the Proposer's philosophy of doing business and its relationship to clients; and
- a description of the Proposer's experience working with and understanding of public agencies or government accounts.

Proposers should not prepare unnecessarily elaborate brochures or other presentation materials that go beyond that which is sufficient to present a complete and effective response. Such presentation may be construed as an indication of the Proposer's lack of cost consciousness. Elaborate artwork, expensive paper and bindings, and expensive visual or other presentation aids are neither necessary nor wanted.

SECTION IV - SELECTION PROCESS AND EVALUATION CRITERIA

SELECTION PROCESS

In accordance with the criteria listed below, an evaluation committee will select a Proposer and submit a recommendation for contract award to the Transit Manager, and then to the Yakima City Manager for approval. During the evaluation period, the committee may interview some or all of the proposing firms. Proposers should be aware; however, that award may be made without interviews or further discussion. The committee will make its selection based on conformance to the specifications, technical qualifications of the Proposer, and revenue returns.

EVALUATION CRITERIA

This is a solicitation for the services described elsewhere herein. Each proposal will be evaluated in accordance with the evaluation criteria stated herein to determine acceptable proposals. The City will award to the Proposer whose offer conforms to the solicitation and will be most advantageous to the City of Yakima, as determined by the evaluation factors listed below. The City reserves the right to award the contract to the applicant that it deems to offer the best overall qualifications/proposal in its sole discretion. The City reserves the right to revise the RFQ schedule, to revise the RFQ and/or to issue amendments to the RFQ. The City also reserves the right to cancel or to reissue the RFQ in whole or in part prior to the execution of a contract. The City also reserves the right to refrain from contracting with any and all applicants. The release of the RFQ does not compel the City to enter into any contract pursuant to the RFQ.

The City reserves the right to correct obvious ambiguities and errors in the Coordinator's proposal and to waive non-material irregularities and/or omissions.

The Evaluation Committee will conduct an initial review and short-list 2 or 3 proposals to be evaluated and scored. The decision of the Committee shall be final and conclusive.

Selection Criteria and Consideration: The proposals will be evaluated on the basis of the following criteria. Each criteria has been assigned a pre-established point value to reflect its relative importance.

Item #	Description	Points
1.	The highest revenue generated over the proposed initial term of the contract	30
2.	The Proposer's demonstrated understanding of the contractual undertaking, including the Proposer's approach to project, management plan, transition, and alignment to the scope of work.	30
3.	Qualifications and experience of firm, firm officers, management personnel, and key personnel assigned to this project.	30
4.	Financial capacity and overall risk/benefit assessment	10
	TOTAL	100

Based upon the evaluation criteria, a finalist or finalists will be selected. There may be further evaluation by interviews; however, the City reserves the right to award without holding discussions. The purpose of the interview, if held, will be to further review the final proposals

in specific areas with regards to satisfying the evaluation criteria stated above. Proposers shall have key management employees available for these interviews. If interviews are deemed necessary, the City reserves the right to utilize an in-person assessment or a telephone interview during the selection process. The City will notify the finalists as to the time and date for an interview, if applicable. On-site, in-person interviews will be held at Yakima Transit, 2301 Fruitvale Blvd., Yakima, WA 98902.

The Evaluation Committee will assess the overall proposal and ratings for the finalist(s). The City reserves the right to request a best and final offer if necessary.

The City reserves the right, if it is determined to be in its best interest, to conduct subsequent discussion, either oral or written, with all finalists after the interview process. In such an event, all finalists may be requested to submit best and final offers. The evaluation of the best and final offer will be on the same criteria as the original proposal.

Submission of a proposal implies the Proposer's acceptance of the evaluation criteria and process and recognition that subjective judgments may be made by the Evaluation Committee.

CONFLICT OF INTEREST

No employee, officer, or agent of the City shall participate in the selection, award, or administration of this contract if a conflict of interest, real or apparent, would be involved. Such a conflict would arise when:

- A. The employee, officer or Agent;
- B. Any member of his/her immediate family;
- C. His/her partner; or,
- D. An organization which employs or is about to employ, has a financial or other interest in the firm selected for award.

Exhibit A – Proposal Form

PROPOSAL FORM -- NOT AN ORDER

PROPOSAL NO. 11405-P CITY OF YAKIMA/YAKIMA COUNTY PLEASE QUOTE ON THIS FORM.
 PURCHASING DIVISION RETURN MARKED "NO BID"
 DATE March 4, 2014 129 NO. 2ND STREET IF YOU CANNOT QUOTE,
 YAKIMA, WASHINGTON 98901 AND REASON IN ORDER TO
 PHONE 575-6093 REMAIN ON VENDOR LIST.

PROPOSER _____

PROPOSALS WILL BE RECEIVED

ADDRESS _____

UNTIL 2:00 p.m., March 18, 2014

PROPOSAL OPENING 2:00 p.m., March 18, 2014

TO PROPOSER:

Please submit your best proposal for the following. The City reserves the right to reject any or all proposals. This proposal shall remain valid for at least ninety (90) days from the latest published RFP closing date. The City of Yakima intends to award this contract within ninety (90) days.

The City of Yakima Transit Division is requesting proposals for Interior and Exterior Transit Bus Advertising Services, for a term of five (5) years, commencing on the date the contract is signed, with five (5) possible one (1) year contract extensions, for a total of ten (10) years. Execution of this option shall be per the terms and conditions as set forth in the final agreement. **The Proposer agrees that it will pay the City no less than the following guaranteed amounts per month, or a set percentage of revenues generated, for the periods set forth:**

<i>Enter totals for the first five (5) year term:</i>				<i>Enter totals for the following years, if the City chooses to renew on a year-to-year option:</i>			
<i>Year</i>	<i>Amount</i>		<i>Percentage</i>	<i>Year</i>	<i>Amount</i>		<i>Percentage</i>
2014	\$	or	%	2019	\$	or	%
2015	\$	or	%	2020	\$	or	%
2016	\$	or	%	2021	\$	or	%
2017	\$	or	%	2022	\$	or	%
2018	\$	or	%	2023	\$	or	%

If, for each year during the term of this agreement, the total monthly payments made to the City (excluding payments made to the City due to other charges such as damage to vehicles) is less than the listed annual guarantee, the Contractor shall remit the difference to the City within thirty (30) days after the end of contract year.

TO THE BUYER OF THE CITY OF YAKIMA:

DELIVERY: WE (I) WILL START WORK UNDER THIS CONTRACT WITHIN _____ DAYS FROM AWARD OF CONTRACT AND AT PRICES AND TERMS SPECIFIED UNLESS OTHERWISE NOTED.

Exhibit B – Everify Form



Compliance with Immigration and Naturalization Act

(Form to be turned in with Qualification Packet)

The City of Yakima supports the Federal Immigration, Reform and Control Act of 1986, as amended. The City requires that all contractors or business entities that contract with the City for the award of any City contract for public works in excess of Five Thousand Dollars (\$5,000), or any other city contract in excess of Two Thousand Five Hundred Dollars (\$2,500), enroll in the E-Verify program or its successor, and thereafter to verify its employees' proof of citizenship and authorization to work in the United States.

E-Verify will be used for newly hired employees during the term of the contract ONLY: it is NOT to be used for existing employees.

The Contractor must remain enrolled in the program for the duration of the contract and be responsible for verification of every applicable subcontractor. The contractor shall sign and return with their bid response the E-Verify Declaration below. Failure to do so may be cause for rejection of bid.

E-VERIFY COMPLIANCE DECLARATION

The undersigned declares, under penalty of perjury under the laws of Washington State that:

1. By submitting this Declaration, I certify that I do not and will not, during the performance of this contract, employ illegal alien workers, or otherwise violate the provisions of the Federal Immigration Reform and Control Act of 1986.
2. I agree to enroll in E-Verify prior to the start date of any contract issued by the City of Yakima to ensure that my workforce is legal to work in the United States of America. I agree to use E-Verify for all newly hired employees during the length of the contract.
3. I certify that I am duly authorized to sign this declaration on behalf of my company.
4. I acknowledge that the City of Yakima reserves the right to require evidence of enrollment of the E-Verify program at any time and that non-compliance could lead to suspension of this contract.

Firm Name: _____

Dated this _____ day of _____, 20____.

Signature: _____

Printed Name: _____

Address: _____

Phone #: _____ Email Address: _____

Exhibit C – Non-Collusion Declaration

I, by signing the Bid, hereby declare, under penalty of perjury under the laws of the United States that the following statements are true and correct:

1. That the undersigned person(s), firm, association or corporation has (have) not, either directly or indirectly, entered into any agreement, participated in any collusion, or otherwise taken any action in restraint of free competitive bidding in connection with the project for which this bid is submitted.

2. That by signing the signature page of this bid, I am deemed to have signed and have agreed to the provisions of this declaration.

Exhibit D – Signature Sheet

PROPOSAL NO. 11405-P

The Proposer is hereby advised that by signing this signature sheet he/she is deemed to have acknowledged all requirements contained herein.

****Receipt is hereby acknowledged of addendum(s) No. (s) _____, _____ & _____.**

SIGNATURE OF AUTHORIZED OFFICIAL(S)

Firm Name

Address

Sign Name

Print Name

Date Signed

Phone Number

Fax Number

E-Mail Address

UBI

PROPOSAL MUST BE SIGNED 

Exhibit E – Qualification Statement/Questionnaire

REQUEST FOR PROPOSAL NO. 11405-P PROPOSER QUALIFICATION STATEMENT/QUESTIONNAIRE

Proposer must complete all portions of this statement before proposal will be considered.
The following statements as to experience, equipment and general qualifications of the bidder as submitted in conjunction with the proposal, as part thereof and truthfulness and accuracy of information is guaranteed by the Proposer and included in RFP evaluation.

- I. Name and address of principal business office which Contract will be administered from:

Telephone: _____

- II. Number of years proposer has been engaged in business: _____

- III. The proposer as a contractor has never failed to satisfactorily perform a contract awarded to him except as follows: (Name of any and all exceptions and reasons thereof)

- IV. Has proposer's firm ever filed bankruptcy within the last 10 years? If so give details below:

V. Proposer must have at least five (5) years experience as a contractor in this field of work and have satisfactorily completed three (3) projects of this nature in the last five (5) years:

1. Location and for whom performed:

Phone _____ Contact Person _____

2. Location and for whom performed:

Phone _____ Contact Person _____

3. Location and for whom performed:

Phone _____ Contact Person _____

VI. List the name of the staff member who will be assigned to the City's contract, and their experience (especially as it relates to transit advertising).

Name:

Experience:

VII. Describe your firm's accounting practices to illustrate how accounts are administered.

VIII. Describe in detail the following:

Your signage installation process:

Preventative maintenance procedures for signage:

Replacement procedures for damaged, older, worn-out signage:

IX. Describe the following:

Your firm's project management approach, including ability to provide responsible and timely coordination with the City of Yakima Transit Division.

Your public service advertising policy.

What distinguishes your company from others in the industry?

Exhibit F – Sample Contract

INTERIOR AND EXTERIOR TRANSIT BUS ADVERTISING PROPOSAL NO. 11405-P

THIS AGREEMENT, entered into this ____ day of April, 2014, between the City of Yakima ("City"), and _____, ("Contractor") and shall remain in full force and effect for five (5) years from date of award. The City may extend this contract on a year-to-year basis, for up to a period of five (5) additional years.

WITNESSETH: The parties, in consideration of the terms and conditions herein, do hereby covenant and agree as follows:

1. **Compensation:**

The City promises and agrees to employ, and does employ, the Contractor to cause to be done the work provided for in this Contract and to complete and finish the same according to the attached specifications, offer, and terms & conditions contained herein. The City agrees to pay the Contractor according to the payment schedule as listed in the Contractor's attached Proposal submittal.

2. **Payment**

The Vendor shall provide payment to the City on a monthly basis in conjunction with the specified percentages and/or guaranteed minimums outlined on page one of the request for proposal. The Vendor's remittance shall be due within twenty (20) days after the end of each month.

A. Covenant Against Contingent Fees. The Vendor warrants that no person or selling agency has been employed or retained to solicit or secure this contract upon an agreement or understanding for a commission, percentage, brokerage, or contingent fee, excepting bona fide employees or bona fide established commercial or selling agencies maintained by the Vendor for the purpose of securing business. For breach or violation of this warranty, the City shall have the right to annul this contract without liability, or at its discretion to deduct from the contract price or consideration or otherwise recover the full amount of such commission, percentage, brokerage, or contingent fee.

3. **Taxes**

Any taxes imposed upon any part of this contract by any local, state, or federal taxing authority shall be the sole responsibility of the Vendor.

3. **Performance:**

In consideration of these mutual terms and conditions, the parties covenant and agree as follows:

A. The Vendor will perform all work, furnish all labor, necessary supplies, supervision, organization, and other items of work and cost necessary for the proper execution of the services described in the specification criteria entitled "Interior and Exterior Advertising Services", Proposal No. 11405-P

B. All performance must be done in strict accord with the Request for Proposals and criteria adopted and approved by the City.

C. The Vendor agrees to comply with all applicable provisions and the most recent amendments of federal, state, and local laws, regulations, and City directives.

4. **Term:**

The period of this contract shall be for a period of five (5) years from its effective date. The City may, at its option, extend the contract on a year to year basis for up to five (5) additional years provided, however, that either party may

at any time during the life of this contract, or any extension thereof, terminate this contract by giving thirty (30) days notice in writing to the other party of its intention to cancel. Contract extensions shall be automatic, and shall go into effect without written confirmation, unless the City provides advance notice of the intention to not renew.

5. **Changes:**

Any proposed change in this contract shall be submitted in writing to the City of Yakima Purchasing Manager for her prior approval. If approved, she will make the change by a contract modification that will become effective upon execution by the parties hereto. Any oral statement or representation changing any of these terms or conditions is specifically unauthorized and is not valid.

6. **Agency Relationship between City and Contractor:**

Contractor shall, at all times, be an independent contractor and not an agent or representative of City with regard to performance of the Services. Contractor shall not represent that it is, or hold itself out as, an agent or representative of City. In no event shall Contractor be authorized to enter into any agreement or undertaking for, or on, behalf of City.

7. **Successors and Assigns:**

Neither the City, nor the Contractor, shall assign, transfer, or encumber any rights, duties, or interests accruing from this Contract without the written consent of the other.

8. **Property Rights:**

All records or papers of any sort relating to the City and to the project will at all times be the property of the City and shall be surrendered to the City upon demand. All information concerning the City and said project, which is not otherwise a matter of public record or required by law to be made public, is confidential, and the Contractor will not, in whole or part, now or at any time disclose that information without the express written consent of the City.

9. **Work Made for Hire:**

All work the Contractor performs under this agreement shall be considered work made for hire, and shall be the property of the City. The City shall own any and all data, documents, plans, copyrights, specifications, working papers, and any other materials the Contractor produces in connection with this agreement. On completion or termination of the agreement, the Contractor shall deliver these materials to the project manager.

10. **Compliance with Law:**

Contractor agrees to perform all services under and pursuant to this Agreement in full compliance with any and all applicable laws, rules, and regulations adopted or promulgated by any governmental agency or regulatory body, whether federal, state, local, or otherwise. Contractor shall have all applicable and necessary permits, licenses and approvals of any federal, state, and local government or governmental authority.

11. **Federal Requirements and Changes:**

The Contractor shall at all times comply with all applicable Federal Transit Administration (FTA) regulations, policies, procedures and directives. The Contractor's failure to so comply shall constitute a material breach of this Agreement.

12. **Federal Funding:**

On the basis of the federal funding that is part of the funding package for the services provided by the Contractor under the Agreement, and to assure compliance with all federal regulations associated with services compensated with federal funds, in addition to the terms of the primary Agreement, the Contractor must also comply with the specific provisions of the attached **Federal Funding Agreement**, attached hereto as **Attachment A** and fully incorporated herein. If there is any conflict between the terms expressed in the primary Agreement and those set forth in Exhibit A, the terms and conditions in Exhibit A shall prevail.

13. **Hold Harmless:**

Contractor shall, and hereby agrees to, release, save, otherwise hold harmless and indemnify the City of Yakima from claims, demands, damages, actions, causes of actions or other liability, injury, or harm caused by act or omissions, foreseen or unforeseen, negligent or otherwise, that would otherwise befall said City arising out of the Contractor's implementation of the terms of this contract.

14. **Professional Liability Insurance:**

The Contractor shall obtain and maintain in full force and effect during the term of the contract, professional liability coverage with insurance carriers admitted to do business in the State of Washington. The insurance companies must carry a Best's Rating of A- VII or better. The policies will be written on an occurrence basis, subject to the following minimum limits of liability:

<u>Professional Liability:</u>		
Combined Single Limit:	\$1,000,000	Per Occurrence
	\$2,000,000	Annual Aggregate
<u>Garage Liability:</u>	\$1,000,000	Minimum Limit
<u>Garage Keepers Liability:</u>	\$200,000	Minimum Limit

The City of Yakima, its agents, elected and appointed officials, volunteers and employees are to be listed as additional insureds under the policies.

The Contractor will provide a Certificate of Insurance to the City as evidence of coverage. The insured will provide the City with 30-days notice of cancellation in the event coverage is terminated during the term of this Contract. A copy of the additional insured endorsement attached to the policy will be included with the certificate.

The Contractor shall also maintain worker's compensation through the State of Washington.

If at any time during the life of the contract or any extension, the Contractor fails to maintain the required insurance in full force and effect, all work under the contract shall be discontinued immediately. Any failure to maintain the required insurance may be sufficient cause for the City to terminate the contract.

This Certificate of insurance shall be provided to the Purchasing Manager, prior to commencement of this work. A sample is attached.

15. **Disadvantaged Business Enterprise (DBE)**

Policy. It is the policy of the U.S. Department of Transportation that Disadvantaged Business Enterprises, as defined in 49 CFR Part 26, shall have the maximum opportunity to participate in the performance of contracts financed in whole or in part with federal funds under this agreement. Consequently, the DBE requirements of 49 CFR Part 26 apply to this agreement. The City's goal for DBE participation in this and other contracts is currently ten percent (10%).

15. **Contract Documents:**

This Agreement, the Request for Proposals, Scope of Work, conditions, addenda, and modifications and the Contractor's proposal (to the extent consistent with Yakima Transit's documents) constitute the Contract Documents and are complementary. Specific Federal and State laws and the terms of this Agreement, in that order respectively, supersede other inconsistent provisions. These Contract Documents are on file in the Office of the Purchasing Manager, 129 No. 2nd St., Yakima, WA, 98901, and are hereby incorporated by reference into this Agreement.

16. **Termination**

A. Refer to section 21 of the Federal Transit Administration Federally Required Clauses in ATTACHMENT G.

16. **Governing Law:**

This Agreement shall be governed by and construed in accordance with the laws of the State of Washington.

17. **Venue:**

The venue for any action to enforce or interpret this Agreement shall lie in the Superior Court of Washington for Yakima County, Washington.

18. **Authority:**

The person executing this Agreement, on behalf of Contractor, represents and warrants that he/she has been fully authorized by Contractor to execute this Agreement on its behalf and to legally bind Contractor to all the terms, performances and provisions of this Agreement.

IN WITNESS WHEREOF, the parties hereto have caused this agreement to be executed the day and year first above written.

CITY OF YAKIMA

CONTRACTOR
(Name Here)

Tony O'Rourke, City Manager

BY _____
Authorized Representative

ATTEST:

Sonya Claar Tee, City Clerk

Address

Federal Certifications and Assurances

It is hereby understood that this application and attachments hereto, when approved and signed by all concerned parties as indicated, shall constitute an agreement by and between the applicant organization to perform in accordance with the terms of this application and attachments, taken as a whole. This agreement is based on guidelines found in the Common Rule, the Office of Management and Budget (OMB) Circular A-102, in order to standardize and simplify federal grants.

- 1) **REPORTS** – The CONTRACTOR shall submit quarterly reports, a final report at end of the project, and submit special reports as outlined in the Project Agreement.
- 2) **COPYRIGHTS, PUBLICATIONS, AND PATENTS** – Where activities supported by this project produce original copyright material, the CONTRACTOR may copyright such, but the CITY reserves nonexclusive and irrevocable license to reproduce, publish, and use such materials and to authorize others to do so. The CONTRACTOR may publish, at its own expense, the results of project activities without prior review by the CITY, provided that any publications (written, visual, or sound) contain acknowledgment of the support provided by the CITY. Any discovery or invention derived from work performed under this project shall be referred to the CITY, who will determine whether patent protections will be sought, how any rights will be administered, and other action required to protect the public interest.
- 3) **TERMINATION** – This project agreement may be terminated or fund payments discontinued or reduced by CITY at any time upon written notice to the CONTRACTOR due to non-availability of funds, failure of the CONTRACTOR to accomplish any of the terms herein, or from any change in the scope or timing of the project.
- 4) **FISCAL RECORDS** – Complete and detailed accounting records will be maintained by the CONTRACTOR of all costs incurred on this project, including documentation of all purchases of supplies, equipment, and services; travel expenses; payrolls; and time records of any person employed part-time on this project. Federal, state, or CITY auditors shall have access to any records of the CONTRACTOR. These records shall be retained for three years after the final audit is completed or longer, if necessary, until all questions are resolved.
- 5) **FUNDING** – The CONTRACTOR will utilize funds provided to supplement and not to supplant state and local funds otherwise available for these purposes. Funds are to be expended only for purposes and activities approved in the project agreement. Reimbursement will be made periodically by CITY based on approved requests for reimbursement. If matching funds are required, the CONTRACTOR will expend them from nonfederal sources, which must be spent not later than 30 days following the completion of the project.
- 6) **COST PRINCIPLES AND GRANT MANAGEMENT** – The allowability of costs incurred and the management of this project shall be determined in accordance with OMB 2 CFR Part 225 and 49 CFR Part 18 for state and local agencies, OMB Circulars A-21 and A-110 for educational institutions, and OMB Circular A-122 for nonprofit entities.
- 7) **OBLIGATION FUNDS** – Federal funds may not be obligated prior to the effective date or subsequent to the termination date of the project period. Requests for reimbursement outstanding at the termination date of the project must be made within 30 days or those funds may not be paid.
- 8) **CHANGES** – The CONTRACTOR must obtain prior written approval from the CITY for major project changes including: changes of substance in project objectives, evaluation, activities, the project manager, key personnel, or project budget. The period of performance of the project, however, cannot be changed.
- 9) **INCOME** – Income earned by the CONTRACTOR with respect to the conduct of the project (sale of publications, registration fees, service charges, etc.) must be accounted for and income applied to project purposes or used to reduce project costs.
- 10) **PURCHASES** – Purchase of equipment or services must comply with state or local regulations. After the end of the project period, equipment should continue to be utilized for traffic safety purposes and cannot be disposed of without

written approval of the CITY. The CONTRACTOR shall make and maintain an inventory of equipment to include descriptions, serial numbers, locations, costs or other identifying information, and submit a copy to the CITY.

- 11) **THIRD PARTY PARTICIPANTS** – No contracts or agreements may be entered into by the CONTRACTOR related to this project, which are not incorporated into the project agreement and approved in advance by the CITY. The CONTRACTOR will retain ultimate control and responsibility for the project. CITY shall be provided with a copy of all contracts and agreements entered into by the CONTRACTOR. Any contract or agreement must allow for the greatest practical competition and evidence of such competition or justification for a negotiated contract or agreement shall be provided to the CITY.
- 12) **PARTICIPATION BY DISADVANTAGED BUSINESS ENTERPRISES** – The CONTRACTOR agrees to take all necessary and reasonable steps in accordance with Title 49, CFR, Subtitle A, Part 26 to ensure that minority business enterprises have the maximum opportunity to compete for and perform contracts. The CONTRACTOR shall not discriminate on the basis of race, color, national origin, or sex in the award and performance of any subcontracts financed in whole or in part with federal funds.
- 13) **AMERICANS WITH DISABILITIES ACT** – In the performance of this agreement, the CONTRACTOR shall comply with the provisions of Title VI of Civil Rights Act of 1964 42 USC 200d, Section 504 of the Rehabilitation Act of 1973 29 USC 794 Chapter 49.60 RCW, and the Americans with Disabilities Act (42 USC § 12101, et seq.; PL 101-336), which prohibits discrimination on the basis of disabilities (and 49 CFR Part 27). The CONTRACTOR shall not discriminate on the grounds of race, color, national origin, sex, religion, marital status, age, creed, Vietnam-Era and Disabled Veterans status, or the presence of any sensory, mental, or physical handicap in any terms and conditions of employment to induce taking affirmative action necessary to accomplish the objectives of this Act and denying an individual the opportunity to participate in any program provided by this agreement through the provisions of services, or otherwise afforded others.
- 14) **POLITICAL ACTIVITIES** – No funds, materials, equipment, or services provided in this project agreement shall be used for any partisan political activity or to further the election or defeat of any candidate for public office or to pay any person to influence or attempt to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any federal loan or the entering in of any cooperative agreements.
- 16) **CERTIFICATION REGARDING FEDERAL LOBBYING** –

Certification for Contracts, Grants, Loans, and Cooperative Agreements.

The undersigned 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 any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.
2. If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.
3. The undersigned shall require that the language of this certification be included in the award documents for all sub-award at all tiers (including subcontracts, sub-grants, and contracts under grant, loans, and cooperative agreements) and that all sub-recipients shall certify and disclose accordingly.

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

- 17) **SINGLE AUDIT** – State and local governments and nonprofit organizations that receive federal assistance are subject to the audit requirements of OMB Circular A-133.

18) **FEDERAL FUNDING ACCOUNTABILITY AND TRANSPARENCY ACT** –

The CONTRACTOR will report for each grant awarded:

- Name of the entity receiving the award;
- Amount of the award;
- Information on the award including transaction type, funding agency, the North American Industry Classification System code or Catalog of Federal Domestic Assistance number (where applicable), program source;
- Location of the entity receiving the award and the primary location of performance under the award, including the city, State, congressional district, and country; and an award title descriptive of the purpose of each funding action;
- A unique identifier (DUNS);
- The names and total compensation of the five most highly compensated officers of the entity if - of the entity receiving the award and of the parent entity of the recipient, should the entity be owned by another entity;
 - (i) The entity in the preceding fiscal year received—
 - (I) 80 percent or more of its annual gross revenues in Federal awards; and (II) \$25,000,000 or more in annual gross revenues from Federal awards; and (ii) the public does not have access to information about the compensation of the senior executives of the entity through periodic reports filed under section 13(a) or 15(d) of the Securities Exchange Act of 1934 (15 U.S.C. 78m(a), 78o(d)) or section 6104 of the Internal Revenue Code of 1986;
- Other relevant information specified by the Office of Management and Budget in subsequent guidance or regulation.

19) **SEAT BELT POLICY** – No funds, materials, property, or services will be provided to any political subdivision that does not have a current and actively enforced policy requiring the use of seat belts.

20) **POLICY TO BAN TEXT MESSAGING WHILE DRIVING** – The CONTRACTOR are encouraged to adopt and enforce workplace safety policies to decrease crashes caused by distracted driving including policies to ban text messaging while driving.

21) **DRUG FREE WORKPLACE** – In accordance with the Anti-Drug Act of 1988 41 USC 702-707 and Drug Free Workplace 42 USC 12644, CITY has the responsibility to ensure that unlawful manufacture, distribution, dispensing, possession or use of a controlled substance by any employees, grantees, and/or sub-grantees of the CONTRACTOR and/or any such activity is prohibited in the CONTRACTOR's workplace.

22) **DEBARMENT AND SUSPENSION** – The applicant certifies, by signature below, that neither it nor its principals are presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction by any Federal department or agency.

Exhibit G – FTA Required Clauses

FEDERAL TRANSIT ADMINISTRATION 3RD PARTY CONTRACT CLAUSES FOR CITY OF YAKIMA

A.1 - Federally Required and Other Model Contract Clauses

1. Fly America Requirements SELECTION DELETED
2. Buy America Requirements SELECTION DELETED
3. Charter Bus and School Bus Requirements SELECTION DELETED
4. Cargo Preference Requirements
5. Seismic Safety Requirements SELECTION DELETED
6. Energy Conservation Requirements
7. Clean Water Requirements SELECTION DELETED
8. Bus Testing SELECTION DELETED
9. Pre-Award and Post-Delivery Audit Requirements SELECTION DELETED
10. Lobbying
11. Access to Records and Reports
12. Federal Changes
13. Bonding Requirements SELECTION DELETED
14. Clean Air SELECTION DELETED
15. Recycled Products SELECTION DELETED
16. Davis-Bacon and Copeland Anti-Kickback Acts SELECTION DELETED
17. Contract Work Hours and Safety Standards Act SELECTION DELETED
18. [Reserved]
19. No Government Obligation to Third Parties
20. Program Fraud and False or Fraudulent Statements and Related Acts
21. Termination
22. Government-wide Debarment and Suspension (Non-procurement)
23. Privacy Act SELECTION DELETED
24. Civil Rights Requirements
25. Breaches and Dispute Resolution SELECTION DELETED
26. Patent and Rights in Data SELECTION DELETED
27. Transit Employee Protective Agreements SELECTION DELETED
28. Disadvantaged Business Enterprises (DBE)
29. State and Local Law Disclaimer
30. Incorporation of Federal Transit Administration (FTA) Terms
31. Drug and Alcohol Testing SELECTION DELETED

4. CARGO PREFERENCE REQUIREMENTS

**46 U.S.C. 1241
46 CFR Part 381**

Applicability to Contracts

The Cargo Preference requirements apply to all contracts involving equipment, materials, or commodities which may be transported by ocean vessels.

Flow Down

The Cargo Preference requirements apply to all subcontracts when the subcontract may be involved with the transport of equipment, material, or commodities by ocean vessel.

Model Clause/Language

The MARAD regulations at 46 CFR 381.7 contain suggested contract clauses. The following language is proffered by FTA.

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 loading 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. ENERGY CONSERVATION REQUIREMENTS

**42 U.S.C. 6321 et seq.
49 CFR Part 18**

Applicability to Contracts

The Energy Conservation requirements are applicable to all contracts.

Flow Down

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

Model Clause/Language

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

Energy Conservation - The contractor agrees to comply with mandatory standards and policies relating to energy efficiency which are contained in the state energy conservation plan issued in compliance with the Energy Policy and Conservation Act.

Needs to be returned with Proposal

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

Applicability to Contracts

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

Flow Down

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

Mandatory Clause/Language

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

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

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

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

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

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

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

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

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

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

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

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

_____ Signature of Contractor's Authorized Official

_____ Name and Title of Contractor's Authorized Official

_____ Date

11. ACCESS TO RECORDS AND REPORTS

49 U.S.C. 5325

18 CFR 18.36 (i)

49 CFR 633.17

Applicability to Contracts

Reference Chart "Requirements for Access to Records and Reports by Type of Contracts"

Flow Down

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

Model Clause/Language

The specified language is not mandated by the statutes or regulations referenced, but the language provided paraphrases the statutory or regulatory language.

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 including any PMO Contractor access to Contractor's records and construction sites pertaining to a major capital project, defined at 49 U.S.C. 5302(a)1, which is receiving federal financial assistance through the programs described at 49 U.S.C. 5307, 5309 or 5311.
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, including any PMO Contractor, 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
<u>I State Grantees</u> a. Contracts	None	Those imposed on state pass	None	None	None	None

below SAT (\$100,000) b. Contracts above \$100,000/Capital Projects	None unless ¹ non-competitive award	thru to Contractor	Yes, if non-competitive award or if funded thru ² 5307/5309/5311	None unless non-competitive award	None unless non-competitive award	None unless non-competitive award
<u>II Non State Grantees</u> 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

Sources of Authority:

¹ 49 USC 5325 (a)

² 49 CFR 633.17

³ 18 CFR 18.36 (i)

12. FEDERAL CHANGES

49 CFR Part 18

Applicability to Contracts

The Federal Changes requirement applies to all contracts.

Flow Down

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

Model Clause/Language

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

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

18. [RESERVED]

19. NO GOVERNMENT OBLIGATION TO THIRD PARTIES

Applicability to Contracts

Applicable to all contracts.

Flow Down

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

Model Clause/Language

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

No Obligation by the Federal Government.

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

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

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

Applicability to Contracts

These requirements are applicable to all contracts.

Flow Down

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

Model Clause/Language

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

Program Fraud and False or Fraudulent Statements or Related Acts.

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

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

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

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

Applicability to Contracts

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

Flow Down

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

Model Clause/Language

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

a. Termination for Convenience (General Provision) The (Recipient) 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 (Recipient) to be paid the Contractor. If the Contractor has any property in its possession belonging to the (Recipient), the Contractor will account for the same, and dispose of it in the manner the (Recipient) 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 (Recipient) 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 (Recipient) 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 (Recipient), 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 (Recipient) 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 (Recipient)'s satisfaction the breach or default of any of the terms, covenants, or conditions of this Contract within [ten (10) days] after receipt by Contractor of written notice from (Recipient) setting forth the nature of said breach or default, (Recipient) 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 (Recipient) 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 (Recipient) elects to waive its remedies for any breach by Contractor of any covenant, term or condition of this Contract, such waiver by (Recipient) shall not limit (Recipient)'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 (Recipient), 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 (Recipient) may terminate this contract for default. The (Recipient) 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 Recipient.

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 (Recipient) may terminate this contract for default. The (Recipient) 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 (Recipient), protect and preserve the goods until surrendered to the Recipient or its agent. The Contractor and (Recipient) 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 (Recipient).

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 (Recipient) may terminate this contract for default. The (Recipient) shall terminate by delivering to the Contractor a Notice of Termination specifying the nature of the default. In this event, the Recipient may take over the work and complete it by contract or otherwise, and may take possession of and use any materials, appliances, and plant on the work site necessary for completing the work. The Contractor and its sureties shall be liable for any damage to the Recipient 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 Recipient, acts of another Contractor in the performance of a contract with the Recipient, epidemics, quarantine restrictions, strikes, freight embargoes; and

2. the contractor, within [10] days from the beginning of any delay, notifies the (Recipient) in writing of the causes of delay. If in the judgment of the (Recipient), the delay is excusable, the time for completing the work shall be extended. The judgment of the (Recipient) 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 Recipient.

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

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 Recipient.

j. Termination for Convenience of Default (Cost-Type Contracts) The (Recipient) 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 (Recipient) 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 (Recipient), or property supplied to the Contractor by the (Recipient). If the termination is for default, the (Recipient) 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 (Recipient) and the parties shall negotiate the termination settlement to be paid the Contractor.

If the termination is for the convenience of the (Recipient), 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 (Recipient) 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 (Recipient), after setting up a new work schedule, may allow the Contractor to continue work, or treat the termination as a termination for convenience.

22. GOVERNMENT-WIDE DEBARMENT AND SUSPENSION (NONPROCUREMENT)

Background and Applicability

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

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

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

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

Clause Language

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

Suspension and Debarment

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

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

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

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

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

Applicability to Contracts

The Civil Rights Requirements apply to all contracts.

Flow Down

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

Model Clause/Language

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

Civil Rights - The following requirements apply to the underlying contract:

(1) **Nondiscrimination** - In accordance with Title VI of the Civil Rights Act, as amended, 42 U.S.C. § 2000d, section 303 of the Age Discrimination Act of 1975, as amended, 42 U.S.C. § 6102, section 202 of the Americans with Disabilities Act of 1990, 42 U.S.C. § 12132, and Federal transit law at 49 U.S.C. § 5332, the Contractor agrees that it will not discriminate against any employee or applicant for employment because of race, color, creed, national origin, sex, age, or disability. In addition, the Contractor agrees to comply with applicable Federal implementing regulations and other implementing requirements FTA may issue.

(2) **Equal Employment Opportunity** - The following equal employment opportunity requirements apply to the underlying contract:

(a) **Race, Color, Creed, National Origin, Sex** - In accordance with Title VII of the Civil Rights Act, as amended, 42 U.S.C. § 2000e, and Federal transit laws at 49 U.S.C. § 5332, the Contractor agrees to comply with all applicable equal employment opportunity requirements of U.S. Department of Labor (U.S. DOL) regulations, "Office of Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor," 41 C.F.R. Parts 60 et seq., (which implement Executive Order No. 11246, "Equal Employment Opportunity," as amended by Executive Order No. 11375, "Amending Executive Order 11246 Relating to Equal Employment Opportunity," 42 U.S.C. § 2000e note), and with any applicable Federal statutes, executive orders, regulations, and Federal policies that may in the future affect construction activities undertaken in the course of the Project. The Contractor agrees to take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, color, creed, national origin, sex, or age. Such action shall include, but not be limited to, the following: employment, upgrading, demotion or transfer, recruitment or recruitment advertising, layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. In addition, the 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.

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

Background and Applicability

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

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

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

Clause Language

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

Disadvantaged Business Enterprises

a. This contract is subject to the requirements of Title 49, Code of Federal Regulations, Part 26, *Participation by Disadvantaged Business Enterprises in Department of Transportation Financial Assistance Programs*. The national goal for participation of Disadvantaged Business Enterprises (DBE) is 10%. The agency's overall goal for DBE participation is <0%. A separate contract goal [of ___ % DBE participation ~~has~~][has not] been established for this procurement.

b. The contractor shall not discriminate on the basis of race, color, national origin, or sex in the performance of this contract. The contractor shall carry out applicable requirements of 49 CFR Part 26 in the award and administration of this DOT-assisted contract. Failure by the contractor to carry out these requirements is a material breach of this contract, which may result in the termination of this contract or such other remedy as {insert agency name} deems appropriate. Each subcontract the contractor signs with a subcontractor must include the assurance in this paragraph (see 49 CFR 26.13(b)).

c. ***{If a separate contract goal has been established, use the following}*** Bidders/offerors are required to document sufficient DBE participation to meet these goals or, alternatively, document adequate good faith efforts to do so, as provided for in 49 CFR 26.53. Award of this contract is conditioned on submission of the following **[concurrent with and accompanying sealed bid] [concurrent with and accompanying an initial proposal] [prior to award]**:

1. The names and addresses of DBE firms that will participate in this contract;
2. A description of the work each DBE will perform;
3. The dollar amount of the participation of each DBE firm participating;
4. Written documentation of the bidder/offeror's commitment to use a DBE subcontractor whose participation it submits to meet the contract goal;
5. Written confirmation from the DBE that it is participating in the contract as provided in the prime contractor's commitment; and
6. If the contract goal is not met, evidence of good faith efforts to do so.

[Bidders][Offerors] must present the information required above **[as a matter of responsiveness] [with initial proposals] [prior to contract award]** (see 49 CFR 26.53(3)).

{If no separate contract goal has been established, use the following} The successful bidder/offeror will be required to report its DBE participation obtained through race-neutral means throughout the period of performance.

d. The contractor is required to pay its subcontractors performing work related to this contract for satisfactory performance of that work no later than 30 days after the contractor's receipt of payment for that work from the **{insert agency name}**. In addition, **[the contractor may not hold retainage from its subcontractors.] [is required to return any retainage payments to those subcontractors within 30 days after the subcontractor's work related to this contract is satisfactorily completed.] [is required to return any retainage payments to those subcontractors within 30 days after incremental acceptance of the subcontractor's work by the {insert agency name} and contractor's receipt of the partial retainage payment related to the subcontractor's work.]**

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

29. STATE AND LOCAL LAW DISCLAIMER

Applicability to Contract

This disclaimer applies to all contracts.

Flow Down

The Disclaimer has unlimited flow down.

Clause/Language

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.

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

Applicability to Contracts

The incorporation of FTA terms applies to all contracts.

Flow Down

The incorporation of FTA terms has unlimited flow down.

Model Clause/Language

FTA has developed the following incorporation of terms language:

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

Exhibit H – General Provisions

CITY OF YAKIMA GENERAL PROVISIONS FOR TRANSIT CONTRACTS (A PART OF ALL CONTRACT DOCUMENTS)

These General Provisions, the Specifications, the Invitation to Bid/Quote form and any attachments, constitutes the bid document, and will be considered as one document.

1. Laws and Regulations

The contractor shall comply with all applicable laws and regulations pertaining to this contract. In addition, the contractor shall ensure that any subcontractor performing this contract shall comply with all applicable laws and regulations pertaining to this contract.

2. Acceptance

The City reserves the right to reject any or all quotations, to waive any technicalities and informalities, and to accept or reject all or any part of this quotation at prices shown.

All bids/quotes must remain open for acceptance by the City for a period of at least 60 calendar days from the date of opening of the bids/quotes, unless otherwise stated.

3. Bid/Quote Submittals

Bids and quotes shall be submitted on the attached forms only. Extra pages and literature may be added to this package, however, the package shall be returned intact as received.

All prices and notations must be typewritten or written in ink, with no erasures permitted. Mistakes may be crossed out and corrections written adjacent thereto, and must be initialed in ink by person signing quotation. Verify your quotations before submission, as they cannot be withdrawn or corrected after being opened.

If applicable, unit prices for all items, all extensions, and the total amount of bid or quote must be shown. In the instance of a discrepancy between the unit price and the total price, the unit price shall govern. Any pricing, configuration, or other errors discovered after bid/quote opening or quotation due date must remain and cannot be adjusted.

4. Change Orders

Change Orders for material or services will be without effect unless issued and authorized in writing by the Purchasing Manager.

5. Quality Standards

The brand names listed indicate the standard of quality required. Brands of equal quality, performance and use will be considered, provided the offeror specifies the brand, model and other data for comparison with their bid/quote. The City of Yakima will be the sole judge for approving other brands offered as equals to the brand specified. Bidders shall indicate if they are offering alternate brands in the space below each item and must provide descriptive specifications explaining the merits of the substitute item.

6. Delivery

Time is of the essence and this order is subject to cancellation by the City of Yakima for Vendor's failure to deliver on time. For any exception to the delivery date specified in this order, Vendor shall give prior written notification and obtain written approval from the City. The acceptance by the City of later performance with or without objection or reservation shall neither waive the City's right to claim damages for such breach nor constitute a waiver of the requirements for the timely performance of any obligation remaining to be performed by Vendor. All quotations shall include delivery F.O.B. destination, freight pre-paid, unless otherwise stated in this "Bid Call" or "Invitation to Quote" at the designated address set forth in the proposal given to each bidder. When shipping addresses specify room identification, Vendor shall make such delivery thereto without If the City grants specific authorization to ship goods F.O.B. Shipping Point, Vendor agrees to prepay all shipping charges, route the goods by cheapest common carrier, and bill the City as a separate item on the invoice for said charges. It is also agreed the City reserves the right, at its sole option, to refuse COD Shipments.

7. Identification

The purchase order number shall appear on all invoices, packing lists, packages, shipping notices and other written documents relating to this order. Packing lists shall be enclosed in each and every box or package shipped pursuant to this order, indicating the content therein.

8. Payment

Vendor is to submit properly completed invoice(s) and mail to:

*City of Yakima
Accounts Payable
129 No. 2nd St.
Yakima, WA 98901*

To insure prompt payment, each invoice should cite purchase order number, bid/quote number, description of item purchased, unit and total price, discount terms and include the vendor's name and return remittance address. Payment will be mailed within thirty (30) days of (a) the receipt and acceptance of the product or service and (b) a properly completed invoice.

9. Risk of Loss

Regardless of the F.O.B. Point specified above, Vendor agrees to bear all risk of loss, injury, or destruction of goods ordered herein which occur prior to actual physical delivery to the City, and such loss, injury, or destruction shall not release Vendor from any obligation hereunder.

10. Force Majeure

Vendor will not be responsible for delays in delivery due to acts of God, fire, Strikes, epidemics, war, riot, delay in transportation or railcar transport shortages, provided vendor notifies the Purchasing Manager immediately in writing of such pending or actual delay. Normally, in the event or any such delays (acts or God, etc.) the date of delivery will be extended for a period equal to the time lost due to the reason for delay.

11. Rejection

All goods and any services purchased in this order are subject to approval by the City. Rejection of goods or services, resulting because of nonconformity to the terms, conditions, and specifications of this order, whether held by the City or returned, will be at Vendor's risk and expense.

12. Approximate Quantity

The quantities listed are the City's current approximate requirements. The City of Yakima will neither be obligated by, nor restricted to, these quantities and may increase or decrease any item(s) ordered under this contract and pay according to the unit prices quoted in the Bid/Quote. If it is agreeable to both parties and prices have not changed and the 12. same unit/materials are still available, additional units/materials may be ordered within 12 months of the signing of the original agreement.

13. Cooperative Purchasing

The Washington State Interlocal Cooperative Act RCW 39.34 provides that other governmental agencies may purchase goods or services on this solicitation or contract in accordance with the terms and prices indicated therein if all parties agree. The City does not accept any responsibility or involvement in the purchase orders or contracts issued by other public agencies.

14. Samples

Samples of items, when required, must be furnished free of expense to the City, and if not destroyed by tests will, upon request, be returned at the bidder's expense.

15. Inspection

Cost of inspection on deliveries or offers for delivery, which do not meet specifications, will be for the account of the vendor.

16. Hazardous Materials

If this order covers goods which include hazardous chemicals, Vendor shall, at the time of product delivery, provide the City with copies of Material Safety Data Sheets for such chemicals. These sheets shall be in the form then required by applicable law or regulation. This requirement shall be in addition to whatever other requirements are imposed by law or regulation.

17. Public Disclosure

The City shall promptly notify Vendor of any requests for public disclosure of documents pursuant to Chapter 42.56 Revised Code of Washington (RCW) which may require disclosure of documents and information supplies under this order. Vendor shall be responsible for and bear the costs of taking legal action to prohibit disclosure of such documents and information and shall indemnify and save the City harmless from any and all cost, liability, penalty and expense related to the City's failure to disclose. In no event shall the City be liable for breach of this order should a court order that such documents and information be, and the same are, disclosed.

18. Warranties

Vendor warrants that all goods and services furnished under this order are new, conform strictly to the specifications herein, are merchantable, good workmanship, free from defect, are fit for the intended purpose of which such goods and services are ordinarily employed and if a particular purpose is stated in a Special Condition, the goods are then warranted as for that particular purpose. Vendor further warrants that no violation of any federal, state or local law, statute, rule, regulation, ordinance or order will result from the manufacturer, production, sale, shipment, installation or use of any other goods. Vendor's warranties (and any more favorable warranties, service policies, or similar undertaking of Vendor) shall survive delivery, inspection, and acceptance of the goods or services.

19. Re-Award

When the contract is terminated by the vendor upon 30 days notice as herein provided, the City, pursuant to City ordinance, may re-award the contract to the next most responsible bidder.

When a vendor is unable to supply goods and/or services to the City and is in breach of the contract, or when the contract is terminated by the City for cause as herein provided, the City reserves the right to re-award the contract to the next most responsible bidder.

20. Errors and Omissions

The City reserves the right to correct obvious ambiguities and errors in the Bidder's proposal and to waive non-material irregularities and/or omissions. In this regard, if the unit price does not compute to the extended total price, the unit price shall govern.

21. Late Receipt of Bid/Quote Documents

Bids and/or quotations and modifications received after the exact hour and date specified for receipt of bids and/or quotations will not be considered (i.e. if bid was due by 2:00 PM, any bids received after 2:00:00 PM will be rejected) .

22. Licenses

If applicable, successful vendor shall have a valid and current business license per Chapter 5.02 Section 5.02.010 of the Yakima Municipal Code covering this type of business and shall satisfy all applicable City Code provisions. Said license shall be obtained prior to the award of any contract. Inquiries as to fees, etc., should be made to the Office of Code Administration, telephone (509) 575-6121.

In addition, Contractors are required to be registered by the State per Chapter 18.27 of the Revised Code of Washington and their registration number must be listed on the bid/quote.

23. Delivery of Unapproved Substitutions

Vendors are authorized to ship only those items ordered covered by the contract. If a review of orders placed by the City reveals that an item other than those covered by and specified in the contract have been ordered and delivered, the Purchasing Manager will take such steps as are necessary to have the item(s) returned to the contractor at no cost to the City regardless of the time lapsed between the date of delivery and discovery of the violation. Violation of this clause may result in the removal of the offending vendor's name from the City mailing list for a period of up to three (3) years.

24. "No Bids"

Vendors who are unable to or do not wish to submit a bid and are encouraged to respond by notating their bid "NO BID" on page one of the "BID CALL" and mailing it to the City of Yakima Clerk's Office, 129 North 2nd Street, Yakima, Washington, 98901, with the Bid/Quote due date and time written on the face of the envelope. It is the City's practice that if no response to a bid is received by a vendor after two consecutive mailings, the vendor will be deleted from our vendor's mailing list for that type of commodity item.

25. Non-Collusion

The Bidder represents, by the submission of the Proposal, that the prices in this bid/quote are neither directly nor indirectly the result of any formal or informal agreement with another bidder.

26. Evaluation of Bid/Quote

In the evaluation of otherwise responsible bids/quotes, the Bidder's experience, delivery time and responsibility in performing other contracts will be considered. In addition to price, the following may be considered:

- I. The ability, capacity and skill of the bidder to perform the contract and provide the services required.
- II. Whether the bidder can perform the contract or provide the service promptly, or within the time specified, without delay or interference.
- III. The character, integrity, reputation, judgement, experience and efficiency of the bidder.
- IV. The quality of performance of previous contracts or service.
- V. The previous and existing compliance by the bidder with laws and ordinances relating to contracts or services.
- VI. The sufficiency of the financial resources and ability of the bidder to perform the contract or provide the service.
- VII. The quality, availability, and adaptability of the supplies or contractual services to the particular use required.
- VIII. The ability of the bidder to provide future maintenance and service for the use of the subject of the contract.

27. Taxes

The City will pay sales and use taxes imposed on goods or services acquired hereunder as required by law. The City is exempt from Federal Excise Tax. Where applicable, the City shall furnish a Federal Excise Tax Exemption certificate.

28. Non-Discrimination

During the performance of this Agreement, Contractor shall not discriminate in violation of any applicable federal, state and/or local law or regulation on the basis of race, color, sex, religion, national origin, creed, age, marital status, disability, honorably discharged veteran or military status, pregnancy, sexual orientation, political affiliation, or the presence of any sensory, mental or physical handicap, and any other classification protected under federal, state, or local law. This provision shall include but not be limited to the following: employment, upgrading, demotion, transfer, recruitment, advertising, layoff or termination, rates of pay or other forms of compensation, selection for training, and the provision of services under this Agreement.

29. Delay of an Award

If, after bid/quote opening, administration problems threaten to delay award beyond the bidder's acceptance period, bidders shall be requested to extend the bid/quote acceptance period. This request must be made and confirmed in writing prior to the expiration date of their bids/quotes (with consent of sureties, if any) to avoid the need to re-advertise.

30. Termination - Convenience

This contract may be terminated by either party by giving thirty (30) days written notice of such intent and will become effective thirty (30) days from the date such written notice is delivered to the applicable party to the contract.

31. Termination - Cause

The City reserves the right to terminate this contract at any time, upon written notice, in the event that the services of the Contractor are deemed by the City to be unsatisfactory, or upon failure to perform any of the terms and conditions contained in this agreement. In addition to the foregoing right of termination, the City may terminate this contract, with or without cause, upon thirty (30) days written notice to Contractor.

32. Venue

In the event that any litigation should arise concerning the construction or interpretation of any of the terms of the Agreement, the venue of such action of litigation shall be in the Courts of the State of Washington in and for the City of Yakima. This Agreement shall be governed by the laws of the State of Washington.

33. Defense and Indemnity Agreement

The vendor agrees to defend, indemnify and save harmless the City, its appointed and elective officers and employees, from and against all loss or expense, including but not limited to judgements, settlements, attorney's fees and costs by reason of any and all claims and demands upon the City, its elected or appointed officials or employees for damages because of personal or bodily injury, including death at any time resulting therefrom, sustained by any person or persons and on account to damage to property including loss of use thereof, whether such injury to persons or damage to property is due to the negligence of the Vendor, his/her subcontractors, its successor or assigns, or its or their agent, servants, or employees, The City, its appointed or elected officers, employees or their agents, except only such injury or damage as shall have been occasioned by the sole negligence of the City, its appointed or elected officials or employees. It is further provided that no liability shall attach to the City by reason of entering into this contract, except as expressly provided herein.

34. Permits

The vendor shall procure and pay for all permits and licenses necessary for the completion of the Contract, including those permits required by the City of Yakima. In the event a necessary permit is not obtained, the Vendor will not be permitted to work on items subject to said permit and any delays caused thereby will not be subject to extra compensation or extension.

35. Severability

If any term or condition of this contract or the application thereof to any person(s) or circumstances is held invalid, such invalidity shall not affect other terms, conditions or applications which can be given effect without the invalid term, condition or application. To this end, the terms and conditions of this contract are declared severable.

36. Waiver

Waiver of any breach or condition of this contract shall not be deemed a waiver of any prior or subsequent breach. No term or condition of this contract shall be held to be waived, modified or deleted except by an instrument, in writing, signed by the parties hereto.

37. Entire Agreement

This written contract represents the entire Agreement between the parties and supersedes any prior oral statements, discussions or understanding between the parties.

38. Protest Against Award

The City of Yakima shall consider all protests or objections regarding the award of a contract, whether submitted before or after award. If the protest is oral and the matter cannot otherwise be resolved, written confirmation of the protest must be provided by the complainant to the City Purchasing Manager. Upon receipt of an oral or written protest by the Purchasing Manager:

Step I - Division Manager and Purchasing Manager try resolving matter with protester.

Step II - If unresolved, the protest matter is put before the Department Head by the division.

Step III - If unresolved, the protest matter is put before the City Manager.

Step IV - If unresolved, the protest matter is put before the Transit Committee (if applicable) by the City Manager.

Step V - If unresolved, the protest matter is put before the full City Council by the Transit Committee (if applicable).

Step VI - If the bid is a Transit Division Bid and the protest matter is not resolved at the local level to the satisfaction of the protester; then, depending on the matter protested, the protester may file a formal protest with the Federal Transit Administration or any other federal agency concerning the alleged specific violation and shall be provided the guidelines for such filing.

39. Protest Before Award

The City shall require written confirmation of an oral protest. The written confirmation must be submitted seven (7) business days prior to award and the protester must be informed by the City that award will be withheld until the specified time. If the written protest is not received by the time specified, the oral protest shall be disregarded by the City and the award made in the normal manner.

The notice of protest and its basis shall be given to all affected bidders. When the City determines to withhold award pending disposition of a protest, bidders whose bid might become eligible for award shall be requested to extend the time for acceptance (with consent of sureties, if any). To avoid the need for re-advertisement, the request for extension shall be made prior to the expiration of the acceptable period.

When a written protest against making an award is received, the award shall not be made until the matter is resolved unless the City determines that one of the following applies:

- 1) The supplies or services to be contracted for are urgently required;
- 2) Delivery or performance will be unduly delayed by failure to make award promptly;
- 3) A prompt award will otherwise be advantageous to the City.

If the award is made, the file must be documented to explain the basis for the award. Written notice of the decision to proceed shall be sent to the protester and others who may be concerned.

NOTE: If an award is made while a protest is pending, such award does not assure federal funding, if applicable, in the event the protest is upheld.

40. Protest After Award

Vendors may appeal or protest a proposal award as soon as practical following the award, but no later than five (5) business days following notification of the award.

When an award has been made, the contractor shall be provided the notice of protest and the basis for the protest. If it appears likely that the award will be invalidated and a delay in receiving the supplies or services is not prejudicial to the City's interest, the City shall consider a mutual agreement with the contractor to suspend performance at no cost to the City.

When award is made to other than the apparent low bidder, the City must promptly notify the unsuccessful lower bidders that their bids were rejected. The notification shall state the reasons for rejection. In addition, notification that an award has been made to another firm shall be given immediately to all unsuccessful bidders.

41. Qualified Bids

The General Terms and Conditions and Supplemental Terms and Conditions included in this bid document will govern the performance of the work. No other terms and conditions will be accepted. Bids that are conditioned in any way, or Bids that take exception in any way to the City of Yakima's General and Supplemental Terms and Conditions, may result in the Bid being considered non-responsive.

42. Proprietary Material Submitted

Any information contained in the bid/RFP submitted that is proprietary must be clearly designated. Marking the entire bid as proprietary will be neither accepted nor honored. If a request is made to view a vendor's bid, the City of Yakima will comply according to the Open Public Records Act, Chapter 42.56 RCW. If any information is marked as proprietary in the proposal, such information will not be made available until the affected vendor has been given an opportunity to seek a court injunction against the requested disclosure.

Exhibit I – Certificate of Insurance



TOWING

CERTIFICATE OF LIABILITY INSURANCE

DATE (MM/DD/YYYY)
Current Date

THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AFFIRMATIVELY OR NEGATIVELY AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW. THIS CERTIFICATE OF INSURANCE DOES NOT CONSTITUTE A CONTRACT BETWEEN THE ISSUING INSURER(S), AUTHORIZED REPRESENTATIVE OR PRODUCER, AND THE CERTIFICATE HOLDER.

IMPORTANT: If the certificate holder is an ADDITIONAL INSURED, the policy(ies) must be endorsed. If SUBROGATION IS WAIVED, subject to the terms and conditions of the policy, certain policies may require an endorsement. A statement on this certificate does not confer rights to the certificate holder in lieu of such endorsement(s).

PRODUCER INSURANCE AGENT ISSUING CERTIFICATE ADDRESS	CONTACT NAME Insurance Agent Information PHONE (A/C, H/R, Ext) _____ FAX (A/C, H/R) _____ E-MAIL ADDRESS: _____ ADDRESS: _____ INSURER(S) AFFORDING COVERAGE INSURER A: A-VII or better, admitted carrier INSURER B: _____ INSURER C: _____ INSURER D: _____ INSURER E: _____ INSURER F: _____
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INSURED: **ENTITY INSURED ADDRESS**

COVERAGES: _____ CERTIFICATE NUMBER: _____ REVISION NUMBER: _____

THIS IS TO CERTIFY THAT THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED. NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.

ITEM LTR	TYPE OF INSURANCE	AGRE. DURS	WORK. INVS	POLICY NUMBER	POLICY EFF. DATE (MM/DD/YYYY)	POLICY EXP. DATE (MM/DD/YYYY)	LIMITS
A	GENERAL LIABILITY <input checked="" type="checkbox"/> COMMERCIAL GENERAL LIABILITY CLAIMS-MADE <input type="checkbox"/> OCCUR <input checked="" type="checkbox"/>	X	X	POLICY NUMBER	start date	stop date	EACH OCCURRENCE \$ 1,000,000 DAMAGE TO RENTED PREMISES (Ea occurrence) \$ 100,000 MED EXP (Any one person) \$ 5,000 PERSONAL & ADV INJURY \$ 1,000,000 GENERAL AGGREGATE \$ 2,000,000 PRODUCTS - COMP/OP AGG \$ _____ \$ _____
	GEN'L AGGREGATE LIMIT APPLIES PER <input checked="" type="checkbox"/> POLICY <input type="checkbox"/> PRO-JECT <input type="checkbox"/> LOC						
A	AUTOMOBILE LIABILITY <input checked="" type="checkbox"/> ANY/AUTO ALL OWNED AUTOS <input type="checkbox"/> SCHEDULED AUTOS <input type="checkbox"/> HIRED AUTOS <input type="checkbox"/> NON-OWNED AUTOS	X	X	POLICY NUMBER	start date	stop date	COMBINED SINGLE LIMIT (Ea accident) \$ 1,000,000 BODILY INJURY (Per person) \$ _____ BODILY INJURY (Per accident) \$ _____ PROPERTY DAMAGE (Per accident) \$ _____ \$ _____
	UMBRELLA LIAB EXCESS LIAB <input type="checkbox"/> OCCUR <input type="checkbox"/> CLAIMS-MADE <input type="checkbox"/> DED. \$ _____ RETENTION \$ _____						
A	WORKERS COMPENSATION AND EMPLOYERS LIABILITY ANY PROFESSIONAL PARTNER/EXECUTIVE OFFICER/BOARDER EXCLUDED? (mandatory to R) <input type="checkbox"/> If yes, describe under DESCRIPTION OF OPERATIONS below		N/A	POLICY NUMBER Stop Gap/EL Only	start date	stop date	WC STATU-TORY LIMITS <input checked="" type="checkbox"/> OTHER \$ _____ E.L. EACH ACCIDENT \$ 1,000,000 E.L. DISEASE - EA EMPLOYEE \$ 1,000,000 E.L. DISEASE - POLICY LIMIT \$ 1,000,000
A	Cargo / on Hook Garagekeepers Liab.	X		POLICY NUMBER	start date	stop date	\$50,000 \$60,000

DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES (Attach ACORD 101, Additional Remarks Schedule, if more space is required)
The City of Yakima and the County of Yakima, its agents, employees, authorized volunteers, elected and appointed officials are included as Primary/Non-Contributory additional insureds. See attached Additional Insured Endorsement.

CERTIFICATE HOLDER City of Yakima/County of Yakima Purchasing Department 129 N. 2nd Street Yakima, WA 98901	CANCELLATION SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, NOTICE WILL BE DELIVERED IN ACCORDANCE WITH THE POLICY PROVISIONS. AUTHORIZED REPRESENTATIVE SIGNATURE
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ADDITIONAL INSURED - OWNERS, LESSEES OR CONTRACTORS
- SCHEDULED PERSON OR ORGANIZATION

This endorsement modifies insurance provided under the following:

COMMERCIAL GENERAL LIABILITY COVERAGE PART

SCHEDULE

Name of Person or Organization:

The City of Yakima and the County of Yakima, its agents, employees, authorized volunteers, elected and appointed officials are included as Primary/Non-Contributory additional insured's.

(If no entry appears above, information required to complete this endorsement will be shown in the Declarations as applicable to this endorsement.)

- A. Section II - **Who Is An Insured** is amended to include as an insured the person or organization shown in the Schedule, but only with respect to liability arising out of your ongoing operations performed for that insured.
- B. With respect to the insurance afforded to these additional insureds, the following exclusion is added:

2. Exclusions

This insurance does not apply to "bodily injury" or "property damage" occurring after:

- (1) All work, including materials, parts or equipment furnished in connection with such work, on the project (other than service, maintenance or repairs) to be performed by or on behalf of the additional insured(s) at the site of the covered operations has been completed; or
- (2) That portion of "your work" out of which the injury or damage arises has been put to its intended use by any person or organization other than another contractor or subcontractor engaged in performing operations for a principal as a part of the same project.

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.