



Connecting Our Community.

## ADMINISTRATIVE & FINANCE COMMITTEE

THURSDAY, JUNE 12, 2014 – 8:00 A.M.

OMNITRANS METRO FACILITY

1700 WEST 5TH STREET

SAN BERNARDINO, CA 92411

The meeting facility is accessible to persons with disabilities. If assistive listening devices or other auxiliary aids or services are needed in order to participate in the public meeting, requests should be made through the Recording Secretary at least three (3) business days prior to the Committee Meeting. The Recording Secretary's telephone number is 909-379-7110 (voice) or 909-384-9351 (TTY), located at 1700 West Fifth Street, San Bernardino, California. If you have comments about items on the agenda or other general concerns and are not able to attend the meeting, please mail them to Omnitrans at 1700 West Fifth Street, San Bernardino, California, Attention Board Secretary. Comments may also be submitted by email to [BoardSecretary@omnitrans.org](mailto:BoardSecretary@omnitrans.org).

### A. CALL TO ORDER

1. Pledge of Allegiance
2. Roll Call

### B. ANNOUNCEMENTS/PRESENTATIONS

1. Next Committee Meeting: Thursday, July 10, 2014, 8:00 a.m.  
Omnitrans Metro Facility Board Room

### C. COMMUNICATIONS FROM THE PUBLIC

This is the time and place for the general public to address the Board for items that are not on the agenda. In accordance with rules applicable to meetings of the Administrative & Finance Committee, comments on items not on the agenda and on items on the agenda are to be limited to a total of three (3) minutes per individual.

### D. POSSIBLE CONFLICT OF INTEREST ISSUES

Disclosure – Note agenda items contractors, subcontractors and agents, which may require member abstentions due to conflict of interest and financial interests. Board Member abstentions shall be stated under this item for recordation in the appropriate item.

### E. DISCUSSION ITEMS

- |   |    |
|---|----|
| 1. Approve Administrative & Finance Committee Minutes – May 15, 2014  | 2  |
| 2. Receive & File Forward Fuel Purchase Program Update for June 2014  | 6  |
| 3. Recommend to Board of Directors, Receive and File Construction Progress Report No. 29 through May 24, 2014 – sbX E Street Corridor BRT Project | 10 |
| 4. Recommend to Board of Directors, Pass-Through Funding Agreement, Chino Transit Center Phase II   | 23 |
| 5. Recommend to Board of Directors, Disposition of 28.8 Acre Property located in Rancho Cucamonga, California                                     | 66 |

### F. REMARKS AND ANNOUNCEMENTS

### G. ADJOURNMENT

N/A

ITEM # E1

**ADMINISTRATIVE & FINANCE COMMITTEE  
MINUTES OF MAY 15, 2014**

**A. CALL TO ORDER**

Committee Chair Ed Graham called the regular meeting of the Administrative and Finance Committee to order at 8:00 a.m., Thursday, May 15, 2014.

1. Pledge of Allegiance
2. Roll Call – Self-introductions were made.

**Committee Members Present**

Mayor Ed Graham, City of Chino Hills – Committee Chair  
Mayor Carey Davis, City of San Bernardino  
Mayor Paul Eaton, City of Montclair  
Council Member Frank Gonzales, City of Colton  
Mayor Pro Tem John Roberts, City of Fontana  
Mayor Walt Stanckiewicz, City of Grand Terrace  
Mayor Pro Tem Alan Wapner, City of Ontario

**Committee Members Not Present**

Mayor Ray Musser, City of Upland

**OmniTrans Administrative Staff Present**

Diane Caldera, Interim Director of Operations  
Jack Dooley, Director of Maintenance  
Marge Ewing, Director of Human Resources  
Sam Gibbs, Director of Internal Audit Services  
Jacob Harms, Director of Information Technology  
Anna Rahtz, Acting Director of Planning & Development Services  
Jennifer Sims, Director of Procurement  
Don Walker, Director of Finance  
Wendy Williams, Director of Marketing  
Jim Deskus, sbX Project Analyst  
Maurice Mansion, Treasury Manager  
Andres Ramirez, sbX Construction Manager

**B. ANNOUNCEMENTS/PRESENTATIONS**

The next Committee Meeting is scheduled Thursday, June 12, 2014, at 8:00 a.m.

**C. COMMUNICATIONS FROM THE PUBLIC**

There were no comments from the public.

**D. POSSIBLE CONFLICT OF INTEREST ISSUES**

There were no conflict of interest issues identified.

**E. DISCUSSION ITEMS**

1. Approve Administrative & Finance Committee Minutes – April 17, 2014

M/S (Eaton/Roberts) that approved the Committee Minutes of April 17, 2014. Motion was unanimous by remaining Members present.

2. Receive & File Forward Fuel Purchase Program Update for May 2014

Director of Finance Donald Walker presented the monthly Forward Fuel Purchase Update for May 2014. The contract closed almost 12 cents above the hedge price, which results in a recognized gain of \$18,075 for May. As the market price for fuel was higher in May than the budgeted price, the gain from the hedge price helps to offset the loss and a loss of only \$1,547 will be recognized for the month.

From February 2012 through May 2014, Omnitrans has recognized a total gain of \$58,318 on the settled hedge positions. As of two weeks ago, there was a projected unrecognized gain of \$18,325 for June, the last month of the current hedge contract. However, as of May 14, 2014, the unrecognized gain dropped to \$12,725 in this two week period. Over the entire 29-month hedge contract, Omnitrans is projected to recognize a total gain of \$71,000.

As approved by the Board of Directors, Omnitrans will enter into a new 12-month hedge contract when the price of the hedge hits \$.92 per gallon or less vs. the current price of \$1.04 per gallon.

This item was received and filed.

3. Recommend to Board of Directors, Receive and File Construction Progress Report No. 28 through April 25, 2014 – sbX E Street Corridor BRT Project

sbX Construction Manager Andres Ramirez announced that the sbX Revenue Service Date of April 28, 2014, was achieved and was met with success! The budget remains at

\$191.7M, with \$155.2M spent to date, for a total estimated cost at completion of \$188M. Lost time injuries remain at zero with over 401,000 man hours combined.

The Vehicle Maintenance Facility (VMF) is approximately 46% complete with completion now projected for December 2014. In the existing building (Building A), concrete installation is completed and the installation of the hydraulic scissor bus lift has begun, as has work on the exhaust shaft in the Battery Room.

Work has also progressed on Building B, with over-excavation complete and the foundation excavation started.

Board Member F. Gonzales arrived at 8:09 a.m.

In response to questions raised by Board Members regarding the bridge-plate issue on the sbX buses, Mr. Ramirez reported that the issue has been resolved, but there is a manual (suitcase) ramp available for Coach Operators should issues arise in the future. Director of Maintenance Jack Dooley further explained that the bridge plates were tested for four months prior to service and issues identified during testing were addressed. However, once service began and people were actually stepping onto the plates, failures occurred. Since service date, the program and controllers have been changed. New Flyer, the bus manufacturer, has been on top of the issue and is working with the bridge plate manufacturer, Ricon, to ensure all issues are addressed. Also reported was a new issue with the plates, whereby the screws in the plates that cover the bridge plates are coming loose and creating a trip hazard. The vendor has a temporary fix in place, but we are requesting that the plate covers be replaced to include more robust screws. He emphasized that staff is on top of the issues and are working close with the vendors toward resolution.

And, in response to an inquiry regarding ridership numbers, Director of Marketing Wendy Williams reported that the first week of free service saw an average of 3,000 passengers per day, with Route 2 recording nearly the same ridership. During Week 2, ridership on the sbX line was 1,300, with Route 2 remaining nearly the same as Week 1. Omnitrans was surprised that more riders didn't immediately migrate from Route 2. Marketing is using all communication tools available, including more outreach in the field, to address any confusion of passengers, such as whether the cost to ride is the same as other routes and whether existing passes can be used to ride, with additional promotions planned in June to attract new riders. One of the challenges Omnitrans is faced with is that the ridership projections for sbX established five years ago included the understanding that the San Bernardino Transit Center would also be operational. However, with its delay, the Transit Center is downtown at 4<sup>th</sup> and G, two-and-a-half blocks and around the corner from sbX and passengers have chosen not to make the walk around the corner to ride sbX.

This item was received by the Committee and will be forwarded to the Board of Directors for receipt and file.

**F. REMARKS AND ANNOUNCEMENTS**

Committee Chair Graham announced he would not be available for the Administrative and Finance Committee in June and someone else would have to lead the meeting.

**G. ADJOURNMENT**

The Administrative & Finance Committee meeting adjourned at 8:20 a.m. The next Administrative & Finance Committee Meeting is scheduled Thursday, June 12, 2014, at 8:00 a.m., with location posted on the Omnitrans website and at Omnitrans' San Bernardino Metro Facility.

Prepared by:

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Vicki Dennett, Assistant to CEO/General Manager

ITEM #           E2          

**DATE:** June 12, 2014

**TO:** Committee Chair Ed Graham and  
Members of the Administrative and Finance Committee

**THROUGH:** P. Scott Graham, CEO/General Manager

**FROM:** Donald Walker, Director of Finance

**SUBJECT: OMNITRANS' DIRECTOR OF FINANCE FINAL REPORT –  
FORWARD FUEL PURCHASES THROUGH JUNE 2014**

**FORM MOTION**

Receive and forward to the Board of Directors to receive and file the Director of Finance's final report on Omnitrans' current forward fuel purchase program ending June 2014. This program was implemented on May 6, 2009, to increase the predictability of Omnitrans costs and reduce operational uncertainty in the event of dramatic fuel price increases in the open market.

**BACKGROUND**

This report is submitted in order to comply with the requirements of the Omnitrans Forward Fuel Purchase Policy and Procedure. The Board of Directors authorized staff to hedge up to 150,000 gallons per month of CNG on the NYMEX exchange through Morgan Stanley. The current hedge fixes the price of approximately 45% of the Agency's natural gas through June 2014. This is the final month a hedging program report will be presented to this Committee for this hedging program.

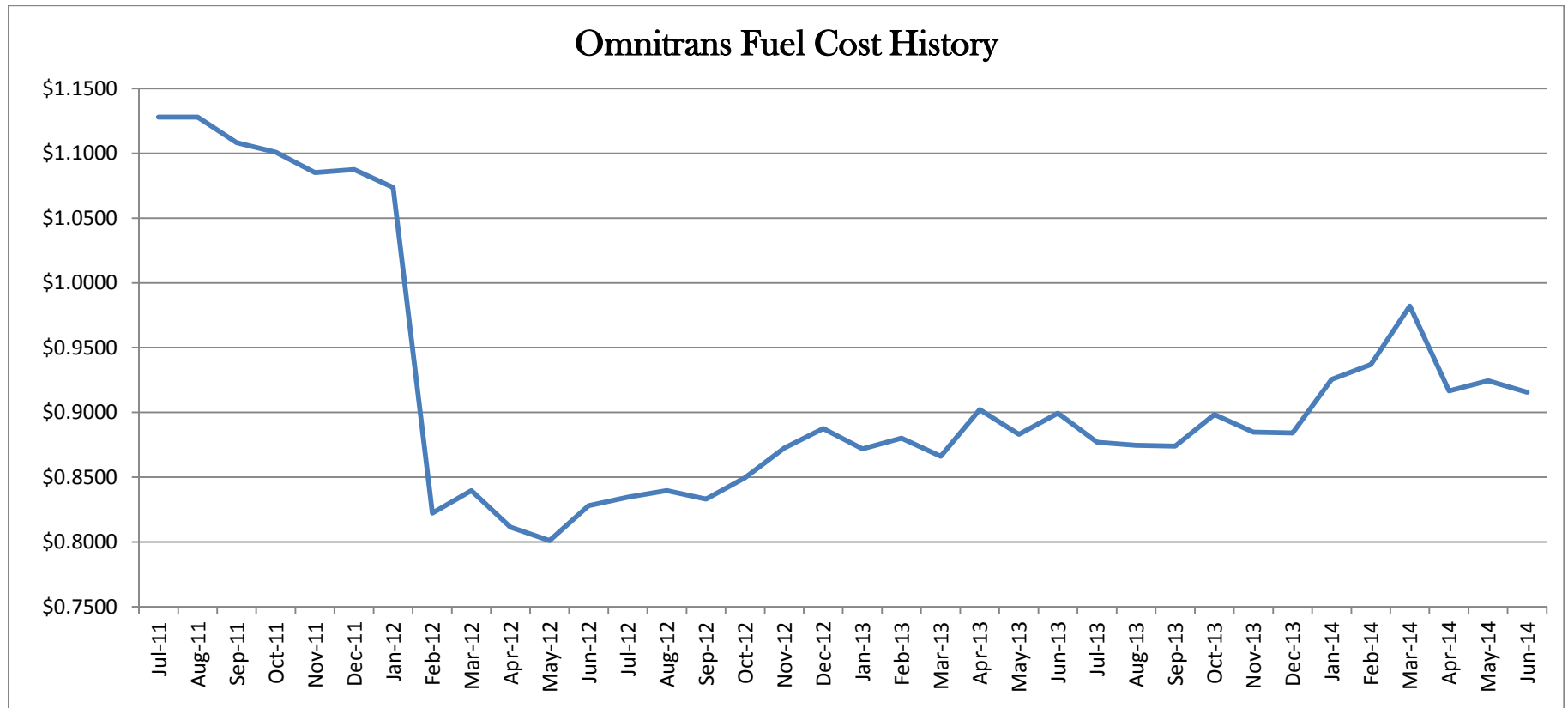
The June 2014 contract closed \$0.10 above the hedge price. The Agency will record a profit on our futures position for the month of June and that gain will offset a portion of the fuel costs that will be reflected in the Agency's Expense Summary for May 2014.

The net price that will be used for Omnitrans' June 2014 fuel purchase is \$0.9155 per gallon. This includes CNG at the So Cal Index price, the gain on the hedge position, liquefaction, delivery, and sales tax. (Note: We do not hedge the index differential. The gain on the hedge is based on the Henry Hub index. Clean Energy prices our deliveries off the SoCal index. In June, the SoCal Index settled slightly below Henry Hub.) This price is after recognition of the monthly gain on the hedge position in the amount of \$15,875.

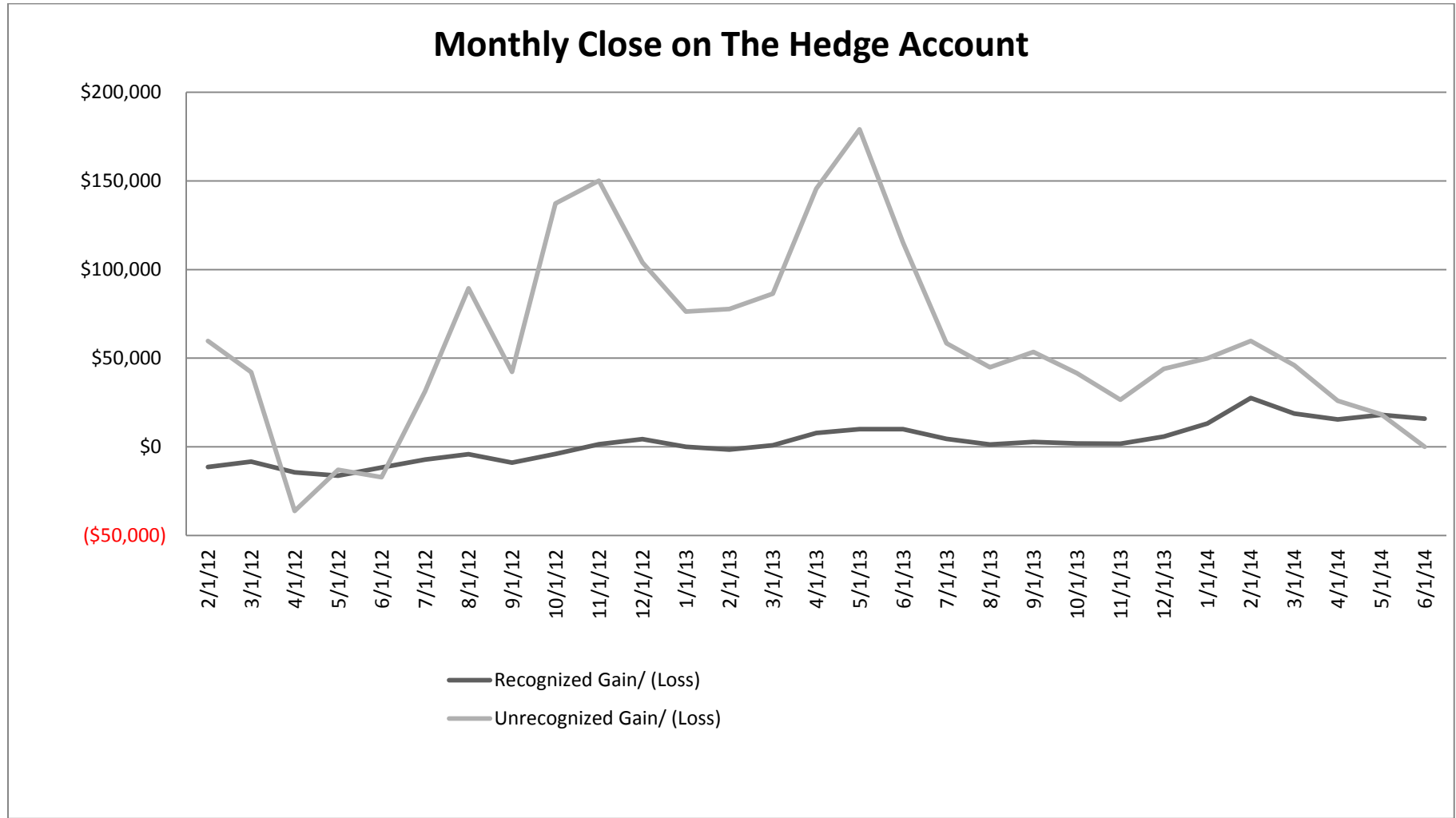
Omnitrans will recognize a gain in the CNG account of approximately \$1,539 in the month of June 2014. Omnitrans has recognized a total gain of \$74,192 for this twenty-nine (29) month hedging program that began in February 2012 through June 2014.

Omnitrans will continue to monitor the spot market price of fuel for fiscal year 2015 through Morgan Stanley. If and when the price per gallon of CNG is equal to or less than the \$0.92 budgeted for FY2015, Omnitrans will implement a new hedging program with 150,000 gallons hedged for twelve (12) months as approved by the Board of Directors on May 7, 2014.

PSG:dw







ITEM #       E3      

**DATE:** June 12, 2014

**TO:** Committee Chair Ed Graham and  
Members of the Administrative & Finance Committee

**THROUGH:** P. Scott Graham, CEO/General Manager

**FROM:** Andres Ramirez, sbX Construction Manager

**SUBJECT:** **CONSTRUCTION PROGRESS REPORT NO. 29 THROUGH  
MAY 24, 2014 - sbX E STREET CORRIDOR BRT PROJECT**

**FORM MOTION**

Receive and recommend to the Board of Directors for receipt and file Construction Progress Report No. 29 for the sbX E Street Corridor BRT Project through May 24, 2014.

**BACKGROUND**

This is Construction Progress Report No. 29 for the sbX E Street Corridor Project.

**CONCLUSION**

Receive and recommend to the Board of Directors for receipt and file Construction Progress Report No.29 for the sbX E Street Corridor BRT Project through May 24, 2014.

PSG:AR

Attachment



## **sbX E Street Corridor Bus Rapid Transit (BRT) Project**

### **Construction Progress Report No. 29**

**As of May 24, 2014**

**Submitted By:**

**JACOBS**

Contractor:	SBX Corridor - Griffith/Comet VMF – USS Cal Builders
Contractor Contract No.:	IPMO11-5
Project Manager:	Roger Hatton, P.E. (Corridor) Anni Larkins, P.E. (VMF)
Omnitrans Construction Manager:	Andres Ramirez



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## **I. PROJECT STATUS SUMMARY**

### **A. Project Description – sbX Corridor**

The sbX E Street Corridor BRT Project is a 15.7-mile-long transit improvement project that will connect the northern portion of the City of San Bernardino with the City of Loma Linda. Over the past four years, the sbX E Street Corridor Bus Rapid Transit (BRT) Project has evolved as the highest priority corridor identified in the System-Wide Transit Corridor Plan for the San Bernardino Valley.

The Refined LPA includes:

- 15.7 mile corridor
- 5.4 miles of exclusive center-running BRT lanes
- 10.3 miles of mixed flow BRT operation
- 16 BRT station locations, 6 center stations and 10 curb stations
- 23 station boarding structures
- 4 park-and-ride facilities with a total of 610 parking spaces
- Transit signal priority (TSP) applications at select key intersections

### **B. Summary Status Update (Accomplishments) – sbX Corridor**

- SBX Revenue Start Date commenced on April 29, 2014.
- Punch List items 95% completed.
- Continued completion of remaining change order work.
- Completed Level 2-4 testing/certification.

### **C. June Work – sbX Corridor**

- Complete remaining 5% of Punch List corrections.
- Complete final punch walk.
- Complete As-Built turnover.
- Complete turnover of stations and corridor.
- Complete project document turnover.

### **D. Project Description – Vehicle Maintenance Facility (VMF)**

The Omnitrans' Vehicle Maintenance Facility is a 4.4-acre facility maintaining and servicing the Omnitrans' bus fleet, comprised of over 160 buses. Modifications to Omnitrans' facility include the demolition of a bus washing station, removal of abandoned underground fuel tanks and new construction of a bus washing system, a new Genset building, a three-lane CNG fueling station, and re-configuring the bus parking area. Modifications to the maintenance building made in order to accommodate Omnitrans' 60-foot articulated bus fleet.

**E. Summary Status Update (Accomplishments) – Vehicle Maintenance Facility (VMF)**

- Completed installation and testing for the new water line to the facility.
- Completed bus-lift equipment installation in Maintenance Building A, and started exhaust reel installation.
- Completed installation of underground electrical to Building B and excavation for sewer ejection pit; underground plumbing is ongoing.
- Started the shaft construction and the sheetrock installation in the new battery room.
- Completed the Punch List work for the thirty-yard trash compactor. The compactor has been operational and in use by the Agency since January 2014.

**F. June Work – Vehicle Maintenance Facility (VMF)**

- Start cutting the roof penetrations in Maintenance Building A.
- Place concrete for the footings and inspection pits at the new Bus Wash Facility, Building B, and to complete construction of the sewer ejection pit and reclamation pits.
- Complete construction on the new buffer tank pad, start the relocation of the buffer tanks, and start demolition for the new Fuel Facility (Building C).
- Proceed with installation of the new sewer line.
- Install the two new compressors.
- Continue work at the new battery room for completion by end of June 2014.

**II. PROJECT SCHEDULE**

The CM team and Contractors are using the latest scheduling tools (Primavera V. P6), available to manage the project schedule.

Due to the actual field conditions (the VMF), many construction activities needed re-sequencing, resulting in several revisions in the baseline schedules submitted. As a proactive approach, the CM team has created an internal schedule as a guiding tool used to monitor and manage the construction progress.

**Summary of Project Schedule – Vehicle Maintenance Facility (VMF)**

Proactive and collective efforts by the Agency and Contractor continue in the submission and review of the monthly schedule updates through February 2014. The Contractor's latest monthly schedule update is for March 2014 (UP08), with a data date of March 16, 2014, submitted on May 20, 2014. The schedule update shows the project behind schedule, with approximately (+/-) 342-calendar days of negative float projecting a Substantial and Final Completion dates of November 17, 2014 and January 15, 2015, respectively. The submittal is under evaluation and a response planned for May 27, 2014.

The March 2014 monthly schedule update includes the contaminated soil shutdown that occurred from January 31, 2014 through March 19, 2014. A small pocket of soil with a distinct odor was encountered on January 31, 2014. After testing of the soil no contaminants were encountered and the grading was allowed to continue. However, this process had impact to the project, and based on internal assessments, the project currently forecasted to complete in January 2015, reflected in the Contractor's latest schedule. Per the Agency's and Contractor's meeting at the upper management level on April 16, 2014, collective actualization of the project schedule continues with the goal to have all schedule updates submitted and reviewed through May 2014 by the end of May/mid-June 2014. This will allow the Agency and Contractor to assess impacts to date, and manage the remaining work as a partnering and collective effort.

The Contractor has yet to submit its response to the Agency findings on Time Impact Evaluation (TIE No. 1) submitted on October 28, 2013. The Agency issued a letter on January 29, 2014 granting an extension of 108-calendar days: 55-CD deemed concurrent (Excusable & Non-Compensable) and 53-CD deemed (Excusable & Compensable), resulting in revised Substantial and Final Completion dates of March 27, 2014 and May 26, 2014, respectively.

The contract documents require that the Contractor submit a claim for any time extension requested. The Contractor submitted its formal Claim on May 21, 2014 for processing. The Contractor's claim documentation is under review by the Agency, for compliance with the Contract requirements to Claims.

As noted in previous monthly reports, subsequent to the Agency's issuance of the TIE No. 1 findings, the Contractor submitted its notification of suspension of work on January 31, 2014, and did not work much in February 2014. Although the contaminated soil issue was discovered on January 31, 2014, this only affected earthwork activities, but had no impact to the work that remained outstanding at the compressor room, the new battery room and in maintenance Building A. However, any impacts have yet to be submitted or substantiated by the Contractor, by submission of a TIE. Work is progressing and unresolved items are continuing to be elevated for resolution through the Dispute Resolution Ladder.

### **III. REQUESTS FOR INFORMATION (RFIs), SUBMITTALS, AND NON-CONFORMANCE REPORTS (NCRs)**

#### **A. sbX Corridor**

To date, the CM team has met the required timelines and no delay has come about as a result of submittal and RFI responses.

Total RFIs – 1011  
Total Open – 0

Total Submittals – 891  
Total Open – 0

Total NCRs - 26  
Total Open - 0

**B. Vehicle Maintenance Facility (VMF)**

To date, the CM team has met the required timelines and no delay has come about as a result of submittal and RFI responses.

Total RFIs – 195  
Total Open – 0

Total Submittals – 358  
Total Open – 5

Total NCRs – 14  
Total Open – 2

**IV. SAFETY**

The project team considers safety to be the utmost priority. As such, the entire project team works towards a “no-lost time” goal on a daily basis.

SbX Corridor - As of May 22, 2014 there are 424,441 “no-lost time” hours.

VMF - As of May 16, 2014 there are 22,291 “no-lost time” hours.

**V. PROJECT BUDGET AND COST**

**TOTAL PROGRAM BUDGET**  
**BUDGET AS OF APRIL 30, 2014**

Approved Budget	\$191,706,000
Cost to Date	\$158,097,288
Estimate to Complete	\$ 29,701,628
Estimate at Completion	\$187,798,916

**SBX CORRIDOR PROJECT COSTS - AS OF APRIL 30, 2014**

	CURRENT AUTHORIZED	CURRENT INVOICES PAID	REMAINING CONTRACT BALANCE
<b>JACOBS</b>	\$11,852,647	\$10,183,990	\$1,668,657
<b>PARSONS</b>	\$18,097,876	\$16,920,294	\$1,177,582
<b>GRIFFITH/COMET</b>	\$83,782,780	\$76,771,882	\$7,010,898
<b>TOTAL</b>	\$113,733,303	\$103,876,166	\$9,857,137



**VMF CORRIDOR PROJECT COSTS - AS OF APRIL 30, 2014**

	<b>CURRENT AUTHORIZED</b>	<b>CURRENT INVOICES PAID</b>	<b>REMAINING CONTRACT BALANCE</b>
<b>STV Inc.</b>	\$1,418,132	\$1,266,342	\$151,790
<b>USS Cal Builders</b>	\$11,685,598	\$5,601,908	\$6,083,690
<b>Total</b>	\$13,103,730	\$6,868,250	\$6,235,480

**SBX CORRIDOR CONTRACT TIME**

<b>Activity</b>	<b>Days</b>	<b>Date</b>
Notice to Proceed		11/21/11
Calendar Days per Original Contract	730	
Original Completion Date		12/21/13
Calendar Days Completed as of April 25, 2014	884	
CCO Time Extension to Date	0	
Required Completion Days/Date as of April 25, 2014	-154	12/21/13
Forecasted Completion Date as of April 25, 2014		06/30/14
Percent Time Elapsed	121%	

**VMF CONTRACT TIME**

<b>Activity</b>	<b>Days</b>	<b>Date</b>
Notice to Proceed		12/10/12
Calendar Days per Original Contract	425	
Original Completion Date		02/08/14
Calendar Days Completed as of April 25, 2014	529	
CCO Time Extension to Date	0	
Required Completion Days/Date as of April 25, 2014	-105	02/08/14
Forecasted Revenue Start Date as April 25, 2014		04/28/14
Percent Time Elapsed	124%	

\* CONSTRUCTION COMPLETION DATE WILL BE AVAILABLE UPON COMPLETION OF THE SCHEDULE UPDATE.

**CHANGE ORDERS****SBX CORRIDOR CONTRACT CHANGE ORDERS - As of April 25, 2014**

<b>Change Order Status</b>	<b>Amount Approved</b>
Approved Change Orders	\$18,962,326.34
Pending Change Orders	\$1,958,845.20
Potential Change Orders	\$666,358.36
<b>Total</b>	<b>\$21,587,529.90</b>

**VMF CONTRACT CHANGE ORDERS - As of April 25, 2014**

<b>Change Order Status</b>	<b>Amount</b>
Approved Change Orders	\$1,621,448.60
Pending Change Orders	\$217,820.22
Potential Change Orders	\$1,227,343.40
<b>Total</b>	<b>\$3,007,647.32</b>

**Note:** Currently, pricing for Potential Change Orders are estimated based on Rough Order of Magnitude pending designer plans or final submittal of pricing by the Contractor.

Upon the approval of the final to date schedule, an analysis will be completed to determine the effect of the change orders on the scheduled completion date.

## VI. Project Photographs

### VMF PROGRESS PHOTOS



1. Setting forms for footings at new bus wash facility (Building B)



2. Placing underground plumbing drain lines at new bus wash facility (Building B)



3. New platform bus lifts installed in Maintenance Facility (Building A)



4. New platform bus lifts installed in Maintenance Facility (Building A)

**IPMO/sbX Project Cost Report**  
**Period Ended 4/30/14**

Description	Current Budget	Expenditures \$	%	Remaining Budget	Estimate to Complete	Estimate at Completion	Budget Forecast Variance
BRT Construction	84,637,000	76,888,283	90.8%	7,748,717	10,124,457	87,012,740	(2,375,740)
Vehicle Maintenance Facility (VMF) Construction	8,131,000	5,601,908		2,529,092	10,007,944	15,609,852	(7,478,852)
Vehicles - Design & Manufacturing	16,628,000	14,890,755	89.6%	1,737,245	1,274,960	16,165,715	462,285
ROW Acquisition Services	10,357,000	10,937,789	105.6%	(580,789)	952,181	11,889,970	(1,532,970)
3rd Party Utilities Design & Relocation	1,003,000	1,074,398	107.1%	(71,398)	31,719	1,106,117	(103,117)
BRT Design	17,849,400	16,920,294	94.8%	929,106	330,788	17,251,082	598,318
VMF Design	1,007,600	1,280,742	127.1%	(273,142)	415,190	1,695,932	(688,332)
Other Professional, Technical & Management Services	34,020,000	30,503,119	89.7%	3,516,881	6,564,389	37,067,508	(3,047,508)
<b>SUB-TOTAL</b>	<b>173,633,000</b>	<b>158,097,288</b>		<b>15,535,712</b>	<b>29,701,628</b>	<b>187,798,916</b>	<b>(14,165,916)</b>
Unallocated Contingency	18,073,000	-		18,073,000	3,907,084	3,907,084	14,165,916
<b>TOTAL</b>	<b>191,706,000</b>	<b>158,097,288</b>	<b>82.5%</b>	<b>33,608,712</b>	<b>33,608,712</b>	<b>191,706,000</b>	<b>-</b>



**IPMO/sbX Project  
Through 4/30/14**

Standard Cost Category (SCC)	Description	Approved Current Budget	Expenditures \$ %	Remaining Budget	Estimate to Complete	Estimate at Completion	Budget Forecast Variance
<b>10</b>	<b>GUIDEWAY &amp; TRACK ELEMENTS</b>	<b>19,725,000</b>	<b>17,120,394 86.8%</b>	<b>\$ 2,604,606</b>	<b>\$ 2,744,371</b>	<b>\$ 19,864,765</b>	<b>\$ (139,765)</b>
10.02	Guideway: At-grade semi-exclusive (allows cross-traffic)	\$ 18,353,000	15,193,514 82.8%	\$ 3,159,486	\$ 2,407,778	\$ 17,601,292	\$ 751,708
10.03	Guideway: At-grade in mixed traffic	\$ 1,372,000	1,926,880 140.4%	\$ (554,880)	\$ 336,593	\$ 2,263,473	\$ (891,473)
<b>20</b>	<b>STATIONS, STOPS, TERMINALS, INTERMODAL</b>	<b>14,917,000</b>	<b>14,086,309 94.4%</b>	<b>\$ 830,691</b>	<b>\$ 289,828</b>	<b>\$ 14,376,137</b>	<b>\$ 540,863</b>
20.01	At-grade station, stop, shelter, mall, terminal, platform	14,917,000	14,086,309 94.4%	\$ 830,691	\$ 289,828	\$ 14,376,137	\$ -
<b>30</b>	<b>SUPPORT FACILITIES: YARDS, SHOPS, ADMIN. BLDGS</b>	<b>\$ 8,131,000</b>	<b>5,601,909 68.9%</b>	<b>\$ 2,529,091</b>	<b>\$ 10,007,943</b>	<b>\$ 15,609,852</b>	<b>\$ (7,478,852)</b>
30.02	Light Maintenance Facility	\$ 4,265,000	4,352,683 102.1%	\$ (87,683)	\$ 7,666,903	\$ 12,019,586	\$ (7,754,586)
30.05	Yard and Yard Track	\$ 3,866,000	1,249,226 0.0%	\$ 2,616,774	\$ 2,341,040	\$ 3,590,266	\$ 275,734
<b>40</b>	<b>SITework &amp; SPECIAL CONDITIONS</b>	<b>34,271,000</b>	<b>26,853,764 78.4%</b>	<b>\$ 7,417,236</b>	<b>\$ 4,583,595</b>	<b>\$ 31,437,359</b>	<b>\$ 2,833,641</b>
40.01	Demolition, Clearing, Earthwork	\$ 4,741,000	440,613 9.3%	\$ 4,300,387	\$ (350,603)	\$ 90,010	\$ 4,650,990
40.02	Site Utilities, Utility Relocation	\$ 4,993,000	9,728,185 194.8%	\$ (4,735,185)	\$ 1,854,969	\$ 11,583,154	\$ (6,590,154)
40.05	Site structures including retaining walls, sound walls	\$ 90,000	448,344 498.2%	\$ (358,344)	\$ 195,522	\$ 643,866	\$ (553,866)
40.06	Pedestrian / bike access and accommodation, landscaping	\$ 6,925,000	3,822,448 55.2%	\$ 3,102,552	\$ 1,475,965	\$ 5,298,413	\$ 1,626,587
40.07	Automobile, bus, van accessways including roads, parking lots	\$ 3,601,000	4,132,352 114.8%	\$ (531,352)	\$ 133,355	\$ 4,265,707	\$ (664,707)
40.08	Temporary Facilities and other indirect costs during construction	\$ 13,921,000	8,281,822 59.5%	\$ 5,639,178	\$ 1,274,387	\$ 9,556,209	\$ 4,364,791
<b>50</b>	<b>SYSTEMS</b>	<b>\$ 16,727,000</b>	<b>19,902,213 119.0%</b>	<b>\$ (3,175,213)</b>	<b>\$ 584,151</b>	<b>\$ 20,486,364</b>	<b>\$ (3,759,364)</b>
50.02	Traffic signals and crossing protection	\$ 10,810,000	6,586,083 60.9%	\$ 4,223,917	\$ (127,986)	\$ 6,458,097	\$ 4,351,903
50.05	Communications	\$ 4,210,000	8,325,528 197.8%	\$ (4,115,528)	\$ 102,739	\$ 8,428,267	\$ (4,218,267)
50.06	Fare collection system and equipment	\$ 1,707,000	4,990,602 292.4%	\$ (3,283,602)	\$ 609,398	\$ 5,600,000	\$ (3,893,000)
	Pending Change Orders				\$ 2,592,376	\$ 2,592,376	\$ (2,592,376)
	Risk				\$ (638,144)	\$ (638,144)	\$ 638,144
	<b>Construction Subtotal (10-50)</b>	<b>93,771,000</b>	<b>83,564,589 89.1%</b>	<b>\$ 10,206,411</b>	<b>\$ 20,164,120</b>	<b>\$ 103,728,709</b>	<b>\$ (9,957,709)</b>
<b>60</b>	<b>ROW, LAND, EXISTING IMPROVEMENTS</b>	<b>\$ 6,532,000</b>	<b>\$ 6,006,388 92.0%</b>	<b>\$ 525,612</b>	<b>\$ 944,447</b>	<b>\$ 6,950,835</b>	<b>\$ (418,835)</b>
60.01	Purchase or lease of real estate	\$ 6,327,000	5,841,458 92.3%	\$ 485,542	\$ 904,377	\$ 6,745,835	\$ (418,835)
60.02	Relocation of existing households and businesses	\$ 205,000	164,930 80.5%	\$ 40,070	\$ 40,070	\$ 205,000	\$ -
<b>70</b>	<b>VEHICLES</b>	<b>\$ 16,628,000</b>	<b>\$ 14,890,755 89.6%</b>	<b>\$ 1,737,245</b>	<b>\$ 1,274,960</b>	<b>\$ 16,165,715</b>	<b>\$ 462,285</b>
70.04	Bus	\$ 15,448,000	14,858,641 96.2%	\$ 589,359	\$ 400,026	\$ 15,258,667	\$ 189,333
70.06	Non-revenue vehicles	\$ 250,000	- 0.0%	\$ 250,000	\$ -	\$ -	\$ 250,000
70.07	Spare parts	\$ 930,000	32,114 3.5%	\$ 897,886	\$ 874,934	\$ 907,048	\$ 22,952
<b>80</b>	<b>PROFESSIONAL SERVICES</b>	<b>56,702,000</b>	<b>53,635,556 94.6%</b>	<b>\$ 3,066,444</b>	<b>\$ 7,318,101</b>	<b>\$ 60,953,657</b>	<b>\$ (4,251,657)</b>
80.01	Preliminary Engineering	\$ 12,921,000	12,876,525 99.7%	\$ 44,475	\$ 17,502	\$ 12,894,027	\$ 26,973
80.02	Final Design	\$ 7,261,000	7,106,035 97.9%	\$ 154,965	\$ 736,087	\$ 7,842,122	\$ (581,122)
80.03	Project Management for Design and Construction	\$ 15,997,000	11,949,434 74.7%	\$ 4,047,566	\$ 2,501,869	\$ 14,451,303	\$ 1,545,697
80.04	Construction Administration & Management	\$ 6,632,000	10,183,990 153.6%	\$ (3,551,990)	\$ 2,668,657	\$ 12,852,647	\$ (6,220,647)
80.05	Professional Liability and other Non-Construction Insurance	\$ 1,112,000	- 0.0%	\$ 1,112,000	\$ -	\$ -	\$ 1,112,000
80.06	Legal; Permits; Review Fees by other agencies, cities, etc.	\$ 10,596,000	11,519,572 108.7%	\$ (923,572)	\$ 668,986	\$ 12,188,558	\$ (1,592,558)
80.07	Surveys, Testing, Investigation, Inspection	\$ 1,463,000	- 0.0%	\$ 1,463,000	\$ 25,000	\$ 1,438,000	\$ 1,438,000
80.08	Start up	\$ 720,000	- 0.0%	\$ 720,000	\$ 700,000	\$ 700,000	\$ 20,000
	<b>Subtotal (10-80)</b>	<b>\$ 173,633,000</b>	<b>\$ 158,097,288 91.1%</b>	<b>\$ 15,535,712</b>	<b>\$ 29,701,628</b>	<b>\$ 187,798,916</b>	<b>\$ (14,165,916)</b>
<b>90</b>	<b>UNALLOCATED CONTINGENCY</b>	<b>18,073,000</b>	<b>- 0.0%</b>	<b>\$ 18,073,000</b>	<b>\$ 3,907,084</b>	<b>\$ 3,907,084</b>	<b>\$ 14,165,916</b>
	<b>Subtotal (10-90)</b>	<b>191,706,000</b>	<b>158,097,288 82.5%</b>	<b>\$ 33,608,712</b>	<b>\$ 33,608,712</b>	<b>\$ 191,706,000</b>	<b>\$ -</b>
<b>100</b>	<b>FINANCE CHARGES</b>	<b>-</b>	<b>-</b>	<b>\$ -</b>	<b>\$ -</b>	<b>\$ -</b>	<b>\$ -</b>
	<b>TOTAL PROJECT COST (10-100)</b>	<b>191,706,000</b>	<b>158,097,288 82.5%</b>	<b>\$ 33,608,712</b>	<b>\$ 33,608,712</b>	<b>\$ 191,706,000</b>	<b>\$ -</b>

ITEM #           E4          

**DATE:** June 12, 2014

**TO:** Committee Chair Ed Graham and  
Members of the Administrative and Finance Committee

**THROUGH:** P. Scott Graham, CEO/General Manager

**FROM:** Anna Rahtz, Acting Director of Planning & Development Services

**SUBJECT: PASS-THROUGH FUNDING AGREEMENT – CHINO TRANSIT CENTER  
PHASE II**

**FORM MOTION**

Recommend to the Board of Directors to authorize the CEO/General Manager to execute an agreement to pass through funding in an amount not to exceed \$188,905 to the City of Chino for the development and construction of Phase II improvements at the Chino Transit Center.

*Omnitrans legal counsel has reviewed and approved this agreement.*

**BACKGROUND**

Phase I of the Chino Transit Center was completed in 2005 through a partnership between Omnitrans and the City of Chino. The Transit Center consists of seven bus bays with shelters, benches, lighting, a central fountain, and landscaping.

Phase II will consist of pedestrian and safety improvements that are needed at the Transit Center. Phase II will involve the following scope of work:

- Crosswalk improvements on 6th Street at Chino Avenue;
- Asphalt overlay and restriping of two public park-and-ride lots;
- Installation of lighting and curb for safety in public park-and-ride lot at the southwest corner of 6th Street and “D” Street; and
- Installation of wayfinding signage throughout transit center site.

The City of Chino will take the lead on design and construction of the project. Omnitrans will pass through the funding and will participate in the project development process as needed.

### **FUNDING SOURCE**

The costs associated with this project are budgeted from capital funds and will have no impact on Omnitrans' budget. The federal portion of funding is the remainder of unused FTA 5309 congressional earmark funding from 2004 for the Chino Transit Center, which cannot be used for any other project. Omnitrans is providing the required local match funding from STA funds allocated for this project.

Of the total \$195,082 of funding, Omnitrans will receive \$6,177 for administrative charges. A total amount not to exceed \$188,905 will be passed through to the City for the project.

<b>Fund Source</b>	<b>Grant Number</b>	<b>Account</b>	<b>Description</b>	<b>Total Funding</b>	<b>Omnitrans Administration</b>	<b>Pass-Through to City of Chino</b>
FTA 5309	CA-03-0660	C0430101F	Chino Transit Center	\$150,898	\$4,778	\$146,120
STA	12-09-OMN-B	L0530301S	Chino Transit Center	\$44,184	\$1,399	\$42,785
<b>Total</b>				<b>\$195,082</b>	<b>\$6,177</b>	<b>\$188,905</b>

\_\_\_\_\_ Verification of funding source and availability of funds  
(Verified and initialed by Finance)

### **CONCLUSION**

Staff recommends that the Omnitrans Board of Directors authorize the CEO/General Manager to execute an agreement to pass through funding in an amount not to exceed \$188,905 to the City of Chino for the development and construction of Phase II improvements at the Chino Transit Center.

PSG:AR

Attachment



CHINO TRANSIT CENTER PHASE II  
PASS-THROUGH FUNDING AGREEMENT AND COOPERATIVE AGREEMENT

This AGREEMENT, entered into on \_\_\_\_\_, is between the  
CITY OF CHINO, a MUNICIPAL CORPORATION OF THE STATE OF  
CALIFORNIA, referred to herein as "CITY"

THE CITY OF CHINO

13220 Central Avenue

Chino, CA 91710

DUNS# 015107340

AND

OMNITRANS, a joint powers public transit agency, referred to herein as  
"OMNITRANS."

OMNITRANS

1700 W. Fifth Street

San Bernardino, CA 92411-2499

CITY and OMNITRANS are sometimes referred to herein individually as "Party", and  
collectively, as the "Parties".

## RECITALS

1. OMNITRANS and CITY mutually desire to cooperate and participate in the design, development, and construction of the Chino Transit Center Phase II, referred to herein as “PROJECT” and located in the City of Chino, bounded generally by Fifth Street, Central Avenue, “D” Street, and Chino Avenue (see Exhibit “A”).
2. The PROJECT may consist of any of the following improvements contingent upon available funding:
  - a. Crosswalk improvements on 6<sup>th</sup> Street at Chino Avenue;
  - b. Asphalt overlay and restriping of two public park-and-ride lots;
  - c. Installation of lighting and curb for safety in public park-and-ride lot at the southwest corner of 6<sup>th</sup> Street and “D” Street; and
  - d. Installation of wayfinding signage throughout transit center site.
3. OMNITRANS and CITY desire to specify herein the terms and conditions, under which the PROJECT shall be funded, designed, constructed, and maintained.

## SECTION I

### OMNITRANS AGREES:

1. To pass through an amount not to exceed \$188,905 of Funding to the CITY for completion of the PROJECT (“Maximum Funding Obligation”).
2. The total of \$188,905 of funding will come from the following sources (“Funding”):
  - a. Up to \$146,120 in FTA 5309 discretionary funds (grant # CA-03-0660, CFDA # 20.500);
  - b. Up to \$42,785 in local match funding. (City of Chino has no direct funding for the project.)
3. To attend pertinent meetings scheduled by the CITY and/or its CONTRACTORS regarding the PROJECT.
4. To review preliminary and final PROJECT plans and provide timely input and review of all documents submitted to OMNITRANS by CITY and/or its CONTRACTORS.

5. To submit all required documentation to Funding agencies and facilitate the processing of all Funding reimbursements or disbursements.
6. If CITY submits an invoice to OMNITRANS on or before the 15th day of each month, OMNITRANS will remit payment in the first full week of the following month, up to the Maximum Funding Obligation. If CITY submits an invoice to OMNITRANS on or after the 16<sup>th</sup> day of each month, OMNITRANS will remit payment in the first full week of the second month after the invoice is submitted, up to the Maximum Funding Obligation. OMNITRANS shall not unreasonably withhold payment and shall promptly pay any undisputed amounts in compliance with the regulations and terms of the grant agreements governing the Funding sources, and in accordance with the terms of this Agreement. Should OMNITRANS dispute any portion of an invoice, it must deliver written notice within five (5) working days of receipt of the invoice. The notice must reasonably describe the amount to be withheld and the reason(s) therefor; provided, however, that OMNITRANS shall not be entitled to dispute the amount of a condemnation award approved by OMNITRANS in advance or any item previously approved by OMNITRANS. Failure of OMNITRANS to deliver timely notice of a disputed reimbursement or payment request as required in this section shall be deemed its approval of such payment or reimbursement request, unless such requested reimbursement is for costs that are ineligible for Funding.
7. In the event that the Federal Transit Administration (FTA) advises OMNITRANS that any requested disbursement of federal funds would constitute a violation of the terms of either the Funding grant for the federal funds or of applicable federal, state or local laws or regulations, OMNITRANS shall notify the CITY within five (5) working days in writing ("Violation Notice"). If the PROJECT costs incurred by CITY prior to the receipt of the Violation Notice cannot ultimately be paid out of the applicable federal fund, CITY and OMNITRANS agree to seek in good faith, a timely and equitable cost sharing of the costs not reimbursed by FTA, provided that such costs are in accordance with the terms of this Agreement. If costs are not incurred in accordance with the terms of this Agreement, CITY shall be solely liable for such costs without reimbursement from OMNITRANS.
8. OMNITRANS will conduct annual site visits with CITY in each fiscal year in which PROJECT activity occurs. The site visit will include a spot check of compliance with FTA regulations.

## SECTION II

### CITY AGREES:

1. To act as lead agency (as a subrecipient of federal funding) in the design, development, and construction of the PROJECT, and to be responsible for compliance with all local, state and federal laws, rules, and regulations related to PROJECT, including the California Environmental Quality Act.
2. To provide adequate inspection of all work performed for PROJECT and maintain adequate records of inspection and materials testing for PROJECT.
3. To attend pertinent meetings scheduled by the CITY'S CONTRACTORS and/or OMNITRANS regarding the development of the PROJECT.
4. To provide all applicable permits required by CITY at no cost to the PROJECT.
5. To provide project management and related administrative support required during development of the PROJECT.
6. To adhere to the PROJECT milestones and PROJECT budget set forth in Exhibits "B" and "C" to this Agreement.
7. To claim full ownership of the PROJECT.
8. To maintain and upkeep all portions of the completed PROJECT.
9. To maintain, and operate safety lighting/street lighting installed as part of the PROJECT at City's sole expense.
10. To protect the Federal investment in the project by maintaining the City of Chino Transit Center's intended transit use.
11. To provide construction management and related administrative support required during the design phase, bid phase, and construction phase of the PROJECT.
12. To provide to OMNITRANS copies of all official project documents, including Requests for Proposals or Invitations for Bids, contract documents, notices to proceed issued to contractors, final project plans, closeout documents, etc..

13. To comply with all requirements related to the Funding, including the state and federal funding, and Federal Transit Administration's (FTA) procurement guidelines for all services related to the PROJECT. In addition to and notwithstanding any other of CITY's obligations under this Agreement, CITY agrees that it will be responsible for reasonable damages and expenses, including fines or penalties imposed by the FTA or any other Funding sources, reimbursement of funds, remedies of violations and any attorney's fees which OMNITRANS suffers by CITY's willful and material breach of any such funding requirements referred to in this Section.
14. To provide to OMNITRANS all information needed for submitting quarterly reports that document the status of the PROJECT's progress, including task completion status, budget status, and adherence to PROJECT milestones (see Exhibit "B" and "C").
15. To submit a monthly, itemized invoice to OMNITRANS on or before the 15th day of the month that contains supporting documentation detailing all costs, fees, and other charges that the CITY incurred related to the PROJECT. The invoice shall describe the amount of services and supplies provided (including such detail as hourly billing rates per employee for all CONTRACTORS, labor hours per task per employee, work performed, and milestones met since the initial commencement date, or since the start of the billing period, as appropriate, through the date of the current statement. The invoice shall include copies of checks issued by CITY and copies of invoices paid by CITY.
16. CITY shall comply with all requirements of the FTA 2012 Master Agreement, found at <http://www.fta.dot.gov/documents/19-Master.pdf>, with the FTA requirements in Exhibit "D", and with FTA Circular 4220.1F, the provisions of which are incorporated herein by reference. CITY shall incorporate all applicable federal requirements into its contracts with its CONTRACTORS, as required under the Master Agreement, the attached Exhibit "D" and FTA Circular 4220.1F.
17. To submit to OMNITRANS, annually upon request, a copy of CITY's annual single audit report that includes the federal funds used for the PROJECT. If not required, the CITY will submit to OMNITRANS a letter stating such.
18. To submit to OMNITRANS, annually upon request, a signed Self-Certification form that certifies CITY's and CONTRACTOR's compliance with all pertinent FTA regulations.

19. CITY shall keep and maintain all books, papers, records, and accounting records (collectively referred to herein as “records”) including: records of all costs allocated to the PROJECT, files, accounts, reports, single audits, cost proposals with backup data, and all other material relating to the PROJECT. CITY shall, upon request, make all such materials available to OMNITRANS or its designee at any reasonable time during the term of the Agreement and for three (3) years from the date of final payment to CITY, for auditing, inspection, and copying. CITY shall include the provisions of this paragraph in all of its contracts resulting from this Agreement or shall take other steps to ensure the availability of such records for the required time.
20. For any equipment or material purchased as a result of this Agreement or to be funded hereunder, the CITY shall comply, and shall require its CONTRACTORS to comply, with 49 U.S.C. §5323(j) and FTA regulations, “Buy America Requirements,” 49 C.F.R. Part 661, and any amendments thereto.
21. CITY shall require and ensure that its CONTRACTORS will obtain and maintain insurance of the types and in the amounts described below and satisfactory to OMNITRANS, and that its CONTRACTORS shall indemnify and defend OMNITRANS as further set forth below.
  - A. Commercial General Liability Insurance. City’s CONTRACTORS shall maintain occurrence version commercial general liability insurance or equivalent form with a combined single limit of not less than \$2,000,000 per occurrence. If such insurance contains a general aggregate limit, it shall apply separately to this Agreement or be no less than two times the occurrence limit. Such insurance shall:
    - (1) Name CITY, OMNITRANS and their officials, officers, employees, agents, and consultants, as additional insureds with respect to performance of this Agreement and/or the PROJECT. Such insured status shall contain no special limitations on the scope of its protection to the above-listed insured.
    - (2) Together be primary and non-contributory with respect to any insurance or self-insurance programs covering OMNITRANS, the CITY or their officials, officers, employees, agents, and consultants.
    - (3) Contain standard separation of insured's provisions.
  - B. Business Automobile Liability Insurance. CITY’s CONTRACTORS shall maintain comprehensive automobile liability insurance with a combined single limit of not less than \$1,000,000 per occurrence. Such insurance shall include coverage for owned, hired, and non-owned automobiles.

- C. Public and Property Damage Liability Insurance. CITY's CONTRACTORS shall maintain a public and property damage liability insurance policy of not less than \$1,000,000 combined single limits liability coverage for bodily injury and/or property damage.
- D. Workers' Compensation Insurance. CITY's CONTRACTORS shall maintain workers' compensation insurance with statutory limits and employers' liability insurance with limits of not less than \$1,000,000 per accident.
- E. Errors and Omissions. CITY's CONTRACTORS shall maintain errors and omissions insurance with a \$1,000,000 combined single limit bodily and property damage liability per occurrence and \$3,000,000 in the aggregate, if available for the work the CONTRACTOR will be performing.
- F. Professional Liability. CITY's CONTRACTORS shall maintain professional liability insurance with a limit of at least \$1,000,000 per occurrence, if available for the work the CONTRACTOR will be performing.
- G. Certificates/Insurer Rating/Cancellation Notice.
- (1) CITY shall require, prior to commencement of the PROJECT, that CONTRACTORS furnish properly executed certificates of insurance, and certified copies of endorsements, and policies, which shall clearly evidence all insurance required in this Section II.17. CITY shall require that the contract with CITY's CONTRACTORS include thirty (30) days prior written notification to CITY and OMNITRANS of pending insurance cancellation, expiration, or material reduction.
  - (2) City's CONTRACTORS shall maintain such insurance from the time the Agreement commences until the PROJECT is completed, except as may be otherwise required by this Section or provided in the CITY's or CONTRACTORS' policies.
  - (3) CITY's CONTRACTORS shall place insurance with insurers having an A.M. Best Company rating of no less than A:VII and licensed to do business in California.
- H. CITY's CONTRACTORS shall replace certificates, policies, and endorsements for any insurance expiring prior to completion of the PROJECT.
- I. CONTRACTOR/CONSULTANT Indemnity.

- (1) CITY shall require, under its contracts with its CONTRACTORS, that its CONTRACTORS shall indemnify, defend and hold harmless CITY and OMNITRANS, and their respective officers and employees, from all claims, suits, or actions of every name, kind, and description brought for or on account of injury occurring by reason of anything done or omitted to be done by CONTRACTORS in connection with the PROJECT.

### SECTION III

#### IT IS MUTUALLY AGREED:

1. No alteration or variation of the terms of this Agreement shall be valid unless made in writing and signed by the parties hereto, and no oral understanding or agreement not incorporated herein shall be binding on any of the parties hereto.
2. Upon completion of all work under this Agreement, ownership and title to materials, equipment, structures, and appurtenances which are installed within the CITY's property shall automatically be vested in the CITY.
3. Nothing in the provisions of this Agreement is intended to create duties or obligations to or rights in third parties not parties to this Agreement.
4. Neither CITY nor any officer /employee thereof is responsible for any damage or liability occurring by reason of anything done or omitted to be done by OMNITRANS under or in connection with any work, authority or jurisdiction delegated to OMNITRANS under this Agreement. It is understood and agreed that OMNITRANS shall fully defend, indemnify, and save harmless CITY, all officers and employees from all claims, suits, or actions of every name, kind, and description brought for or on account of injury occurring by reason of anything done or omitted to be done by OMNITRANS under or in connection with any work, authority, or jurisdiction delegated to OMNITRANS under this Agreement.
5. Neither OMNITRANS nor any officer or employee thereof is responsible for any damage or liability occurring by reason of anything done or omitted to be done by CITY under or in connection with any work, authority, or jurisdiction delegated to CITY under this Agreement. It is understood and agreed that, CITY shall fully defend, indemnify, and save harmless OMNITRANS, all officers and employees from all claims, suits, or actions of every name, kind, and description brought for or on account of injury occurring by reason of anything done or omitted to be done by CITY under or in connection with any work, authority, or jurisdiction delegated to CITY under this Agreement.
6. All correspondence is to be sent to the following address:



OMNITRANS

City of Chino

Attn: Anna Rahtz

Attn: Jose Alire

Acting Director of Planning & Development Services

Assistant City Manager

1700 W. Fifth Street

13220 Central Avenue

San Bernardino, CA 92411-2499

Chino, CA 91710

7. OMNITRANS shall designate a Project Manager to represent OMNITRANS and CITY shall designate a Project Manager to represent CITY through whom all communications between the two agencies shall be channeled.
8. This Agreement constitutes the entire understanding of the parties with respect to the subject matter hereof, and there are no other representations, promises, warranties, covenants or undertakings with respect thereto.
9. If any term, provision, covenant, or condition of this Agreement is held to be invalid, void, or otherwise unenforceable, to any extent, by any court of competent jurisdiction, the remainder of this Agreement shall not be affected thereby, and each term, provision, covenant or condition of this Agreement shall be valid and enforceable to the fullest extent permitted by law.
10. No waiver of any default shall constitute a waiver of any other default whether of the same or other covenant or condition. No waiver, benefit, privilege, or service voluntarily given or performed by a Party shall give the other Party any contractual rights by custom, estoppel, or otherwise.
11. Either Party to this Agreement may declare a default hereunder by serving written notice describing the nature of the breach to the other Party. The Party alleged to have breached the Agreement shall be afforded thirty (30) days from service of the notice of default to take whatever steps necessary to cure the breach. If the breach is not cured within the time parameters set forth herein, this Agreement may be terminated for cause upon written notice of termination to the defaulting Party. Termination shall be effective as of the date set forth in the notice of termination. Upon termination, OMNITRANS shall pay to CITY all approved costs incurred by CITY up to the date of termination, provided that if termination is as a result of CITY's default, OMNITRANS may withhold costs incurred by OMNITRANS as a result of such default.

12. This Agreement shall terminate upon completion of PROJECT, except that the indemnification provisions shall remain in effect until terminated or modified, in writing, by mutual agreement. Should any claims arising out of PROJECT be asserted against one of the Parties, the Parties agree to extend the fixed termination date of this Agreement, until such time as the claims are settled, dismissed or paid.
13. Neither this Agreement, nor any of the Parties' rights, obligations, duties, or authority hereunder may be assigned in whole or in part by either Party without the prior written consent of the other Party in its sole, and absolute, discretion. Any such attempt of assignment shall be deemed void and of no force and effect.
14. The recitals set forth above are true and correct and are incorporated by reference as though fully set forth herein.
15. The exhibits attached to this Agreement are incorporated herein by reference.
16. General Interpretation.
  - A. As used in this Agreement, unless otherwise specified, the terms "shall" and "will" shall have the same meaning.
  - B. As used in this Agreement, unless otherwise specified, "CONTRACTOR" or "CONTRACTORS" shall mean any third party hired by CITY to perform work in relation to the PROJECT.

[Signatures on following page]

In witness thereof, the parties have caused this Agreement to be executed by their respective officers.

OMNITRANS

CITY

Approved as to content:

Approved as to content:

By: \_\_\_\_\_  
P. Scott Graham  
CEO/General Manager

By: \_\_\_\_\_  
Matthew C. Ballantyne  
City Manager

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

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

Approved as to form:

Attest:

By: \_\_\_\_\_

Angela Robles

Omnitrans Legal Counsel

City Clerk

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

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

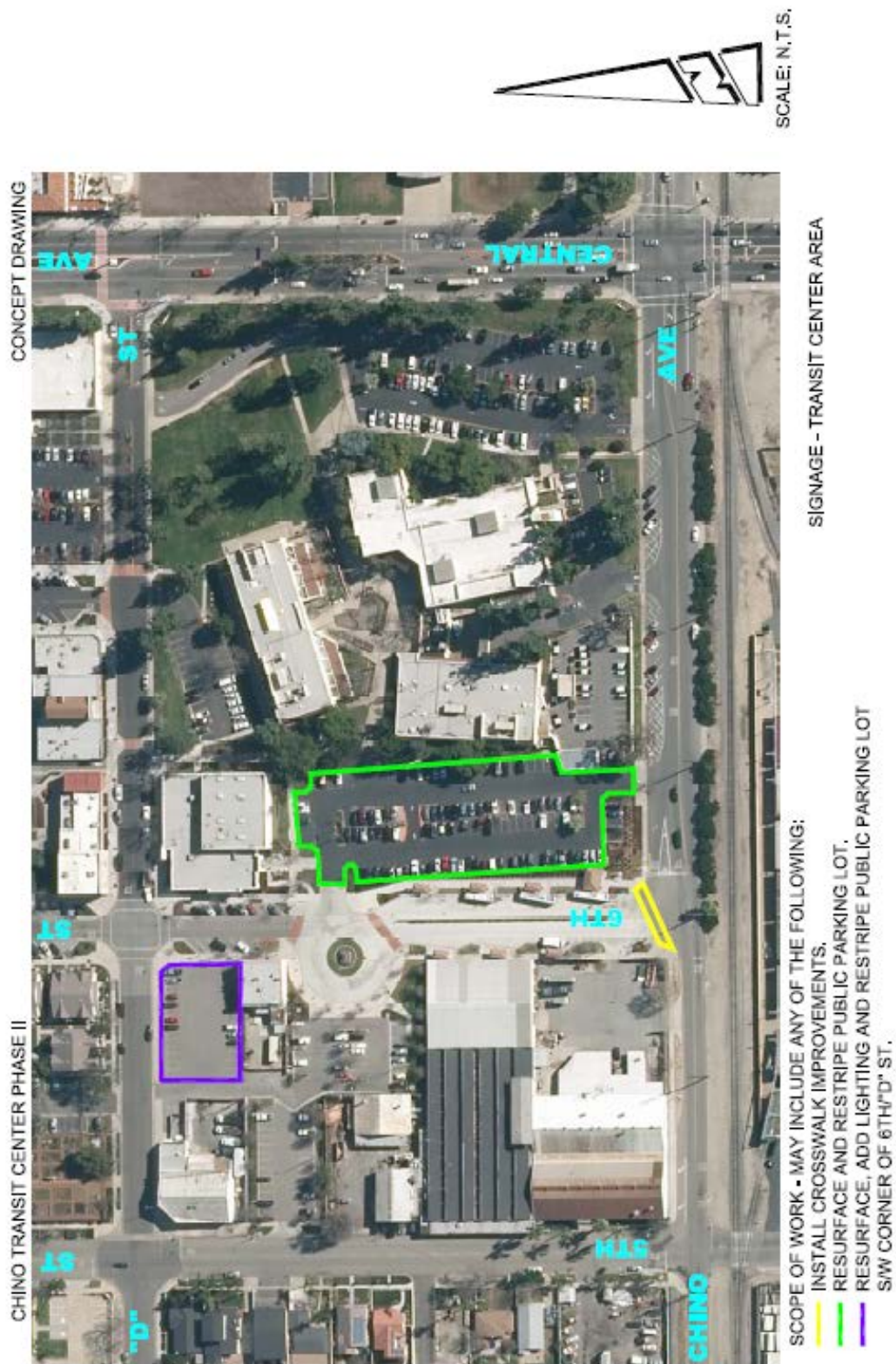
Approved as to form:

By: \_\_\_\_\_

City Attorney

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

# EXHIBIT A: PROJECT LOCATION DIAGRAM



## EXHIBIT B: PROJECT MILESTONES SCHEDULE

Milestone	Completion Date
Preparation of conceptual site plan.	
Review period by OMNITRANS/CITY.	
Agencies to select "preferred design and site" collectively.	
Final design consultant to be selected jointly.	
Final design completed.	
Review period by OMNITRANS/CITY (simultaneous review by both agencies each review to take no more than two (2) weeks, after that, deemed approved by that agency).	
Final design complete.	
Award Construction Contract	
Start Construction.	
Complete Construction	

*To be refined and completed by CITY upon start of PROJECT.*

### EXHIBIT C: PROJECT BUDGET

Project Component	Cost
City's project management/administration	
Design, environmental clearance, and design services during construction	
Construction management	
Construction	
Contingency	

*To be completed by CITY upon start of PROJECT and to be refined as design is developed.*

## **EXHIBIT D: FEDERAL REQUIREMENTS**

OMNITRANS will be funding this Agreement with federal funds from the Federal Transit Authority (“FTA”). The provision of such funds requires incorporation of the following contract terms in this Agreement, and the construction and related agreements for the PROJECT to be completed under this Agreement, as further set forth below. The references below to “Contractor” shall mean and refer to CITY and its CONTRACTORS for the PROJECT covered under this Agreement.

### **1. OPEN MARKET PROCUREMENT REQUIREMENTS**

#### **a. Competition**

All CITY procurement transactions to be funded under this Agreement shall be conducted in a manner that provides full and open competition, and shall be conducted in accordance with applicable state and federal requirements, including the FTA requirements set forth in FTA Circular 4220.1F.

### **2. BUY AMERICA REQUIREMENTS**

#### **49 U.S.C. 5323(j) ; 49 CFR Part 661**

#### **a. Applicability to Contracts**

The Buy America requirements apply to the following types of contracts: Construction Contracts and Acquisition of Goods or Rolling Stock (valued at more than \$100,000).

#### **b. Buy America**

The Contractor agrees to comply with 49 U.S.C. 5323(j) and 49 CFR Part 661, which provide that Federal funds may not be obligated unless steel, iron, and manufactured products used in FTA-funded projects are produced in the United States, unless a waiver has been granted by FTA or the product is subject to a general waiver.

General waivers are listed in 49 CFR 661.7. Note: General waivers for small purchases do not apply to Contractor equipment purchases when Contractor’s contract value exceeds \$100,000 in value.

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

### **3. CARGO PREFERENCE REQUIREMENTS**

#### **46 U.S.C. Appx 1241; 46 CFR Part 381**

#### **a. Applicability to Contracts**

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

**b. 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.

**c. Cargo Preference - Use of United States-Flag Vessels** The Contractor agrees:

1. 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;
2. To furnish within 20 working days following the date of loading for shipments originating within the United States or within 30 working days following the date of leading for shipments originating outside the United States, a legible copy of a rated, "on-board" commercial ocean bill-of-lading in English for each shipment of cargo described in the preceding paragraph to the Division of National Cargo, Office of Market Development, Maritime Administration, Washington, DC 20590 and to Commission (through the Contractor in the case of a subcontractor's bill-of-lading); and
3. 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.

**4. ENERGY CONSERVATION REQUIREMENTS**

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

**a. Applicability to Contracts**

The Energy Conservation requirements are applicable to all contracts.

**b. Flow Down**

The Energy Conservation requirements extend to all Contractors and their contracts at every tier and sub recipients and their sub agreements at every tier.

**c. 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.



## **5. CLEAN WATER REQUIREMENTS**

### **33 U.S.C. 1251 et seq.**

#### **a. Applicability to Contracts**

The Clean Water requirements apply to each contract and subcontract which exceeds \$100,000.

#### **b. Clean Water**

1. The Contractor agrees to comply with all applicable standards, orders or regulations issued pursuant to the Federal Water Pollution Control Act, as amended, 33 U.S.C. 1251. The Contractor agrees to report each violation to the Commission and understands and agrees that the Commission will report the violation to the Commission, who will, in turn, report each violation as required to assure notification to FTA and the appropriate EPA Regional Office.

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

## **6. LOBBYING**

### **31 U.S.C. 1352; 49 CFR Part 19 49 CFR Part 20**

#### **a. Applicability to Contracts**

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

#### **b. 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.

#### **c. 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. 4 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 Commission.

## **7. ACCESS TO RECORDS AND REPORTS**

### **49 U.S.C. 5325; 49 CFR 18.36 (i) 49 CFR 633.17**

#### **a. Applicability to Contracts**

Reference Chart “Requirements for Access to Records and Reports by Type of Contracts”, Item 6 of this Article.

#### **b. Flow Down**

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

#### **c. Access to Records**

The following access to records requirements apply to this Contract:

1. The Contractor agrees to provide Commission, 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 Commission or a sub grantee of Commission 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 Commission, 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.
3. 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.
4. 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 Commission, 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).

5. FTA does not require the inclusion of these requirements in subcontracts.
6. Requirements for Access to Records and Reports by Types of Contract:

Contract Characteristics	Construction	Architectural Engineering	Professional Services
Non State	Yes	Yes	Yes
Grantees	Yes	Yes	Yes
a. Contracts below SAT (\$100,000)			
b. Contracts above \$100,000/Capital Projects			

<sup>1</sup> Sources of Authority: 49 CFR 836 (i).

## **8. FEDERAL CHANGES**

### **49 CFR Part 18**

#### **a. Applicability to Contracts**

The Federal Changes requirement applies to all contracts.

#### **b. Flow Down**

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

**c. Federal Changes**

Contractor shall at all times comply with all applicable FTA regulations, policies, procedures and directives, including without limitation those listed directly or by reference in the Agreement (Form FTA MA (10) dated October, 2003) between Commission 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.

**9. CLEAN AIR**

**42 U.S.C. 7401 et seq.; 40 CFR 15.61; 49 CFR Part 18**

**a. Applicability to Contracts**

The Clean Air requirements apply to all contracts exceeding \$100,000, including indefinite quantities where the amount is expected to exceed \$100,000 in any year.

**b. Flow Down**

The Clean Air requirements flow down to all subcontracts which exceed \$100,000.

**c. Clean Air**

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

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

**10. RECYCLED PRODUCTS**

**42 U.S.C. 6962; 40 CFR Part 247**

**a. Applicability to Contracts**

The Recycled Products requirements apply to all contracts for items designated by the EPA, when the Contractor procures \$10,000 or more of one of these items during the fiscal year, or has procured \$10,000 or more of such items in the previous fiscal year, using Federal funds.

**b. Flow Down**

These requirements flow down to all contractor and subcontractor tiers.

**c. Recovered Materials**

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

**11. PREVAILING WAGE CALIFORNIA LABOR CODE AND DAVIS-BACON ACT**

**40 U.S.C. 3142 et seq. (2003); 29 CFR § 5 et seq. (2003)**

**California Labor Code section 1720, et. seq.**

**a. Applicability to Contracts**

Contractor shall comply with the requirements of the Davis-Bacon Act and California Labor Law, California Labor Code section 1720, et. seq. As between Davis-Bacon and California prevailing wage rates, the higher of the two shall apply.

**b. Apprentices and trainees**

1. Apprentices. Apprentices will be permitted to work at less than the predetermined rate for the work they performed when they are employed pursuant to and individually registered in a bona fide apprenticeship program registered with the U.S. Department of Labor, Employment and Training Administration, Bureau of Apprenticeship and Training, or with a State Apprenticeship Agency recognized by the Bureau, or if a person is employed in his or her first 90 days of probationary employment as an apprentice in such an apprenticeship program, who is not individually registered in the program, but who has been certified by the Bureau of Apprenticeship and Training or a State Apprenticeship Agency (where appropriate) to be eligible for probationary employment as an apprentice. The allowable ratio of apprentices to journeymen on the job site in any craft classification shall not be greater than the ratio permitted to the Contractor as to the entire work force under the registered program. Any worker listed on a payroll at an apprentice wage rate, who is not registered or otherwise employed as stated above, shall be paid not less than the applicable wage rate on the wage determination for the classification of work actually performed. In addition, any apprentice performing work on the job site in excess of the ratio permitted under the registered program shall be paid not less than the applicable wage rate on the wage determination for the work actually performed. Where a Contractor is performing construction on a project in a locality other than that in which its program is registered, the ratios and wage rates (expressed in percentages of the journeyman's hourly rate) specified in the Contractor's or subcontractor's registered program shall be observed. Every apprentice must be paid at not less than the rate specified in the registered program for the apprentice's level of progress, expressed as a percentage of the journeymen hourly rate specified in the applicable wage determination. Apprentices shall be paid fringe benefits in accordance with the provisions of the apprenticeship program. If the

apprenticeship program does not specify fringe benefits, apprentices must be paid the full amount of fringe benefits listed on the wage determination for the applicable classification. If the Administrator of the Wage and Hour Division of the U.S. Department of Labor determines that a different practice prevails for the applicable apprentice classification, fringes shall be paid in accordance with that determination. In the event the Bureau of Apprenticeship and Training, or a State Apprenticeship Agency recognized by the Bureau, withdraws approval of an apprenticeship program, the Contractor will no longer be permitted to utilize apprentices at less than the applicable predetermined rate for the work performed until an acceptable program is approved.

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

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

**c. Compliance with Copeland Act requirements**

The Contractor shall comply with the requirements of 29 CFR part 3, which are incorporated by reference in this contract.

**d. Subcontracts**

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

**e. Contract termination: debarment**

A breach of the contract clauses in 29 CFR 5.5 may be grounds for termination of the contract, and for debarment as a contractor and a subcontractor as provided in 29 CFR 5.12.

**f. Disputes concerning labor standards**

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

**g. Certification of eligibility**

1. By entering into this contract, the Contractor certifies that neither it (nor he or she) nor any person or firm who has an interest in the Contractor's firm is a person or firm ineligible to be awarded Government contracts by virtue of section 3(a) of the Davis-Bacon Act or 29 CFR 5.12(a)(1).
2. No part of this contract shall be subcontracted to any person or firm ineligible for award of a Government contract by virtue of section 3(a) of the Davis-Bacon Act or 29 CFR 5.12(a)(1).
3. The penalty for making false statements is prescribed in the U.S. Criminal Code, 18 U.S.C. 1001.

**12. CONTRACT WORK HOURS AND SAFETY STANDARDS ACT**

**40 U.S.C. §§ 3701 -3708 (2003); 29 C.F.R. § 5 (2003); 29 C.F.R. § 1926 (2003)**

**a. Applicability to Contracts**

Section 102 of the Act, which deals with overtime requirements, applies to:

1. All construction contracts in excess of \$2,000 and;

Section 107 of the Act, which deals with OSHA requirements applies to construction contracts in excess of \$2,000 only. The requirements of this section do not apply to contracts or subcontracts for the purchase of supplies or materials or articles normally available on the open market.

**b. Flow Down**

Applies to third party contractors and subcontractors.

**c. Pursuant to Section 102 (Overtime)**

These clauses are specifically mandated under DOL regulation 29 C.F.R. § 5.5.

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

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

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

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



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

**d. Section 107 (OSHA)**

**1. Contract Work Hours and Safety Standards Act**

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

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

apply to contracts or subcontracts for the purchase of supplies or materials or articles normally available on the open market.

### **13. COPELAND ANTI-KICKBACK ACT**

**40 U.S.C. § 3145 (2003); 29 C.F.R. § 3 (2003); 29 C.F.R. § 5 (2003)**

#### **a. Applicability to Contracts**

All construction contracts in excess of \$2,000.

#### **b. Flow Down**

Applicable to all third party contractors and subcontractors. The language can be found at § 5.5(a)(5) of the Davis-Bacon clause 16.

#### **c. Compliance with Copeland Act requirements**

The Contractor shall comply with the requirements of 29 CFR part 3, which are incorporated by reference in this contract.

### **14. NO GOVERNMENT OBLIGATION TO THIRD PARTIES**

#### **a. Applicability to Contracts**

Applicable to all contracts.

#### **b. Flow Down**

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.

#### **c. No Obligation by the Federal Government**

1. Commission 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 Commission, 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.

## **15. 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**

### **a. Applicability to Contracts**

These requirements are applicable to all contracts.

### **b. Flow Down**

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

### **c. 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 q. 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.

## **16. GOVERNMENT-WIDE DEBARMENT AND SUSPENSION (NONPROCUREMENT)**

**49 CFR Part 29; Executive Order 12549**

### **a. Applicability to Contracts**

Executive Order 12549, as implemented by 49 CFR Part 29, prohibits Commission from contracting for goods and services from organizations that have been suspended or debarred from receiving Federally-assisted contracts. As part of their applications each year, Commission is required to submit a certification to the effect that they will not enter into contracts over \$100,000 with suspended or debarred contractors and that they will require their contractors (and their subcontractors) to make the same certification to them.

**b. Flow Down**

Contractors are required to pass this requirement on to subcontractors seeking subcontracts over \$100,000. Thus, the terms “lower tier covered participant” and “lower tier covered transaction” include both contractors and subcontractors and contracts and subcontracts over \$100,000.

**c. Instructions for Certification**

**By signing and submitting its Bid or proposal, the prospective lower tier participant is deemed to be providing a signed certification to the following:**

1. The certification in this clause is a material representation of fact upon which reliance was placed when this transaction was entered into. If it is later determined that the prospective lower tier participant knowingly rendered an erroneous certification, in addition to other remedies available to the Federal Government, Commission may pursue available remedies, including suspension and/or debarment.
2. The prospective lower tier participant shall provide immediate written notice to Commission if at any time the prospective lower tier participant learns that its certification was erroneous when submitted or has become erroneous by reason of changed circumstances.
3. The terms “covered transaction,” “debarred,” “suspended,” “ineligible,” “lower tier covered transaction,” “participant,” “persons,” “lower tier covered transaction,” “principal,” “proposal,” and “voluntarily excluded,” as used in this clause, have the meanings set out in the Definitions and Coverage sections of rules implementing Executive Order 12549 [49 CFR Part 29]. You may contact Commission for assistance in obtaining a copy of those regulations.
4. The prospective lower tier participant agrees by submitting this proposal that, should the proposed covered transaction be entered into, it shall not knowingly enter into any lower tier covered transaction with a person who is debarred, suspended, declared ineligible, or voluntarily excluded from participation in this covered transaction, unless authorized in writing by Commission.
5. The prospective lower tier participant further agrees by submitting this proposal that it will include the clause titled “Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion -

Lower Tier Covered Transaction”, without modification, in all lower tier covered transactions and in all solicitations for lower tier covered transactions.

6. A participant in a covered transaction may rely upon a certification of a prospective participant in a lower tier covered transaction that it is not debarred, suspended, ineligible, or voluntarily excluded from the covered transaction, unless it knows that the certification is erroneous. A participant may decide the method and frequency by which it determines the eligibility of its principals. Each participant may, but is not required to, check the Nonprocurement List issued by U.S. General Service Administration.

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

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

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

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

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

**17. PRIVACY ACT**

**5 U.S.C. 552**

**a. Applicability to Contracts**

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

**b. Flow Down**

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

**c. Contracts Involving Federal Privacy Act Requirements**

The following requirements apply to the Contractor and its employees that administer any system of records on behalf of the Federal Government under any contract:

1. The Contractor agrees to comply with, and assures the compliance of its employees with, the information restrictions and other applicable requirements of the Privacy Act of 1974, 5 U.S.C. § 552a. Among other things, the Contractor agrees to obtain the express consent of the Federal Government before the Contractor or its employees operate a system of records on behalf of the Federal Government. The Contractor understands that the requirements of the Privacy Act, including the civil and criminal penalties for violation of that Act, apply to those individuals involved, and that failure to comply with the terms of the Privacy Act may result in termination of the underlying contract.
2. The Contractor also agrees to include these requirements in each subcontract to administer any system of records on behalf of the Federal Government financed in whole or in part with Federal assistance provided by FTA.

**18. CIVIL RIGHTS REQUIREMENTS**

**29 U.S.C. § 623, 42 U.S.C. § 2000 d; 42 U.S.C. § 6102, 42 U.S.C. § 12112; 42 U.S.C. § 12132, 49 U.S.C. § 5332; 29 CFR Part 1630 et seq., 41 CFR Parts 60-1 et seq.**

**a. Applicability to Contracts**

The Civil Rights Requirements apply to all contracts.

**b. Flow Down**

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

**c. 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 m., (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. Access Requirements for Persons with Disabilities. The Recipient agrees to comply with the requirements of 49 U.S.C. § 5301(d), which states the Federal policy that the elderly and persons with disabilities have the same right as other persons to use mass transportation service and facilities, and that special efforts shall be made in planning and designing those services and facilities to implement that policy. The Recipient also agrees to comply with all applicable requirements of section 504 of the Rehabilitation Act of 1973, as amended, 29 U.S.C. § 794, which prohibits discrimination on the basis of handicaps, with the Americans with Disabilities Act of 1990 (ADA), as amended, 42 U.S.C. §§ 12101 *et seq.*, which requires that accessible facilities and services be made available to persons with disabilities, including any subsequent amendments to that Act, and with the Architectural Barriers Act of 1968, as amended, 42 U.S.C. §§ 4151 *et seq.*, which requires that buildings and public accommodations be accessible to persons with disabilities, including any subsequent amendments to that Act. In addition, the Recipient agrees to comply with all applicable requirements of the following regulations and any subsequent amendments thereto:

- i. U.S. DOT regulations, “Transportation Services for Individuals with Disabilities (ADA),” 49 C.F.R. Part 37;
- ii. U.S. DOT regulations, “Nondiscrimination on the Basis of Handicap in Programs and Activities Receiving or Benefiting from Federal Financial Assistance,” 49 C.F.R. Part 27;
- iii. Joint U.S. Architectural and Transportation Barriers Compliance Board/U.S. DOT regulations, “Americans With Disabilities (ADA) Accessibility Specifications for Transportation Vehicles,” 36 C.F.R. Part 1192 and 49 C.F.R. Part 38;
- iv. U.S. DOJ regulations, “Nondiscrimination on the Basis of Disability in State and Local Government Services,” 28 C.F.R. Part 35;
- v. U.S. DOJ regulations, “Nondiscrimination on the Basis of Disability by Public Accommodations and in Commercial Facilities,” 28 C.F.R. Part 36;
- vi. U.S. General Services Administration (U.S. GSA) regulations, “Accommodations for the Physically Handicapped,” 41 C.F.R. Subpart 101-19;
- vii. 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;
- viii. U.S. Federal Communications Commission regulations, “Telecommunications Relay Services and Related Customer Premises Equipment for the Hearing and Speech Disabled,” 47 C.F.R. Part 64, Subpart F;
- ix. FTA regulations, “Transportation for Elderly and Handicapped Persons,” 49 C.F.R. Part 609;
- x. Architectural and Transportation Barriers Compliance Board regulations, “Electronic and Information Technology Accessibility Standards,” 36 C.F.R. Part 1194; and
- xi. Any implementing requirements FTA may issue.

## **19. STATE AND LOCAL LAW DISCLAIMER**

### **a. Applicability to Contracts**

This disclaimer applies to all contracts.

### **b. Flow Down**

The Disclaimer has unlimited flow down.



## **20. INCORPORATION OF FEDERAL TRANSIT ADMINISTRATION (FTA) TERMS**

### **FTA Circular 4220.1F**

#### **a. Applicability to Contracts**

The incorporation of FTA terms applies to all contracts.

#### **b. Flow Down**

The incorporation of FTA terms has unlimited flow down.

#### **c. 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 4220.1F, dated November 1, 2008, 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 Commission requests which would cause Commission to be in violation of the FTA terms and conditions.

## **21. METRIC REQUIREMENTS**

### **15 U.S.C. §§205a et seq.**

As required by U.S. DOT or FTA, Commission agrees to use the metric system of measurement in its Project activities, pursuant to the Metric Conversion Act, as amended by the Omnibus Trade and Competitiveness Act, 15 U.S.C. §§ 205a *et seq.*; Executive Order No. 12770, "Metric Usage in Federal Government Programs," 15 U.S.C. § 205a note; and other U.S. DOT or FTA regulations, guidelines, and policies. To the extent practicable and feasible, the Commission agrees to accept products and services with dimensions expressed in the metric system of measurement.

## **22. NATIONAL INTELLIGENT TRANSPORTATION SYSTEMS (ITS) ARCHITECTURE AND STANDARDS**

### **23 U.S.C. §502**

Commission agrees to conform, to the extent applicable, to the National Intelligent Transportation Systems (ITS) Architecture and Standards as required by section 5206(e) of TEA-21, 23 U.S.C. § 502 note, and with FTA Notice, "PTA National ITS Architecture Policy on Transit Projects" 66 Fed. Reg. 1455 *et seq.*, January 8, 2001, and other subsequent Federal directives that may be issued.

## **23. FEDERAL MINIMUM WAGE REQUIREMENTS**

## **29 U.S.C. § 201 *et seq.***

The Fair Labor Standards Act of 1938, as amended 29 U.S.C. 201, *et seq.* (“FLSA”). The FLSA establishes minimum wage, overtime pay, recordkeeping, and youth employment standards affecting employees in the private sector and in Federal, State, and local governments. Covered nonexempt workers are entitled to a minimum wage of not less than \$7.25 per hour effective July 24, 2009. Overtime pay at a rate not less than one and one-half times the regular rate of pay is required after 40 hours of work in a workweek.

**FLSA Minimum Wage:** The federal minimum wage is \$7.25 per hour effective July 24, 2009. Many states also have minimum wage laws. In cases where an employee is subject to both state and federal minimum wage laws, the employee is entitled to the higher minimum wage.

**FLSA Overtime:** Covered nonexempt employees must receive overtime pay for hours worked over 40 per workweek (any fixed and regularly recurring period of 168 hours — seven consecutive 24-hour periods) at a rate not less than one and one-half times the regular rate of pay. There is no limit on the number of hours employees 16 years or older may work in any workweek. The FLSA does not require overtime pay for work on weekends, holidays, or regular days of rest, unless overtime is worked on such days.

**Hours Worked:** Hours worked ordinarily include all the time during which an employee is required to be on the employer’s premises, on duty, or at a prescribed workplace.

**Recordkeeping:** Employers must display an official poster outlining the requirements of the FLSA. Employers must also keep employee time and pay records.

**Youth Employment:** These provisions are designed to protect the educational opportunities of minors and prohibit their employment in jobs and under conditions detrimental to their health or well-being.

For additional requirements and guidelines, Contractor must visit the website for the U.S. Department of Labor at: <http://www.dol.gov/esa/whd/Flsa/>

## **Applicable Laws and Regulations**

29 U.S.C. 201, *et seq.*

29 CFR Chapter V

See the Federal Web site, <http://www.dot.ca.gov/davisbacon>

## **24. DISADVANTAGED BUSINESS ENTERPRISE (DBE) REQUIREMENTS**

a General DBE Requirements: In accordance with federal financial assistance agreements with the U.S. Department of Transportation (U.S. DOT), the Commission has

adopted a Disadvantaged Business Enterprise (DBE) Policy and Program, in conformance with Title 49 CFR Part 26, "Participation by Disadvantaged Business Enterprises in Department of Transportation Programs" (the "Regulations"). The Project is subject to these stipulated regulations. In order to ensure that the Commission achieves its overall DBE Program goals and objectives, the Commission encourages the participation of DBEs as defined in 49 CFR 26 in the performance of contracts financed in whole or in part with U.S. DOT funds.

b. Discrimination: Contractor shall not discriminate on the basis of race, color, national origin, or sex in the award and performance of subcontracts. Any terms used in this section that are defined in 49 CFR Part 26, or elsewhere in the Regulations, shall have the meaning set forth in the Regulations. In the event of any conflicts or inconsistencies between the Regulations and the Commission's DBE Program with respect to DOT-assisted contracts, the Regulations shall prevail.

c. Commission's Race-Neutral DBE Program: Pursuant to recently released Race-Neutral DBE policy directives issued by the U.S. DOT in response to the Ninth Circuit U.S. Court of Appeals decision in *Western States Paving Co. v. Washington State Department of Transportation*, the Commission has implemented a wholly Race-Neutral DBE Program.

A Race-Neutral DBE Program is one that, while benefiting DBEs, is not solely focused on DBE firms. Therefore, under a Race-Neutral DBE Program, the Commission does not establish numeric race-conscious DBE participation goals on its DOT-assisted contracts. Contractor shall not be required to achieve a specific level of DBE participation as a condition of contract compliance in the performance of this DOT-assisted contract. However, Contractor shall adhere to race-neutral DBE participation commitment(s) made at the time of contract award.

d. Definitions: The following definitions apply to the terms as used in these provisions:

1. "Disadvantaged Business Enterprise (DBE)" means a small business concern: (a) which is at least 51 percent owned by one or more socially and economically disadvantaged individuals or, in the case of any publicly-owned business, at least 51 percent of the stock of which is owned by one or more socially and economically disadvantaged individuals; and (b) whose management and daily business operations are controlled by one or more of the socially and economically disadvantaged individuals who own it.

2. "Small Business Concern" means a small business as defined pursuant to Section 3 of the Small Business Act and relevant regulations promulgated pursuant thereto, except that a small business concern shall not include any concern or group of concerns controlled by the same socially and economically disadvantaged individual or individuals which has annual average gross receipts in excess of \$19.57 million over the previous three fiscal years.

3. “Socially and Economically Disadvantaged Individuals” means those individuals who are citizens of the United States (or lawfully admitted permanent residents) and who are Black Americans, Hispanic Americans, Native Americans, Asian-Pacific Americans, or Asian-Indian Americans, women and any other minorities or individuals found to be disadvantaged by the Small Business Administration pursuant to Section 8(a) of the Small Business Act, or by the Commission pursuant to 49 CFR part 26.65. Members of the following groups are presumed to be socially and economically disadvantaged:

A. “Black Americans,” which includes persons having origins in any of the Black racial groups of Africa;

B. “Hispanic Americans,” which includes persons of Mexican, Puerto Rican, Cuban, Central or South American, or other Spanish or Portuguese culture or origin, regardless of race;

C. “Native Americans,” which includes persons who are American Indians, Eskimos, Aleuts, or Native Hawaiians;

D. “Asian-Pacific Americans,” which includes persons whose origins are from Japan, China, Taiwan, Korea, Vietnam, Laos, Cambodia, the Philippines, Samoa, Guam, the U.S. Trust Territories of the Pacific, and the Northern Marianas;

E. “Asian-Indian Americans,” which includes persons whose origins are from India, Pakistan, and Bangladesh; and

F. Women, regardless of ethnicity or race.

4. “Owned and Controlled” means a business: (a) which is at least 51 percent owned by one or more “Socially and Economically Disadvantaged Individuals” or, in the case of a publicly-owned business, at least 51 percent of the stock of which is owned by one or more “Socially and Economically Disadvantaged Individuals”; and (b) whose management and daily business operations are controlled by one or more such individuals.

5. “Manufacturer” means a firm that operates or maintains a factory or establishment that produces on the premises the materials or supplies obtained by Contractor.

6. “Regular Dealer” means a firm that owns, operates or maintains a store, warehouse, or other establishment in which the materials or supplies required for the performance of the Contract are bought, kept in stock, and regularly sold to the public in the usual course of business. The firm must engage in, as its principal business, and in its own name, the purchase and sale of the product in question. A regular dealer in such bulk items as steel, cement, gravel, stone and petroleum products need not keep such products in stock if it owns or operates distribution equipment.

7. “Other Socially and Economically Disadvantaged Individuals” means those individuals who are citizens of the United States (or lawfully admitted permanent

residents) and who, on a case-by-case basis, are determined by Small Business Administration or the Commission to meet the social and economic disadvantage criteria described below.

A. Social Disadvantage: The individual's social disadvantage must stem from his/her color, national origin, gender, physical handicap, long-term residence in an environment isolated from the mainstream of American society, or other similar cause beyond the individual's control.

(i) The individual must demonstrate that he/she has personally suffered social disadvantage.

(ii) The individual's social disadvantage must be rooted in treatment, which he/she has experienced in American society, not in other countries.

(iii) The individual's social disadvantage must be chronic, longstanding and substantial, not fleeting or insignificant.

(iv) The individual's social disadvantage must have negatively affected his/her entry into and/or advancement in the business world.

(v) A determination of social disadvantage must be made before proceeding to make a determination of economic disadvantage.

B. Economic Disadvantage

(i) The individual's ability to compete in the free enterprise system has been impaired due to diminished capital and credit opportunities, as compared to others in the same line of business and competitive market area that are not socially disadvantaged.

(ii) The following criteria will be considered when determining the degree of diminished credit and capital opportunities of a person claiming social and economic disadvantage:

With respect to the individual:

- availability of financing
- bonding capability
- availability of outside equity capital
- available markets

With respect to the individual and the business concern:

- personal and business assets
- personal and business net worth
- personal and business income and profits

e. Race-Neutral DBE Submissions and Ongoing Reporting Requirements: In the event DBE(s) are utilized in the performance of this Contract, Contractor shall comply with reporting requirements delineated in this Section. Contractor shall complete and submit the “Monthly Race-Neutral DBE Subcontractors Paid Report Summary and Payment Verification” at the times specified herein. If Contractor is a DBE firm and/or has proposed to utilize DBE firms, Contractor shall complete and submit the Report to the Commission by the 10th of each month until completion of the Contract to facilitate reporting of race-neutral DBE participation, following the first month of Contract activity. Contractor shall report the total dollar value paid to DBEs for the applicable reporting period. Contractor shall also report the DBE’s scope of work and the total subcontract value of commitment for each DBE reported. Contractor is advised not to report the participation of DBEs toward the Commission’s race-neutral DBE attainment until the amount being counted has been paid to the DBE. Upon completion of the Contract, Contractor shall prepare and submit to the Commission a “Race-Neutral DBE Subcontractors Paid Report Summary and Payment Verification” clearly marked “Final” to facilitate reporting and capturing actual DBE race-neutral attainments. Contractor shall complete and submit a Final Report whether or not DBEs were utilized in the performance of the Contract.

f. DBE Eligibility and Commercially Useful Function Standards: A DBE must be a small business concern as defined pursuant to Section 3 of the U.S. Small Business Act and relevant regulations promulgated pursuant thereto. A DBE may participate as a prime contractor, subcontractor, joint venture partner with a prime or subcontractor, vendor of material or supplies, or as a trucking company. A DBE joint venture partner must be responsible for specific Contract items of work, or clearly defined portions thereof. Responsibility means actually performing, managing and supervising the work with its own forces. The DBE joint venture partner must share in the capital contribution, control, management, risks and profits of the joint venture commensurate with its ownership interest. A DBE must perform a commercially useful function in accordance with 49 CFR 26.55 (i.e., must be responsible for the execution of a distinct element of the work and must carry out its responsibility by actually performing, managing and supervising the work). A DBE should perform at least thirty percent (30%) of the total cost of its contract with its own workforce to presume it is performing a commercially useful function. DBEs must be certified by the California Unified Certification Program (CUCP). Listings of DBEs certified by the CUCP are available from the following sources: the CUCP web site, which can be accessed at <http://www.californiaucp.com>; or

the Caltrans “Civil Rights” web site at <http://www.dot.ca.gov/hq/bep>. The CUCP DBE Directory, which may be obtained from the Department of Transportation, Material Operations Branch, Publication Distribution Unit, 1900 Royal Oaks Drive, Sacramento, California 95815; Telephone: (916) 445-3520.

g. DBE Crediting Provisions: When a DBE is proposed to participate in the Contract, either as a prime Contractor or Subcontractor, only the value of the work proposed to be performed by the DBE with its own forces may be counted towards race-neutral DBE participation. If Contractor is a DBE joint venture participant, only the DBE proportionate interest in the joint venture shall be counted. If a DBE intends to subcontract part of the work of its subcontract to a lower tier Subcontractor, the value of the subcontracted work may be counted toward race-neutral DBE participation only if the DBE Subcontractor is a certified DBE and actually performs the work with their own forces. Services subcontracted to a non-DBE firm may not be credited toward the prime Contractor’s race-neutral DBE attainment.

1. Contractor is to calculate and credit participation by eligible DBE vendors of equipment, materials, and suppliers toward race-neutral DBE attainment, as follows: Sixty percent (60%) of expenditure(s) for equipment, materials and supplies required under the Contract, obtained from a regular dealer; or one hundred percent (100%) of expenditure(s) for equipment, materials and supplies required under the Contract, obtained from a DBE manufacturer.

2. The following types of fees or commissions paid to DBE subcontractors, brokers, and packagers may be credited toward the prime Contractor’s race-neutral DBE attainment, provided that the fee or commission is reasonable, and not excessive, as compared with fees or commissions customarily allowed for similar work, including:

A. Fees and commissions charged for providing bona fide professional or technical services, or procurement of essential personnel, facilities, equipment, materials, or supplies required in the performance of the Contract;

B. Fees charged for delivery of material and supplies (excluding the cost of materials or supplies themselves) when the licensed hauler, trucker, or delivery service is not also the manufacturer of, or a regular dealer in, the material and supplies;

C. Fees and commissions charged for providing any insurance specifically required in the performance of the Contract.

3. Contractor may count the participation of DBE trucking companies toward race-neutral DBE attainment, as follows:

A. The DBE must be responsible for the management and supervision of the entire trucking operation for which it is responsible on a particular contract.

B. The DBE must itself own and operate at least one fully licensed, insured, and operational truck used on the Contract. The DBE receives credit for the total value of the

transportation services it provides on the Contract using trucks it owns, insures, and operates using drivers it employs.

C. The DBE may lease trucks from another DBE firm, including an owner-operator who is certified as a DBE.

D. The DBE who leases trucks from another DBE receives credit for the total value of the transportation services the lessee DBE provides on the Contract. The DBE may also lease trucks from a non-DBE firm, including an owner-operator.

E. The DBE who leases trucks from a non-DBE is entitled to credit only for the fee or commission it receives as a result of the lease arrangement.

F. The DBE does not receive credit for the total value of the transportation services provided by the lessee, since these services are not provided by a DBE.

For purposes of this Section, a lease must indicate that the DBE has exclusive use of and control over the truck. This does not preclude the leased truck from working for others during the term of the lease with the consent of the DBE, so long as the lease gives the DBE absolute priority for use of the leased truck. Leased trucks must display the name and identification number of the DBE.

If Contractor listed a non-certified DBE 1st tier subcontractor to perform work on this Contract, and the non-certified DBE subcontractor subcontracts a part of its work or purchases materials and/or supplies from a lower tier DBE certified subcontractor or vendor, the value of work performed by the lower tier DBE firm's own forces can be counted toward race-neutral DBE participation on the Contract.

h. Performance of DBE Subcontractors: DBE subcontractors listed by Contractor in its "DBE Race-Neutral Participation Listing" submitted at the time of proposal submittal shall perform the work and supply the materials for which they are listed, unless Contractor has received prior written authorization from Commission to perform the work with other forces or to obtain the materials from other sources. Contractor shall provide written notification to the Commission in a timely manner of any changes to its anticipated DBE participation. This notice should be provided prior to the commencement of that portion of the work.

i. Additional DBE Subcontractors: In the event Contractor identifies additional DBE subcontractors or suppliers not previously identified by Contractor for race-neutral DBE participation under the Contract, Contractor shall notify Commission by submitting a "Request for Additional DBE Subcontractor/Supplier" to enable Commission to capture all race-neutral DBE participation. Contractor shall also submit, for each DBE identified after Contract execution, a written confirmation from the DBE acknowledging that it is participating in the Contract for a specified value, including the corresponding scope of work (a subcontract agreement can serve in lieu of the written confirmation).



j. DBE Certification Status: If a listed DBE subcontractor is decertified during the life of the Project, the decertified subcontractor shall notify Contractor in writing with the date of decertification. If a non-DBE subcontractor becomes a certified DBE during the life of the Project, the DBE subcontractor shall notify Contractor in writing with the date of certification. Contractor shall furnish the written documentation to Commission in a timely manner. Contractor shall include this requirement in all subcontracts.

k. Contractor's Assurance Clause Regarding Non-Discrimination: In compliance with State and Federal anti-discrimination laws, Contractor shall affirm that it will not exclude or discriminate on the basis of race, color, national origin, or sex in consideration of contract award opportunities. Further, Contractor shall affirm that they will consider, and utilize subcontractors and vendors, in a manner consistent with non-discrimination objectives.

l. Any forms listed above will be provided by Commission upon request of Contractor.

ITEM # E5

**DATE:** June 12, 2014

**TO:** Committee Chair Ed Graham and  
Members of the Administrative and Finance Committee

**THROUGH:** P. Scott Graham, CEO/General Manager

**FROM:** Donald Walker, Director of Finance

**SUBJECT: DISPOSITION OF 28.8 ACRE PROPERTY LOCATED IN RANCHO  
CUCAMONGA, CALIFORNIA**

**FORM MOTION**

Recommend approval to the Board of Directors to authorize the Chief Executive Officer/General Manager to proceed with the disposition of the 28.8 acre property located in Rancho Cucamonga, California (Mid-Valley), through County of San Bernardino Real Estate Services.

*A Memorandum of Understanding between Omnitrans and the County of San Bernardino Real Estate Services will be developed and presented to the Board of Directors for approval.*

**BACKGROUND**

Omnitrans is proposing sale of the 28.8-acre property located in Rancho Cucamonga, CA, which was purchased with the intention of paratransit expansion and construction of a new vehicle maintenance facility. Current projections no longer show a need for this expansion of the size and capacity anticipated for the 28.8 acre property in the foreseeable future. The property was purchased in May 2001 for \$5,863,786 consisting of 77.2% federal funds (\$4,525,230) and 22.8% local funds (\$1,338,556).

As required by the Federal Transit Administration (FTA), prior to the disposition of real property purchased with FTA funds, an appraisal and a review appraisal of the Mid-Valley was prepared. The appraisals were completed in January 2014 and estimate the value of the Mid-Valley property at \$21.3 million.

Upon review of the appraisals, Omnitrans received approval to sell the Mid-Valley property, with the proceeds from the sale to go towards another capital project, the West Valley Connector Corridor, from the FTA on May 12, 2014.

Omnitrans proposes to enter into a Memorandum of Understanding (MOU) with the County of San Bernardino Real Estate Services Department for the sale of this property. Once the MOU is approved by the Board of Directors, the County will have to advertise the property as excess property for 60 days to governmental agencies. If there is no interest in purchasing the property within that 60 day period, the next step would be to advertise the property for sale at auction for 45 days to the public.

Omnitrans further proposes to use the net proceeds from the sale of the Mid-Valley property towards (1) the West Valley Connector Corridor – a rapid bus line from Fontana, CA to Pomona, CA; and (2) the purchase of a three to five acre property to accommodate the overflow of coaches and support vehicles associated with the West Valley Connector Corridor and Access services.

The Rapid line (similar to the sbX Green Line, but without dedicated transit lanes or median stations) is the initially preferred alternative that resulted from the sbX Holt Boulevard/4<sup>th</sup> Street Corridor Alternatives Analysis study funded by the FTA in 2011. The West Valley Connector Corridor project is the first unconstrained capital project listed in the OmniConnects FY2015-FY2020 Short Range Transit Plan.

The Alternatives Analysis summary report will be presented to the Plans and Programs Committee and the Board of Directors in the next few months, along with more detail about project costs, scope, and definition. Omnitrans is developing the scope of the project based on a realistic funding and operating plan, working in collaboration with the project development team made up of the five cities along the corridor (Fontana, Rancho Cucamonga, Ontario, Montclair, and Pomona), as well as regional stakeholders such as the Los Angeles World Airports (Ontario Airport management), Ontario Mills, Metrolink, LA Metro, and Foothill Transit Agency. The results of the public outreach meetings being held for the project on June 3-5, 2014, will also be presented to the Plans and Programs Committee and the Board of Directors.

### **RECOMMENDATION**

Recommending approval to sell the Mid-Valley property will support Omnitrans' mission of providing the San Bernardino Valley with comprehensive mass transportation services which maximize customer use, comfort, safety, and satisfaction while efficiently using financial and other resources, in an environmentally sensitive manner.

PSG:DJW