



**ADMINISTRATIVE & FINANCE COMMITTEE**  
**TUESDAY, NOVEMBER 12, 2013 – 11:00 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**

**B. ANNOUNCEMENTS/PRESENTATIONS**

1. Next Committee Meeting: Monday, December 9, 2013, at 11:00 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 CONFLICTS 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. AGENDA ITEMS**

- |                                                                                                                                                                                                          |    |
|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|----|
| 1. Approve Administrative & Finance Committee Minutes – October 15, 2013                                                                                                                                 | 4  |
| 2. Receive & File Forward Fuel Purchase Program Update for November 2013                                                                                                                                 | 8  |
| 3. Receive & Forward to Board of Directors, Construction Progress Report No. 22 through October 25, 2013 – sbX E Street Corridor BRT Project                                                             | 12 |
| 4. Recommend to the Board of Directors, Authorize Interim CEO/General Manager to Execute Funding Agreement with San Bernardino Associated Governments for Downtown San Bernardino Passenger Rail Project | 27 |
| 5. Recommend to Board of Directors, Authorize Interim CEO/General Manager to Execute Memorandum of Understanding for Section 5339 Bus and Bus Facilities Formula Grant Program                           | 45 |



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6. Recommend to the Board of Directors, Authorize Additional Spend Authority, Contract IPMO14-116, As Needed Scheduling Services for sbX E Street Corridor and Vehicle Maintenance Facility Projects

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**F. ADJOURNMENT**

ITEM #     D1    

**DATE:** November 12, 2013

**TO:** Committee Chair Patrick Morris and  
Members of the Administrative and Finance Committee

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

**FROM:** Jennifer Sims, Director of Procurement

**SUBJECT: DISCLOSURE(S) REGARDING RECOMMENDATIONS FOR  
ACTION BY THE ADMINISTRATIVE & FINANCE COMMITTEE**

**FORM MOTION**

Staff hereby provides a listing of principals and subcontractors associated with action items on the agenda for the Administrative and Finance Committee Meeting scheduled November 12, 2013.

| Item No. | Contract                                                                                                                                                               | Principals & Agents                                                                                       | Subcontractors |
|----------|------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-----------------------------------------------------------------------------------------------------------|----------------|
| E6       | Contract IPMO14-116<br>Authorize Additional Spend Authority<br>As Needed Scheduling Services<br>sbX E Street Corridor BRT and Vehicle<br>Maintenance Facility Projects | <i>APSI Construction<br/>Management<br/>Irvine, CA<br/>Atul Apte, CCM, LEED AP<br/>Operations Manager</i> | <i>None</i>    |

PSG/JS

ITEM #       E1      

**ADMINISTRATIVE & FINANCE COMMITTEE  
MINUTES  
October 15, 2013**

The Administrative & Finance Committee meeting was called to order by Chair Pat Morris at 11:02 a.m. on October 15, 2013.

Committee Members Attending

Mayor Pat Morris, City of San Bernardino – Chair  
Councilmember Frank Gonzales, City of Colton  
Vice Mayor Ed Graham, City of Chino Hills  
Councilmember Dick Riddell, City of Yucaipa  
Mayor Pro Tem John Roberts, City of Fontana  
Councilmember Alan Wapner, City of Ontario

Committee Members Absent

Mayor Paul Eaton, City of Montclair  
Mayor Pro Tem Paul Foster, City of Redlands  
Supervisor Gary Ovitt, County of San Bernardino  
Mayor Walt Stanckiewicz, City of Grand Terrace

Omnitrans Staff

Scott Graham, Interim CEO/General Manager  
Diane Caldera, Interim Director of Operations  
Wendy Williams, Director of Marketing  
Sam Gibbs, Director of Internal Audit Services  
Don Walker, Director of Finance  
Jacob Harms, Director of IT  
Anna Rahtz, Acting Director of Planning & Development Services  
Milind Joshi, sbX Program Manager  
Maurice Mansion, Treasury Manager  
Eugenia Pinheiro, Contracts Manager  
Jeremiah Bryant, Service Planning & Scheduling Manager  
Scott Begg, Planner I  
Carol Angier, Administrative Secretary

**C. Communication From the Public**

None.

**D. Possible Conflict of Interest Issues**

None

**E. Agenda Items**

1. Approve Administrative & Finance Committee Minutes of September 9, 2013

M/S (Graham/Roberts) to approve the minutes of the September 9, 2013 Committee meeting. Motion was unanimous by members present.

2. Receive & File Forward Fuel Purchase Program Update for October 2013

Director of Finance Walker said 45 percent of Omnitrans' fuel is hedged under the current contract. There was a gain of \$1,862 for September. Since February 2012, there was a loss of \$42,545 on settled hedge positions. There is an unrecognized gain of \$41,613 through June 2014. This will give Omnitrans a loss of less than \$1,000. CNG fuel prices are expected to remain above the hedge. Staff will make a recommendation whether or not to extend the hedge within the next eight months.

This was a receive and file agenda item.

3. Receive & Forward to Board of Directors, Construction Progress Report No. 21 through September 25, 2013 – sbX E Street Corridor BRT Project

sbX Program Manager Joshi said sbX service is still expected to start April 30, 2014. To date, we are \$4.5 million under budget. He showed Power Point presentations of the construction for the sbX corridor and Vehicle Maintenance Facility (VMF) construction. Approximately 85 percent of the sbX construction is completed. Chair Morris asked if the VMF construction would delay start of sbX service, and sbX Program Manager said it would not.

This was a receive and file agenda item.

4. Adopt Proposed 2014 Committee Meeting Schedule

M/S (Gonzales/Graham) to adopt the proposed Administrative & Finance Committee Meeting Schedule for 2014. The current meeting schedule is proposed to remain the same as 2013 with meetings scheduled the second Monday of each month (unless otherwise noted) and beginning at 11 a.m. Motion was unanimous by members present.

Member Graham asked if the committee meetings could be scheduled in conjunction with SANBAG meetings to avoid taking two trips to this area. Chair Morris asked staff to check into the possibility of doing this.

5. Recommend to Board of Directors, Authorize Interim CEO/General Manager to Execute Revised Agreement Between Inland Empire United Way and Omnitrans

Interim CEO/General Manager Graham said Omnitrans' current funding agreement for the Inland Empire United Way did not match SANBAG's Call for Projects funding award. Therefore, the agreement needs to be modified by a total of \$9,056 to match SANBAG's final approved budget for the project.

M/S (Graham/Wapner) to recommend the Board of Directors authorize the Interim CEO/General Manager to execute a revised funding agreement with Inland Empire United Way for the purchase of hardware and software to expand the capacity of the 2-1-1 system and create a new Veterans' One Click transportation service regional coordination information center for the San Bernardino County for an additional sum

of \$9,056, bringing the total contract amount to of \$404,744. Motion was unanimous by members present.

6. Recommend to Board of Directors, Adoption of Title VI Service Equity Analysis of sbX Green Line Service

Planner I Begg said Omnitrans is required by the FTA to report triennially regarding compliance with Title VI requirements to demonstrate no discrimination for low income and minority residents in the area. The FTA also requires that Omnitrans prepare a Title VI Service Equity Analysis six months before service starts. The proposed service changes include start of sbX Green Line service and changes to Routes 2 and 7. An analysis was done for the proposed service changes using demographic data within a half-mile walking distance of the sbX corridor and Routes 2 and 7. It was found the changes will not negatively impact service to those within walking distance of the sbX stations, but will, in fact, provide a higher Low Income/Minority (LIM) proportion than with any other measure. Therefore, these changes comply with Title VI requirements.

M/S (Gonzales/Wapner) to recommend to the Board of Directors adoption of the Title VI Service Equity Analysis of sbX Green Line and accompanying changes to Routes 2 and 7. Motion was unanimous by members present.

7. Recommend to Board of Directors, Adopt Revision to Personnel Policy #103, Standards of Ethical Conduct, and Personnel Policy #109, Conflict of Interest

Interim CEO/General Manager Graham said a review was conducted on Personnel Policies #103 and #109. While both policies hold very high standards, it was recommended that language be added to both policies addressing the State of California Form 700, Statement of Economic Interests. The language states the CEO/General Manager must approve any vendor gifts for any staff member. Member Graham asked if this was for all employees, and Interim CEO/General Manager Graham said yes.

M/S (Graham/Roberts) to recommend to the Board of Directors adoption of the proposed changes to Personnel Policy #103, Standards of Ethical Conduct, and Personnel Policy #109, Conflict of Interest, effective November 6, 2013. Motion was unanimous by members present.

8. Recommend to Board of Directors, Authorize Interim CEO/General Manager to Solicit Appraisal for Omnitrans' Property located at 12300 Arrow Route, Rancho Cucamonga, California (Mid-Valley)

Interim CEO/General Manager Graham said staff had discussions with FTA on how to dispose of the Omnitrans property in Rancho Cucamonga, called the Mid-Valley site. Staff also discussed how Omnitrans can use the funding from that land sale for transit-related projects. FTA stated that an appraisal of the land site must be done to present to the Board for approval before sending it to the FTA for review.

M/S (Graham/Riddell) to recommend the Board of Directors authorize the Interim CEO/General Manager to solicit quotes from qualified appraisers who are experienced in the valuation and evaluation of commercial and industrial properties to appraise Omnitrans' property located at 12300 Arrow Route, Rancho Cucamonga, California (Mid-Valley). Motion was unanimous by members present.

Member Graham asked if service to Butterfield Ranch in Chino Hills had been considered by staff. Interim CEO/General Manager Graham said all requests for circulator services by member cities will be taken to the Board for approval within two months. A committee is being formed to review all requests and will present recommendations to the Board at that time. Member Graham said a new Senior Center will open soon in Chino Hills, and he asked if a bus stop could be installed near the facility. Service Planning & Scheduling Manager Bryant said several service stops were requested in that location, and more stops will be added. He will check to determine if these stops will be near the Senior Center. Member Graham said considerable construction will be taking place along OmniGo Route 65. Service Planning & Scheduling Manager Bryant said he will be in touch with the city to get updates on this construction.

The Administrative & Finance Committee meeting adjourned at 11:37 a.m. The next Administrative & Finance Committee Meeting is scheduled for Tuesday, November 12, 2013 at 11:00 a.m., with location posted on the Omnitrans website and at Omnitrans' San Bernardino Metro Facility.

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Carol Angier, Recording Secretary

ITEM # E2

**DATE:** November 12, 2013

**TO:** Committee Chair Patrick Morris and  
Members of the Administrative and Finance Committee

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

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

**SUBJECT: DIRECTOR OF FINANCE'S REPORT ON FORWARD FUEL  
PURCHASES FOR NOVEMBER 2013**

**FORM MOTION**

Receive and file Director of Finance's report on forward fuel purchases for November 2013. 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 report highlights activities taken under the Board action of November 2011 authorizing staff to hedge up to 150,000 gallons per month of CNG on the NYMEX exchange through Morgan Stanley. The report includes a summary of the hedge that has been established, an estimate of the monthly variance to be recognized in the Agency's financials, and may include articles on significant matters that have impacted the market for CNG. The current hedge fixes the price of approximately 45% of the Agency's natural gas through June 2014. Staff will make a recommendation on whether or not to extend the hedge within the next eight months.

Omnitrans has increased its fuel budget from \$.88 to \$.92 for FY2014, as CNG prices in the market have increased. The November 2013 contract closed above the hedge price. The Agency will record a profit on our futures position for the month of November and that gain will offset a portion of the fuel costs that will be reflected in the Agency's Expense Summary for October 2013.

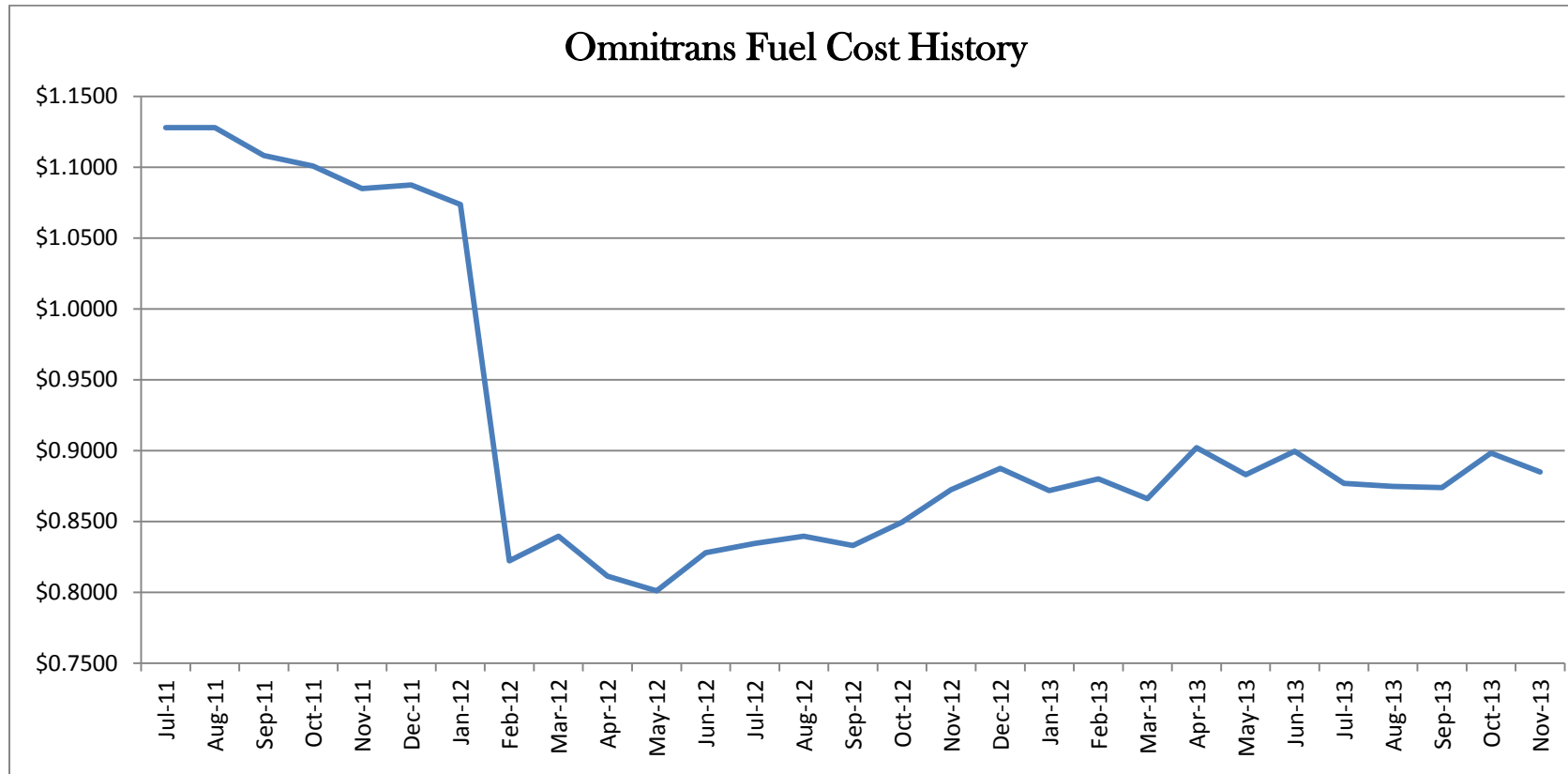
The net price that will be used for Omnitrans' November 2013 fuel purchase is \$0.8849 per gallon. This includes CNG at the So Cal Index price, the gain on the hedge position, liquefaction, delivery, and sales tax. (Note: We do not hedge the index differential. The gain on

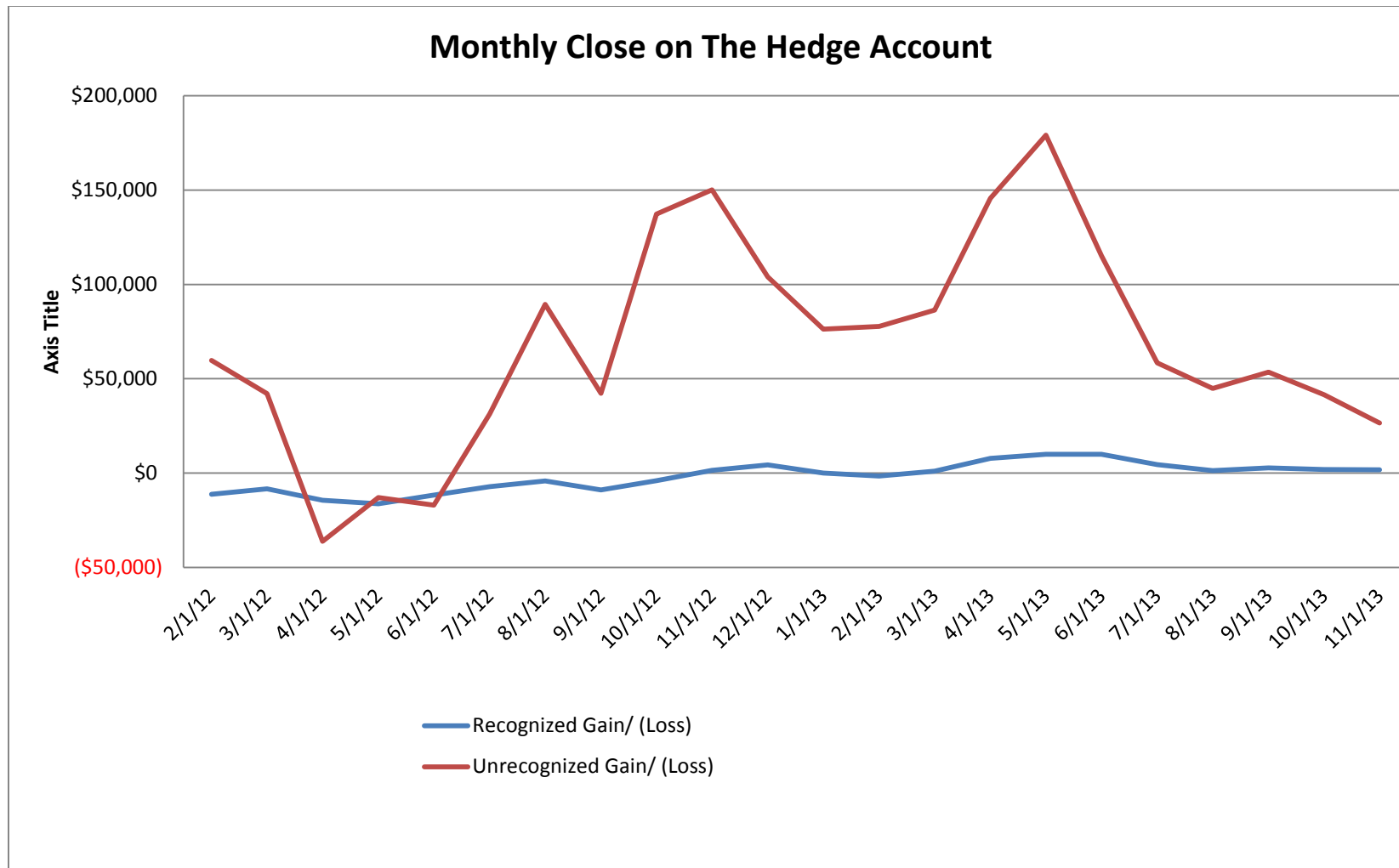


the hedge is based on the Henry Hub index. Clean Energy prices our deliveries off the SoCal index. In November, the SoCal Index settled slightly above Henry Hub.) This price is after recognition of the monthly gain on the hedge position in the amount of \$1,838.

Omnitrans will recognize a favorable budget variance in the CNG account of approximately \$11,934 in the month of November 2013. Omnitrans has recognized a total loss of \$40,708 on settled hedge positions; February 2012 through November 2013. The Agency has an unrecognized gain of \$26,550 on positions that remain open; December 2013 through June 2014. The forward market is anticipating that CNG fuel prices in the future will remain above the price levels of the Omnitrans hedge.

PSG:dw





ITEM # E3

**DATE:** November 12, 2013

**TO:** Committee Chair Patrick Morris and  
Members of the Administrative & Finance Committee

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

**FROM:** Milind Joshi, sbX Program Manager

**SUBJECT:** **CONSTRUCTION PROGRESS REPORT NO. 22 THROUGH  
OCTOBER 25, 2013 - sbX E STREET CORRIDOR BRT PROJECT**

**FORM MOTION**

Receive and recommend to the Board of Directors for receipt and file Construction Progress Report No. 22 for the sbX E Street Corridor BRT Project through October 25, 2013.

**BACKGROUND**

This is Construction Progress Report No. 22 for the sbX E Street Corridor Project.

**CONCLUSION**

Receive and recommend to the Board of Directors for receipt and file Construction Progress Report No.22 for the sbX E Street Corridor BRT Project through October 25, 2013.

PSG:MJ

Attachment



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

### **Construction Progress Report No. 22**

**As of October 25, 2013**

**Submitted By:**

**JACOBS**

Contractor: SBX Corridor - Griffith/Comet  
VMF – USS Cal Builders

Contractor Contract No.: IPMO11-5

Project Manager: Roger Hatton, P.E.

Resident Engineer Karim Varshochi, P.E.  
(Corridor)  
Anni Larkins, P.E.  
(VMF)

Omnitrans Construction  
Manager: Andres Ramirez  
Construction Manager



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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 – sbX Corridor**

In October, the Contractor completed installation of the platform pavers at Carnegie and Tippecanoe stations and continued installation of base pavers at the Anderson Redlands and Anderson Prospect stations. Contractor also completed parking lot paving at Anderson Park-and-Ride and street paving at south bound Anderson Station.

The contractor also completed energizing SCE services for nine stations and work continued on energizing the balance of the remaining.

Two catch basins on Hospitality Lane were completed and station concrete and canopy installation completed on the Baseline Station. At the Court Station, station concrete, bus pads, and canopy installation was completed.

Installation of electric equipment for stations and traffic signals continued. Installing irrigation and landscape at Hospitality Lane median islands.

### **C. Accomplishments – sbX Corridor**

- Energizing SCE services for nine stations completed.
- Began installing station canopies.
- Completed the CSUSB Station and prepared for testing and commissioning scheduled on October 29, 2013.

**D. November Work – sbX Corridor**

- Continue installation of station canopies.
- Relocation of the Cross-Connect on the north side of Hospitality Lane, west of Hunts Lane.
- Complete AC cap paving and striping.
- Construct parkway drain, low walls, and bus pad at Baseline station north bound.
- Complete center median landscape on Hospitality Lane.
- Systems start up and integration.
- Continue with testing and commissioning (locally and system wide).

**E. 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 are made in order to accommodate Omnitrans' 60-foot articulated bus fleet.

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

In October 2013, the Agency continued use of the temporary fuel island (Building D).

The Contractor completed safe-off and equipment removal at the existing fuel island (Building C) during the first week in October 2013. Demolition of the building and surrounding slab-on-grade completed on October 18, 2013. The product lines for the underground storage tanks (UST) were removed in their entirety, along with the UST's, on October 25, 2013. Soil sampling and testing for contamination was performed during the UST removal work on October 25, 2013; also on October 28, 2013. Testing to date indicates non-detect results, however final results are pending.

Overhead rough-in utility work for electrical, HVAC, plumbing and mechanical at Maintenance Building A is complete, and the Contractor started demolition of the slab inside the building on October 10, 2013. The opening for the new rollup door was cut and excavation of the new pits is ongoing.

The existing battery room was demolished on October 18, 2013 as part of the slab demolition work inside Building A. Metal stud framing, drywall, and rough-in electrical work at the new Battery Room at Building A resumed mid October 2013. Construction of the catch basin for the emergency eyewash/shower to be performed by the Agency.

The existing bus wash facility (Building B) was turned over for safe-off and demolition work effective October 21, 2013. Temporary bus wash services



started on October 21, 2013 and are being directly coordinated between the Agency and the vendor, Fleetwash.

The Contractor completed installation of the guide rails for the new thirty-yard trash compactor during the week of October 14, 2013. The compactor with the added cart-dump attachment was delivered and installed on October 22, 2013. Startup and testing of the compactor performed on October 23, 2013. Final inspection, testing, training and turnover expected to occur during the week of October 28, 2013.

#### **G. Accomplishments – Vehicle Maintenance Facility (VMF)**

- Demolished the existing Fuel Island (Bldg. C) and surrounding slab-on-grade.
- Removed the underground storage tanks (UST's) and product lines. Soil testing performed on October 25, 2013 indicates non-detect results, however final results are pending.
- Demolished the slab-on-grade and existing battery room inside Maintenance Building A. Excavation for the new pits is ongoing.
- Delivered and installed the thirty-yard trash compactor. Testing, training and turn over planned to be completed by October 31, 2013.
- Started temporary bus wash services and turned over existing bus wash facility (Building B) to Contractor effective October 21, 2013.

#### **H. November Work – Vehicle Maintenance Facility (VMF)**

- Contractor expected to complete excavation, and start formwork and concrete placement for the new bus lift pits in Maintenance Building A.
- Shaft construction, drywall installation, and electrical work at the new Battery Room at Building A will continue.
- Pending results of soil sampling for contaminants associated with the UST removal work, the Contractor expected to remove of the existing footings for the demolished Building C.
- Safe-off and demolition of existing Building B and the remaining slab-on-grade is expected to start. Once this demolition work is complete, grading of the site will start in preparation for construction of the new buildings.

## **II. PROJECT SCHEDULE**

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

Due to the actual field conditions (E Street Corridor and 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.

**A. Summary of Project Schedule – sbX Corridor**

The schedule updates are being submitted on time. However, before accepting them, the CM team is scrutinizing the validity of the durations, especially the delays indicated by the Contractor.

The August update was submitted and rejected. A meeting was held on October 25, 2013 with the Contractor discussing the August schedule and why it was rejected. The Contractor is to revise and resubmit their August schedule based on comments received at this meeting.

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

The Contractor submitted a combined August/September 2013 Monthly Schedule Update on October 8, 2013. The schedule update shows the project behind schedule, with approximately (+/-) 212-calendar days of negative float projecting a Substantial Completion Date in early/mid July 2014; however, it is expected that the recent demolition activities and early turnover of the existing bus wash facility (Building B) will result in improvements to the schedule. Comments to the September 2013 schedule update were returned on October 24, 2013 and submission of the October 2013 schedule update is anticipated no later than November 15, 2013.

The Contractor and CM are meeting weekly to update schedule progress and to assess upcoming work and durations, and potential risks, to ensure further delays can be avoided.

**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 – 955 | Total Submittals – 756 | Total NCRs - 22 |
| Total Open – 13  | Total Open – 22        | Total Open - 4  |

Weekly RFI meetings are held every Tuesday morning.  
Weekly NCR meetings are held every Thursday morning.

**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 (totals are as of September 25, 2013).

|                  |                        |                |
|------------------|------------------------|----------------|
| Total RFIs – 144 | Total Submittals – 297 | Total NCRs – 7 |
| Total Open – 5   | Total Open – 10        | Total Open – 1 |

**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 October 25, 2013 there are 355,311 “no-lost time” hours.

VMF - As of October 25, 2013 there are 7975 “no-lost time” hours.

**V. PROJECT BUDGET AND COST****TOTAL PROGRAM BUDGET**

BUDGET AS OF SEPTEMBER 30, 2013

|                        |               |
|------------------------|---------------|
| Approved Budget        | \$191,706,000 |
| Cost to Date           | \$131,825,236 |
| Estimate to Complete   | \$ 55,446,806 |
| Estimate at Completion | \$187,272,042 |

**SBX CORRIDOR PROJECT COSTS - AS OF SEPTEMBER 30, 2013**

|                | <b>CURRENT<br/>AUTHORIZED</b> | <b>CURRENT INVOICES<br/>PAID</b> | <b>REMAINING<br/>CONTRACT<br/>BALANCE</b> |
|----------------|-------------------------------|----------------------------------|-------------------------------------------|
| Jacobs         | \$11,852,647                  | \$7,568,400                      | \$4,284,247                               |
| Parsons        | \$18,097,876                  | \$16,841,587                     | \$1,256,289                               |
| Griffith/Comet | \$82,633,801                  | \$59,446,089                     | \$23,187,712                              |
| Total          | \$112,584,324                 | \$83,856,076                     | \$28,728,248                              |

**VMF CORRIDOR PROJECT COSTS - AS OF SEPTEMBER 30, 2013**

|                  | <b>CURRENT<br/>AUTHORIZED</b> | <b>CURRENT INVOICES<br/>PAID</b> | <b>REMAINING<br/>CONTRACT BALANCE</b> |
|------------------|-------------------------------|----------------------------------|---------------------------------------|
| STV Inc.         | \$1,046,132                   | \$901,757                        | \$144,375                             |
| USS Cal Builders | \$11,231,796                  | \$2,538,991                      | \$8,692,805                           |
| Total            | \$12,277,928                  | \$3,440,748                      | \$8,837,180                           |

**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 October 25, 2013       | 673         |             |
| CCO Time Extension to Date                           | 0           |             |
| Required Completion Days/Date as of October 25, 2013 | 57          | 12/21/13    |
| Forecasted Completion Date as of October 25, 2013    |             | TBD*        |
| Percent Time Elapsed                                 | 92%         |             |

**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 September 25, 2013       | 247         |             |
| CCO Time Extension to Date                             | 0           |             |
| Required Completion Days/Date as of September 25, 2013 | 178         | 02/08/14    |
| Forecasted Revenue Start Date as of September 25, 2013 |             | 04/30/14    |
| Percent Time Elapsed                                   | 58%         |             |

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

**CHANGE ORDERS****SBX CORRIDOR CONTRACT CHANGE ORDERS - As of September 25, 2013**

| <b>Change Order Status</b> | <b>Amount Approved</b> |
|----------------------------|------------------------|
| Approved Change Orders     | \$17,626,194           |
| Pending Change Orders      | \$870,556              |
| Potential Change Orders    | \$2,600,000            |
| <b>Total</b>               | <b>\$21,096,750</b>    |

**VMF CONTRACT CHANGE ORDERS - As of September 25, 2013**

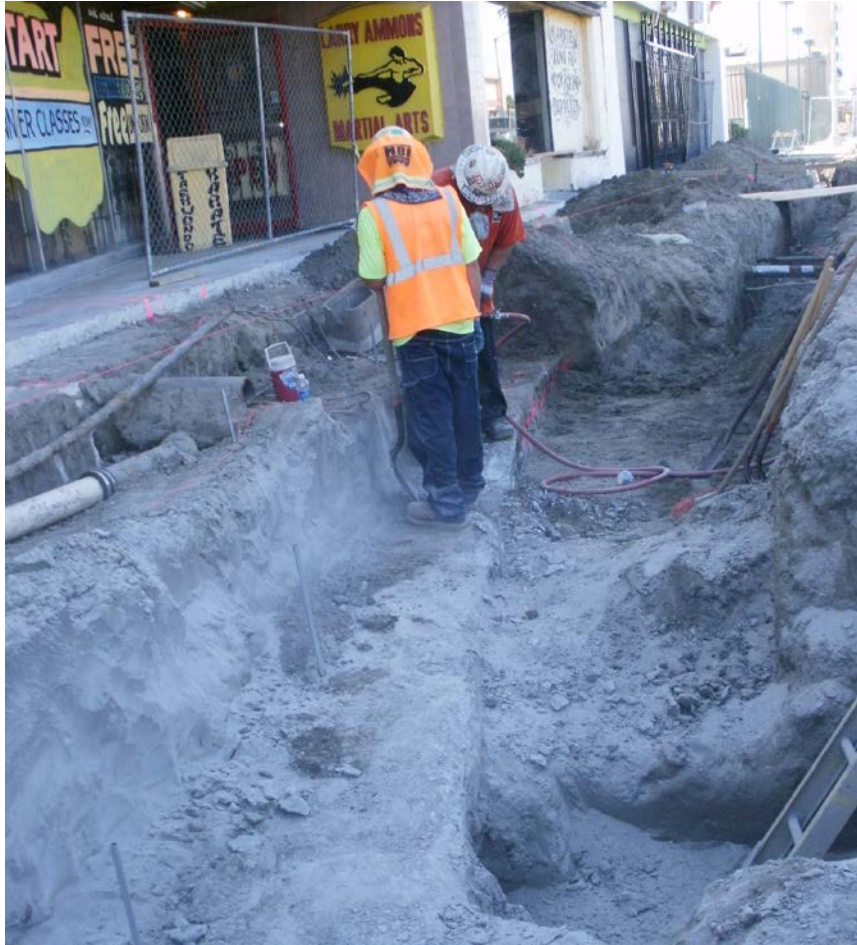
| <b>Change Order Status</b> | <b>Amount</b>      |
|----------------------------|--------------------|
| Approved Change Orders     | \$577,547          |
| Pending Change Orders      | \$94,050           |
| Potential Change Orders    | \$1,473,058        |
| <b>Total</b>               | <b>\$2,144,655</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

### SBX CORRIDOR PROGRESS PHOTOS



1. ATT Chipping Encasement



## 2. North Mall Station – Railing for Entrance Ramp



**VMF PROGRESS PHOTOS****1. Removal of the Underground Storage Tanks (UST)****2. Demolition of the existing Fuel and Vacuum Station**



**IPMO/sbX Project Cost Report**  
**Period Ended 9/30/13**

| <b>Description</b>                                  | <b>Current Budget</b> | <b>Expenditures</b> |              | <b>Remaining</b>  | <b>Estimate to</b> | <b>Estimate at</b> | <b>Budget Forecast</b> |
|-----------------------------------------------------|-----------------------|---------------------|--------------|-------------------|--------------------|--------------------|------------------------|
|                                                     |                       | <b>\$</b>           | <b>%</b>     | <b>Budget</b>     | <b>Complete</b>    | <b>Completion</b>  | <b>Variance</b>        |
| BRT Construction                                    | 84,637,000            | 59,522,432          | 70.3%        | 25,114,568        | 27,463,484         | 86,985,916         | (2,348,916)            |
| Vehicle Maintenance Facility (VMF) Construction     | 8,131,000             | 2,538,991           |              | 5,592,009         | 12,118,182         | 14,657,173         | (6,526,173)            |
| Vehicles - Design & Manufacturing                   | 16,628,000            | 14,800,861          | 89.0%        | 1,827,139         | 1,537,869          | 16,338,730         | 289,270                |
| ROW Acquisition Services                            | 10,357,000            | 10,792,120          | 104.2%       | (435,120)         | 946,280            | 11,738,400         | (1,381,400)            |
| 3rd Party Utilities Design & Relocation             | 1,003,000             | 970,965             | 96.8%        | 32,035            | 135,152            | 1,106,117          | (103,117)              |
| BRT Design                                          | 17,849,400            | 16,841,587          | 94.4%        | 1,007,813         | 1,256,289          | 18,097,876         | (248,476)              |
| VMF Design                                          | 1,007,600             | 916,157             | 90.9%        | 91,443            | 529,775            | 1,445,932          | (438,332)              |
| Other Professional, Technical & Management Services | 34,020,000            | 25,442,123          | 74.8%        | 8,577,877         | 11,459,775         | 36,901,898         | (2,881,898)            |
| <b>SUB-TOTAL</b>                                    | <b>173,633,000</b>    | <b>131,825,236</b>  |              | <b>41,807,764</b> | <b>55,446,806</b>  | <b>187,272,042</b> | <b>(13,639,042)</b>    |
| Unallocated Contingency                             | 18,073,000            | -                   |              | 18,073,000        | 4,433,958          | 4,433,958          | 13,639,042             |
| <b>TOTAL</b>                                        | <b>191,706,000</b>    | <b>131,825,236</b>  | <b>68.8%</b> | <b>59,880,764</b> | <b>59,880,764</b>  | <b>191,706,000</b> | <b>-</b>               |

**IPMO/sbX Project  
Through 9/30/13**

| 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>13,718,068 69.5%</b>     | <b>\$ 6,006,932</b>  | <b>\$ 5,666,510</b>  | <b>\$ 19,384,578</b>   | <b>\$ 340,422</b>        |
| 10.02                                | Guideway: At-grade semi-exclusive (allows cross-traffic)          | \$ 18,353,000           | 11,911,991 64.9%            | \$ 6,441,009         | \$ 5,213,342         | \$ 17,125,333          | \$ 1,227,667             |
| 10.03                                | Guideway: At-grade in mixed traffic                               | \$ 1,372,000            | 1,806,077 131.6%            | \$ (434,077)         | \$ 453,168           | \$ 2,259,245           | \$ (887,245)             |
| <b>20</b>                            | <b>STATIONS, STOPS, TERMINALS, INTERMODAL</b>                     | <b>14,917,000</b>       | <b>9,230,648 61.9%</b>      | <b>\$ 5,686,352</b>  | <b>\$ 5,105,431</b>  | <b>\$ 14,336,079</b>   | <b>\$ 580,921</b>        |
| 20.01                                | At-grade station, stop, shelter, mall, terminal, platform         | 14,917,000              | 9,230,648 61.9%             | \$ 5,686,352         | \$ 5,105,431         | \$ 14,336,079          | \$ -                     |
| <b>30</b>                            | <b>SUPPORT FACILITIES: YARDS, SHOPS, ADMIN. BLDGS</b>             | <b>\$ 8,131,000</b>     | <b>2,538,991 31.2%</b>      | <b>\$ 5,592,009</b>  | <b>\$ 12,118,182</b> | <b>\$ 14,657,173</b>   | <b>\$ (6,526,173)</b>    |
| 30.02                                | Light Maintenance Facility                                        | \$ 4,265,000            | 1,972,796 46.3%             | \$ 2,292,204         | \$ 9,313,227         | \$ 11,286,023          | \$ (7,021,023)           |
| 30.05                                | Yard and Yard Track                                               | \$ 3,866,000            | 566,195 0.0%                | \$ 3,299,805         | \$ 2,804,955         | \$ 3,371,150           | \$ 494,850               |
| <b>40</b>                            | <b>SITEWORK &amp; SPECIAL CONDITIONS</b>                          | <b>34,271,000</b>       | <b>21,210,168 61.9%</b>     | <b>\$ 13,060,832</b> | <b>\$ 8,359,133</b>  | <b>\$ 29,569,301</b>   | <b>\$ 4,701,699</b>      |
| 40.01                                | Demolition, Clearing, Earthwork                                   | \$ 4,741,000            | 281,559 5.9%                | \$ 4,459,441         | \$ 174,000           | \$ 455,559             | \$ 4,285,441             |
| 40.02                                | Site Utilities, Utility Relocation                                | \$ 4,993,000            | 8,022,386 160.7%            | \$ (3,029,386)       | \$ 2,911,727         | \$ 10,934,113          | \$ (5,941,113)           |
| 40.05                                | Site structures including retaining walls, sound walls            | \$ 90,000               | 67,969 75.5%                | \$ 22,031            | \$ 98,283            | \$ 166,252             | \$ (76,252)              |
| 40.06                                | Pedestrian / bike access and accommodation, landscaping           | \$ 6,925,000            | 2,156,873 31.1%             | \$ 4,768,127         | \$ 2,501,802         | \$ 4,658,675           | \$ 2,266,325             |
| 40.07                                | Automobile, bus, van accessways including roads, parking lots     | \$ 3,601,000            | 3,410,945 94.7%             | \$ 190,055           | \$ 836,404           | \$ 4,247,349           | \$ (646,349)             |
| 40.08                                | Temporary Facilities and other indirect costs during construction | \$ 13,921,000           | 7,270,436 52.2%             | \$ 6,650,564         | \$ 1,836,917         | \$ 9,107,353           | \$ 4,813,647             |
| <b>50</b>                            | <b>SYSTEMS</b>                                                    | <b>\$ 16,727,000</b>    | <b>16,334,513 97.7%</b>     | <b>\$ 392,487</b>    | <b>\$ 4,191,790</b>  | <b>\$ 20,526,303</b>   | <b>\$ (3,799,303)</b>    |
| 50.02                                | Traffic signals and crossing protection                           | \$ 10,810,000           | 5,660,202 52.4%             | \$ 5,149,798         | \$ 837,834           | \$ 6,498,036           | \$ 4,311,964             |
| 50.05                                | Communications                                                    | \$ 4,210,000            | 7,317,583 173.8%            | \$ (3,107,583)       | \$ 1,110,684         | \$ 8,428,267           | \$ (4,218,267)           |
| 50.06                                | Fare collection system and equipment                              | \$ 1,707,000            | 3,356,728 196.6%            | \$ (1,649,728)       | \$ 2,243,272         | \$ 5,600,000           | \$ (3,893,000)           |
|                                      | Pending Change Orders                                             |                         |                             |                      | \$ 2,965,772         | \$ 2,965,772           | \$ (2,965,772)           |
|                                      | Risk                                                              |                         |                             |                      | \$ 1,310,000         | \$ 1,310,000           | \$ (1,310,000)           |
| <b>Construction Subtotal (10-50)</b> |                                                                   | <b>93,771,000</b>       | <b>63,032,388 67.2%</b>     | <b>\$ 30,738,612</b> | <b>\$ 39,716,818</b> | <b>\$ 102,749,206</b>  | <b>\$ (8,978,206)</b>    |
| <b>60</b>                            | <b>ROW, LAND, EXISTING IMPROVEMENTS</b>                           | <b>\$ 6,532,000</b>     | <b>\$ 5,861,800 89.7%</b>   | <b>\$ 670,200</b>    | <b>\$ 1,237,465</b>  | <b>\$ 7,099,265</b>    | <b>\$ (567,265)</b>      |
| 60.01                                | Purchase or lease of real estate                                  | \$ 6,327,000            | 5,764,436 91.1%             | \$ 562,564           | \$ 1,129,829         | \$ 6,894,265           | \$ (567,265)             |
| 60.02                                | Relocation of existing households and businesses                  | \$ 205,000              | 97,364 47.5%                | \$ 107,636           | \$ 107,636           | \$ 205,000             | \$ -                     |
| <b>70</b>                            | <b>VEHICLES</b>                                                   | <b>\$ 16,628,000</b>    | <b>\$ 14,800,861 89.0%</b>  | <b>\$ 1,827,139</b>  | <b>\$ 1,537,869</b>  | <b>\$ 16,338,730</b>   | <b>\$ 289,270</b>        |
| 70.04                                | Bus                                                               | \$ 15,448,000           | 14,800,861 95.8%            | \$ 647,139           | \$ 630,821           | \$ 15,431,682          | \$ 16,318                |
| 70.06                                | Non-revenue vehicles                                              | \$ 250,000              | - 0.0%                      | \$ 250,000           | \$ -                 | \$ -                   | \$ 250,000               |
| 70.07                                | Spare parts                                                       | \$ 930,000              | - 0.0%                      | \$ 930,000           | \$ 907,048           | \$ 907,048             | \$ 22,952                |
| <b>80</b>                            | <b>PROFESSIONAL SERVICES</b>                                      | <b>56,702,000</b>       | <b>48,130,187 84.9%</b>     | <b>\$ 8,571,813</b>  | <b>\$ 12,954,654</b> | <b>\$ 61,084,841</b>   | <b>\$ (4,382,841)</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            | 6,658,659 91.7%             | \$ 602,341           | \$ 1,480,257         | \$ 8,138,916           | \$ (877,916)             |
| 80.03                                | Project Management for Design and Construction                    | \$ 15,997,000           | 10,128,595 63.3%            | \$ 5,868,405         | \$ 4,594,105         | \$ 14,722,700          | \$ 1,274,300             |
| 80.04                                | Construction Administration & Management                          | \$ 6,632,000            | 7,568,400 114.1%            | \$ (936,400)         | \$ 4,284,248         | \$ 11,852,648          | \$ (5,220,648)           |
| 80.05                                | Professional Liability and other Non-Construction Insurance       | \$ 1,112,000            | - 0.0%                      | \$ 1,112,000         | \$ 500,000           | \$ 500,000             | \$ 612,000               |
| 80.06                                | Legal; Permits; Review Fees by other agencies, cities, etc.       | \$ 10,596,000           | 10,898,008 102.9%           | \$ (302,008)         | \$ 1,332,542         | \$ 12,230,550          | \$ (1,634,550)           |
| 80.07                                | Surveys, Testing, Investigation, Inspection                       | \$ 1,463,000            | - 0.0%                      | \$ 1,463,000         | \$ 25,000            | \$ 25,000              | \$ 1,438,000             |
| 80.08                                | Start up                                                          | \$ 720,000              | - 0.0%                      | \$ 720,000           | \$ 721,000           | \$ 721,000             | \$ (1,000)               |
| <b>Subtotal (10-80)</b>              |                                                                   | <b>\$ 173,633,000</b>   | <b>\$ 131,825,236 75.9%</b> | <b>\$ 41,807,764</b> | <b>\$ 55,446,806</b> | <b>\$ 187,272,042</b>  | <b>\$ (13,639,042)</b>   |
| <b>90</b>                            | <b>UNALLOCATED CONTINGENCY</b>                                    | <b>18,073,000</b>       | <b>- 0.0%</b>               | <b>\$ 18,073,000</b> | <b>\$ 4,433,958</b>  | <b>\$ 4,433,958</b>    | <b>\$ 13,639,042</b>     |
| <b>Subtotal (10-90)</b>              |                                                                   | <b>191,706,000</b>      | <b>131,825,236 68.8%</b>    | <b>\$ 59,880,764</b> | <b>\$ 59,880,764</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>131,825,236 68.8%</b>    | <b>\$ 59,880,764</b> | <b>\$ 59,880,764</b> | <b>\$ 191,706,000</b>  | <b>\$ -</b>              |

ITEM # E4

**DATE:** November 12, 2013

**TO:** Committee Chair Patrick Morris and  
Members of the Administrative and Finance Committee

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

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

**SUBJECT:** **DOWNTOWN SAN BERNARDINO PASSENGER RAIL PROJECT -  
FUNDING AGREEMENT WITH SANBAG**

**FORM MOTION**

Recommend the Board of Directors authorize the Interim CEO/General Manager to execute a Funding Agreement to pass through an amount not to exceed \$22,306,000 to San Bernardino Associated Governments (SANBAG) for the Downtown San Bernardino Passenger Rail Project (DSBPRP) and to act as Omnitrans' authorized representative for the term of this agreement.

*Omnitrans' legal counsel reviewed and approved the agreement.*

**BACKGROUND**

SANBAG is proposing to extend Metrolink commuter passenger rail service approximately one mile east from its current terminus at the existing San Bernardino Metrolink Station/Santa Fe Depot (Depot) to new Metrolink commuter rail platforms at the proposed San Bernardino Transit Center near the intersection of Rialto Avenue and E Street in the City of San Bernardino. The project will consist of double tracking, relocation of station platforms at the Depot, construction of a pedestrian bridge at the Depot, reconfiguration of the Depot parking lot, and two station platforms at the San Bernardino Transit Center. The project is referred to the Downtown San Bernardino Passenger Rail Project (DSBPRP).

SANBAG has allocated \$12,000,000 of FTA §5307 funds and \$10,306,000 of Congestion Mitigation and Air Quality (CMAQ) funds for the DSBPRP. Because Omnitrans is the designated FTA grantee for the San Bernardino Valley, the funds must be included in Omnitrans' Fiscal Year 2014 FTA grant application and then passed through from Omnitrans to SANBAG. SANBAG will manage the project as a subgrantee and will fulfill all the responsibilities of a subgrantee per FTA regulations and guidelines, as outlined in the Agreement.

**FUNDING SOURCES**

The below-listed funding sources are capital funds allocated by SANBAG for the DSBPRP. SANBAG will provide the required 20% local match obligation in the amount of \$5,576,500, from SANBAG's available local and state funding sources.

| <b><u>FUNDING</u></b> | <b><u>GRANT<br/>NUMBER</u></b> | <b><u>FISCAL<br/>YEAR</u></b> | <b><u>PROJECT NAME</u></b>                        | <b><u>AMOUNT</u></b> |
|-----------------------|--------------------------------|-------------------------------|---------------------------------------------------|----------------------|
| FTA                   | CA-90-Z112                     | 2014                          | Downtown San Bernardino<br>Passenger Rail Project | \$ 12,000,000        |
| CMAQ                  | CA-95-X257                     | 2014                          | Downtown San Bernardino<br>Passenger Rail Project | \$ 10,306,000        |
|                       |                                |                               | <b>TOTAL</b>                                      | <b>\$ 22,306,000</b> |

\_\_\_\_\_ Verification of Funding Source and Availability of funds  
(Verified and initialed by Finance)

### **CONCLUSION**

The DSBPRP will be an integral part of a multimodal transportation hub at the San Bernardino Transit Center at E Street and Rialto Avenue in downtown San Bernardino, facilitating transfers between Metrolink passenger rail to Los Angeles and Orange counties, sbX Green Line bus rapid transit service on E Street, 13 local Omnitrans bus routes, and other regional bus services.

PSG:AR

Attachment

## CONTRACT SUMMARY SHEET

Contract No. R 14038 Amendment No. \_\_\_\_\_

By and Between

San Bernardino County Transportation Commission and Omnitrans

Contract Description Pass through funds - Downtown San Bernardino Passenger Rail Project

|                                                                                                             |
|-------------------------------------------------------------------------------------------------------------|
| <b>Board of Director's Meeting Date:</b> December 4, 2013<br><b>Overview of BOD Action:</b>                 |
| <b>Is this Sole-Source procurement?</b> <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No |

| CONTRACT OVERVIEW                                               |    |            |                                                                    |    |            |
|-----------------------------------------------------------------|----|------------|--------------------------------------------------------------------|----|------------|
| Original Contract Amount                                        | \$ | 22,306,000 | Original Contingency Amount                                        | \$ |            |
| Revised Contract Amount<br><i>Inclusive of prior amendments</i> | \$ |            | Revised Contingency Amount<br><i>Inclusive of prior amendments</i> | \$ |            |
| Current Amendment Amount                                        | \$ |            | Contingency Amendment                                              | \$ |            |
| TOTAL CONTRACT VALUE                                            | \$ | 22,306,000 | TOTAL CONTINGENCY VALUE                                            | \$ |            |
| TOTAL BUDGET AUTHORITY (contract value + contingency)           |    |            |                                                                    | \$ | 22,306,000 |

|                                                                                                                           |                                                          |                                         |
|---------------------------------------------------------------------------------------------------------------------------|----------------------------------------------------------|-----------------------------------------|
| <b>Contract Start Date</b><br>November 6, 2013                                                                            | <b>Current Contract Expiration Date</b><br>June 30, 2019 | <b>Revised Contract Expiration Date</b> |
| Has the contract term been amended? <input checked="" type="checkbox"/> No <input type="checkbox"/> Yes - please explain. |                                                          |                                         |

| FINANCIAL INFORMATION                                                                                                                                                                                                                                                     |                                      |                                      |                                    |                                          |  |
|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|--------------------------------------|--------------------------------------|------------------------------------|------------------------------------------|--|
| <input type="checkbox"/> Budget authority for this contract currently exists in Task No. 0352 for DSBPRP<br><input type="checkbox"/> A Budget Amendment is required.<br>How are we funding current FY? Through local funding but will be reimbursed through this contract |                                      |                                      |                                    |                                          |  |
| <input checked="" type="checkbox"/> Federal Funds                                                                                                                                                                                                                         | <input type="checkbox"/> State Funds | <input type="checkbox"/> Local Funds | <input type="checkbox"/> TDA Funds | <input type="checkbox"/> Measure I Funds |  |
| Provide Brief Overview of the <b>Overall</b> Funding for the duration of the Contract:<br>This funding from Section 5307 & CMAQ will be used for construction of the DSBPRP.<br><input type="checkbox"/> Payable <input checked="" type="checkbox"/> Receivable           |                                      |                                      |                                    |                                          |  |

| CONTRACT MANAGEMENT INFORMATION                                                                                                                                                     |  |
|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|--|
| <b>Check all applicable boxes:</b><br><input type="checkbox"/> Retention? If yes, indicate % _____.<br><input type="checkbox"/> Disadvantaged Business Enterprise (DBE) Goal ____ % |  |

|                                                |           |      |
|------------------------------------------------|-----------|------|
| Project Manager (Print Name)                   | Signature | Date |
| Task Manager (Print Name)                      | Signature | Date |
| Dir. of Fund Admin. & Programming (Print Name) | Signature | Date |
| Contract Administrator (Print Name)            | Signature | Date |
| Chief Financial Officer (Print Name)           | Signature | Date |

**CONTRACT No. R14038**

**The San Bernardino County Transportation Commission (SANBAG)  
1170 West 3<sup>rd</sup> Street, 2<sup>nd</sup> Floor  
San Bernardino, California 92410-1715  
DUNS 78-299-1368  
CFDA 20.507  
And**

**OMNITRANS  
1700 West 5<sup>th</sup> Street  
San Bernardino, California 92411**

**FEDERAL FUNDING SUBGRANTEE AGREEMENT  
FOR THE DOWNTOWN SAN BERNARDINO PASSENGER RAIL PROJECT**

**I. PARTIES AND TERM**

- A. This Federal Funding Subgrantee Agreement (“AGREEMENT”) is entered by and between SAN BERNARDINO COUNTY TRANSPORTATION COMMISSION (“SANBAG”) and OMNITRANS, a joint powers authority (“OMNITRANS”) (together, the “PARTIES”).
- B. The Term of this AGREEMENT will commence on the Effective Date and, terminate upon the completion of the disbursement of the funds obtained from the grants and the completion of all reports, updates or any other documentation or responsibility of OMNITRANS related to the grants or June 30, 2019, whichever is earlier.

**II. RECITALS**

- A. WHEREAS, the purpose of the AGREEMENT is to outline the roles and responsibilities related to administration of the federal funding grants for federal funds SANBAG has allocated to the Downtown San Bernardino Passenger Rail Project (“DSBPRP”).
- B. WHEREAS, SANBAG will use federal funding for construction of DSBPRP. The DSBPRP will extend Metrolink commuter passenger rail service

approximately one mile east from the current terminus at the existing San Bernardino Metrolink/Santa Fe Depot (“DEPOT”) located at 1170 West 3<sup>rd</sup> Street, San Bernardino to E Street in the City of San Bernardino. The project will consist of double tracking, relocation of station platforms at the DEPOT, construction of a pedestrian bridge, reconfiguration of the DEPOT parking as well as construction of two station platforms at the San Bernardino Transit Center; and

- C. WHEREAS, OMNITRANS, as the Federal Transit Administration grantee, pursuant to the terms of this Agreement, will submit a §5307 grant application to the Federal Transit Administration (“FTA”) for Fiscal Year 2014 with respect to obtaining funding for the DSBPRP; and
- D. WHEREAS, work that will be reimbursed under the terms of this Agreement may not be invoiced until the grant application is approved and funding is made available to OMNITRANS by the FTA; and
- E. WHEREAS, SANBAG will be considered the Subgrantee for purposes of the grant agreement, and SANBAG and its Contractors will be responsible for complying with all provisions of the grants and of applicable federal, state and local laws and regulations (“APPLICABLE LAW”) necessary in order to qualify for the funding for, and to undertake, the DSBPRP.

NOW THEREFORE, in consideration of the foregoing recitals and the terms and conditions herein, the parties agree as follows:

### **III. OMNITRANS’ RESPONSIBILITIES.**

- A. OMNITRANS, as the FTA Grantee, will submit a Fiscal Year 2014 §5307 grant application to the FTA with respect to obtaining funding for the

DSBPRP (\$12,000,000 in § 5307 funds and \$10,306,000 in Congestion Mitigation Air Quality funds).

- B. OMNITRANS will sign the grant documents resulting from the foregoing grant application submittal, upon the receipt of such assurances from SANBAG as OMNITRANS may reasonably require.
- C. OMNITRANS, as the FTA Grantee responsible for subgrantee oversight, will conduct site visits at least annually, and attend pertinent meetings related to the DSBPRP.
- D. OMNITRANS will reimburse SANBAG for the DSBPRP expenditures up to the amount available from any grant received for the DSBPRP, in conformity with the following procedure:
  - a. SANBAG shall submit a Disbursement Request to OMNITRANS by the fifteenth day of each month which consists of a written invoice to OMNITRANS specifying the amount requested to be disbursed, the purpose of the disbursement, and such additional supporting documentation and background information as OMNITRANS may reasonably require ( “Disbursement Request”), including the following:
    - 1. The total amount incurred and a statement that 80% of the total amount expended in each billing period is being billed to OMNITRANS to be paid with FTA funds;
    - 2. A detailed breakdown of work tasks completed; and
    - 3. A detailed breakdown of labor, material, direct, and indirect costs, including backup information such as time sheets, copies of checks, and copies of receipts, as necessary to satisfy FTA audit requirements.



- b. Each Disbursement Request shall be accompanied by a written certification by SANBAG's Director of Transit and Rail that such Disbursement will not constitute any violation of the terms of the grant, or of APPLICABLE LAW, and that SANBAG will use the Disbursement for the purpose indicated in the Disbursement Request.
- c. Within five (5) business days of the receipt of a Disbursement Request and accompanying certification, OMNITRANS shall notify SANBAG as to any additional supporting documentation and background information it requires.
- d. First week of the following month, after receiving a Disbursement Request, OMNITRANS shall: (i) disburse (including through electronic transfer of funds, if so requested, and if SANBAG provides the necessary information by the date of execution of this Agreement) all or that portion of the requested funds which it reasonably believes it can disburse without violating the terms of either the grant or APPLICABLE LAW; and (ii) if applicable, notify SANBAG why it reasonably believes that it is unable to disburse some or all of the requested funds without violating the terms of either the grant or APPLICABLE LAW.
- e. To the extent that the FTA advises OMNITRANS that a disbursement of funds would constitute a violation of the terms of either the grant or of APPLICABLE LAW, OMNITRANS shall have no obligation to disburse such funds. If OMNITRANS has any question as to whether any disbursement will be in violation of any provision of either the grant or of APPLICABLE LAW, notwithstanding SANBAG's certification, it shall be entitled to receive at SANBAG's expense, a legal opinion from competent counsel of its choice to resolve any such question.
- f. OMNITRANS shall have no liability to SANBAG for any refusal to disburse funds so long as OMNITRANS has acted in good faith and reasonable belief that such disbursement of funds would constitute a

violation of the terms of the grant or of APPLICABLE LAW. OMNITRANS, upon receipt of a legal opinion from counsel of OMNITRANS' choice supporting the disbursement, will release the requested funds within five (5) days.

- E. OMNITRANS shall prepare and submit to the FTA on a timely basis all required periodic reports and milestone updates, so long as it timely receives all necessary information from SANBAG.
- F. OMNITRANS shall conduct itself so that any aspect of OMNITRANS' participation in this Agreement and the actions required of it hereunder, will be in compliance with the terms of the grant which is being sought and with APPLICABLE LAW.
- G. OMNITRANS shall comply with all requirements of the FTA 2013 Master Agreement, found at <http://ftateamweb.fta.dot.gov/static/Agreements/2012-19-MASTER.pdf>, including submission to FTA on a quarterly basis, of reports that document the status of the DSBPRP's implementation progress, including task completion status and budget status.

#### **IV. SANBAG's RESPONSIBILITIES.**

- A. SANBAG has or will have, prior to the necessity of expending them, all funds necessary to provide the local matching funds required to receive a FTA §5307 grant (the "Match Obligation"). The approximate amount of the Match Obligation for the DSBPRP is \$5,576,500. SANBAG will submit evidence of the dollar amount and source(s) of the Match Obligation funds, as OMNITRANS may reasonably require. SANBAG may utilize its payment of staff salaries, benefits and expenses in administrative support for the DSBPRP to satisfy its Match Obligation.
- B. SANBAG shall provide to OMNITRANS all information that is reasonably needed for the §5307 grant application submission. Additionally, to the best

of SANBAG's knowledge, the submittal of the contemplated FTA §5307 application by OMNITRANS on behalf of the SANBAG will not constitute any violation of APPLICABLE LAW.

- C. SANBAG shall conduct itself so that all aspects of the DSBPRP, and any aspect of SANBAG's participation in this Agreement and the actions contemplated of it by this Agreement, will be in compliance with the terms of the grant and with APPLICABLE LAW, including laws or regulations related to planning studies.
- D. SANBAG will use the disbursements for the purposes indicated in its Disbursement Requests and will certify to OMNITRANS for each Disbursement Request, that to the best of its knowledge such Disbursement will not constitute any violation of either the provisions of the grant or of APPLICABLE LAW.
- E. SANBAG shall be responsible for all duties relative to the construction phase of the DSBPRP, including complying with all bidding and contract administration requirements relative to construction of a public works project, with all due diligence and in a skillful and competent manner. SANBAG represents and warrants to OMNITRANS that it and/or its contractors has or will have all licenses, permits, qualifications and approvals of whatever nature that are legally required to perform the work required to complete the DSBPRP. SANBAG further represents and warrants that it and/or its contractors shall keep in effect all such licenses, permits, and other approvals during the term of this Agreement.
- F. SANBAG and its contractor(s) shall comply with all requirements of the FTA 2013 Master Agreement, found at <http://ftateamweb.fta.dot.gov/static/Agreements/2012-19-MASTER.pdf>, including submission to OMNITRANS on a quarterly basis, of reports that

document the status of the DSBPRP's implementation progress, including task completion status, budget status, and adherence to project schedule.

- G. SANBAG and its contractor(s) shall agree 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.
- H. SANBAG and its contractor(s) shall agree to comply with 31 U.S.C. §1352(a) and "New Restrictions on Lobbying" 49 C.F.R. Part 20, and any amendments thereto, pertaining to the use of Federal funds for lobbying.
- I. SANBAG and its contractor(s) will provide Omnitrans the required signed Self-Certification Form by July 31 of each year, in accordance with FTA audit requirements.
- J. SANBAG and its contractor(s) will provide Omnitrans a copy of its annual single audit for each fiscal year, in accordance with FTA audit requirements.
- K. SANBAG shall notify OMNITRANS of any changes in the scope or description of the DSBPRP.
- L. SANBAG shall claim full ownership of the DSBPRP, and maintain and perform upkeep of all portions of the completed DSBPRP in accordance with FTA requirements.
- M. SANBAG shall provide to OMNITRANS all information needed for quarterly DSBPRP reporting and milestone updates in a timely manner to allow OMNITRANS enough time to prepare and submit to the FTA on a timely basis all required or requested FTA reports and updates, but in no event to be received later than fifteen (15) days prior to the required date of submission to the FTA of such report or update.

- N. SANBAG shall maintain all books, papers, records, and accounting records including but not limited to all direct and indirect costs allocated to the DSBPRP, cost proposals with backup data, and all other material relating to the DSBPRP. SANBAG 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 by SANBAG for DSBPRP expenses and costs, for auditing, inspection, and copying. Any contract entered into as a result of this Agreement, shall contain all of the provisions of this paragraph.
- O. SANBAG shall insure that all aspects of the DSBPRP and any aspect of SANBAG's participation in this Agreement and the actions contemplated of it by this Agreement will be in compliance with the terms of the grants which are being sought and with all APPLICABLE LAW.

## **V. MISCELLANEOUS**

- A. Designation of Authority. The CEO/General Manager of OMNITRANS, or his/her designee, shall exercise the rights of OMNITRANS under this Agreement including, without limit, accepting the certifications of SANBAG required under the terms of this Agreement. The Executive Director of SANBAG, or his/her designee, shall exercise the rights of SANBAG under this Agreement; however, any certifications of SANBAG required under the terms of this Agreement shall be provided only by the Executive Director or such other representative of SANBAG as specified by action of SANBAG's governing body.
- B. Insurance and Bonding Requirements. SANBAG shall require that any contractor providing services with respect to the DSBPRP obtain and maintain insurance of the type and in the amounts that OMNITRANS would require of its contractors performing similar services for a project similar to DSBPRP for the longer period of: 1) the duration of this Agreement; or 2)

for the duration of such contractor's involvement in the DSBPRP. All insurance policies shall name OMNITRANS and its directors, officers, employees and volunteers as additional named insureds, as appropriate for the type of policy. Further, SANBAG will require that any contractors provide bid, performance and payment bonds as are required by applicable Federal, State or local law.

- C. Mutual Indemnity. The PARTIES agree that each Party shall responsible for its own actions, and the actions of its officers, employees, agents, and volunteers in the performance of the construction of the DSBPRP and Agreement. Each Party shall indemnify, defend and hold harmless all other Parties and their officers, employees, agents, and volunteers from any cost, expense, fine, penalty, claim, demand, judgment, loss, injury and/or liability of any kind or nature, including personal injury, death or property damage, or regulatory violation(s) asserted or otherwise, whether in contract or in tort, that may arise from, directly or indirectly, or be in any way caused by any wrongful or negligent act, error, or omission of the indemnifying Party, its officers, employees, agents, or volunteers in the performance of the construction of the DSBPRP or this Agreement, including without limitation the payment of all consequential damages and reasonable attorneys' fees, expert witness fees and other related costs and expenses of defense. The sole exception to the indemnifying Party's obligation to indemnify shall be for acts of negligence or willful misconduct of the indemnified Party, its officers, employees, agents, or volunteers. This is a comparative negligence provision and each Party shall bear their own costs to the extent to which they are each negligent. The indemnifying Party shall defend, at its own cost, expense and risk, any and all such aforesaid suits, actions or other legal proceedings of every kind that may be brought or instituted against the indemnified Party, its officers, employees, agents, or volunteers. The indemnifying Party shall pay and satisfy any judgment, award or decree that may be rendered against the indemnified Party, its officers, employees,

agents, or volunteers in any such suits, actions or other legal proceedings. Each PARTIES obligation to indemnify shall not be restricted to the terms or limitations of its self-insurance coverage or to any insurance proceeds, if any, received.

D. Loss of Funding. In the event that none of the funding identified in Section III is available due to a complete loss in funding for the PROJECT, OMNITRANS will have no obligation to make payment to SANBAG for any services performed.

E. Legal Fees. The PARTIES shall be responsible for all legal fees associated with this agreement and the DSBPRP.

F. Force Majeure.

a. An "Uncontrollable Force" (force majeure) is any occurrence beyond the control of a Party which causes that Party to be unable to perform its obligations hereunder and which a Party has been unable to overcome by the exercise of due diligence, including but not limited to, flood, drought, earthquake, storm, fire, pestilence, lightning and other natural catastrophes, epidemic, war, riot, civil disturbance or disobedience, strike, labor dispute, action or inaction of legislative bodies, judicial bodies, or regulatory agencies, or other proper authority, excepting the governing body of the Party asserting the Uncontrollable Force, which may conflict with the terms of this Agreement.

b. Subject to Section G (a), neither Party shall be considered to be in default in the performance of any of the agreements contained in this Agreement when and to the extent failure of performance shall be caused by an Uncontrollable Force.

c. If either Party because of an Uncontrollable Force is rendered wholly or partly unable to perform its obligations under this Agreement, the

Party shall be excused from whatever performance is affected by the Uncontrollable Force to the extent so affected provided that: (i) the nonperforming Party within one week after the occurrence of the Uncontrollable Force, gives the other Party written notice describing the particulars of the occurrence; (ii) the suspension of performance is of no greater scope and of no longer duration than is required by the Uncontrollable Force; (iii) the nonperforming Party uses its best efforts to remedy its inability to perform (this subsection shall not require the settlement of any strike, walkout, lockout, other labor disputes or any other dispute on terms which, in the sole judgment of the Party involved in the dispute, are contrary to its interest, it being understood and agreed that the settlement of any disputes shall be at the sole discretion of the Party having the difficulty); and (iv) when the nonperforming Party is able to resume performance of its obligations under this Agreement, that Party shall give the other Party written notice to that effect.

d. If either Party's ability to perform cannot be corrected when the Uncontrollable Force is caused by the actions or inactions of legislative bodies, judicial bodies, or regulatory agencies or other proper authority, the Parties agree to meet in good faith to determine if this Agreement may be amended to comply with the legal or regulatory change which caused the nonperformance of the Parties.

- G. Authorization. OMNITRANS represents that the terms and execution of this Agreement have been duly authorized by OMNITRANS' governing Board and that the persons signing this Agreement on its behalf have the necessary authority to do so. SANBAG represents that the terms and execution of this Agreement have been duly authorized by SANBAG's governing body and that the persons signing this Agreement on its behalf have the necessary authority to do so.



- H. Headings. All paragraph headings throughout this Agreement are for convenience of reference only.
- I. Additional Documents. Each of the Parties shall execute such additional documents as the other Party may reasonably request in order to carry out or implement any of the provisions of this Agreement, which request shall not be unreasonably refused.
- J. Litigation Expenses. If after this Agreement is in effect, any action or proceeding of any nature shall be commenced seeking to enforce, construe or rescind, or otherwise relating to this Agreement, the prevailing party in any such action or proceeding shall be entitled to recover from the other, in addition to all other sums recoverable, its reasonable litigation expenses, including reasonable attorney's fees, expert witness fees and other related expenses and costs.
- K. Entire Agreement. This Agreement constitutes the sole and entire agreement between the parties hereto, and no modification, alteration or amendment shall be binding unless expressed in writing signed by the Parties. No representation, warranty, covenant, inducement or obligation not included in this Agreement shall be binding, and this Agreement supersedes all prior negotiations, agreements, arrangements and undertakings among the Parties hereto with respect to the matters set forth in this Agreement. It is the intent of the Parties that this Agreement is an integrated agreement and that no evidence may be introduced to vary in any manner its terms and conditions.
- L. Accuracy of Representations. As of the date each signed this Agreement, the representations herein of both Parties are true and correct in all material respects.

M. Originals and Copies. This Agreement with the Exhibits attached hereto may be executed in counterparts, each of which shall be deemed an original. In any action or proceeding, an exact and correct copy may be used in lieu of an original.

N. Construction of Agreement.

a. Equal Construction. This Agreement shall not be construed in favor of or against a Party by reason of participation or lack of participation of that Party or its counsel in the drafting of this Agreement. This Agreement shall be interpreted and construed as drafted by all Parties with equal participation in the drafting hereof.

b. Internal Consistency. The Parties intend that the terms of this Agreement are all internally consistent with each other and should be construed to that end.

O. Notices. All notices hereunder shall be in writing and shall be effective upon receipt. All notices and communications, including invoices, between the Parties to this Agreement shall be either personally delivered, sent by first-class mail, return receipt requested, or sent by overnight express delivery service, postage or other charges fully prepaid, as follows:

|                                                                                          |                                                                                                                                                                                  |
|------------------------------------------------------------------------------------------|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| OMNITRANS<br>1700 West Fifth Street<br>San Bernardino, CA 92411<br>Attention: Anna Rahtz | SANBAG<br>San Bernardino Associated Governments<br>1170 W. 3 <sup>rd</sup> Street, 2 <sup>nd</sup> Floor<br>San Bernardino, CA 92410-1715<br>Attention: Mitchell A. Alderman, PE |
|------------------------------------------------------------------------------------------|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|

P. No Third Party Beneficiaries. There are no third party beneficiaries to this Agreement. Other than the Parties, no person, political subdivision, agency, board, department, division or commission shall be entitled to bring an administrative or judicial proceeding to enforce or interpret its terms.

Q. Amendments. In the event that the PARTIES determine that the provisions of the AGREEMENT should be altered, the PARTIES may execute an amendment to add, delete, or amend any provisions of this AGREEMENT. All such amendments must be in the form of a written instrument signed by the original signatories of the AGREEMENT, or their successors or authorized designees.

-----SIGNATURES ON FOLLOWING PAGE-----

In witness whereof the PARTIES have executed this AGREEMENT on the dates written below and this AGREEMENT is effective upon execution of the AGREEMENT by SANBAG (“Effective Date”).

OMNITRANS

SANBAG

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

P. Scott Graham, Interim CEO/General  
Manager

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

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

W.E. Jahn, SANBAG Board President

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

APPROVED AS TO FORM:

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

| Carol Greene,  
OMNITRANS Legal Counsel

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

APPROVED AS TO FORM:

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

Eileen Monaghan Teichert,  
SANBAG General Counsel

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

ITEM # E5

**DATE:** November 12, 2013

**TO:** Committee Chair Patrick Morris and  
Members of the Administrative and Finance Committee

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

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

**SUBJECT:** **MEMORANDUM OF UNDERSTANDING FOR SECTION 5339 BUS  
AND BUS FACILITIES FORMULA GRANT PROGRAM**

**FORM MOTION**

Recommend the Board of Directors authorize the Interim CEO/General Manager to execute a Memorandum of Understanding (MOU) between Omnitrans and San Bernardino Associated Governments (SANBAG) for Section 5339 Bus and Bus Facilities Formula Grants Program.

*Omnitrans' legal counsel reviewed and approved the agreement.*

**BACKGROUND**

Pursuant to the new two-year transportation reauthorization bill that was signed into law on July 6, 2012, the Moving Ahead for Progress in the 21<sup>st</sup> Century Act (MAP-21), funding is authorized for the Section 5339 Bus and Bus Facilities Formula Grants Program for the Federal Fiscal Year (FFY) 2012/2013 and FFY 2013/2014. The funding can be used for the purchase of buses or for bus facility projects.

SANBAG, acting in its capacity as the San Bernardino County Transportation Commission, is responsible for identifying any and all eligible subrecipients of Section 5339 Program funds within the county, and sub-allocating the funds among eligible subrecipients. SANBAG has identified Omnitrans as the only eligible subrecipient because these funds are only available to fixed route operators in the Valley Subarea.

The Memorandum of Understanding clarifies the roles and responsibilities of all parties with regard to administration and implementation of the Section 5339 Program. The MOU has no direct financial impact, as it is separate from the sub-allocation of funds (estimated at \$1.7 million in FFY 2012/2013 and \$1.7 million in FFY 2013/2014).

**CONCLUSION**

By authorizing execution of the MOU, Omnitrans will be able to use the Section 5339 grant funds for buses and/or bus facilities.

PSG:AR

Attachment

**MEMORANDUM OF UNDERSTANDING No. C14041**  
**BETWEEN**  
**SAN BERNARDINO ASSOCIATED GOVERNMENTS**  
**AND**  
**OMNITRANS**  
**FOR THE**  
**SECTION 5339 BUS AND BUS FACILITIES GRANTS PROGRAM**

This Memorandum of Understanding (MOU or Agreement) is entered into on the Effective Date by and between San Bernardino Associated Governments, acting in its capacity as the San Bernardino County Transportation Commission (SANBAG) and Omnitrans, a California Joint Powers Authority, (collectively referred to as “Parties”) with respect to the following facts.

**RECITALS**

**WHEREAS**, the Southern California Association of Governments (SCAG) is a joint powers agency formed pursuant to Title 1, Division 7, Chapter 5 of the California Government Code (Section 6500 et seq.) and is the Metropolitan Planning Organization (MPO) recognized under 23 United States Code (U.S.C.) Section 134 and 49 U.S.C. Section 5303;

**WHEREAS**, SCAG is responsible for developing Regional Transportation Plans and Federal Transportation Improvement Programs (FTIPs), pursuant to 23 U.S.C. Section 134 et seq., 49 U.S.C. Section 5303 et seq., California Government Code Section 65080 et seq., and California Public Utilities Code Section 130300 et seq., and applicable regulations and guidance;

**WHEREAS**, SCAG is the Designated Recipient (as defined in 49 U.S.C Section 5302(4)) of Federal Transit Administration (FTA) Urbanized Area Formula Grants under 49 U.S.C. Section 5307 (Section 5307 Program) for the following large urbanized areas (UZAs) with populations of 200,000 or more (according to the latest U.S. Census) in San Bernardino County: Los Angeles-Long Beach-Anaheim (UZA 2), Riverside-San Bernardino (UZA 22);

**WHEREAS**, San Bernardino Associated Governments, acting in its capacity as the San Bernardino County Transportation Commission, (referred to herein as a “CTC” or “SANBAG”) is responsible for developing short-range Transportation Improvement Programs (TIPs) for San Bernardino County in coordination with SCAG and the municipal transit operators (pursuant to California Public Utilities Code Section 130303 et seq.), and for submitting its TIPs to SCAG for recommended inclusion in the FTIP;

**WHEREAS**, pursuant to the new two-year transportation reauthorization bill that was signed into law on July 6, 2012, the Moving Ahead for Progress in the 21st Century Act (MAP-21; P.L. 112-141), funding is authorized for the 49 U.S.C Section 5339 Bus and Bus Facilities Formula Grants Program (Section 5339 Program);

**WHEREAS**, the Federal Fiscal Year (FFY) is the accounting period for the federal government which begins on October 1 and ends on September 30;

**WHEREAS**, MAP-21 authorizes funding for the Section 5339 Program for FFY 2012/2013 and FFY 2013/14 for capital projects to replace, rehabilitate, and purchase buses and related equipment, as well as to construct bus-related facilities;

**WHEREAS**, the Section 5339 Program replaces the FTA Bus and Bus Facilities discretionary grants program previously under 49 U.S.C. Section 5309(b)(3);

**WHEREAS**, FTA guidance specifies that the Designated Recipient of Section 5339 Program funds for large UZAs shall be the same as the Designated Recipient of Section 5307 Program funds for such areas;

**WHEREAS**, SCAG, as the Designated Recipient of Section 5307 funds is also the Designated Recipient of 5339 Program funds for large UZAs identified herein within the SCAG region, and must apply to FTA on behalf of eligible Subrecipients for allocations of Section 5339 Program funds;

**WHEREAS**, SCAG is further responsible for administering Section 5339 Program funds allocated to Subrecipients;

**WHEREAS**, the SANBAG is responsible for identifying any and all eligible Subrecipients of Section 5339 Program funds in San Bernardino County;

**WHEREAS**, the SANBAG is further responsible for sub-allocating Section 5339 Program funds among eligible Subrecipients identified by SANBAG within the county consistent with the Section 5339 Program formula, and notifying SCAG and Subrecipients of such sub-allocations and changes to such sub-allocations;

**WHEREAS**, Omnitrans is an eligible recipient identified by SANBAG within its county consistent with the Section 5339 Program formula;

**WHEREAS**, SANBAG and all other Subrecipients of Section 5339 Program funds are responsible for compliance with all applicable grant requirements set forth in the FTA Master Agreement and annual FTA Certifications and Assurances;

**WHEREAS**, SCAG shall prepare the allocations of Section 5339 Program funds apportioned by FTA for large UZAs identified herein that do not expand over more than one county, and the inter-county allocations of Section 5339 Program funds apportioned by FTA for large UZAs identified herein that expand over more than one county (County and Inter-county Allocations). The County and Inter-county Allocations shall be consistent with the formula set forth in subparagraph (d) of 49 U.S.C Section 5339;

**WHEREAS**, SCAG shall include with the Notice of Final County and Inter-County Allocations to SANBAG, the "Grant Certification Form," attached hereto and incorporated herein as Exhibit "A." The Grant Certification Form includes as attachments, the FTA Certifications and



Assurances (Attachment A-1) in addition to the Opt-Out Form (Attachment A-2) as described in Section 2.2;

**WHEREAS**, upon receipt of the Notices of Sub-allocations from SANBAG as set forth in paragraph 2 of Section 2.1 of this Agreement, SCAG shall transmit “funding split” letters notifying FTA of the sub-allocations of 5339 Program funds to Subrecipients in UZAs identified herein;

**WHEREAS**, SCAG shall issue a “Call for Applications” at least biannually setting forth the application process and deadline for Subrecipients to submit Section 5339 Program grant applications to SCAG. SCAG shall combine and submit Subrecipient grant applications received by such deadline into FTA’s Electronic Grant Management System in addition to submitting quarterly Milestones/Progress Reports and Federal Financial Reports to FTA; submitting Final/Close-out Reports to FTA; drawing-down grant funds on a reimbursement-basis, upon receipt and approval of a Subrecipient’s invoice, via FTA’s Electronic Clearing House Operation (ECHO) System; and paying Subrecipients’ approved invoices pursuant to Section 2.2, paragraph 5, of this Agreement;

**WHEREAS**, upon receipt of grant applications submitted to SCAG by the applicable deadline (set forth in SCAG’s Call for Applications), SCAG shall submit grant applications directly to FTA, contingent upon SCAG’s receipt of the following required documentation: the Grant Certification Form (Exhibit A) signed by Omnitrans’ duly authorized representative; the FFY 2013 FTA Certifications and Assurances (Attachment A-1), attached to the Grant Certification Form or subsequent annual FTA Certifications and Assurances (published in the Federal Register), as applicable, signed by Omnitrans’ duly authorized representative and its attorney; and any further documentation requested by SCAG or FTA to ensure compliance with the grant requirements;

**WHEREAS**, SCAG shall track grant activity of Section 5339 Program funds at UZA levels and share the balances with Subrecipients, CTCs, and FTA upon request or as needed, but not less frequently than once per quarter of the FFY;

**WHEREAS**, all references to “days” shall mean calendar days, unless otherwise specified, in notification periods set forth herein; and

**WHEREAS**, this MOU is entered into by SANBAG and Omnitrans in order to clarify the roles and responsibilities of the parties with regard to implementation of the Section 5339 Program, and to be consistent with roles and responsibilities of SANBAG, SCAG and Subrecipients set forth in the SCAG/SANBAG Memorandum of Understanding (MOU No. M-016-13).

**NOW, THEREFORE, THE PARTIES HEREBY MUTUALLY AGREE AS FOLLOWS:**

## **1. Incorporation of Recitals**

- 1.1.** The foregoing Recitals are hereby incorporated into and made part of this Agreement.

## 2. Roles and Responsibilities

### 2.1. Role and Responsibilities of SANBAG

- 1) Review of Proposed County and Inter-County Allocations: Upon receipt from SCAG of the Notice of Proposed County and Inter-County Allocations, SANBAG shall review and provide comments to SCAG as needed within thirty (30) days.
- 2) Sub-Allocations: SANBAG shall identify eligible Subrecipients of Section 5339 Program funds within San Bernardino County and shall sub-allocate funds consistent with the formula set forth in U.S.C Section 5339(d), pursuant to the following process:
  - a. SANBAG shall provide a "Notice of Sub-allocations" to SCAG and to Omnitrans, within thirty (30) days of receiving the Notice of Final County and Inter-County Allocations from SCAG. The Notice of Sub-allocations shall include but is not limited to the following information, and all available funds shall be sub-allocated (without a remaining balance):
    - i. Full name of the Subrecipient,
    - ii. Dollar amounts of sub-allocations to each Subrecipient,
    - iii. FFY of funding sub-allocations, and
    - iv. Any other information requested by FTA.
  - b. SANBAG shall be responsible for coordinating and obtaining signed Certification Forms or Opt-Out Forms as described in Section 2.2, paragraphs 9 and 10, of this Agreement, from all eligible Subrecipients identified by SANBAG in San Bernardino County, and ensuring that such timely submitted forms are submitted to SCAG prior to SCAG's submittal of the grant applications.
- 3) Funding Exchanges: SANBAG shall be responsible for managing and approving any exchanges of such funds with other federal, state, and/or local funds within the same UZA, in accordance with applicable federal, state and/or local requirements. SANBAG shall further notify SCAG of any and all revised sub-allocations within fifteen (15) days from the date of such revisions, to reflect any funding exchanges or in the event that any identified eligible Subrecipient opts-out of receiving its sub-allocation pursuant to Section 2.2, paragraph 10. SANBAG further agrees to provide SCAG with documentation of any exchanges of funds, upon request of SCAG or FTA.
- 4) Short-range Programming: SANBAG shall be responsible for programming eligible projects in its short-range TIPs that are submitted to SCAG for recommended inclusion in the FTIP.

## 2.2. Role and Responsibilities of Omnitrans

- 1) Definition of "Subrecipient": For purposes of this Agreement, "Subrecipient" shall mean an eligible public agency or private nonprofit organization engaged in public transportation and identified by SANBAG as serving and being located in San Bernardino County, to receive a sub-allocation of Section 5339 Program funds awarded by FTA, contingent upon meeting federal requirements and requirements set forth in this Section 2.2. Omnitrans agree to submit any grant applications for this program to SCAG in accordance with the Call for Applications process established by SCAG.
- 2) Certifications and Assurances: By signing this Agreement Omnitrans hereby agrees to accept responsibilities and comply with the requirements stated in this Agreement including but not limited to this Section 2.2.
- 3) Applications and Grant Management Process: Omnitrans is responsible for submitting grant applications through SCAG's Call for Applications process to receive Section 5339 Program funds awarded by FTA to implement eligible, capital projects, contingent upon meeting federal requirements and requirements set forth in this Section 2.2. Omnitrans shall not submit grant applications on behalf of sub-tier recipients. All grant applications for projects eligible for funding as described herein, must be submitted by Omnitrans through SCAG's Call for Applications process. All requested revisions or amendments to approved applications must be submitted to SCAG.
- 4) Grant Requirements: The responsibilities of Omnitrans include, but are not limited to, the following:
  - a. FTA Master Agreement: Omnitrans agrees to comply in the same capacity as the "Recipient" with applicable terms and conditions of the FTA Master Agreement, FTA MA (19) dated October 1, 2012 ([www.fta.dot.gov/documents/19-Master.pdf](http://www.fta.dot.gov/documents/19-Master.pdf)) and any agreement which supersedes and replaces it.
  - b. Annual FTA Certifications and Assurances: By signing the FFY 2013 FTA Certifications and Assurances, attached hereto and incorporated herein as Attachment "A-1," Omnitrans certifies in the same capacity as the "Applicant" that it shall comply with the applicable annual FTA Certifications and Assurances (published annually in the Federal Register). Upon publication of the FFY 2014 FTA Certifications and Assurances form, and for each additional FFY for which Congress authorizes and appropriates Section 5339 Program funds, Omnitrans shall sign and submit a copy of such form to SCAG prior to applying for any of such funds.
  - c. Documentation: Omnitrans shall submit to SCAG any documentation reasonably requested by SCAG to assure the validity of all above-referenced Certifications and Assurances.

d. Transit Asset Management Plans: Omnitrans agrees to the following:

- i. It will develop a Transit Asset Management Plan that complies with:
  - a) 49 U.S.C. Section 5326 et seq. and Section 5339(a)(4), as amended by MAP-21;
  - b) Federal regulations pertaining to the National Transit Asset Management System required to be issued by 49 U.S.C. Section 5326(d), as amended by MAP-21;
  - c) Performance Measures and Targets required to be issued by 49 U.S.C. Section 5326(c)(1); and
  - d) Other applicable Federal laws and regulations
- ii. It will develop a Transit Asset Management Plan that is consistent with Federal guidance developed or to be developed to implement 49 USC Section 5326, as amended by MAP-21.
- iii. It will provide progress and performance reports as required by 49 U.S.C. Section 5326(c)(3), as amended by MAP-21.
- iv. Transit Asset Management Plans shall at minimum include capital asset inventories and condition assessments, and investment prioritization. Omnitrans shall further report on the condition of its system and any change in condition since the last report and submit such reports into the FTA's National Transit Database (NTD). Omnitrans shall submit to SCAG performance measures and targets adopted as part of such plans, and any other related documentation requested by SCAG.

5) Invoices. Upon approval of SCAG's grant applications by FTA and commencement of approved projects under the Section 5339 Program, Omnitrans shall submit invoices to SCAG for reimbursement of incurred, eligible and allowable grant program costs. Such costs shall comply with all applicable federal cost principles and other related requirements, and shall serve as the only costs eligible for reimbursement by SCAG. Upon approval of invoices by SCAG, SCAG shall draw-down funds on a reimbursement basis from FTA's ECHO System, and shall pay Omnitrans upon receipt of payment by FTA.

a. Invoices shall comply with the Invoice Format set forth in Exhibit "B," attached hereto and incorporated herein by this reference. The required, local cash match (20%) shall be deducted by Omnitrans and reflected in each Invoice. The Authorized Representative of Omnitrans agrees to sign the Cash Match Certification Statement on each Invoice. All invoices shall be submitted at least quarterly and no more frequently than monthly, and contain the following information:

- i. Name of Subrecipient expending the Section 5339 Program funds;

- ii. UZA name and number for which the project funds are being reported;
    - iii. A listing of the FTA grant number(s) being reported, with their respective project budget line item (ALI Codes), project category, approved FTA amount, and description of the funded projects;
    - iv. Invoice period and corresponding Progress Report in narrative format; and
    - v. Explanation if there is no activity.
  - b. All invoices shall be submitted by Omnitrans to the following email address: [AccountsPayable@scag.ca.gov](mailto:AccountsPayable@scag.ca.gov).
  - c. SCAG shall maintain final approval authority of invoices submitted under this Agreement.
- 6) Quarterly Reports: Omnitrans shall submit Quarterly Reports to SCAG which contain the following information, and any additional information as may be required by SCAG or FTA:
- a. Name of Subrecipient expending the Section 5339 Program funds;
  - b. UZA name and number for which the funds are being reported;
  - c. A listing of the FTA grant number(s) being reported, with their respective project budget line item (ALI Codes), project category, approved FTA amount, and description of the funded projects; and
  - d. Federal Fiscal Year (FFY) Quarterly Milestones/Progress Reports in a narrative format.

Quarterly Reports shall be submitted no later than fifteen (15) days after each FFY quarter has ended, to the attention of Alfonso Hernandez (or other person identified by SCAG), SCAG Grants Administrator. SCAG shall promptly notify all parties in the event of a change in the person identified in this paragraph as the recipient of the Quarterly Reports.

- 7) Audits: In accordance with the FTA Master Agreement and applicable federal law and regulations, Omnitrans agrees to retain and require its contractors and other third party participants to retain complete and readily accessible records related in whole or part to the Section 5339 Program ("Records"). Records required to be retained include but are not limited to data, documents, reports, statistics, leases, third party contracts or agreements, arrangements, and other supporting materials related to those records.
- a. Omnitrans shall retain Records for the period required under the FTA Master Agreement, and shall make the Records available for inspection and audit by

representatives of SCAG, the State, or the Federal Government upon request. Copies of the Records shall be made and furnished to SCAG upon request at no cost to SCAG.

- b. Any costs for which Omnitrans receives payment that is determined by a subsequent audit or other review by SCAG, State or Federal authorities to be unallowable under, but not limited to, OMB Circular A-87; 48 CFR, Chapter 1, Part 31; or 49 CFR, Part 18, are to be repaid by Omnitrans within thirty (30) days of Omnitrans receiving notice of audit findings and a written demand for reimbursement from SCAG. Should Omnitrans fail to reimburse unallowable costs due SCAG within thirty (30) days of demand, or within such other period as may be agreed between both parties hereto, SCAG is authorized to withhold future payments due to Omnitrans.
- 8) Reports and Forms: Upon approval of grant applications by FTA, as applicable, Omnitrans shall submit to SCAG the following reports and forms which relate to the Section 5339 Program:
- a. Quarterly Milestones/Progress Reports during the current FFY;
  - b. Disadvantaged Business Enterprise (DBE) reports and all other reports and documentation required by FTA;
  - c. Final/Close-out Reports;
  - d. IRS W-9 Form;
  - e. Banking information which includes name of the financial institute, ACH routing number, and account number; and
  - f. Any other documents or reports requested by FTA or SCAG.
- 9) Grant Certification Form: Omnitrans shall execute and submit to SCAG, in advance of submitting a grant application for Section 5339 Program funds to SCAG and no later than fifteen (15) days after receiving a Notice of Sub-allocations from SANBAG, a signed Grant Certification Form (Exhibit A) including a signed FFY 2013 FTA Certifications and Assurances (Attachment A-1). Upon publication of the FFY 2014 FTA Certifications and Assurances, and for each additional FFY for which Congress authorizes and appropriates Section 5339 Program funds, Omnitrans shall sign and submit a copy to SCAG of the applicable FTA Certifications and Assurances form, prior to applying for such funds. SCAG shall not allocate and SANBAG shall not sub-allocate, as applicable, any Section 5339 Program funds to a Subrecipient who has not executed a Grant Certification Form and applicable FTA Certifications and Assurances form.
- 10) Opt-Out Option: In the event Omnitrans elects not to apply for Section 5339 Program funds and does not execute the Grant Certification Form described in

paragraph 9 of this Section 2.2, Omnitrans may sign and return the Opt-Out Form (Attachment A-2). Should Omnitrans elect to opt-out, as described herein, Omnitrans shall sign and return to SCAG's Grants Administrator the required Opt-Out Form within thirty (30) days of receiving the Notice of Sub-Allocations from SANBAG. Upon receipt by SCAG of the Opt-Out Form signed by Omnitrans' duly authorized representative or upon the lapse of the thirty (30)-day notification period, SCAG and SANBAG shall initiate the process to sub-allocate the applicable Section 5339 Program funds among other eligible Subrecipients within the SCAG regional boundaries and according to the statutory formulas set forth under 49 U.S.C. Section 5339, as applicable and as amended from time to time. In any event, this Agreement shall remain fully binding and enforceable among the signatory parties.

### **3. General Provisions**

#### **3.1. Term of Agreement:**

This Agreement shall commence on the Effective Date of the Agreement and continue in full force unless a party withdraws from this Agreement or this Agreement is terminated in accordance with Section 3.7.

#### **3.2. Drafting:**

This Agreement has been prepared, reviewed and endorsed by the Parties.

#### **3.3. Amendments:**

This Agreement may be amended only by the execution by the Parties of a written amendment.

#### **3.4. Jurisdiction and Venue:**

This Agreement shall be deemed an Agreement under the laws of the State of California and for all purposes shall be interpreted in accordance with such laws. All parties hereby agree and consent to the exclusive jurisdiction of the courts of the State of California and that the venue of any action brought hereunder shall be in San Bernardino County, California.

#### **3.5. Non-assignment:**

No party may assign this Agreement, or any part thereof, without the written consent of each party to this Agreement.

#### **3.6. Indemnity:**

Omnitrans agrees to indemnify, defend and hold harmless SANBAG and its officers, agents and employees from and against any and all claims, demands, costs, or liability arising from or connected with intentional or negligent acts, errors or omissions, any violations of law, or any violations of the terms and conditions of this Agreement (including non-compliance with the FTA Master Agreement and annual FTA Certifications and Assurances) attributable to performance of the responsibilities as set forth in this MOU by Omnitrans or its officers, agents, employees, contractors and subcontractors, except to the extent caused by the negligence or willful misconduct of SANBAG.

### **3.7. Withdrawal and Termination:**

- 1) Any party may withdraw from this Agreement upon thirty (30) days written notice to the other party, provided that the notice of withdrawal sets forth the effective date of withdrawal and the reason for withdrawal. Additionally, the notice of withdrawal shall provide that the Parties meet during the period prior to the effective date of withdrawal to try to resolve any dispute, if applicable. In the event that the withdrawal is for cause, the withdrawal shall not be effective if the party cures the default in its performance within the thirty (30) day period.
- 2) SANBAG shall notify SCAG of the withdrawal from this Agreement of Omnitrans and shall administer and sub-allocate Section 5339 Program funds to eligible Subrecipients, as applicable.
- 3) SANBAG may terminate this Agreement at any time, upon thirty (30) days written notice to Omnitrans provided that the notice of termination sets forth the effective date of termination. Such termination clause may be invoked by SANBAG in the following circumstances including but not limited to: in the event that the Section 5339 Program is no longer funded by Congress and the fund balances have been exhausted, or in the event that SCAG is no longer a designated recipient of Section 5339 Program funds for a UZA or UZAs identified herein and SANBAG is no longer eligible to sub-allocate Section 5339 funds.

### **3.8. Disputes:**

Except as otherwise provided in this Agreement, any dispute arising under this Agreement which is not disposed of by mutual agreement shall be decided through binding arbitration by a three (3) member panel in accordance with the rules of the American Arbitration Association.

### **3.9. Counterparts:**

This Agreement may be executed in counterparts, each of which shall be an original, but all of which shall constitute one instrument.

### **3.10. Contact List:**

The names and contact information for the grants administrator representing each party are identified in the Grants Administrator Contacts List, attached hereto and incorporated herein as Exhibit "C."

### **3.11. Notice:**

Any notice or notices required or permitted to be given pursuant to this Agreement may be personally served on the other party by the party giving such notice, or may be served by certified mail, return receipt requested, to the names and addresses attached hereto and incorporated herein as Exhibit "D."



**3.12. Entire Agreement:**

This Agreement contains the entire agreement and understanding of the Parties relating to the subject matter hereof, and the Parties have made no agreement or representation relating to the subject matter hereof which are not set forth herein.

**3.13 Effective Date:**

This Agreement is effective on the date executed by SANBAG.

IN WITNESS WHEREOF, the Parties hereto have caused this Agreement to be executed by their duly authorized representatives on the dates set forth below.

**San Bernardino Associated Governments**

By: \_\_\_\_\_  
Ray Wolfe  
Executive Director

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

Approved as to Form:

\_\_\_\_\_  
Eileen Monaghan Teichert  
General Counsel

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

**Omnitrans**

By: \_\_\_\_\_  
Scott Graham  
Chief Executive Officer

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

Approved as to Form:

By: \_\_\_\_\_  
(Insert Name Here)  
General Counsel

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

## **EXHIBIT A**

### **GRANT CERTIFICATION FORM**

#### **Section 5339 Bus and Bus Facilities Grants Program (Section 5339 Program)**

This Grant Certification Form is required to be signed by all Subrecipients of Section 5339 Program Funds, pursuant to the Memorandum of Understanding among the Southern California Association of Governments (SCAG) and County Transportation Commissions for the Section 5339 Bus and Bus Facilities Formula Grants Program.

1. **Definition of "Subrecipient":** For purposes of administering the Section 5339 Program, "Subrecipient" shall mean an eligible public agency or private nonprofit organization engaged in public transportation and identified by the CTC serving the county in which such public entity or nonprofit organization is located, to receive a sub-allocation of Section 5339 Program funds awarded by FTA, contingent upon meeting federal requirements and requirements set forth in Section 2.3 of MOU No. M-016-13. "Subrecipients" may include CTCs. All Subrecipients shall agree to submit grant applications for this program to SCAG in accordance with the Call for Applications process established by SCAG.
2. **Applications and Grant Management Process:** Subrecipients are responsible for submitting grant applications through SCAG's Call for Applications process to receive Section 5339 Program funds awarded by FTA to implement eligible, capital projects, contingent upon meeting federal requirements and requirements set forth in Section 2.3 of MOU No. M-016-13. Subrecipients shall not submit grant applications on behalf of sub-tier recipients. All grant applications for projects eligible for funding as described herein, must be submitted by Subrecipients through SCAG's Call for Applications process.
3. **Grant Requirements:** The responsibilities of Subrecipients include, but are not limited to, the following:
  - a. **FTA Master Agreement:** Each Subrecipient agrees to comply in the same capacity as the "Recipient" with applicable terms and conditions of the FTA Master Agreement, FTA MA (19) dated October 1, 2012 ([www.fta.dot.gov/documents/19-Master.pdf](http://www.fta.dot.gov/documents/19-Master.pdf)) and any agreement which supersedes and replaces it.
  - b. **Annual FTA Certifications and Assurances:** The Subrecipient agrees to sign the Federal Fiscal Year (FFY) 2013 FTA Certifications and Assurances, attached hereto and incorporated herein as Attachment "A-1." Each Subrecipient certifies in the same capacity as the "Applicant" that it shall comply with the applicable annual FTA Certifications and Assurances (published annually in the Federal Register). Upon publication of the FFY 2014 FTA Certifications and Assurances, and for each additional FFY for which Congress authorizes and appropriates Section 5339 Program funds, each Subrecipient shall sign and submit a copy of such form to SCAG prior to applying for any of such funds.
  - c. **Documentation:** Each Subrecipient shall submit to SCAG any documentation reasonably requested by SCAG to assure the validity of all above-referenced FTA Certifications and Assurances.
  - d. **Transit Asset Management Plans:** Each Subrecipient shall agree to the following:
    - i. It will develop a Transit Asset Management Plan that complies with:
      1. 49 U.S.C. Section 5326 et seq. and Section 5339(a)(4), as amended by MAP-21;
      2. Federal regulations pertaining to the National Transit Asset Management System required to be issued by 49 U.S.C. Section 5326(d), as amended by MAP-21;
      3. Performance Measures and Targets required to be issued by 49 U.S.C. Section 5326(c)(1); and
      4. Other applicable Federal laws and regulations;
    - ii. It will develop a Transit Asset Management Plan that is consistent with Federal guidance developed or to be developed to implement 49 USC Section 5326, as amended by MAP-21.
    - iii. It will provide progress and performance reports as required by 49 U.S.C. Section 5326(c)(3), as amended by MAP-21.
    - iv. Transit Asset Management Plans shall at minimum include capital asset inventories and condition assessments, and investment prioritization. Subrecipients shall further report on the condition of their system and any change in condition since the last report and submit such reports into the FTA's National Transit Database (NTD). The Subrecipient shall submit to SCAG performance

measures and targets adopted as part of such plans, and any other related documentation requested by SCAG.

4. Invoices. Upon approval of SCAG's grant applications by FTA and commencement of approved projects under the Section 5339 Program, Subrecipients shall submit invoices to SCAG for reimbursement of incurred, eligible and allowable grant program costs. Such costs shall comply with all applicable federal cost principles and other related requirements, and shall serve as the only costs eligible for reimbursement by SCAG. Upon approval of invoices by SCAG, SCAG shall draw-down funds on a reimbursement basis from FTA's ECHO System, and shall pay the Subrecipient upon receipt of payment by FTA.
  - a. Invoices shall comply with the Invoice Format set forth in the Call for Applications instructions which shall be provided by SCAG. The required, local cash match (20%) shall be deducted by the Subrecipient and reflected in each Invoice. The Authorized Representative of each Subrecipient agrees to sign the Cash Match Certification Statement on each Invoice. All invoices shall be submitted at least quarterly and no more frequently than monthly, and contain the following information:
    - i. Name of Subrecipient expending the Section 5339 Program funds;
    - ii. UZA name and number for which the project funds are being reported;
    - iii. A listing of the FTA grant number(s) being reported, with their respective project budget line item (ALI Codes), project category, approved FTA amount, and description of the funded projects;
    - iv. Invoice period and corresponding Progress Report in narrative format; and
    - v. Explanation if there is no activity.
  - b. All invoices shall be submitted by Subrecipients to the following email address: [AccountsPayable@scag.ca.gov](mailto:AccountsPayable@scag.ca.gov).
  - c. SCAG shall maintain final approval authority of invoices submitted under this Agreement.
5. Quarterly Reports. Each Subrecipient shall submit Quarterly Reports to SCAG which contain the following information, and any additional information as may be required by SCAG or FTA:
  - a. Name of Subrecipient expending the Section 5339 Program funds;
  - b. UZA name and number for which the funds are being reported;
  - c. A listing of the FTA grant number(s) being reported, with their respective project budget line item (ALI Codes), project category, approved FTA amount, and description of the funded projects; and
  - d. Federal Fiscal Year (FFY) Quarterly Milestones/Progress Reports in a narrative format.

Quarterly Reports shall be submitted no later than fifteen (15) days after each FFY quarter has ended, to the attention of Alfonso Hernandez (or other person identified by SCAG), SCAG Grants Administrator. SCAG shall promptly notify all Subrecipients in the event of a change in the person identified in this paragraph as the recipient of the Quarterly Reports.

6. Audits. In accordance with the FTA Master Agreement and applicable federal law and regulations, Subrecipients agree to retain and require its contractors and other third party participants to retain complete and readily accessible records related in whole or part to the Section 5339 Program ("Records"). Records required to be retained include but are not limited to data, documents, reports, statistics, leases, third party contracts or agreements, arrangements, and other supporting materials related to those records.
  - a. Subrecipients shall retain Records for the period required under the FTA Master Agreement, and shall make the Records available for inspection and audit by representatives of SCAG, the State, or the Federal Government upon request. Copies of the Records shall be made and furnished to SCAG upon request at no cost to SCAG.
  - b. Any costs for which a Subrecipient receives payment that is determined by a subsequent audit or other review by SCAG, State or Federal authorities to be unallowable under, but not limited to, OMB Circular A-87; 48 CFR, Chapter 1, Part 31; or 49 CFR, Part 18, are to be repaid by the Subrecipient within thirty (30) days of such Subrecipient receiving notice of audit findings and a written demand for reimbursement from SCAG. Should the Subrecipient fail to reimburse unallowable costs due SCAG within thirty (30) days of demand, or within such other period as may be agreed between both parties hereto, SCAG is authorized to withhold future payments due to the Subrecipient.

7. Reports and Forms: Upon approval of grant applications by FTA, as applicable, Subrecipients shall submit to SCAG the following documents and reports which relate to the Section 5339 Program:
  - a. Quarterly Milestones/Progress Reports during the current FFY;
  - b. Disadvantaged Business Enterprise (DBE) reports and all other reports and documentation required by FTA;
  - c. Final/Close-out Reports;
  - d. IRS W-9 Form;
  - e. Banking information which includes name of the financial institute, ACH routing number, and account number; and
  - f. Any other documents or reports requested by FTA or SCAG.
8. Sub-allocations Process: The Subrecipient hereby understands and agrees that it shall execute and submit to SCAG, in advance of submitting a grant application for Section 5339 Program funds to FTA and no later than fifteen (15) days after receiving a Notice of Sub-allocations from the CTC serving the county in which the Subrecipient is located, this Grant Certification Form and the FFY 2013 FTA Certifications and Assurances, signed by the duly authorized representative of the Subrecipient. Upon publication of the FFY 2014 FTA Certifications and Assurances, and for each additional FFY for which Congress authorizes and appropriates Section 5339 Program funds, each Subrecipient shall sign and submit a copy to SCAG of the applicable FTA Certifications and Assurances form, prior to SCAG's submittal of an application for such funds. SCAG shall not allocate and the CTCs shall not sub-allocate, as applicable, any Section 5339 Program funds to a Subrecipient who has not executed a Grant Certification Form and applicable FTA Certifications and Assurances form.
9. Opt-Out Option: In the event an eligible Subrecipient, excluding a CTC who is a Subrecipient, elects not to apply for Section 5339 Program funds and does not execute the Grant Certification Form, the Subrecipient may elect to sign and return the attached Opt-Out Form, attached hereto and incorporated herein as Attachment "A-2." A Subrecipient that elects to opt-out, as described herein, shall sign and return to SCAG's Grants Administrator the attached Opt-Out Form within thirty (30) days of receiving the Notice of Sub-Allocations from the CTC serving the county in which the Subrecipient is located. Upon receipt by SCAG of the Opt-Out Form signed by a Subrecipient's duly authorized representative or upon the lapse of the 30-day notification period, SCAG and the respective CTC shall initiate the process to sub-allocate the Section 5339 Program funds among other eligible Subrecipients within the SCAG regional boundaries and according to the statutory formulas set forth under 49 U.S.C. Section 5339, as applicable and as amended from time to time.
10. Indemnity: The Subrecipient agrees to indemnify, defend and hold harmless SCAG and its respective officers, agents and employees from and against any and all claims, demands, costs, or liability arising from or connected with intentional or negligent acts, errors or omissions, any violations of law, or any violations of the terms and conditions of this Certification Form (including non-compliance with the FTA Master Agreement and annual FTA Certifications and Assurances) attributable to performance of the responsibilities as set forth herein by the Subrecipient or its officers, agents, employees, contractors and subcontractors, except to the extent caused by the negligence or willful misconduct of SCAG.

**SIGNING BELOW, on behalf of the Subrecipient, I declare under penalty of perjury that the Subrecipient has duly authorized me to sign this Grant Certification Form, and bind the recipient's compliance. Thus, the Subrecipient agrees to comply with all requirements set forth herein.**

Signature of Authorized Representative

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Date

\_\_\_\_\_  
Name of Subrecipient

\_\_\_\_\_  
Address

**Return Form To:**

Alfonso Hernandez, SCAG Grants Administrator  
818 W. 7<sup>th</sup> Street, 12<sup>th</sup> Floor  
Los Angeles, CA 90017  
[hernande@scag.ca.gov](mailto:hernande@scag.ca.gov)

**ATTACHMENT A-1**  
**FEDERAL FISCAL YEAR 2013 CERTIFICATIONS AND ASSURANCES  
FOR FEDERAL TRANSIT ADMINISTRATION ASSISTANCE PROGRAMS**

Name of Applicant: \_\_\_\_\_

The Applicant agrees to comply with applicable provisions of Groups 01 – 24. \_\_\_\_\_

**OR**

The Applicant agrees to comply with applicable provisions of the Groups it has selected:

| <b><u>Group</u></b> | <b><u>Description</u></b>                                                                                                                       |       |
|---------------------|-------------------------------------------------------------------------------------------------------------------------------------------------|-------|
| 1.                  | Required Certifications and Assurances for Each Applicant.                                                                                      | _____ |
| 2.                  | Lobbying.                                                                                                                                       | _____ |
| 3.                  | Private Sector Protections.                                                                                                                     | _____ |
| 4.                  | Procurement and Procurement System.                                                                                                             | _____ |
| 5.                  | Rolling Stock Reviews and Bus Testing.                                                                                                          | _____ |
| 6.                  | Demand Responsive Service.                                                                                                                      | _____ |
| 7.                  | Intelligent Transportation Systems.                                                                                                             | _____ |
| 8.                  | Interest and Finance Costs and Leasing Costs.                                                                                                   | _____ |
| 9.                  | Transit Asset Management and Agency Safety Plans.                                                                                               | _____ |
| 10.                 | Alcohol and Controlled Substances Testing.                                                                                                      | _____ |
| 11.                 | Fixed Guideway Capital Investment Program (New Starts, Small Starts, and Core Capacity) and Capital Investment Program in Effect before MAP-21. | _____ |
| 12.                 | Bus and Bus Facilities Program.                                                                                                                 | _____ |
| 13.                 | Bus/Bus Facilities Programs.                                                                                                                    | _____ |
| 14.                 | Urbanized Area Formula Programs and Job Access and Reverse Commute (JARC) Program.                                                              | _____ |
| 15.                 | Seniors/Elderly/Individuals with Disabilities Programs and New Freedom Program.                                                                 | _____ |
| 16.                 | Rural/Other Than Urbanized Areas/Appalachian Development/Over-the-Road Bus Accessibility Programs.                                              | _____ |
| 17.                 | Public Transportation on Indian Reservations and "Tribal Transit Programs."                                                                     | _____ |
| 18.                 | Low or No Emission/Clean Fuels Grant Programs.                                                                                                  | _____ |
| 19.                 | Paul S Sarbanes Transit in Parks Program.                                                                                                       | _____ |
| 20.                 | State Safety Oversight Program.                                                                                                                 | _____ |
| 21.                 | Public Transportation Emergency Relief Program.                                                                                                 | _____ |
| 22.                 | Expedited Project Delivery Pilot Program.                                                                                                       | _____ |
| 23.                 | Infrastructure Finance Programs.                                                                                                                | _____ |

**FEDERAL FISCAL YEAR 2013 FTA CERTIFICATIONS AND ASSURANCES SIGNATURE PAGE**  
(Required of all Applicants for FTA funding and all FTA Grantees with an active Capital or Formula Project)

**AFFIRMATION OF APPLICANT**

Name of Applicant: \_\_\_\_\_

Name and Relationship of Authorized Representative: \_\_\_\_\_

BY SIGNING BELOW, on behalf of the Applicant, I declare that the Applicant has duly authorized me to make these Certifications and Assurances and bind the Applicant's compliance. Thus, the Applicant agrees to comply with all Federal statutes and regulations, and follow applicable Federal guidance, and comply with the Certifications and Assurances as indicated on the foregoing page applicable to each application its authorized representative makes to the Federal Transit Administration (FTA) in Federal Fiscal Year 2013, irrespective of whether the individual that acted on its Applicant's behalf continues to represent the Applicant.

FTA intends that the Certifications and Assurances the Applicant selects on the other side of this document should apply, as provided, to each Project for which the Applicant seeks now, or may later seek FTA funding during Federal Fiscal Year 2013.

The Applicant affirms the truthfulness and accuracy of the Certifications and Assurances it has selected in the statements submitted with this document and any other submission made to FTA, and acknowledges that the Program Fraud Civil Remedies Act of 1986, 31 U.S.C. 3801 *et seq.*, and implementing U.S. DOT regulations, "Program Fraud Civil Remedies," 49 CFR part 31, apply to any certification, assurance or submission made to FTA. The criminal provisions of 18 U.S.C. 1001 apply to any certification, assurance, or submission made in connection with a Federal public transportation program authorized by 49 U.S.C. chapter 53 or any other statute

In signing this document, I declare under penalties of perjury that the foregoing Certifications and Assurances, and any other statements made by me on behalf of the Applicant are true and accurate.

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

Full Name: \_\_\_\_\_

Authorized Representative of Applicant: \_\_\_\_\_

**AFFIRMATION OF APPLICANT'S ATTORNEY**

For (Name of Applicant): \_\_\_\_\_

As the undersigned Attorney for the above named Applicant, I hereby affirm to the Applicant that it has authority under State, local, or tribal government law, as applicable, to make and comply with the Certifications and Assurances as indicated on the foregoing pages. I further affirm that, in my opinion, the Certifications and Assurances have been legally made and constitute legal and binding obligations on the Applicant.

I further affirm to the Applicant that, to the best of my knowledge, there is no legislation or litigation pending or imminent that might adversely affect the validity of these Certifications and Assurances, or of the performance of its FTA Project or Projects.

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

Full Name: \_\_\_\_\_

Attorney for Applicant: \_\_\_\_\_

Each Applicant for FTA funding and each FTA Grantee with an active Capital or Formula Project must provide an Affirmation of Applicant's Attorney pertaining to the Applicant's legal capacity. The Applicant may enter its signature in lieu of the Attorney's signature, provided the Applicant has on file this Affirmation, signed by the attorney and dated this Federal fiscal year.

**ATTACHMENT A-2**  
**Opt-Out Form**

Name of Eligible Subrecipient (Public Entity):

\_\_\_\_\_

The Public Entity named above hereby elects not to sign the Grant Certification Form required under the Memorandum of Understanding among the Southern California Association of Governments (SCAG) and County Transportation Commissions (CTCs) for the Section 5339 Bus and Bus Facilities Grants Program.

The Public Entity understands and agrees that SCAG shall not be obligated to allocate and that the County Transportation Commission (CTC), serving the county in which the Public Entity is located, shall not be obligated to sub-allocate Section 5339 Program funds to any entity which elects not to sign the Grant Certification Form. Such Public Entity that elects to opt-out shall sign and return this Opt-Out Form to SCAG's Grants Administrator within thirty (30) days of receiving notification from the respective CTC of the Subrecipients' sub-allocation amount(s) ("Notice of "Sub-allocations").

The Public Entity agrees and understands that SCAG will initiate, upon receipt of this Opt-Out Form signed by the duly authorized representative of the Public Entity or upon the lapse of the 30-day notification period set forth above (whichever occurs first), the process to sub-allocate the Section 5339 Program funds among other eligible Subrecipients within the SCAG regional boundaries and according to the statutory formulas set forth under 49 U.S.C. Section 5339, as applicable and as amended from time to time.

\_\_\_\_\_  
Signature of Authorized Representative                      Date

\_\_\_\_\_  
Name

\_\_\_\_\_  
Name of Public Entity

\_\_\_\_\_  
Address

Any Eligible Subrecipient that elects to opt-out of receiving 5339 Program Funds shall sign and return this Opt-Out Form to SCAG's Grants Administrator at the following address within thirty (30) calendar days of receiving the Notice of Sub-allocations:

Alfonso Hernandez, SCAG Grants Administrator  
818 W. 7<sup>th</sup> Street, 12<sup>th</sup> Floor  
Los Angeles, CA 90017  
[hernande@scag.ca.gov](mailto:hernande@scag.ca.gov)

[illegible]





**Exhibit C**  
**Grants Administrator Contacts List**

The Southern California Association of Governments

**Full Name:** Alfonso Hernandez

**Title/Dept:** Senior Budget and Grants Analyst, Finance

**Mailing Street Address:** 818 W. 7<sup>th</sup> Street, 12<sup>th</sup> Floor

**City, State and Zip Code:** Los Angeles, CA 90017

**Phone:** 213-236-1897

**Email:** [hernande@scag.ca.gov](mailto:hernande@scag.ca.gov)

San Bernardino Associated Governments

**Full Name:** Vanessa Jezik

**Title/Dept:** Transportation Programming Analyst

**Mailing Street Address:** 1170 W. 3<sup>rd</sup> Street, 2<sup>nd</sup> Floor

**City, State and Zip Code:** San Bernardino, CA 92410-1715

**Phone:** 909-884-8276

**Email:** [vjezik@sanbag.ca.gov](mailto:vjezik@sanbag.ca.gov)

Omnitrans

**Full Name:**

**Title/Dept:**

**Mailing Street Address:**

**City, State and Zip Code:**

**Phone:**

**Email:**

**Exhibit D**  
**Notices**

Mr. Hasan Ikhata  
Executive Director  
Southern California Association of Governments  
818 West 7<sup>th</sup> Street, 12<sup>th</sup> Floor  
Los Angeles, CA 90017-3435

Mr. Raymond Wolfe  
Executive Director  
San Bernardino Associated Governments  
1170 W. 3rd Street, 2nd Floor  
San Bernardino, CA 92410-1715

Mr. Scott Graham  
Interim CEO/General Manager  
Omnitrans  
1700 W. Fifth Street  
San Bernardino, CA 92411

ITEM # E6

**DATE:** November 12, 2013

**TO:** Committee Chair Patrick Morris and  
Members of the Administrative and Finance Committee

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

**FROM:** Jennifer M. Sims, Director of Procurement

**SUBJECT: AUTHORIZE ADDITIONAL SPEND AUTHORITY, CONTRACT  
IPMO14-116, AS NEEDED SCHEDULING SERVICES**

**FORM MOTION**

Recommend the Board of Directors authorize additional spending authority to Contract IPMO14-116 with APSI Construction Management of Irvine, California, for the provision of As Needed Scheduling Services to support the sbX E Street Corridor BRT and Vehicle Maintenance Facility Projects in the amount of \$53,848, bringing the total contract amount to \$78,848, plus the addition of the 3.27% Cost Allocation Plan of \$2,578.33, that will be charged to the total project cost vested in the Omnitrans Interim CEO/General Manager.

**BACKGROUND**

On August 14, 2013, Contract IPMO12-23 with APSI for the provision of Schedule, Utility and Environmental Support Consulting Services was terminated for convenience as part of corrective action required for the Federal Transit Administration's 2013 Procurement System Review. Each component of the scope of work requires different qualifications. As a result, Procurement determined that the most appropriate path forward is to unbundle the scope and issue three separate solicitations. The utility and environmental solicitations was presented to the Board for award November 6, 2013 (IPMO14-103 On-Call Stormwater Prevention Pollution Plan (SWPPP) Oversight Services, and IPMO14-105 On-Call Environmental Support).

Staff released Request for Proposals (RFP) No. RFP-IPMO14-116 for As-Needed Scheduling Services to support the sbX E Street Corridor and Vehicle Maintenance Facility Projects, posted on Omnitrans' online bidding system, and distributed to fifty-one registered firms. The Independent Cost Estimate was \$71,680.

Four proposals were received electronically on October 28, 2013. Two of the proposals did not meet the minimum qualifications required as specified in the RFP. The remaining proposals

were found to be responsive and evaluated according to the criteria listed in the RFP. A total of 100 points were possible. The following firms ranked from highest to lowest:

|                                                                       | Total<br>Points<br>Possible | APSI  | Dabri |
|-----------------------------------------------------------------------|-----------------------------|-------|-------|
| Responsiveness & General Understanding of Requirements                | 10                          | 8.27  | 9.28  |
| Quality of Work Plan or description of how the work will be performed | 30                          | 26.75 | 24    |
| Experience in performing the work as described in the scope of work   | 40                          | 38    | 33.67 |
| Overall cost to Omnitrans                                             | 20                          | 20    | 15.40 |
| Total                                                                 | 100                         | 93.02 | 82.35 |

To minimize impact to the project due to a lapse in scheduling services, Omnitrans entered into an agreement not to exceed \$25,000. Staff requests that the Board authorize the Interim CEO/General Manager increase the agreement as needed in an amount not to exceed amount of \$78,848 (ICE plus 10% contingency).

This procurement meets the requirements of Omnitrans' current Procurement Policies and Procedures.

#### **FUNDING SOURCE**

| <b>FUNDING</b> | <b>GRANT#</b> | <b>FISCAL YEAR</b> | <b>PROJECT NAME</b> | <b>AMOUNT*</b> |
|----------------|---------------|--------------------|---------------------|----------------|
| LTF            | S-1205-049    | 2012               | sbX E Street BRT    | \$78,848       |

\_\_\_\_\_ Verification of Funding Source and Availability of Funds.  
(Verified and initialed by Finance)

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