



ADMINISTRATIVE & FINANCE COMMITTEE MEETING

Tuesday, November 13, 2012 – 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.

A. CALL TO ORDER

B. ANNOUNCEMENTS/PRESENTATIONS

1. Next Committee Meeting: December 10, 2012, at 11:00 a.m.
OmniTrans Metro Facility Board Room

C. POSSIBLE CONFLICTS OF INTEREST ISSUES

1. 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.

D. AGENDA ITEMS

- | | |
|--|----|
| 1. Approve Administrative & Finance Committee Minutes – October 9, 2012 | 2 |
| 2. Receive & File Construction Progress Report No. 11 through October 2012 – sbX E Street Corridor BRT Project | 6 |
| 3. Receive & File Forward Fuel Purchase Program Update for November 2012 | 24 |
| 4. Adopt Committee Meeting Calendar for 2013 | 27 |
| 5. Receive and Recommend to Board of Directors for Receipt and File, Revised Purchase Order Terms and Conditions & Standard Contract Template | 28 |
| 6. Receive and Recommend to Board of Directors for Approval, Purchase of Software Maintenance Services – SAP ERP Software for Business Systems | 47 |

E. REMARKS AND ANNOUNCEMENTS

F. ADJOURNMENT



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E. REMARKS AND ANNOUNCEMENTS

F. ADJOURNMENT

ITEM # C1

DATE: November 13, 2012

TO: Committee Chair Alan Wapner and
Members of the Administrative & Finance Committee

THROUGH: Milo Victoria, 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 the listing of principals and subcontractors associated with action items on the agenda for the November 13, 2012, Administrative & Finance Committee Meeting.

Item No.	Contract	Principals & Agents	Subcontractors
D6	Recommend Sole Source Purchase SAP Enterprise Resource Planning (ERP) Annual Software Maintenance Services	SAP Public Services, Inc. <i>Palo Alto, CA</i> <i>Peggy Concannon</i> <i>Account Executive</i>	<i>None</i>

MV/JS

ITEM # D1

**ADMINISTRATIVE & FINANCE COMMITTEE
MINUTES
October 9, 2012**

The Administrative & Finance Committee meeting was called to order by Chair Alan Wapner at 11:03 a.m. on October 9, 2012.

Committee Members Attending

Councilmember Alan Wapner, City of Ontario, Committee Chair
Mayor Pro Tem Lee Ann Garcia, City of Grand Terrace
Mayor Pro Tem Frank Gonzales, City of Colton
Mayor Ed Graham, City of Chino Hills
Supervisor Gary Ovitt, County of San Bernardino
Mayor Dick Riddell, City of Yucaipa
Mayor Pro Tem John Roberts, City of Fontana

Committee Members Absent

Mayor Paul Eaton, City of Montclair
Mayor Pro Tem Paul Foster, City of Redlands

Omnitrans Staff & Others Attending

Milo Victoria, CEO/General Manager
Wendy Williams, Director of Marketing
Jack Dooley, Director of Maintenance
Sam Gibbs, Director of Internal Audit Services
Scott Graham, Director of Operations
Jennifer Sims, Director of Procurement
Don Walker, Director of Finance
Ray Lopez, Director of Safety & Security
Milind Joshi, sbX Program Manager
Maurice Mansion, Treasury Manager
Councilmember Bill Alexander, City of Rancho Cucamonga
Nancy Strickert, SANBAG
Joy Chadwick, County of San Bernardino
Robert Chevez, Westbound Communications
Osman Hamidzaola, SCAG
Arnold San Miguel, SCAG
Jessica Jacquez, VTrans
Carol Angier, Administrative Secretary

C. Possible Conflict of Interest Issues

None

D. Agenda Items

1. Approve Administrative & Finance Committee Minutes of September 10, 2012

M/S (Roberts/Garcia) to approve the minutes of the September 10, 2012 Committee meeting. Motion was unanimous by members present.

2. Receive & File Construction Progress Report No. 10 through September 2012 – sbX E Street Corridor BRT Project

sbX Program Manager said a tour of the sbX construction will take place after the meeting. He reviewed the sbX construction progress starting at the north end of the project up to Tippecanoe. The streets of San Bernardino are approximately 200 years old and many of the drawings are either out-of-date or incomplete. Due to this fact, it was determined to have a contingency of \$45 million for the project to fund these unknown issues. The project is currently on schedule and will be within the established budget. On the tour, two areas will be shown that experienced these problems to demonstrate what happened and what was done to remedy the situation. Member Garcia suggested including in the monthly reports the budget amount, contingency amount, as well as the amount spent to date.

This was a receive and file agenda item.

3. Receive & File Omnitrans Chief Financial Officer's Report on Forward Fuel Purchases for October 2012

Director of Finance Walker said Omnitrans was authorized to hedge up to 150,000 gallons per month of CNG fuel. As of September, Omnitrans has a favorable fuel variance of \$11,000. Omnitrans also has an unrecognized gain of \$137,263 on open positions from October 2012 through June 2014. Member Graham asked what unrecognized gain meant. Director of Finance Walker said this represents the various fuel contracts we have in the future that have not yet settled. We cannot book this gain yet as the amount of the settlement may change.

This was a receive and file agenda item.

4. Recommend Approval to the Board of Directors, Amend Fiscal Year 2012 Budget and 2008-2013 Short Range Transit Plan

Treasury Manager Mansion said when SANBAG and the Board adopted the FY12 budget, it included \$4.6 million in STA funds for operating and capital expenses and \$9.9 million of CMAQ funds to purchase CNG buses. Recently during meetings with SANBAG, Omnitrans was informed that we would not be receiving the STA funds. SANBAG staff informed Omnitrans that they did not receive as much STA funding this fiscal year and the way these funds are allocated has changed. SANBAG also informed him that only \$4.9 million of CMAQ funds will be allocated to Omnitrans. The loss of these funding sources will mean that Omnitrans will have to report an operating deficit for FY12. However, by deobligating and reobligating prior year grants, the loss of STA funds will have a minimal impact on capital projects. Omnitrans received \$5 million in a Section 5309 grant that will resolve the reduction in CMAQ funding. However, since Omnitrans had purchased 17 CNG buses in anticipation of receiving the full CMAQ funds, staff was forced to ask SANBAG to advance the LTF funding ahead of schedule to cover the costs. SANBAG did forward these funds, but charged Omnitrans three percent interest, which reduced

the FY12 LTF funds by \$61,944. Based on the above, Omnitrans will need to amend the FY12 budget to also reduce the LTF allocation.

M/S (Gonzales/Riddell) to recommend approval to the Board of Directors to authorize the CEO/General Manager to amend the Fiscal Year 2012 Operating and Capital Budget and the 2008 – 2013 Short Range Transit Plan (SRTP) to remove State Transit Assistance (STA) funding of \$4,611,500, reduce Congested Mitigation Air Quality (CMAQ) from \$9,900,000 to \$4,900,000, increase Federal Transit Administration (FTA) Section 5309 from \$0 to \$5,000,000, and reduce Local Transit Fund (LTF) funding by \$61,944. Motion was unanimous by members present.

5. Recommend Approval to the Board of Directors, Deobligate and Reobligate State Transit Assistance Funds (STA) and Local Transportation Funds (LTF)

Treasury Manager Mansion said Omnitrans regularly closes out prior years' grant funding and reallocate the funding balance to other projects. Normally, it is done later in the year, but due to reduction in STA and LTF funding, Omnitrans staff recommends deobligating and reobligating funds now.

M/S (Riddell/Roberts) to recommend approval to the Board of Directors to authorize the CEO/General Manager to de-obligate \$9,533,077 of State Transit Assistance (STA) funds and \$1,161,478 of Local Transportation Funds (LTF) as shown in the Funding Source section, and re-obligate these funds to the projects identified. Motion was unanimous by members present.

6. Receive and Forward to the Board of Directors, Status of Omnitrans Revenue Vehicle Funding and Future Procurements

Director of Maintenance Dooley said this information was presented to Senior Leadership earlier, and it was determined that this should be presented to the Committee, as well. Omnitrans normally replaces up to 15 vehicles each year using approximately \$10 million in CMAQ funding. Based on the COA, the funding dedicated to replacing buses in the future will be dramatically reduced. This has become an issue as CNG fuel tanks on the buses cannot exceed fifteen years and cannot be refurbished. This necessitates replacing the tank completely. By June 2015, 27 buses will require replacement or CNG tank replacement. By June 2016, ten more buses will be in the same position. By 2015, 22 buses will be over the FTA guideline of 500,000 miles and will need to be replaced. Replacement of each CNG tank form will cost \$40,000, plus incidentals, and will give the buses three to five more years of life. Beyond the issue of the CNG tanks, the buses with the John Deere engines have had a significant number of failures. The buses with Cummins engines have also had serious engine failure problems. Even if the CNG tanks are replaced, there will be continued problems with other issues with the buses. Chair Wapner asked how many buses the sbX route would replace, and Director of Maintenance Dooley said five buses, and they were included in this report. Member Graham asked what happened to the CMAQ funds. Treasury Manager said SANBAG informed him these funds are limited for transit and most of the funding will go to roads/highways. CEO/General Manager Victoria said Omnitrans received CMAQ funding for the San Bernardino Transit Center, but not for buses. Director of Maintenance Dooley said replacing the CNG tanks will affect the ability to sell these buses at auction. The tanks cannot be recertified, and the buses will have to be sold without a tank. As most auction vendors want buses with tanks, Omnitrans will be able to sell the buses only for scrap metal.

Chair Wapner asked what staff recommends. Director of Maintenance Dooley said Omnitrans will continue to look at other funding opportunities to replace the buses, but may end up having to replace the CNG tanks instead. He just wanted to give the Committee information on the situation Omnitrans is facing with bus replacement. This issue will need a resolution within one year, as that is when the contract with New Flyer will expire.

M/S (Ovitt/Garcia) to receive and forward to the Board of Directors a report on the status of Omnitrans' revenue vehicle funding and future procurements. Motion was unanimous by members present.

The Administrative & Finance Committee meeting adjourned at 11:45 a.m. The next Administrative & Finance Committee Meeting is scheduled for November 13, 2012, with location posted on the Omnitrans website and at Omnitrans' San Bernardino Metro Facility.

Carol Angier, Recording Secretary

ITEM # D2

DATE: November 13, 2012

TO: Committee Chair Alan Wapner and
Members of the Administrative & Finance Committee

THROUGH: Milo Victoria, CEO/General Manager

FROM: Milind Joshi, sbX Program Manager

**SUBJECT: CONSTRUCTION PROGRESS REPORT NO. 11 THROUGH OCTOBER
2012 - sbX E STREET CORRIDOR BRT PROJECT**

FORM MOTION

Receive and recommend to the Board of Directors for receipt and file Construction Progress Report No. 11 for the sbX E Street Corridor BRT Project through October 2012.

BACKGROUND & SUMMARY

This is Construction Progress Report No. 11 for the sbX E Street Corridor Project.

CONCLUSION

Receive and recommend to the Board of Directors for receipt and file Construction Progress Report No.11 for the sbX E Street Corridor BRT Project through October 2012.

MV:MJ

Attachment



E-STREET CORRIDOR BRT Project

sbX E Street Corridor Bus Rapid Transit (BRT) Project

Construction Progress Report No. 11

Month Ending: October 2012

Submitted By:

JACOBS

Contractor:	Griffith/Comet
Contractor Contract No.:	IPM011-5
Project Manager:	Joe Jenkins, P.E.
Resident Engineer	Karim Varshochi, P.E.
Omnitrans Construction Manager:	Bart Hayashi, P.E.



PROJECT SUMMARY

The month of October saw progression of the Sbx project at 23% complete with 309 calendar days completed.

Weekly Quality Assurance inspections of the steel fabrication and galvanizing shops located in Arizona, took place in October, as well as,

Communication with the public through various outreach programs have continued to provide advance notification of the construction schedule, resolve minor issues, and provide safety awareness to the public. Stakeholder issues and concerns have been addressed with the continuous availability of the CM team for face to face meetings in addition to the regularly scheduled monthly meetings.

In order to complete the required work adjacent to Costco on Hospitality Lane prior to their November 1, 2012 moratorium taking effect, notifications were distributed to the private properties located on Hospitality Lane and work was expedited by the Contractor providing two work shifts (one day shift and one night shift). As a result, 90% of the work has been completed at the Costco location with only a few blackout locations remaining for utilities and minor landscaping.

On east side of E Street, the demolition and street pole removal has been completed from 2nd Street through 6th Street with tree removal currently taking place and planned to be completed by October 31, 2012. This will then be followed by street widening excavation and making grade for the curb and gutter, planned for the month of November.

The Kendall/Palm Park-N-Ride and the University station are both approximately 60% complete as of October 25, 2012. With drainage, canopies and the landscape remaining at Kendall/Palm, the light poles, paving and the majority of the structural steel have been completed. The structural elements for the station and the majority of the landscaping have been completed at the University station, leaving the remaining landscaping, striping and signage remaining.

With the majority of the completion of the curb and gutter, all the grading and the light foundation poured, the Marshall Park-N-Ride is currently 50% complete. Landscaping, paving, striping and signage has been scheduled for to begin in November.

The bid opening for the VMF took place on October 18, 2012. Recommendation for award was presented to the Board of Directors on November 7, 2012.

NOVEMBER WORK

In November the contractor will complete the bus pads at the Little Mountain and Shandin Hills stations; continue relocation of fire hydrants on E Street between 6th Street and 2nd Street; continue work on the traffic signals on E Street/4th Street; and continue with work on the north side of Hospitality at Hunts Lane and Commerce Center West.

CONCERNS

Project progress has been slower than anticipated due to several issues;

1. Utilities – The Verizon cross connect on Hospitality Lane, west of Hunts Lane, needs to be relocated; this will require Omnitrans to obtain an easement for the new location.
2. Utilities – An Edison vault located on Hospitality Lane west of Hunts Lane, vault cannot be relocated as per original plans, because a Verizon duck bank is in the way. We are trying to resolve this issue by trying to adjust the vault to grade and install a false curb.
3. City Issues – The City has lane restrictions at the Little Mountain and Shandin Hills stations. The City is requiring two lanes of travel. The CM, Contractor and Designer are investigating options for two lanes of travel.
4. The CM and Contractor are moving forward with construction at Orange Show and E Street as quickly as possible working around utility structures and property owner issues, in order to make up potential delays
5. Change Orders – The numerous Change Orders due to unforeseen conditions, as well as, the Change Order process as a whole are increasing cost and may increase time to the project causing a schedule slip which will inadvertently effect the substantial completion date, testing and revenue dates.

The CM and the Contractor are working diligently to maintain the project schedule by removing moratoriums and adding extra work shifts.

SCHEDULE

The baseline schedule was approved and scheduled have been updated through June. The projection for the final update on the schedule to date is November 30, 2012. 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.

RFIS AND SUBMITTALS

Per contract response time for submittals is 25 days and 15 days for RFIs.

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- 528	Total Submittals- 466
Total Open -11	Total Open- 11

SAFETY

As of October 19, 2012 there are 97,627.20 "no-lost time" hours.

NON-CONFORMANCE REPORTS (NCRS)

A total of (11) NCRs have been issued, of which (8) have been closed and (3) are in process the process of being corrected.

PROJECT COSTS

	CURRENT AUTHORIZED SEPTEMBER 30, 2012	CURRENT INVOICED SEPTEMBER 30, 2012	REMAINING SEPTEMBER 30, 2012
Jacobs	\$5,716,965	\$3,473,730	\$2,243,235
Parsons	\$16,462,791	\$16,087,186	\$375,605
Griffith Comet	\$70,905,098	\$20,384,571	\$50,520,527
TOTAL	\$93,084,854.00	\$39,945,487	\$53,139,367

CONTRACT TIME

Activity	Days	Date
Notice to Proceed		11/21/11
Calendar Days per Original Contract	730	
Original Completion Date		12/21/13
Calendar Days Completed as of 25 October 2012	309	
CCO Time Extension to Date	0	
Required Completion Date as of 25 October 2012	421	12/21/13
Forecasted Completion Date as of 25 October 2012		12/21/13
Percent Time Elapsed	42.33%	

CONTRACTOR COST-SEPTEMBER PAYMENT REQUEST

	Project Cost
Original Contract Amount	\$65,007,603.05
Total Authorization to Date as of month ending September 2012	\$70,905,098.45
Contract Items as of month ending September 2012	\$2,037,330.14
CCO's Paid as of month ending September 2012	\$5,897,495.40
Amount Earned as of month ending September 2012	\$20,384,571.35
Retention Held as of month ending September 2012	\$2,038,457.14
Percent Complete(% paid) as of month ending September 2012	28.75%

DBE

DBE Contract Amount as of month ending September 2012	\$6,522,536.89
DBE Paid to Date as of month ending September 2012	\$1,553,669.76
DBE Contract Goal	9.15%
DBE Percentage of Total Earned to Date as of month ending September 2012	7.52%

CONTRACT CHANGE ORDERS

CEO	Description	Negotiated Cost	Time Extension Contract Calendar Days
1	Water Meter and Fire Hydrant Connections to the Main	\$2,594,555.00	TBD
2	Additional Insurance Requirements, prepared and processing	\$214,364.64	TBD
3	Electrical Service Modifications for Street Lights; prepared and processing	\$433,500.00	TBD
4	Modifications to Project Signs	\$3,519.69	TBD
5	Requirement for Additional Emergency Vehicle Pre-emption (EVP) & Civil Modifications	\$455,553.60	TBD
6	Partnering Supplies	\$7,936.87	TBD
7	Additional Traffic Signal Requirements	\$59,477.00	TBD
8	No Cost Change Orders Including CORs 10, 10A, 11, 13, 16, and 48	\$0	TBD
9	Increase in Artist Costs, In Plain Sight	\$3,187.24	TBD
10	Out of Sequence Pours Due to Existing Unforeseen Obstructions	\$381,042.00	TBD
11	Revised Payment Section Along E Street from 10th to 2nd Street	\$721,519.44	TBD
12	Install Cross Gutter at E Street and Victoria	\$48,665.19	TBD
13	Fire Sprinkler System Restart	\$130,000.00	TBD
14	Walkway at Cocos' Restaurant along Hospitality Station	\$24,775.37	TBD
15	G&M Oil Gas Station Civil Modifications: SCE & Verizon Service Connection Revisions	\$929,299.36	TBD
16	E Street/North Mall Way bay taper & median removal	\$27,413.51	TBD
17	Union Street Removal Limits & Culvert Modifications	\$24,900.53	TBD
TOTAL		\$6,059,709.44	TBD

*Change Orders are updated through September 30, 2012.

*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.

POTENTIAL CHANGE ORDERS/CHANGE ORDER REQUESTS

COR	Description	*Estimated Cost	Time Extension Contract Calendar Days	Status
2	Permit Plan Changes, Delta 1A, additional changes	\$150,000	TBD	JV preparing cost proposal
9	Caltrans Kendall/Palm Encroachment Permit	\$50,000	TBD	Awaiting further information
15	Electrical Plan Changes	\$80,000	TBD	JV preparing cost proposal
18	Drainage Plan and Profile Kendall/Palm Station East	\$70,000	TBD	JV to revise and resubmit proposal
21	Flow line modifications at Benton, Prospect, Anderson & Redlands stations	\$12,000	TBD	Designer preparing scope
25	Addition of two bus stops at Kendall/Palm	\$55,000	TBD	Sent to Omnitrans for approval on 07/19/2012
26	Redesign of median fountain area at Court Station	\$15,000	TBD	Designer preparing scope
27	Kendall at Palm Traffic Signal Revisions	\$10,000	TBD	JV preparing cost proposal
28	Kendall at Palm additional local bus station – Part 2 -electrical, landscape, signage and striping additions	\$40,000	TBD	Designer preparing scope
29	Gage Canal Changes	\$10,000	TBD	Designer preparing scope
30	Bus Stop No. 2 Revisions	\$120,000	TBD	Designer preparing scope
32	Graded channel at north end of Kendall/Palm	\$80,000	TBD	Proposal under review
34	Optional traffic signal at Hospitality and private drive	0	TBD	Sent to Omnitrans for approval on 09/14/2012
36	Flow line modifications to Hospitality at Tippecanoe, Hospitality at Carnegie, Kendall at Little Mountain and the CSUSB stations	\$48,000	TBD	JV preparing cost proposal
38	Modified Utility Plans Showing Vaults to be Replaced and water Meter As-Builts	\$2,500,000	TBD	JV to revise and resubmit cost as a result of first negotiation meeting 09/10/2012
40	Curb Ramp at Northwest Corner of E Street & Rialto	\$20,000	TBD	Designer preparing scope

COR	Description	*Estimated Cost	Time Extension Contract Calendar Days	Status
41	Change sbX Traffic Signal Heads from PV to LRT	\$5,000	TBD	JV preparing cost proposal
43	Increase in Bid Quantities	\$50,000	TBD	JV providing back-up.
44	SCE Vault at North Mall Way	\$20,000	TBD	Sent to Omnitrans for approval on 07/26/2012
47	Replace Driveway Approach at B251	\$10,000	TBD	Designer preparing scope
49	System #23 Catch Basin at E & N Mall Way	\$5,000	TBD	Sent to Omnitrans for approval on 09/14/2012
50	0"-18" Retaining Curb	\$70,000	TBD	Sent to Omnitrans for approval on 07/13/2012
51	Expedite Driveway on Hospitality at STA 698+20	\$21,000	TBD	Sent to Omnitrans for approval on 07/26/2012
52	Gas Station at NW Corner of E Street & Orange Show Road (Auto Center Drive)	\$100,000	TBD	JV preparing cost proposal
54	Revised Architectural Drawings	\$10,000	TBD	JV to confirm no cost change
57	Steel Plate Rentals	\$10,000	TBD	JV tracking T & M
58	Trees Substitutions and Replacements	\$25,000	TBD	JV preparing cost proposal
59	Route 2 Stop Revision at 9 th & E – Bus Turnout Lane	\$33,000	TBD	Sent to Omnitrans for approval on 08/28/2012
60	Concrete at Kendall/Palm Loop from 2500 to 4000 psi	\$40,000	TBD	Sent to Omnitrans for approval on 08/28/2012
61	New Cabinet at E & E Orange Show; Additional Conduit at CSUB	\$85,000	TBD	Sent to Omnitrans for approval on 09/14/2012
62	Driveways Along North Side of Hospitality, Phase 1, Remove	\$97,000	TBD	Sent to Omnitrans for approval on 07/13/2012
63	Irrigation Revisions Due to Meter Size Revisions at SBX Stations	\$40,000	TBD	Parsons preparing scope
64	Irrigation Revisions at CSUSB Station Due to CSUSB Irrigation Requests	\$15,000	TBD	JV preparing cost proposal
66	Brick Pavers at Driveway STA 694+50	\$15,000	TBD	Proposal under review
68	Demolition of Home on Southeast Corner of Hospitality	\$35,000	TBD	Parsons preparing scope

COR	Description	*Estimated Cost	Time Extension Contract Calendar Days	Status
	and Tippecanoe			
69	Paver over Platform Electrical Junction Box	\$50,000	TBD	JV preparing cost proposal
70	Additional Survey Monuments	\$90,000	TBD	City of SB to provide scope
73	Kendall/Palm Grade Revisions to Meet ADA requirements	\$30,000	TBD	COR package sent to Omnitrans 7/26/2012
74	Revised Concrete Footing for Kendall/Little Mountain North Station	\$8,000	TBD	COR package sent to Omnitrans 07/13/2012
75	Sewer Line Repair along E Street from 10th to 2nd Street	\$75,000	TBD	City of SB to plans.
76	Slope on West Side of E Street at Hospitality Lane (STA 672+69 to 676+00)	\$100,000	TBD	JV preparing cost proposal.
77	Remove and Relocate Conflicting Traffic Signal	\$7,000	TBD	OR package sent to Omnitrans on 08/06/2012
78	Clear & Grub Remediation at Hospitality and Carnegie West	\$20,000	TBD	Parsons preparing scope
79	Remove Center Median along Hospitality from Carnegie West to Tippecanoe to Expedite Construction	\$170,000	TBD	JV preparing cost proposal
80	Addition of New Conduit & Deletion of Red Light Camera System at the NE Corner of Hospitality Lane and Waterman Ave.	\$0	TBD	Sent to Omnitrans for approval on 09/14/2012
81	Expedite Paving along Southbound Kendall Dr. Adjacent to Park-n-Ride Stations 102+00 to 111+00	\$15,000	TBD	JV preparing cost proposal
82	Removal of Additional Concrete	\$42,000	TBD	Sent to Omnitrans for approval on 08/31/2012
83	Eliminate Solar Panels on Station Canopies	\$0	TBD	Parsons preparing scope
84	Surface Mount 6"-15" Type A Retaining Curb on the Northeast Corner of 9th and E Streets	\$15,000	TBD	JV preparing cost proposal
85	Modification to Handrail Height to Meet ADA Requirements	\$0	TBD	JV to confirm no cost no time impact

COR	Description	*Estimated Cost	Time Extension Contract Calendar Days	Status
86	Demolition and Reconstruction of Parkway Culverts along Northside	\$20,000	TBD	Parsons to respond to RFI 401
87	Relocate Irrigation Controller at NW Corner of Hospitality and Tippecanoe	\$0	TBD	Sent to Omnitrans for approval on 10/19/2012
88	Curb Return Elevation Modifications at South Wells Fargo Driveway (Entrance to Costco STA 694+80)	\$6,000	TBD	Jacobs preparing COR package
89	Relocate Conflicting Water Facilities Not Shown to be Relocated on Original Contract Drawings at various locations	\$150,000	TBD	Jacobs preparing COR package
95	Concrete V-Ditch with Splash Walls along West Side of Kendall / Palm Station Platform	\$27,124	TBD	Sent to Omnitrans for approval on 10/04/2012
96	New Service Cabinet at Hospitality and Tippecanoe.	\$3,000	TBD	Proposal under review
98	SCE Service to Traffic Signals	\$65,000	TBD	Jacobs preparing COR package.
TOTALS		\$4,839,124.00	TBD	

* Currently pricing is estimated based on Rough Order of Magnitude pending designer plans or final submittal of pricing by JV.

* 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.

* COR costs as of September 30, 2012.

CONSTRUCTION MANAGEMENT COST

	Project Cost
Original Contract Amount	\$3,898,769.00
CCO's as of September 28, 2012	\$1,818,196.84
Total Authorization as of September 28, 2012	\$5,716,965.97
Total Billed as of September 28, 2012	\$3,473,730.56
DBE Contract Amount	\$789,333.00
DBE Paid to Date as of September 28, 2012	\$294,987.36
DBE Percentage of Contract	13.80%
DBE Percentage of Total Earned as of September 28, 2012	5.16%
Percent of Budget Expended as of September 28, 2012	60.76%

PROGRESS PHOTOS



1_ E Street- Potholing for utilities at the northeast corner of Rialto.



2. E Street – Pouring concrete for traffic signal foundation at the northwest corner of Valley.



3. E Street-Pouring concrete for traffic signal foundation at the southeast corner of South Mall Way.



4. Marshall Station (West) – Performing subgrading work.



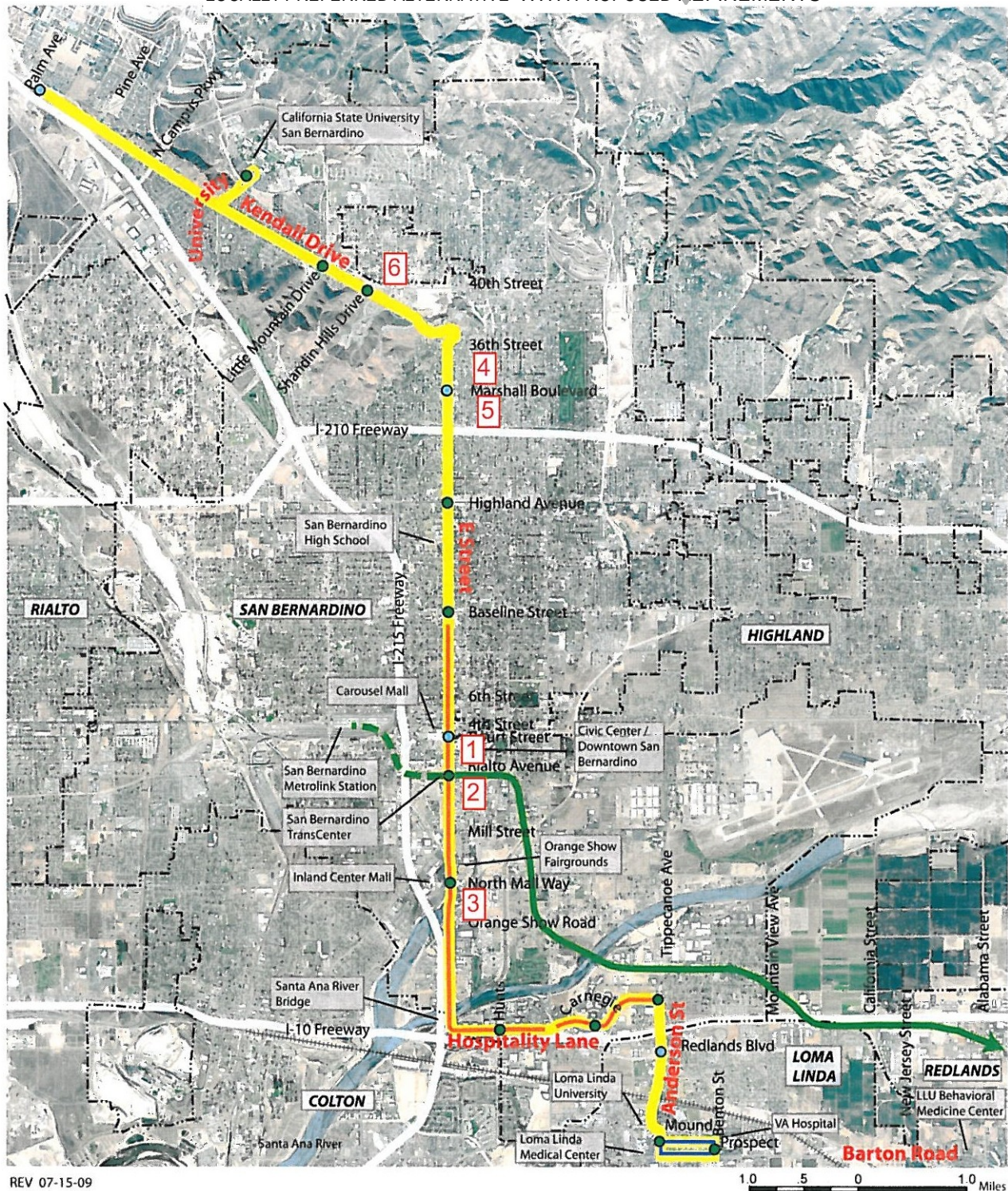
5. Marshall Station (West) – Performing subgrading work.



6. Shandin Hills (South) – Demolition and removal of existing asphalt.

Project Site Map

LOCALLY PREFERRED ALTERNATIVE WITH PROPOSED REFINEMENTS



REV 07-15-09

- Proposed sbX Alignment (Refined LPA)
- Preliminary Locations of Exclusive Center Lanes
- Potential sbX Stations
- Potential sbX Stations with Park-and-Ride
- City Boundaries
- Proposed Redlands Rail/MetroLink Extension Turnaround

**IPMO/sbX Project Costs
Period Ended 9/30/12**

Standard Cost Category (SCC)	Description	Engineer's Estimate	Current Budget	Expenditures \$	%	Remaining Budget	Estimate to Complete	Estimate at Completion	Budget Forecast Variance
10	GUIDEWAY & TRACK ELEMENTS	\$ 19,725,000	14,377,977	3,004,742	20.9%	\$ 11,373,235	\$ 11,373,235	\$ 14,377,977	\$ (5,347,023)
10.02	Guideway: At-grade semi-exclusive (allows cross-traffic)	\$ 18,353,000	\$ 12,472,300	2,627,320	21.1%	\$ 9,844,980	\$ 9,844,980	\$ 12,472,300	\$ (5,880,700)
10.03	Guideway: At-grade in mixed traffic	\$ 1,372,000	\$ 1,905,677	377,422	19.8%	\$ 1,528,255	\$ 1,528,255	\$ 1,905,677	\$ 533,677
20	STATIONS, STOPS, TERMINALS, INTERMODAL	\$ 14,917,000	13,974,737	2,578,830	18.5%	\$ 11,395,907	\$ 11,395,907	\$ 13,974,737	\$ (942,263)
20.01	At-grade station, stop, shelter, mall, terminal, platform	\$ 14,917,000	13,974,737	2,578,830	18.5%	\$ 11,395,907	\$ 11,395,907	\$ 13,974,737	\$ (942,263)
30	SUPPORT FACILITIES: YARDS, SHOPS, ADMIN. BLDGS	\$ 8,131,000	\$ 9,750,099	-	0.0%	\$ 9,750,099	\$ 10,944,318	\$ 10,944,318	\$ 2,813,318
30.02	Light Maintenance Facility	\$ 4,265,000	\$ 9,750,099	-	0.0%	\$ 9,750,099	\$ 10,944,318	\$ 10,944,318	\$ 6,679,318
30.05	Yard and Yard Track	\$ 3,866,000	\$ -	-	-	\$ -	\$ -	\$ -	\$ (3,866,000)
40	SITEWORK & SPECIAL CONDITIONS	\$ 34,271,000	23,384,381	10,399,518	44.5%	\$ 12,984,863	\$ 12,984,863	\$ 23,384,381	\$ (10,886,619)
40.01	Demolition, Clearing, Earthwork	\$ 4,741,000	\$ 455,559	257,682	56.6%	\$ 197,877	\$ 197,877	\$ 455,559	\$ (4,285,441)
40.02	Site Utilities, Utility Relocation	\$ 4,993,000	\$ 7,510,566	3,597,946	47.9%	\$ 3,912,620	\$ 3,912,620	\$ 7,510,566	\$ 2,517,566
40.05	Site structures including retaining walls, sound walls	\$ 90,000	\$ 72,224	-	0.0%	\$ 72,224	\$ 72,224	\$ 72,224	\$ (17,776)
40.06	Pedestrian / bike access and accommodation, landscaping	\$ 6,925,000	\$ 3,803,137	667,885	17.6%	\$ 3,135,252	\$ 3,135,252	\$ 3,803,137	\$ (3,121,863)
40.07	Automobile, bus, van accessways including roads, parking lots	\$ 3,601,000	\$ 4,247,947	1,244,215	29.3%	\$ 3,003,732	\$ 3,003,732	\$ 4,247,947	\$ 646,947
40.08	Temporary Facilities and other indirect costs during construction	\$ 13,921,000	\$ 7,294,948	4,631,790	63.5%	\$ 2,663,158	\$ 2,663,158	\$ 7,294,948	\$ (6,626,052)
50	SYSTEMS	\$ 16,727,000	\$ 20,504,434	5,004,035	24.4%	\$ 15,500,399	\$ 15,500,399	\$ 20,504,434	\$ 3,777,434
50.02	Traffic signals and crossing protection	\$ 10,810,000	\$ 6,610,434	2,909,595	44.0%	\$ 3,700,839	\$ 3,700,839	\$ 6,610,434	\$ (4,199,566)
50.05	Communications	\$ 4,210,000	\$ 8,294,000	1,605,000	19.4%	\$ 6,689,000	\$ 6,689,000	\$ 8,294,000	\$ 4,084,000
50.06	Fare collection system and equipment	\$ 1,707,000	\$ 5,600,000	489,440	8.7%	\$ 5,110,560	\$ 5,110,560	\$ 5,600,000	\$ 3,893,000
	Pending Change Orders					\$ 5,100,000	\$ 5,100,000	\$ 5,100,000	\$ 5,100,000
	Risk					\$ 12,317,711	\$ 12,317,711	\$ 12,317,711	\$ 12,317,711
	Construction Subtotal (10-50)	\$ 93,771,000	81,991,628	20,987,125	25.6%	\$ 61,004,503	\$ 79,616,433	\$ 100,603,558	\$ 6,832,558
60	ROW, LAND, EXISTING IMPROVEMENTS	\$ 6,532,000	\$ 6,032,000	5,095,159	84.5%	\$ 936,841	\$ 2,004,106	\$ 7,099,265	\$ 567,265
60.01	Purchase or lease of real estate	\$ 6,327,000	\$ 5,827,000	5,086,065	87.3%	\$ 740,935	\$ 1,808,200	\$ 6,894,265	\$ 567,265
60.02	Relocation of existing households and businesses	\$ 205,000	\$ 205,000	9,094	4.4%	\$ 195,906	\$ 195,906	\$ 205,000	\$ -
70	VEHICLES	\$ 16,628,000	\$ 15,830,545	-	0.0%	\$ 15,830,545	\$ 15,830,545	\$ 15,830,545	\$ (797,455)
70.04	Bus	\$ 15,448,000	\$ 14,923,497	-	0.0%	\$ 14,923,497	\$ 14,923,496	\$ 14,923,496	\$ (524,504)
70.06	Non-revenue vehicles	\$ 250,000	\$ -	-	-	\$ -	\$ -	\$ -	\$ (250,000)
70.07	Spare parts	\$ 930,000	\$ 907,048	-	0.0%	\$ 907,048	\$ 907,049	\$ 907,049	\$ (22,951)
80	PROFESSIONAL SERVICES	\$ 56,702,000	52,169,072	38,362,422	73.5%	\$ 13,806,650	\$ 19,760,026	\$ 58,122,448	\$ 1,420,448
80.01	Preliminary Engineering	\$ 12,921,000	\$ 12,894,026	12,876,525	99.9%	\$ 17,501	\$ 1	\$ 12,876,526	\$ (44,474)
80.02	Final Design	\$ 7,261,000	\$ 6,019,829	5,790,068	96.2%	\$ 229,761	\$ 1,630,261	\$ 7,420,329	\$ 159,329
80.03	Project Management for Design and Construction	\$ 15,997,000	\$ 14,272,701	6,252,935	43.8%	\$ 8,019,766	\$ 8,019,766	\$ 14,272,701	\$ (1,724,299)
80.04	Construction Administration & Management	\$ 6,632,000	\$ 5,716,966	3,088,725	54.0%	\$ 2,628,241	\$ 6,548,617	\$ 9,637,342	\$ 3,005,342
80.05	Professional Liability and other Non-Construction Insurance	\$ 1,112,000	\$ 500,000	-	0.0%	\$ 500,000	\$ 500,000	\$ 500,000	\$ (612,000)
80.06	Legal; Permits; Review Fees by other agencies, cities, etc.	\$ 10,596,000	\$ 11,580,550	10,354,169	89.4%	\$ 1,226,381	\$ 1,876,381	\$ 12,230,550	\$ 1,634,550
80.07	Surveys, Testing, Investigation, Inspection	\$ 1,463,000	\$ 464,000	-	0.0%	\$ 464,000	\$ 464,000	\$ 464,000	\$ (999,000)
80.08	Start up	\$ 720,000	\$ 721,000	-	0.0%	\$ 721,000	\$ 721,000	\$ 721,000	\$ 1,000
	Subtotal (10-80)	\$ 173,633,000	\$ 156,023,245	64,444,706	41.3%	\$ 91,578,539	\$ 117,211,110	\$ 181,655,816	\$ 8,022,816
90	UNALLOCATED CONTINGENCY	\$ 18,073,000	35,682,755	-	0.0%	\$ 35,682,755	\$ -	\$ -	\$ (18,073,000)
	Subtotal (10-90)	\$ 191,706,000	191,706,000	64,444,706	33.6%	\$ 127,261,294	\$ 117,211,110	\$ 181,655,816	\$ (10,050,184)
100	FINANCE CHARGES	\$ -	-	-	-	\$ -	\$ -	\$ -	\$ -
	TOTAL PROJECT COST (10-100)	\$ 191,706,000	191,706,000	64,444,706	33.6%	\$ 127,261,294	\$ 117,211,110	\$ 181,655,816	\$ (10,050,184)

IPMO/sbX Project Cost Report
Period Ended 9/30/12

Description	Engineers Estimate	Current Budget	Expenditures		Remaining Budget	Estimate to Complete	Estimate at Completion	Budget Forecast Variance
			\$	%				
BRT Construction	\$ 84,637,000	\$ 71,135,412	\$ 20,452,570	24.2%	\$ 50,682,842	\$ 68,100,553	\$ 88,553,123	\$ 3,916,123
Vehicle Maintenance Facility (VMF) Construction	\$ 8,131,000	\$ 9,750,099	\$ -	0.0%	\$ 9,750,099	\$ 10,944,318	\$ 10,944,318	\$ 2,813,318
Vehicles - Design & Manufacturing	\$ 16,628,000	\$ 15,830,545	\$ -	0.0%	\$ 15,830,545	\$ 15,830,545	\$ 15,830,545	\$ (797,455)
ROW Acquisition Services	\$ 10,357,000	\$ 10,021,135	\$ 9,501,764	91.7%	\$ 519,371	\$ 2,236,636	\$ 11,738,400	\$ 1,381,400
3rd Party Utilities Design & Relocation	\$ 1,003,000	\$ 1,106,117	\$ 534,555	53.3%	\$ 571,562	\$ 571,562	\$ 1,106,117	\$ 103,117
BRT Design	\$ 17,849,400	\$ 16,461,791	\$ 16,191,151	90.7%	\$ 270,640	\$ 1,270,640	\$ 17,461,791	\$ (387,609)
VMF Design	\$ 1,007,600	\$ 962,929	\$ 703,575	69.8%	\$ 259,354	\$ 642,354	\$ 1,345,929	\$ 338,329
Other Professional, Technical & Management Services	\$ 34,020,000	\$ 30,755,217	\$ 17,061,092	50.2%	\$ 13,694,125	\$ 17,614,501	\$ 34,675,593	\$ 655,593
Sub-Total		\$ 156,023,245	\$ 64,444,707		\$ 91,578,538	\$ 117,211,109	\$ 181,655,816	\$ 8,022,816
Unallocated Contingency	\$ 18,073,000	\$ 35,682,755	\$ -	0.0%	\$ 35,682,755		\$ -	\$ (18,073,000)
TOTAL	\$ 191,706,000	\$ 191,706,000	\$ 64,444,707	33.6%	\$ 127,261,293	\$ 117,211,109	\$ 181,655,816	\$ (10,050,184)

ITEM # D3

DATE: November 13, 2012

TO: Committee Chair Alan Wapner and
Members of the Administrative & Finance Committee

THROUGH: Milo Victoria, CEO/General Manager

FROM: Robert Miller, Chief Financial Officer

**SUBJECT: OMNITRANS CHIEF FINANCIAL OFFICER'S REPORT ON
FORWARD FUEL PURCHASES FOR NOVEMBER 2012**

FORM MOTION

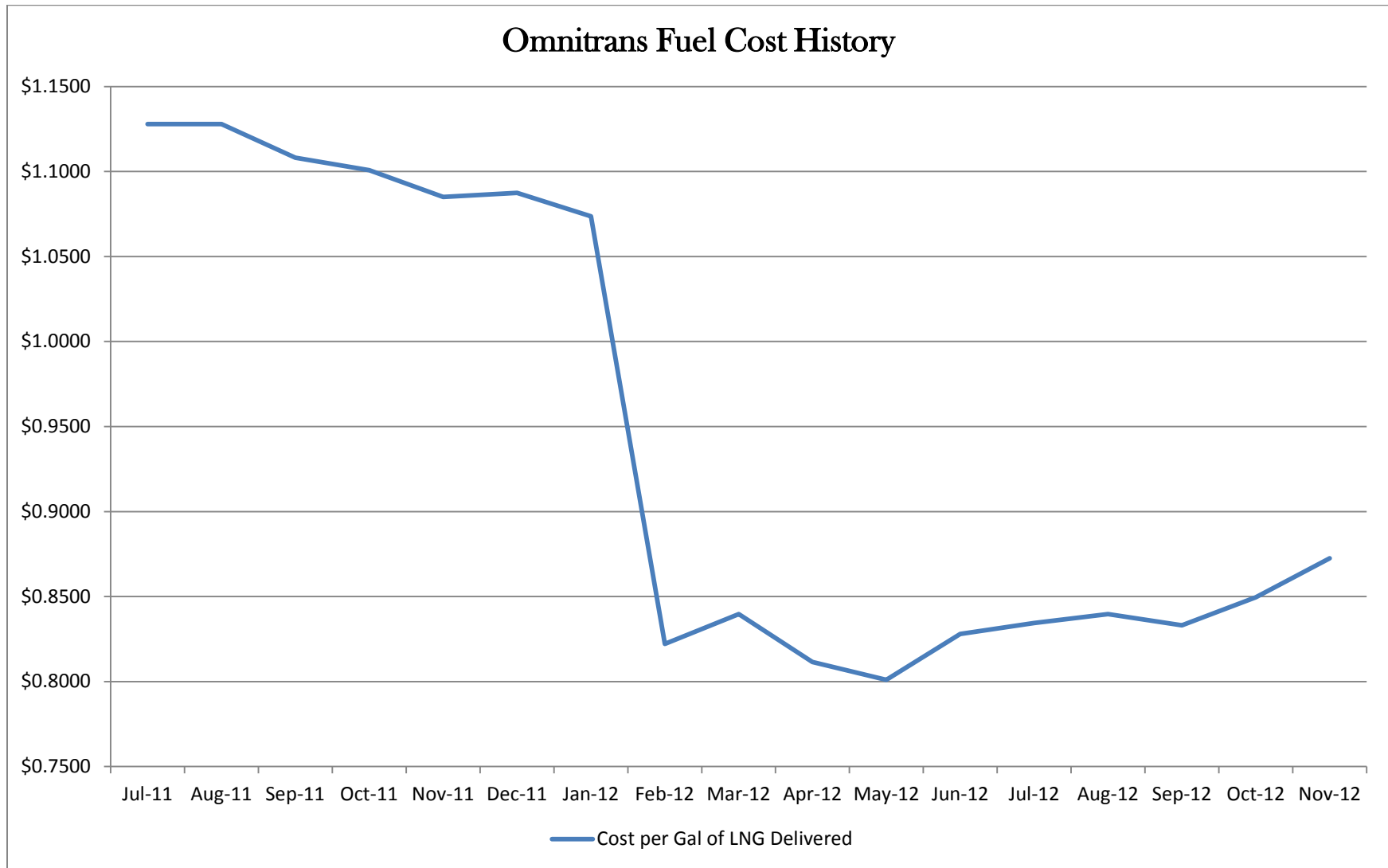
Receive and file Omnitrans Chief Financial Officer's report on forward fuel purchases for November 2012. This program was implemented on May 6, 2009, to increase the predictability of Omnitrans costs and reduce operational uncertainty in the event of dramatic fuel price increases in the open market.

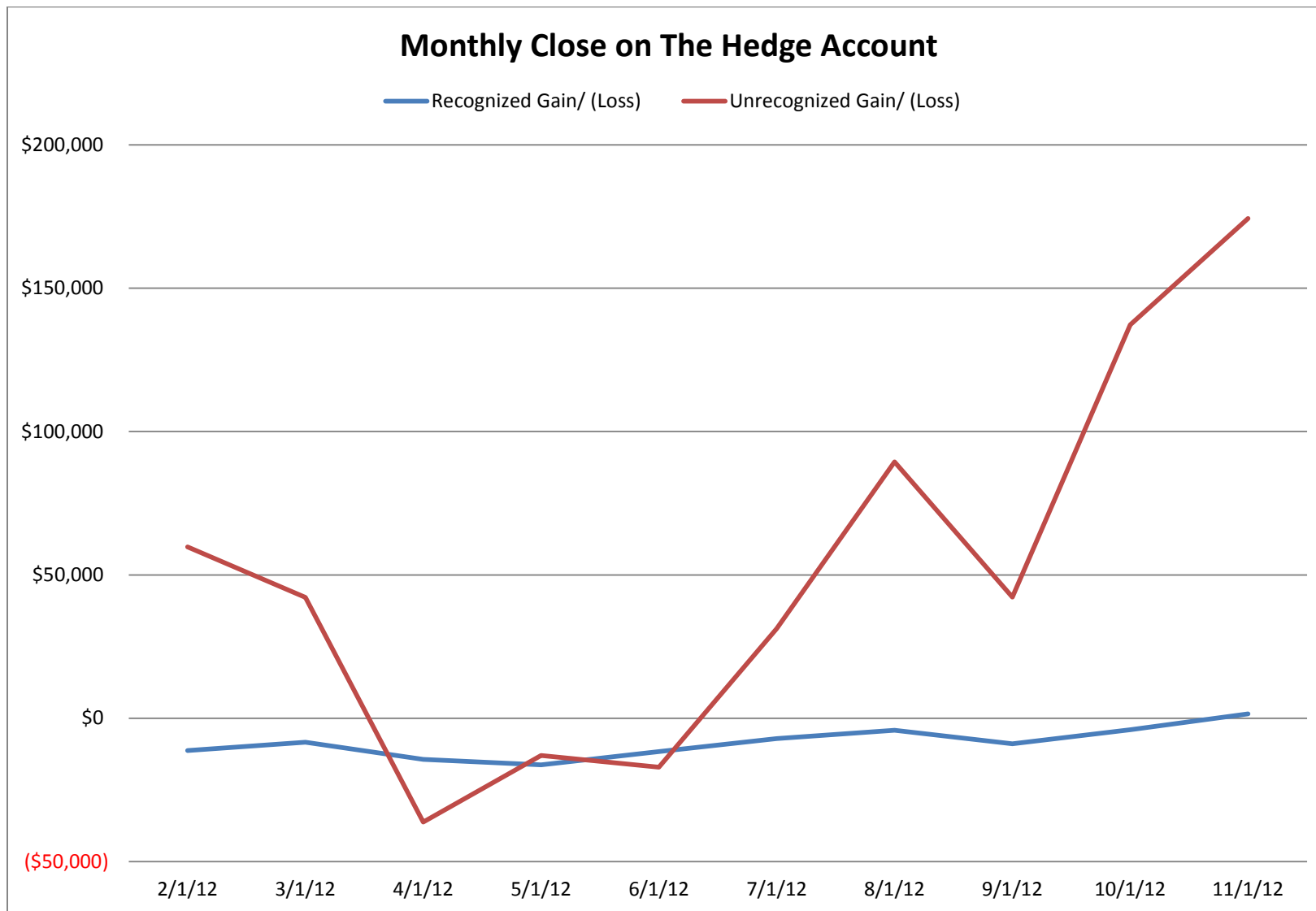
SUMMARY AND BACKGROUND

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, the monthly variance recognized in the Agency's financials, and may include articles on significant matters that have impacted the market for CNG.

Spot market prices for natural gas have been trending upward for the November 2012 contract. November marks the first month in the 2012 hedge where the spot price exceeds the hedge we established. We will recognize a gain on our futures position and that gain will reduce the cost of LNG acquired under our supply agreement with Clean Energy Fuels. The spot price that will be used for Omnitrans' November fuel purchases will reflect a price of \$.8725 per gallon including CNG at the So Cal Index price, liquefaction, delivery, and sales tax. This price is after recognition of the monthly gain on the hedge position in the amount of \$1,512. Omnitrans will recognize a favorable budget variance in the CNG account of approximately \$2,553 in the month of November, 2012. To date, Omnitrans has recognized a total loss of <84,586> on settled hedge positions; February 2012 through November 2012. The Agency has an unrecognized gain of \$150,137 on positions that remain open; December 2012 through June 2014. The forward market is anticipating increased CNG fuel prices in the future; prices at levels above the Omnitrans hedge.

MV:rm





ITEM # D4

DATE: November 13, 2012

TO: Committee Chair Alan Wapner and
Members of the Administrative & Finance Committee

FROM: Milo Victoria, CEO/General Manager

SUBJECT: COMMITTEE MEETING CALENDAR - 2013

FORM MOTION

Adopt the Administrative & Finance Committee Meeting Calendar for 2013. Meetings are scheduled the second Monday of each month (unless otherwise noted) and begin at 11 a.m.

January 14, 2013
February 11, 2013
March 18, 2013¹
April 8, 2013
May 13, 2013
June 10, 2013
July 8, 2013
August 12, 2013
September 9, 2013
October 15, 2013²
November 12, 2013²
December 9, 2013

¹ Third Monday due to conflict with APTA Legislative Conference

² Tuesday immediately following Monday observed holiday.

MV:vlo

ITEM # D5

DATE: November 13, 2012

TO: Committee Chair Alan Wapner &
Members of the Administrative & Finance Committee

THROUGH: Milo Victoria, CEO/General Manager

FROM: Jennifer M. Sims, Director of Procurement

**SUBJECT: REVISED PURCHASE ORDER TERMS AND CONDITIONS &
STANDARD CONTRACT TEMPLATE**

FORM MOTION

Receive and recommend to the Board of Directors for receipt and file the updated Standard Purchase Order Terms and Conditions and Standard Contract Template.

BACKGROUND & SUMMARY

Omnitrans' standard Purchase Order terms and conditions needed to be updated to include patent protection language, warranty requirements, and updated acknowledgement language to avoid exceptions to our standard terms and conditions.

To facilitate the solicitation and contracting process, staff worked with County Counsel to develop a standard contract template.

CONCLUSION

Receive and recommend to the Board of Directors for receipt and file the updated Standard Purchase Order Terms and Conditions and Standard Contract Template.

MV:JS

Attachment

OMNITRANS TERMS AND CONDITIONS OF PURCHASE

ATTACHMENT A

1. **PURCHASE ORDER (P.O.)** Omnitrans shall not be responsible for goods or services provided to officials or employees without a duly authorized P.O.
2. **INVOICES.** Invoices shall be submitted under the same name as that which is shown on the face of this P.O. The P.O. number must appear on all invoices, shipping notices, delivery and packing slips, packages and correspondence. Each P.O. shall be invoiced separately. **Submit invoices monthly** or as prescribed by Omnitrans' Finance Dept.

Invoices shall **reference** the appropriate **purchase order number** and **contract number**. Contractor shall send invoices to:

- accountspayable@omnitrans.org Finance
- contracts@omnitrans.org Procurement

The above does not apply to those Contractors whose invoices are also their packing slip, work order, delivery ticket, etc.

3. **PACKING SLIPS.** Packing slips must accompany each shipment unit (included with each package in shipment), showing Omnitrans' P.O. number, description, and part number for each item.
4. **ACCEPTANCE.** Goods are subject to Omnitrans' inspection and approval within a reasonable time after delivery. If specifications are not met or not approved, material may be returned at supplier's expense.
5. **DELIVERY.** Unless otherwise indicated on the face of this order, delivery shall be FOB destination. COD shipments will not be accepted. Deliveries for all departments must be made through Omnitrans' Receiving Department. Nonpayment may result for goods delivered in any other manner.
6. **PARTIAL DELIVERIES.** Shipments must be identified as partial or complete, along with the number of shipping units.
7. **MODIFICATIONS.** Supplier shall not make any alterations or change to this order in any fashion without prior written authorization from Omnitrans.
8. **WARRANTY.** Vendor warrants that the item(s) provided and/or work performed under this contract comply with all specifications, are free of liens and encumbrances, and that workmanship and materials are free from defects. Work shall comply with nationally recognized codes and established industry standards. Equipment shall carry the manufacturers' most favorable commercial warranties. The warranty period shall begin after acceptance of item(s) and/or work. Vendor agrees to remedy by replacing or repairing any item(s) that is damaged or defective during normal usage within the warranty period, at no additional cost to Omnitrans. Such repair or replacement shall occur within a reasonable time frame and to the satisfaction of Omnitrans.
9. **FEDERAL, STATE AND LOCAL LAWS.** All goods or services furnished pursuant to this P.O. shall comply with all CAL-OSHA standards and regulations and all applicable Federal, state and local laws and regulations.
10. **GOVERNING LAW.** This P.O. and the contract between the parties evidenced hereby or attached thereto shall be deemed to be made in the State of California and shall in all respects be construed and governed by the laws of that state.

11. **PATENT PROTECTION.** To the extent the subject articles are not manufactured pursuant to design originated by Omnitrans, supplier agrees it will indemnify and hold Omnitrans and its officers, agents, and employees harmless from any loss, damage or liability which may be incurred on account of any alleged infringement of any United States patent with respect to such articles or materials, and that it will, at its own expense, defend any action, suit or claim in which such infringement is alleged. Omnitrans agrees to notify supplier promptly of any suit or claim against Omnitrans for any alleged infringement of patent.
12. **DISADVANTAGED BUSINESS ENTERPRISE.** The supplier shall not discriminate based on race, color, national origin, or sex in the performance of this P.O.
13. **ENERGY CONSERVATION.** The supplier agrees to comply with the requirements of the Resource Conservation and Recovery Act, as amended, 42 USC §§6901 et seq.
14. **TITLE VI OF THE CIVIL RIGHTS ACTS OF 1964.** Supplier agrees to comply with all applicable requirements of Title VI of the Civil Rights Act of 1964, 42 USC § 2000d and USDOT regulations "Nondiscrimination in Federally Assisted Programs of the Department of Transportation--Effectuation of Title VI of the Civil Rights Act," 49 CFR, part 21.
15. **RECORD RETENTION.** The supplier shall make available within 30 days, upon request by Omnitrans, all records related to this P.O. for a period of up to three (3) years after closure.
16. **INSURANCE.** The supplier shall be required to provide a Certificate of Insurance for (1) Workers' Compensation in an amount to meet the requirements of the Labor Code of the State of California, including Employer's Liability with \$1,000,000 limits covering all persons including volunteers providing services on behalf of the supplier and all risks to such persons under this contract; (2) Commercial/General Liability (CGL) insurance covering all operations performed by or on behalf of the supplier, providing coverage for bodily injury and property damage with a \$1,000,000, per occurrence and \$2,000,000 general aggregate limit. The CGL policy coverage shall include: premises operations and mobile equipment; products and completed operations; broad form property damage; explosion, collapse and underground hazards; personal injury; contractual liability and (3) Auto Liability (AL) insurance with a combined single limit (CSL) of not less than \$1,000,000 per occurrence. CGL and AL must contain an endorsement that names Omnitrans as an additional insured with coverage at least as broad as Additional Insured (Form B) endorsement form ISO, CG 20 10 11 85.
17. **AMERICANS WITH DISABILITIES ACT.** The supplier agrees to comply with all the applicable requirements of the Americans with Disabilities Act of 1990, 42 USC §§12101 et seq. in conjunction with this P.O.
18. **DRUG AND ALCOHOL POLICY.** It is the policy of Omnitrans that anyone, while on Agency property, is prohibited from unlawfully manufacturing, distributing, dispensing, possessing or using controlled substances or alcohol or illegally using or misusing legally prescribed drugs.
19. **INTEREST OF MEMBERS OF CONGRESS.** No member of or delegate to the Congress of the United States shall be admitted to any share or part of the P.O.

20. **INDEMNIFICATION.** The supplier shall indemnify, keep and save harmless Omnitrans, its agents, officials and employees from any and all claims, actions, losses, damages, and/or liability arising out of this P.O. from any cause whatsoever, including the acts, errors or omissions of any person and for any costs or expenses incurred by Omnitrans on account of any claim except where such indemnification is prohibited by law. This indemnification provision shall apply regardless of the existence or degree of fault of indemnitees. The supplier's indemnification obligation applies to Omnitrans' "active" as well as "passive" negligence but does not apply to Omnitrans' "sole negligence" or "willful misconduct" within the meaning of Civil Code Section 2782.
21. **FORCE MAJEURE (EVENTS BEYOND THE CONTROL OF THE SUPPLIER).** The supplier will not be held liable for failure of delay in fulfillment if hindered or prevented by act of God, fire, strike, loss or shortage of transportation facilities, lock-out, commandeering of materials, products, plants or facilities by government that are not reasonably foreseeable.
22. **ACKNOWLEDGMENT.** By delivery of the goods or services purchased herein, the supplier agrees to all the terms and conditions of this P.O.
23. **TERMINATION.** Omnitrans may terminate the P.O. in whole or in part for Omnitrans' convenience or because of the failure of the supplier to fulfill the contract obligation. Omnitrans' CEO/General Manager shall terminate by specifying the nature, extent, and effective date of the termination. Upon receipt of the notice, the supplier shall: (a) immediately discontinue all services affected and (b) deliver to Omnitrans' CEO/General Manager all data, drawings, specifications, reports, estimates, summaries and other information and materials accumulated in performing this contract, whether completed or in process. If the termination is for the convenience of Omnitrans, Omnitrans shall make an equitable adjustment in the P.O., but shall not allow anticipated profit on unperformed services.
24. **APPLICABILITY.** The Terms and Conditions stated herein will supplement the terms and conditions of any Omnitrans procurement wherein the terms and conditions were previously specified.
25. **OSHA COMPLIANCE.** The items covered by this P.O. must conform to safety orders of OSHA, CALOSHA, and /or NIOSH, and applicable Material Safety Data Sheets (MSDS). Vendor is required to provide a completed MSDS for all hazardous substances as required by Labor Code Sections 6390; General Industrial Safety Order, Section 5194; and Title 8, California Admins. Code. MSDS sheets need to be sent to Omnitrans' Safety and Regulatory Compliance Specialist for each specified item and a copy sent to Omnitrans' Procurement Department.
26. **QUESTIONS.** Questions regarding the Terms and Conditions of this P.O. are to be directed to the Procurement Department, phone 909.379.7146; fax: 909.379.7107; 1700 West Fifth Street, San Bernardino, CA 92411.

End of the Purchase Order Terms and Conditions

Date last revised: Tuesday, September 14, 2012
Form No. 1



ATTACHMENT B
SAMPLE CONTRACT
CONTRACT AGREEMENT

between

CONTRACTOR

CONTRACT DOCUMENTS

**CONTRACT NO.
XXXX**

(hereinafter "CONTRACTOR")

Telephone:

Fax:

_____ **Supplies/Services**

And

Contract Amount: \$ _____

Omnitrans
1700 West Fifth Street
San Bernardino, CA 92411
(hereinafter "OMNITRANS")

Omnitrans Project Manager:

Name:

Title:

Telephone:

Fax: Email: [g](#)

Contract Administrator:

Name:

Title: Telephone:

Fax:

Email:



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This Agreement is made and entered into as of this _____ day of _____, 2012 by and between Omnitrans (hereinafter referred to as "OMNITRANS") and _____ (hereinafter referred to as "CONTRACTOR").

RECITALS

WHEREAS, OMNITRANS is a joint powers authority organized under Sections 6500 et seq. of the California Government Code and Section 130255 of the California Public Utilities Code with power to contract for services described in Attachment A to this Agreement entitled "Attachment A, Scope of Work" (hereinafter referred to as "Work");

WHEREAS, CONTRACTOR has indicated it is qualified to perform such Services and (1) has reviewed all the available data furnished by OMNITRANS pertinent to the Work to be rendered; (2) has inspected and reviewed the Work to be rendered; (3) will exercise the ordinary care and skill expected of a practitioner in its profession; and (4) is willing to accept responsibility of performing the Work set forth in this Agreement for the compensation and in accordance with the terms, requirements and conditions herein specified;

NOW, THEREFORE, for the consideration hereinafter stated, the parties agree as follows:

1. SCOPE OF WORK

- A. CONTRACTOR will perform the Work and related tasks as described in Attachment A, Scope of Work hereto and is incorporated by reference into and made a part of this Agreement.
- B. This is a non-exclusive Agreement, whereby OMNITRANS may, at its sole discretion, augment or supplant the Work with its own forces or forces of another contractor or entity. CONTRACTOR will cooperate fully with OMNITRANS' staff or other contractor or entity that may be providing similar or the same Work for OMNITRANS.

2. PERIOD OF PERFORMANCE

The period of performance shall be _____ or pursuant to the provisions of this Agreement, or unless earlier terminated pursuant to Section 8 or Section 9 of this Agreement.

3. CONTRACT SUM

For CONTRACTOR's full and complete performance of its obligations under this Agreement, OMNITRANS shall pay CONTRACTOR on a FIXED PRICE basis at the fully burdened fixed rates shown in Attachment B, Labor Rates, plus

reimbursement of any direct costs agreed to in accordance with the provisions of this Section, and subject to the maximum cumulative payment obligation.

OMNITRANS' maximum cumulative payment obligation under this Agreement shall not exceed _____ Dollars (\$_____), including all amounts payable to CONTRACTOR for all costs, including but not limited to direct labor, other direct costs, subcontracts, indirect costs including, but not limited to, leases, materials, taxes, insurance, and profit.

4. INVOICING AND PAYMENT

- A. CONTRACTOR shall invoice OMNITRANS on a monthly basis no later than the 15th of each month. CONTRACTOR shall furnish information as may be requested by OMNITRANS to substantiate the validity of an invoice.

CONTRACTOR shall submit invoices in duplicate to:

OMNITRANS
1700 West Fifth Street
San Bernardino, CA 92411
Attn: Accounts Payable

Each invoice shall include, at minimum, the following information:

- Contract number
 - Detail description of the Work rendered
 - Time period covered by the invoice
 - Amount of payment requested
 - Information as requested by OMNITRANS
- B. OMNITRANS shall remit payment within thirty (30) calendar days of approval of the invoices by OMNITRANS' Project Manager.

At its sole discretion, OMNITRANS may decline to make full payment for any Work until such time as CONTRACTOR has documented, to OMNITRANS' satisfaction, that CONTRACTOR has fully completed all required Work.

In the event OMNITRANS should overpay CONTRACTOR, such overpayment shall not be construed as a waiver of OMNITRANS' right to obtain reimbursement for the overpayment. Upon discovering any overpayment, either on its own or upon notice of OMNITRANS, CONTRACTOR shall immediately reimburse OMNITRANS the entire overpayment or, at its sole discretion, OMNITRANS may deduct such overpayment amount from monies due to CONTRACTOR under this

Agreement or any other Agreement between OMNITRANS and CONTRACTOR.

5. AUDIT AND INSPECTION OF RECORDS

CONTRACTOR agrees that OMNITRANS or any duly authorized representative shall have access to and the right to examine, audit, excerpt, copy or transcribe any pertinent transaction, activity, time cards, employment records or other records relating to this Agreement. Such material, including all pertinent cost, accounting, financial records, and proprietary data must be kept and maintained by CONTRACTOR for a period of three (3) years after completion of this Agreement unless OMNITRANS' written permission is given to CONTRACTOR to dispose of material prior to this time.

6. NOTIFICATION

All notices hereunder concerning this Agreement and the Work to be performed shall be physically transmitted by courier, overnight, registered or certified mail, return receipt requested, postage prepaid and addressed as follows:

To OMNITRANS:

To CONTRACTOR:

Omnitrans
1700 West Fifth Street
San Bernardino, CA 92411
Attn:

7. OMNITRANS' AND CONTRACTOR'S REPRESENTATIVES

A. OMNITRANS' Project Manager

Contracting Officer: OMNITRANS' CEO/General Manager or his authorized designee who has authority to execute contracts on behalf of OMNITRANS.

Project Manager: xxxxxx xxxxxxxx.

- a. OMNITRANS has the final approval in all matters relating to or affecting the Work. Except as expressly specified in this Agreement, the Contracting Officer may exercise any powers, rights and/or privileges that have been lawfully delegated by OMNITRANS. Nothing in this Agreement should be construed to bind OMNITRANS for acts of its officers, employees, and/or agents that exceed the delegation of authority specified herein.
- b. The Contracting Officer has delegated to the Project Manager certain powers and duties in connection with this Agreement. The

Project Manager is the authorized representative of the Contracting Officer for matters related to this Agreement. The Project Manager or his/her designee is empowered to:

1. Have general oversight of the Work and this Agreement, including the power to enforce compliance with this Agreement.
 2. Reserve the right to remove any portion of the Work from CONTRACTOR which have not been performed to OMNITRANS' satisfaction.
 3. Subject to the review and acceptance by OMNITRANS, negotiate with CONTRACTOR all adjustments pertaining to this Agreement for revision.
- c. In addition to the foregoing, the Project Manager shall have those rights and powers expressly set forth in other sections of this Agreement.

B. Contractor's Key Personnel

The following are CONTRACTOR's key personnel and their associated roles in the Work to be provided:

<u>Name</u>	<u>Role</u>
_____	_____
_____	_____
_____	_____
_____	_____

Any propose/substitution or replacement by Contractor of Contractor's key personnel shall ensure that such person possesses the same or better expertise and experience than the key personnel being substituted or replaced. Omnitrans reserves the right to interview such person to ascertain and verify if such proposed substitution or replacement does in deed possess such expertise and experience.

OMNITRANS awarded this Agreement to CONTRACTOR based on OMNITRANS' confidence and reliance on the expertise of CONTRACTOR's key personnel described above. CONTRACTOR shall not reassign key personnel or assign other personnel to key personnel roles until CONTRACTOR obtains prior written approval from OMNITRANS.

8. TERMINATION FOR CONVENIENCE

OMNITRANS may terminate this Agreement in whole or in part for OMNITRANS' convenience. Omnitrans' CEO/General Manager shall terminate this Agreement by a written Notice of Termination to CONTRACTOR specifying the nature, extent, and effective date of the termination. Upon receipt of the notice of termination, CONTRACTOR shall immediately discontinue all Work affected and deliver all data, drawings, specifications, reports, estimates, summaries, and other information and materials accumulated in performing this Agreement, whether completed or in process, to Omnitrans' CEO/General Manager. OMNITRANS shall make an equitable adjustment in the Agreement for Work already performed, but shall not allow anticipated profit on unperformed services. Force Majeure shall apply.

9. TERMINATION FOR BREACH OF AGREEMENT

- A. If CONTRACTOR fails to perform any of the provisions of this Agreement or so fails to make progress as to endanger timely performance of this Agreement, OMNITRANS may give CONTRACTOR written notice of such default. If CONTRACTOR does not cure such default or provide a plan to cure such default which is acceptable to OMNITRANS within the time permitted by OMNITRANS, then OMNITRANS may terminate this Agreement due to CONTRACTOR's breach of this Agreement.
- B. If a federal or state proceeding for relief of debtors is undertaken by or against CONTRACTOR, or if CONTRACTOR makes an assignment for the benefit of creditors, then OMNITRANS may immediately terminate this Agreement.
- C. If CONTRACTOR violates Section 26, Compliance with Lobbying Policies, of this Agreement, then OMNITRANS may immediately terminate this Agreement.
- D. In the event OMNITRANS terminates this Agreement as provided in this Section, OMNITRANS may procure, upon such terms and in such manner as OMNITRANS may deem appropriate, Work similar in scope and level of effort to those so terminated, and CONTRACTOR shall be liable to OMNITRANS for all of its costs and damages, including, but not limited, any excess costs for such Work.
- E. All finished or unfinished documents and materials produced or procured under this Agreement shall become OMNITRANS' property upon date of such termination.
- F. If, after notice of termination of this Agreement under the provisions of this Section, it is determined for any reason that CONTRACTOR was not in default under the provisions of this Section, or that the default was excusable under the terms of this Agreement, the rights and obligations of

the parties shall be the same as if the notice of termination had been issued pursuant to Section 8, Termination for Convenience.

- G. The rights and remedies of OMNITRANS provided in this Article shall not be exclusive and are in addition to any other rights and remedies provided by law or under this Agreement.

10. ASSIGNMENT

This Agreement, any interest herein or claim hereunder, may not be assigned by CONTRACTOR either voluntarily or by operation of law, nor may all or any part of this Agreement be subcontracted by CONTRACTOR, without the prior written consent of OMNITRANS. Consent by OMNITRANS shall not be deemed to relieve CONTRACTOR of its obligations to comply fully with all terms and conditions of this Agreement.

11. SUBCONTRACTING

OMNITRANS hereby consents to CONTRACTOR’s subcontracting of portions of the Work to the parties identified below for the functions described in CONTRACTOR’s proposal. CONTRACTOR shall include in each subcontract agreement the stipulation that CONTRACTOR, not OMNITRANS, is solely responsible for payment to the subcontractor for all amounts owing and that the subcontractor shall have no claim, and shall take no action against OMNITRANS, Member Agencies or officers, directors, employees or sureties thereof for nonpayment by CONTRACTOR.

Subcontractor’s Name and Address	Work to Be Performed
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12. INDEPENDENT CONTRACTOR

CONTRACTOR's relationship to OMNITRANS in the performance of this Agreement is that of an independent Contractor. CONTRACTOR's personnel performing Work under this Agreement shall at all times be under CONTRACTOR's exclusive direction and control and shall be employees of CONTRACTOR and not employees of OMNITRANS. CONTRACTOR shall pay all wages, salaries and other amounts due its employees in connection with this Agreement and shall be responsible for all reports and obligations respecting them, such as social security, income tax withholding, unemployment compensation, workers' compensation and similar matters.

13. INSURANCE

Throughout the duration of this Agreement, CONTRACTOR shall maintain the following insurance, which shall be full-coverage insurance not subject to self-insurance provisions. CONTRACTOR shall not of its own initiative cause such insurance to be canceled or materially changed during the term of this Agreement.

- A. **Commercial General Liability including Products/Completed Operations:** \$1,000,000 per occurrence for bodily and property damage liability and \$2,000,000 aggregate; *Endorsement naming Omnitrans as Additional Insured.*
- B. **Automobile Liability:** \$1,000,000 combined single limit bodily and property damage liability per accident; *Endorsement naming Omnitrans as Additional Insured.*
- C. **Workers' Compensation:** statutory limits or, a State-Approved program in an amount and form that meets all applicable requirements of the Labor Code of the State of California; *waiver of subrogation that includes Omnitrans.*
- D. **Contractors Pollution/Environmental Liability:** Applicable to the work being performed, with a limit no less than \$1,000,000 per claim or occurrence and \$2,000,000 aggregate; *Endorsement naming Omnitrans as additional insured.*

Additional Insured:

Omnitrans, its officers, officials, employees, agents, and volunteers.

14. INDEMNITY

CONTRACTOR shall indemnify, defend and hold harmless OMNITRANS, and its member agencies, and their officers, directors, employees and agents from and against any and all liability, expense (including, but not limited to, defense costs

and attorneys' fees), claims, causes of action, and lawsuits for damages of any nature whatsoever, including, but not limited to, bodily injury, death, personal injury or property damage (including property of CONTRACTOR) arising from or connected with any alleged act and/or omission of CONTRACTOR, its officers, directors, employees, agents, Subcontractors or suppliers. This indemnity shall survive termination or expiration of this Agreement and/or final payment thereunder.

15. REVISIONS IN SCOPE OF WORK

By written notice or order, OMNITRANS may, from time to time, order work suspension or make changes to this Agreement. Changes in the Work shall be mutually agreed to and incorporated into an amendment to this Agreement. Upon execution of an amendment, CONTRACTOR shall perform the Work, as amended.

16. RIGHTS IN TECHNICAL DATA

- A. No material or technical data prepared by CONTRACTOR under this Agreement is to be released by CONTRACTOR to any other person or entity except as necessary for the performance of the Work. All press releases or information concerning the Work that might appear in any publication or dissemination, including but not limited to, newspapers, magazines, and electronic media, shall first be authorized in writing by OMNITRANS.
- B. The originals of all letters, documents, reports and other products and data produced under this Agreement shall become the property of OMNITRANS without restriction or limitation on their use and shall be made available upon request to OMNITRANS at any time. Original copies of such shall be delivered to OMNITRANS upon completion of the Work or termination of the Work. CONTRACTOR shall be permitted to retain copies of such items for the furtherance of its technical proficiency; however, publication of this material is subject to the prior written approval of OMNITRANS. The provisions of this paragraph shall survive termination or expiration of this Agreement and/or final payment thereunder.

17. OWNERSHIP OF REPORTS AND DOCUMENTS

The originals of all letters, documents, reports and other products and data produced under this Agreement shall be delivered to, and become the sole and exclusive property of OMNITRANS. Copies may be made for CONTRACTOR's records, but shall not be furnished to others without prior written authorization from OMNITRANS. Such deliverables shall be deemed works made for hire, and all rights in copyright therein shall be retained by OMNITRANS.

18. OWNERSHIP RIGHTS

- A. In the event OMNITRANS rightfully obtains copies of Proprietary Data under the terms of the separate License Agreement and Escrow Agreement that govern rights in Documentation, Software and Intellectual Property created and/or developed by Contractor, its Third Party Software Contractors and its Suppliers as part of the Project, any derivative works and associated documentation created by or on behalf of OMNITRANS by Permitted Programmers (as defined in the License Agreement) shall be the sole and exclusive property of OMNITRANS (collectively, "OMNITRANS Intellectual Property"), and OMNITRANS may use, disclose and exercise dominion and full rights of ownership, in any manner in OMNITRANS Intellectual Property in connection with the use, operation and maintenance of a transportation system administered by OMNITRANS. No use of OMNITRANS Intellectual Property shall be made for any purpose other than in conjunction with a transportation system administered by CONTRACTOR, and OMNITRANS shall not sell, lease, rent, give away or otherwise disclose any OMNITRANS Intellectual Property to any outside third party other than Permitted Programmers. To the extent there may be any question of rights of ownership or use in any OMNITRANS Intellectual Property, Contractor shall require all of its subcontractors and suppliers (including without limitation its Third Party Software Contractors) to assign to OMNITRANS, all worldwide right, title and interest in and to all OMNITRANS Intellectual Property in a manner consistent with the foregoing terms of this paragraph. Contractor shall execute any documents as OMNITRANS may from time to time reasonably request to effectuate the terms of this paragraph.
- B. All documentation and Software which predates this Contract and which otherwise owned by Contractor or its Third Party Software Contractors, and all Documentation and Software which is created by Contractor or its Third Party Software Contractors shall be Licensed Software or Licensed Documentation, as appropriate. All Licensed Software and Licensed Documentation shall be governed by the License Agreement by and between the parties of event date herewith.

19. WORK FOR HIRE

Any work created or produced as a part of this Agreement that may be defined under Section 101, Title 17, USC will be considered "work for hire" as it pertains to ownership rights. CONTRACTOR, by his/her endorsement hereon agrees that all rights to any work(s) created or produced are waived, and that ownership rests with OMNITRANS. CONTRACTOR further agrees to ensure transfer of all rights to such work(s), as defined under federal copyright law, that may be created or produced under this Agreement by its suppliers, contractors or subcontractors.

20. SUBMITTAL OF CLAIMS BY CONTRACTOR

CONTRACTOR shall file any and all claims with OMNITRANS' Project Manager in writing within thirty (30) days of the event or occurrence giving rise to the claim. The claim shall be in sufficient detail to enable OMNITRANS to ascertain the claim's basis and amount, and shall describe the date, place and other pertinent circumstances of the event or occurrence giving rise to the claim and the indebtedness, obligation, injury, loss or damages allegedly incurred by CONTRACTOR.

Even though a claim may be filed and/or in review by OMNITRANS, CONTRACTOR shall continue to perform in accordance with this Agreement.

21. EQUAL OPPORTUNITY

CONTRACTOR shall not discriminate against, or grant preferential treatment to, any individual or group, or any employee or applicant for employment because of race, age, religion, color, ethnicity, sex, national origin, ancestry, physical disability, mental disability, political affiliation, sexual orientation, marital status or other status protected by law. CONTRACTOR shall take action to ensure that applicants and employees are treated without regard to the above.

22. STANDARD OF PERFORMANCE

- A. CONTRACTOR shall perform and exercise, and require its subcontractors to perform and exercise due professional care and competence in the performance of the Work in accordance with the requirements of this Agreement. CONTRACTOR shall be responsible for the professional quality, technical accuracy, completeness and coordination of the Work, it being understood that OMNITRANS will be relying upon such professional quality, accuracy, completeness and coordination in utilizing the Work. The foregoing obligations and standards shall constitute the "Standard of Performance" for purposes of this Agreement. The provisions of this paragraph shall survive termination or expiration of this Agreement and/or final payment thereunder.
- B. All workers shall have sufficient skill and experience to perform the Work assigned to them. OMNITRANS shall have the right, at its sole discretion, to require the immediate removal of CONTRACTOR's personnel at any level assigned to the performance of the Work at no additional fee or cost to OMNITRANS, if OMNITRANS considers such removal in its best interests and requests such removal in writing and such request is not done for illegal reasons. Further, an employee who is removed from performing Work under this Agreement under this Article shall not be re-assigned to perform Work in any other capacity under this Agreement without OMNITRANS' prior written approval.

23. NOTIFICATION OF EMPLOYMENT OF OMNITRANS BOARD MEMBERS/ALTERNATES AND EMPLOYEES

To ensure compliance with OMNITRANS' Ethics Policy, CONTRACTOR shall provide written notice to OMNITRANS disclosing the identity of any individual who CONTRACTOR desires to employ or retain under a contract, and who (1) presently serves as a Board Member/Alternate or an employee of OMNITRANS, or (2) served as a Board Member/Alternate or an employee of OMNITRANS within the previous 12 months of the date of the proposed employment or retention by CONTRACTOR. CONTRACTOR's written notice shall indicate whether the individual will be an officer, principal or shareholder of the entity and/or will participate in the performance of this Agreement.

24. DISQUALIFYING POLITICAL CONTRIBUTIONS

In the event of a proposed amendment to this Agreement, CONTRACTOR shall provide prior to the execution of such amendment, a written statement disclosing any contribution(s) of \$250 or more made by CONTRACTOR or its subcontractor(s) to Omnitrans Board Members/Alternates or employees within the preceding twelve (12) months of the date of the proposed amendment. Applicable contributions include those made by any agent/person/entity on behalf of CONTRACTOR or subcontractor(s).

25. COMPLIANCE WITH LAW

CONTRACTOR shall familiarize itself with and perform the Work required under this Agreement in conformity with requirements and standards of OMNITRANS, municipal and public agencies, public and private utilities, special districts, and railroad agencies whose facilities and work may be affected by Work under this Agreement. CONTRACTOR shall also comply with all Federal, state and local laws and ordinances.

26. COMPLIANCE WITH LOBBYING POLICIES

- A. CONTRACTOR agrees that if it is a Lobbyist Employer or if it has retained a Lobbying Firm or Lobbyist, as such terms are defined by OMNITRANS in its Ethics Policy, it shall comply or ensure that its Lobbying Firm and Lobbyist complies with OMNITRANS' Ethics Policy.
- B. If CONTRACTOR (Lobbyist Employer) or its Lobbying Firm or Lobbyist fails to comply, in whole or in part, with OMNITRANS' Ethics Policy, such failure shall be considered a material breach of this Agreement and OMNITRANS shall have the right to immediately terminate or suspend this Agreement.

27. PUBLIC RECORDS ACT

- A. All records, documents, drawings, plans, specifications and other material relating to conduct of OMNITRANS' business, including materials submitted by CONTRACTOR in its proposal and during the course of performing the Work under this Agreement, shall become the exclusive property of OMNITRANS and may be deemed public records. Said materials may be subject to the provisions of the California Public Records Act. OMNITRANS' use and disclosure of its records are governed by this Act.
- B. OMNITRANS will not advise as to the nature or content of documents entitled to protection from disclosure under the California Public Records Act, including interpretations of the Act or the definitions of trade secret, confidential or proprietary. OMNITRANS will accept materials clearly and prominently labeled "TRADE SECRET" or "CONFIDENTIAL" or "PROPRIETARY" as determined by CONTRACTOR. OMNITRANS will endeavor to notify CONTRACTOR of any request of the disclosure of such materials. Under no circumstances, however, will OMNITRANS be liable or responsible for the disclosure of any labeled materials whether the disclosure is required by law or a court order or occurs through inadvertence, mistake or negligence on the part of OMNITRANS or its officers, employees and/or contractors.
- C. In the event of litigation concerning the disclosure of any material submitted by CONTRACTOR, OMNITRANS' sole involvement will be as a stake holder, retaining the material until otherwise ordered by a court. CONTRACTOR, at its sole expense and risk, shall be responsible for prosecuting or defending any action concerning the materials, and shall defend, indemnify and hold OMNITRANS harmless from all costs and expenses, including attorneys' fees, in connection with such action.

28. WAIVER/INVALIDITY

No waiver of a breach of any provision of this Agreement by either party shall constitute a waiver of any other breach of the provision, or of any other breach of the provision of the Agreement. Failure of either party to enforce any provision of this Agreement at any time shall not be construed as a waiver of that provision.

The invalidity in whole or in part of any provision of this Agreement shall not void or affect the validity of any other provision.

29. FORCE MAJEURE

Performance of each and all CONTRACTOR's and OMNITRANS' covenants herein shall be subject to such delays as may occur without CONTRACTOR's or OMNITRANS' fault from acts of God, strikes, riots, or from other similar causes beyond CONTRACTOR's or OMNITRANS' control.

30. CONFIDENTIALITY

CONTRACTOR agrees that for and during the entire term of this Agreement, any information, data, figures, records, findings and the like received or generated by CONTRACTOR in the performance of this Agreement, shall be considered and kept as the private and privileged records of OMNITRANS and will not be divulged to any person, firm, corporation, or other entity except on the direct prior written authorization of OMNITRANS. Further, upon expiration or termination of this Agreement for any reason, CONTRACTOR agrees that it will continue to treat as private and privileged any information, data, figures, records, findings and the like, and will not release any such information to any person, firm, corporation or other entity, either by statement, deposition, or as a witness, except upon direct prior written authority of OMNITRANS.

31. CONTRACTOR'S INTERACTION WITH THE MEDIA AND THE PUBLIC

- A. OMNITRANS shall review and approve in writing all OMNITRANS related copy proposed to be used by CONTRACTOR for advertising or public relations purposes prior to publication. CONTRACTOR shall not allow OMNITRANS related copy to be published in its advertisements and public relations programs prior to receiving such approval. CONTRACTOR shall ensure that all published information is factual and that it does not in any way imply that OMNITRANS endorses CONTRACTOR's firm, service, and/or product.
- B. CONTRACTOR shall refer all inquiries from the news media to OMNITRANS, and shall comply with the procedures of OMNITRANS' Public Affairs staff regarding statements to the media relating to this Agreement or the Work.
- C. If CONTRACTOR receives a complaint from a citizen or the community, CONTRACTOR shall inform OMNITRANS as soon as possible and inform OMNITRANS of any action taken to alleviate the situation.
- D. The provisions of this Article shall survive the termination or expiration of this Agreement.

32. GOVERNING LAW

The validity of this Agreement and of any of its terms or provisions, as well as the rights and duties of the parties hereunder, shall be governed by the laws of the State of California, and the proper venue of any action brought hereunder is and shall be the County of San Bernardino, California.

33. MODIFICATIONS TO AGREEMENT

Unless specified otherwise in the Agreement, this Agreement may only be modified by written mutual consent evidenced by signatures of representatives

authorized to enter into and modify the Agreement. In order to be effective, amendments may require prior approval by OMNITRANS' Board of Directors, and in all instances require prior signature of an authorized representative of OMNITRANS.

34. PRECEDENCE

Conflicting provisions hereof, if any, shall prevail in the following descending order of precedence: (1) the provisions of this Agreement, (2) Attachment A, Scope of Work, (3) Attachment B, Labor Rates (4) provisions of RFQ No. _____ and (5) CONTRACTOR's proposal dated _____.

35. ENTIRE AGREEMENT

This Agreement, and any attachments or documents incorporated herein by inclusion or by reference, constitutes the complete and entire agreement between OMNITRANS and CONTRACTOR and supersedes any prior representations, understandings, communications, commitments, agreements or proposals, oral or written.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed on the date shown below, and effective on the date first hereinabove written.

OMNITRANS

CONTRACTOR
Name of Firm

MILO VICTORIA
CEO/General Manager

Name
Title

Date

Date

Federal Tax I.D. No. _____

ITEM # D6

DATE: November 13, 2012

TO: Committee Chair Alan D. Wapner and
Members of the Administrative and Finance Committee

THROUGH: Milo Victoria, CEO/General Manager

FROM: William Tsuei, Director of Information Technology

**SUBJECT: AUTHORIZE SOLE SOURCE PURCHASE
ANNUAL SOFTWARE MAINTENANCE SERVICES FOR
SAP ERP SOFTWARE FOR BUSINESS SYSTEMS**

FORM MOTION

Recommend approval to the Board of Directors authorizing the CEO/General Manager to issue sole source purchase order to SAP Public Services, Inc., Palo Alto, CA, for the SAP Enterprise Resource Planning (ERP) software maintenance services for the Agency's business systems, beginning January 1, 2013, and ending December 31, 2013, in the amount of \$244,433.99.

BACKGROUND & SUMMARY

Maintenance support is only available from SAP and the fee includes maintenance and support of the SAP ERP product including software upgrades, maintenance and support of required third party software and all applicable taxes.

FUNDING SOURCE

Funding for this contract is budgeted in Information Technology's operating budget.

Department Number 1320
Expenditure Code 505170

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

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

CONCLUSION

Recommend approval to the Board of Directors authorizing the CEO/General Manager to issue sole source purchase order to SAP Public Services, Inc., Palo Alto, CA, for the SAP Enterprise Resource Planning (ERP) software maintenance services for the Agency's business systems, beginning January 1, 2013, and ending December 31, 2013, in the amount of \$244,433.99.

MV:wt