

BOARD OF DIRECTORS APRIL 4, 2018 SUPPLEMENTAL INFORMATION

ITEM #E5 AUTOMATIC TRANSMISSION FLUID (BENCH) A-C
ITEM #F2 ALLISON TRANSMISSION PARTS (BENCH) A-E



CONTRACT AGREEMENT

between

| CONTRACTOR Fivers Fragger LLC | CONTRACT DOCUMENTS |
|--|---|
| Flyers Energy, LLC 2360 Lindbergh Street |) CONTRACT NO. MNT18-60A |
| Auburn, CA 95602 |) AUTOMATIC TRANSMISSION FLUID |
| (hereinafter "CONTRACTOR") Telephone: (800) 899-2376 Email: corey.johnson@4flyers.com |))))) |
| And |)) Contract Amount: \$30,000) |
| Omnitrans 1700 West Fifth Street San Bernardino, CA 92411 (hereinafter "OMNITRANS") |) Omnitrans Project Manager:) Name: Rick Barone) Title: Materials Manager) Telephone: (909) 379-7204) Email: rick.barone@omnitrans.org) Contract Administrator: Name: Krystal N. Turner) Title: Contract Administrator Telephone: (909) 379-7202) Email: krystal.turner@omnitrans.org) |
| |) |



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This Agreement is made and entered into as of this <u>4th</u> day of <u>April, 2018</u>, and between Omnitrans (hereinafter referred to as "OMNITRANS") and <u>Flyers Energy, LLC</u> (hereinafter referred to as "CONTRACTOR").

RECITALS

WHEREAS, OMNITRANS is a joint powers authority organized under Section 6500 et seq. of the California Government 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 term of this Agreement shall be from the date of execution of this Agreement and continue in effect through <u>April 3, 2020</u>, unless terminated as specified in Section 10 and 11 of this Agreement. Omnitrans has no obligation to purchase any specified amount of products/services. All applicable indemnification provisions in this Agreement shall remain in effect following the termination of this Agreement.

3. CONTRACT OPTIONS

- A. Omnitrans will have the unilateral right in the contract by which, for a specified time, Omnitrans may elect to purchase additional services called for by the contract, or may elect to extend the term of the contract. The requirements below apply:
 - Any options that were requested by Omnitrans and/or contained in the Contractor's PROPOSAL or offer must have been evaluated in making the contract award prior to exercising any such options.
 - Since Contractor's proposed pricing for the option years and additional services are considered in evaluating the Contractor's original proposal and form the basis for awarding the contract, Contractor shall be bound by the proposal pricing for additional services and/or option years, unless otherwise provided herein.
- B. Omnitrans will provide a minimum of thirty days (30) written notice to the Contractor of Omnitrans' exercise of its option to extend the contract years. Omnitrans may give notice of its exercise of the option for additional services at any time during the term of the contract. The minimum time for the written notice may be waived by mutual agreement.

4. COMPENSATION

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 C, and subject to the maximum cumulative payment obligation.

OMNITRANS' maximum cumulative payment obligation under this Agreement shall not exceed <u>Thirty Thousand</u> Dollars (\$30,000), 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.

5. 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 Accountspayable@omnitrans.org

A separate invoice shall be used for each shipment. Each invoice shall include, at minimum, the following information:

- Contract number
- Invoice number
- Description of delivery
- Delivery Date
- Total quantity delivered
- Information as requested by OMNITRANS
- B. OMNITRANS shall remit payment within thirty (30) calendar days of approval of the invoices by OMNITRANS' Project Manager.

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.

C. TITLE

- a. Title shall pass to Omnitrans at the time of payment.
- b. The title transferred as above shall in each case be good, and free and clear from any and all security interests, liens, and/or other encumbrances.
- c. The transfer of title as specified above shall not imply Acceptance by Omnitrans, nor relieve the Contractor from the responsibility for strict compliance with the Contract, including warranty as specified in the Article entitled Warranty of Work, and for any loss of or damage to the Work.
- d. The Contractor at its own expense shall promptly execute, acknowledge, and deliver to the Omnitrans proper bills of sale or other written instruments of title in a form as required by Omnitrans; said instruments shall convey to

the Omnitrans' title free and clear of debts, claims, liens, mortgages, taxes, and/or encumbrances.

e. Contractor shall have title to and bear the risk of any loss of or damage to Work purchased hereunder until they are delivered, unloaded, and received by Omnitrans at the FOB Destination specified herein. Contractor's responsibility for loss or damage except for loss or damage resulting from Contractor's negligence, shall cease when title passes to Omnitrans.

6. 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.

7. 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:

Omnitrans 1700 West Fifth Street San Bernardino, CA 92411 Attn: Krystal N. Turner

Title: Contract Administrator

To CONTRACTOR:

Flyers Energy, LLC 2360 Lindbergh Street Auburn, CA 95602 Attn: Corey Johnson Title: Account Manager

8. 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: Maintenance.

- a. 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>

Role

Corey Johnson

Account Manager

Sales & Marketing Coordinator

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.

9. DISPUTE RESOLUTION

Any disputes between the successful CONTRACTOR and OMNITRANS relating to the implementation or administration of the Contract shall be resolved in accordance with this section.

- A. The parties shall first attempt to resolve the dispute informally in meetings or communications between proposer and OMNITRANS.
- B. If the dispute remains unresolved fifteen (15) days after it first arises, proposer may request that Omnitrans' CEO/General Manager issue a recommended decision on the matter in dispute. Omnitrans' CEO/General Manager shall issue the recommended decision in writing and provide a copy to proposer.
- C. If the dispute remains unresolved after review by Omnitrans' CEO/General Manager, either party may seek judicial resolution of the dispute in an appropriate Court of the State of California.
- D. Pending final resolution of a dispute under this section, proposer shall proceed diligently with performance in accordance with the Contract and Omnitrans' CEO/General Manager's recommended decision.

10. 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.

11. 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 28, 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 10, 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.

12. 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.

13. 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.

CONTRACTOR shall not, without the express written consent of Omnitrans, either:

- a. Substitute any person, firm, or corporation as subcontractor in place of the subcontractors identified below; or
- b. Permit any subcontract to be assigned or transferred; or
- c. Allow work to be performed by anyone other than the original subcontractor listed below.

| Subcontractor's Name and Address | Work to Be Performed |
|----------------------------------|----------------------|
| N/A | |
| | |
| | |
| | |

14. 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.

15. INSURANCE

A. INSURANCE REQUIREMENTS

1) General Requirements for Contractor

- a. Without limiting or diminishing the Contractor's obligation to indemnify or hold Omnitrans harmless, Contractor shall procure, prior to commencement of the services required under this contract and maintain for the duration of the contract at its own expense, insurance of the kinds and in the amounts as indicated below;
- b. Provide Omnitrans with valid original certificates of insurance and endorsements showing Omnitrans as an additional insured.

2) Deductibles or Self-Insured Retention (SIR)

SIR must be declared to and approved by Omnitrans. At the option of Omnitrans, either: the insurer shall reduce or eliminate such deductibles or SIR or Contractor shall procure a bond guaranteeing payment of losses and related investigations, claim administration and defense expenses.

3) Other Insurance Provisions

a. Commercial General Liability and Automobile Liability

Commercial General Liability insurance coverage, including but not limited to, premises liability, contractual liability, products and completed operations liability, personal and advertising injury covering claims which may arise from or out of Contractor's performance of its obligations hereunder and if Contractor's vehicles or mobile equipment are used in the performance of the obligations under this Agreement, then Contractor shall maintain liability insurance for all owned, non-owned or hired vehicles so used. Policy shall name Omnitrans, its officers, officials, employees, agents and volunteers as additional insured as respects: liability arising out of activities performed by or on behalf of Contractor; products and completed operations of Contractor; premises owned, occupied or

used by Contractor; or automobiles owned, leased, hired or borrowed by Contractor. The coverage shall contain no special limitations of the scope of protection afforded Omnitrans, its officers, officials, employees, agents, and volunteers.

- For any claims related to this project, Contractor's insurance coverage shall be primary insurance as respects Omnitrans, its officers, officials, employees, agents, and volunteers. Any insurance and/or deductibles and/or self-insured retentions or self-insured programs maintained by Omnitrans, its officers, officials, employees, agents, and volunteers shall be excess of Contractor's insurance and shall not be construed as contributory.
- 2. Contractor's insurance shall apply separately to each insured against whom claim is made or suit is brought, except with respect to the limits of the insurer's liability.
- 3. Each insurance policy required by this clause shall be endorsed to state that coverage shall not be suspended, voided, cancelled by either party, reduced in coverage or in limits except after thirty (30) days prior written notice has been given to Omnitrans.

b. Workers' Compensation

If the Contractor has employees as defined by the State of California, the Contractor shall maintain statutory Workers' compensation Insurance (Coverage A) as prescribed by the laws of the State of California. Policy shall include Employers' Liability (Coverage B) including Occupational Disease with limits not less than \$1,000,000 per person per accident. The policy shall be endorsed to waive subrogation in favor of Omnitrans and, if applicable, to provide a Borrowed Servant/Alternate Employer Endorsement.

c. Care, Custody, and Control

Contractor shall insure any Omnitrans property while under its Care, Custody, and Control according to the requirements listed in the insurance coverage required.

4) Acceptability of Insurers

Insurance companies shall be State of California admitted or approved and have a current **A.M. Best's** rating of no less than **A:VIII.**

5) Verification of Coverage

a. Contractor shall furnish Omnitrans with original endorsements affecting coverage required by this clause. The endorsements are to be signed by a person authorized by that insurer to bind coverage on its behalf. All insurance certificates and endorsements are to be received and approved by Omnitrans before work commences.

- b. As an alternative, Contractor's insurer may provide complete, certified copies of all required insurance policies, including endorsements affecting the coverage required by these specifications.
- c. In lieu of purchasing insurance and providing original endorsements and or certificates of insurance, the Contractor may provide proof of self-insurance; such proof must be to the satisfaction of Omnitrans.

6) Subcontractors

Contractor shall include all subcontractors as insureds under its policies or shall furnish separate certificates and endorsements for each subcontractor. All coverage for subcontractors shall be subject to all of the requirements stated herein.

7) Notification of Terminated Insurance

Insurance shall not be terminated or expire without thirty (30) days written or electronic notice, and are required to be maintained in force until completion of the contract.

B. MINIMUM INSURANCE COVERAGE

If the Contractor maintains broader coverage and/or higher limits than the minimum requirements shown below, Omnitrans requires and shall be entitled to the broader coverage and/or higher limits maintained by the Contractor.

| 1) | ☐ Commercial General Liability including Products/Completed Operations: \$1,000,000; per occurrence for bodily and property damage liability and \$2,000,000 aggregate; Omnitrans named and endorsed as an Additional Insured. |
|----|--|
| 2) | Automobile Liability: \$1,000,000; per occurrence for bodily and property damage liability and aggregate; Omnitrans named and endorsed as an Additional Insured. |
| 3) | ☐ Errors and Omissions Liability: \$1,000,000; combined single limit bodily and property damage liability per occurrence and \$3,000,000 aggregate or, |
| 4) | Professional Liability: \$1,000,000; per occurrence and aggregate. |
| 5) | |
| 6) | ■ Self Insurance Program: a State Approved program in an amount and form that meets all applicable requirements of the Labor Code of the State of California. |
| 7) | Employer's Liability: \$1,000,000; per occurrence. |

| 8) | Environmental Liability: \$1,000,000; per occurrence and aggregate; Omnitrans named and endorsed as an Additional Insured. |
|-----|---|
| 9) | Umbrella Policy: \$4,000,000; per occurrence and aggregate Additional coverage for the above policies, <i>Omnitrans Additional Insured</i> . |
| 10) | All drivers making deliveries of products specified on this solicitation shall have Hazardous Materials Endorsements on their Commercial Drivers License, and such other Endorsements as may be required by relevant laws and/or regulations. |

16. 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.

17. 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.

18. 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.

19. 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.

20. 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.

21. 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.

22. 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.

23. 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.

24. 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.

25. 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.

26. 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).

27. COMPLIANCE WITH LAW

A. 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.

B. Government regulations that directly affect the CONTRACTOR'S performance of this contract and unforeseen impacts, which neither party could have contemplated at the onset of the contract and have an unconscionable impact on the CONTRACTOR may be given special pricing consideration. The parties, in good faith, shall review established rates and may adopt any mutually agreed new rates, which shall only be effective as agreed upon by the parties. Thorough documentation including all cost elements is required to support the Contractor's claim to any relief under this clause.

28. 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.

29. 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.

30. 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.

31. 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.

32. 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.

33. 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.

34. 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.

35. 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.

36. LICENSING, PERMITS AND INSPECTION COSTS

Α. The CONTRACTOR warrants that it has all necessary licenses and permits required by the laws of the United States, State of California, and the County of San Bernardino, the Local Jurisdictions, and all other appropriate governmental agencies, and agrees to maintain these licenses and permits in effect for the duration of the Agreement. Further, FIRM warrants that its employees, agents, and contractors and subcontractors shall conduct themselves in compliance with such laws and licensure requirements including, without limitation, compliance with laws applicable nondiscrimination, sexual harassment and ethical behavior throughout the duration of this Agreement. CONTRACTOR further warrants that it shall not retain or employ an unlicensed subcontractor to perform work on this Project. CONTRACTOR shall notify OMNITRANS immediately and in writing of its employees', agents', contractors' or subcontractors' inability to obtain or maintain, irrespective of the pendency of any appeal, any such licenses, permits, approvals, certificates, waivers, exemptions. inability shall be cause for termination of this Agreement.

B. CONTRACTOR shall procure all permits and licenses; pay all charges, assessments and fees, as may be required by the ordinances and regulations of the public agencies having jurisdiction over the areas in which the work is located, and shall comply with all the terms and conditions thereof and with all lawful orders and regulations of each such public agency relating to construction operations under the jurisdiction of such agency.

37. PRECEDENCE

Conflicting provisions hereof, if any, shall prevail in the following descending order of precedence: (1) the provisions of this Agreement, and any and all of its Amendments, Appendices, Exhibits and Attachments; (2) provisions of IFB-MNT18-60 and any and all of its Addenda, Appendices, Exhibits and Attachments; and (3) CONTRACTOR's bid dated February 7, 2018 and its Appendices, Exhibits, Attachments.

38. 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.

| Date | Date | | |
|--|--|--|--|
| P. Scott Graham CEO/General Manager | Name: Jay Galvin Title: Sales Director | | |
| OMNITRANS | CONTRACTOR Company name: Flyers Energy, LLC. | | |

Federal Tax I.D. No. 71-09106655

IDP

CONTRACT MNT18-60A REVISED 04/17/17

1. STATEMENT OF WORK

Contractor shall provide Automatic Transmission Fluid (ATF) for Omnitrans' East Valley and West Valley fixed route operations facilities.

GENERAL

- 1) Contractor shall provide and deliver lubricants to Omnitrans' bulk storage facilities located at the East Valley operations site in San Bernardino, California, and West Valley operations site in Montclair, California. If Contractor elects to utilize drums/barrels, the Contractor shall be responsible for the labor and equipment required to pump the ATF into Omnitrans' bulk storage tanks.
- 2) Contractor shall make every effort to avoid Drum/Barrel charges to invoice by informing Omnitrans representative at time of delivery how many Drums/Barrels were delivered and make every effort to take back an equal amount to offset charges.
- 3) Contractor shall provide and deliver Automatic Transmission Fluid to Omnitrans' designated locations.
 - a) Contractor may be required to provide samples of products upon demand.
- 4) Contractor shall furnish all trucks, trailers, off-loading hose(s), tools, equipment, resources, apparatus, facilities, transportation, labor and materials necessary to furnish the services described herein.
- 5) Contractor must provide Omnitrans with proof of compliance, upon request, of relevant local, state, and federal laws/regulations, and contractor must notify Omnitrans of any changes, updates, addendums, and modifications in relevant regulations, laws, statutes and policies.
- 6) Contractor shall notify Omnitrans prior to the delivery of any reformulation of products supplied under this contract, and changes shall not be accepted without the prior written consent of Omnitrans. In the event of a reformulation of a product, Contractor shall promptly provide Omnitrans' Project Manager with an updated Safety Data Sheet (SDS).

2. LUBRICANT REQUIREMENTS

1) AUTOMATIC TRANSMISSION FLUID (ATF) FOR ALLISON AND VOITH TRANSMISSIONS

a) Quantities. It is anticipated that automatic transmission fluid requirements are as follows:

| East & West Valley Facility | Est. Annual Usage (gal) |
|-------------------------------|-------------------------|
| March 1, 2018 - June 30, 2018 | 2,000 |
| July 1, 2018 - June 30, 2019 | 2,000 |
| July 1, 2019 - June 30, 2020 | 2,000 |
| July 1, 2020 - June 30, 2021 | 2,300 |
| July 1, 2021 - June 30, 2022 | 2,300 |

b) Type of Automatic Transmission Fluid

- (1) Omnitrans wishes to use only one brand of fluid in both Allison and Voith transmissions. Contractor shall provide one fluid that meets both manufactures' approved fluids requirements. Omnitrans has identified only 4 brands that meet the approval for extended warranty of transmissions. They brands are as follows;
 - Castrol Transynd
 - BP Autran Syn 295
 - Mobil Delvac Synthetic ATF
 - Shell Spirax S6 ATF A295
 NOTE: Only these brands will be approved.

c) Storage Capacity for Automatic Transmission Fluid.

- (1) East Valley Facility 2,000 gallons (two 1000 gallon tanks) or 55 gallon drums if needed.
- (2) West Valley Facility 1,000 gallons (two 500 gallon tanks) or 55 gallon drums if needed.

d) Supplier Responsibilities

- (1) Only California-compliant fluids shall be supplied to Omnitrans to ensure regulatory compliance is maintained in accordance with all Federal Environmental Protection Agency, California Air Resources Board and South Coast Air Quality Management District emissions standards.
- (2) In the event an improper grade of automatic transmission fluid is delivered, or in the event of the automatic transmission fluid being delivered into the wrong storage tank, causing existing fluid to become contaminated, the supplier shall, at its own expense, dispose of and replace the

contaminated product, and clean the affected storage tank, on a timely basis so as not to interrupt service.

(3) Contractor shall notify Omnitrans prior to delivery of any reformulation of products supplied under this contract.

Applicable Taxes. At the current time, automatic transmission fluid is subject to California State Sales Tax at a rate of 8.00%.

3. PREPARATION AND DELIVERY

- 1) The lubricant delivery hours will be between 7 a.m. and 4 p.m. Monday through Sunday each week, except holidays
- 2) Availability of product is to be within 48 hours of order date.
- 3) All freight costs to be included in the Contractors price as the terms shall be F.O.B. Omnitrans.
- 4) Contractor shall assume full responsibility for providing tankers or transportation containers suitable for delivery of the lubricants to the appropriate Omnitrans bulk storage tank(s).
 - a) Contractor shall be responsible for unloading lubricants into Omnitrans' bulk storage tanks and providing trained personnel capable of performing the unloading of lubricants without assistance from Omnitrans personnel.
 - b) All tanker trucks making deliveries shall be properly certified by the State of California including but not limited to Vehicle Tank Measurement Certificates, and in accordance with Federal Department of Transportation regulations, policies, and procedures.
 - (1) If requested, the Contractor shall provide copies of requested certificates within three (3) days after notification is received from a designated Omnitrans representative.
 - c) All drivers making deliveries of lubricants to Omnitrans shall have Hazardous Materials Endorsements on their Commercial Driver's License, and such other Endorsement as may be required by relevant laws and/or regulations.
- 5) Contractor, its agents or employees, must notify Omnitrans' shop supervisor, or his/her designee, upon delivery of lubricant, as all lubricant deliveries to Omnitrans' bulk storage tanks must be acknowledged by designated Omnitrans representative.
 - a) Contractor shall, at its expense, make every reasonable effort necessary to maintain minimum lubricant levels. Contractor

agrees to notify Omnitrans' designated representative if, at any time, it appears that the delivery schedule set forth may not be met.

- (1) Such notification shall include the reasons for any possible delays, and steps being taken by Contractor to remedy any such problem(s).
- (2) Nothing herein shall be interpreted as waiving remedies otherwise available to Omnitrans.
- 6) Pricing must include all freight delivery costs and applicable fees.

4. PRICING

- A. Each Contractor's per gallon price for <u>lubricant</u> must include:
 - 1) Fixed margin/discount
 - 2) Fixed delivery charge per gallon
- B. Pricing shall include all transportation costs, including those associated with loading, transporting and unloading product from Seller's loading facility to Omnitrans' storage tanks.
- C. Taxes / Fees. Purchases by Omnitrans are subject to applicable State and local sales taxes. However, Omnitrans is exempt from the payment of Federal Excise and Transportation Taxes.
 - 1) Applicable Taxes. At the current time, the following summarizes the taxes applied to lubricants and Omnitrans' tax status regarding each:
 - a) California State Sales Tax. Omnitrans is not exempt from the California State Sales Tax.
 - 2) Applicable Fees. At the current time, the following summarizes the fees applied to lubricants and Omnitrans' tax status regarding each:
 - a) California State Lube Fee. Omnitrans is not exempt from the California State Lube Fee. This fee is paid directly to the vendor.
 - b) California Oil Recycling Fee. Omnitrans is not exempt from the California Oil Recycling Fee. This fee is applied to both diesel and gasoline and is paid directly to the vendor.

5. PERMITS AND LICENSES

- A. Contractor shall be responsible for obtaining all necessary permits and licenses required by local, state, and federal authorities for performance under the terms of this Agreement.
 - 1) Contractor shall pay all charges and fees, and furnish all notices necessary for lawful execution of the work.

- 2) Contractor shall give all required notices and comply with all federal, state, and local laws, ordinances, rules, regulations and orders of any public authority bearing on the performance of this Agreement including, but not limited to, the California Air Resources Board's (CARB) reformulated fuel regulations and the requirements of the Environmental Protection Agency (EPA).
 - a) Upon request, the Contractor shall furnish to Omnitrans certificates and/or other proof of compliance with all such laws, orders, regulations and driving records of the supplier truck drivers.
 - b) Contractor shall be fully responsible for all shipments to insure that each shipment meets relevant state and federal specifications.

6. OMNITRANS' RESPONSIBILITIES

Omnitrans' shall, at all times, provide reasonable access to the facility, and shall permit the unloading of contractor trucks at the delivery locations without undue delay.

7. EMPLOYEE HAZARDS

- A. Contractor shall perform all work in a clean, safe and professional manner, causing no hazards to Omnitrans staff, facility the environment or contractor's service personnel.
- B. All Hazardous waste must be handled, collected, stored and disposed of in accordance with federal, state and local environmental compliance regulations.

| ATTACHMENT B - PRICING | | | |
|---|------------|-----------|--------------|
| MNT18-60A | | | |
| MISC BULK OILS AND LUBRICANTS | | | |
| Description | Unit of Me | *Quantity | **Unit Price |
| ALLISON AND VOITH APPROVED AUTOMATIC TRANSMISSION FLUID (ATF) | GALLON | 2000 | \$22.15 |
| *Omnitrans makes no guarantee of usage of items with regard to quantity | | | |
| **The above itemized pricing shall remain fixed for quarterly intervals begin | | | |

^{**}The above itemized pricing shall remain fixed for quarterly intervals beginning and re-quoted the first business day of April, July, October and January.



POLICY 707 PAGE 1 OF 6

SUBJECT

PROHIBITING WEAPONS IN THE WORKPLACE

APPROVED BY OMNITRANS BOARD OF DIRECTORS

DATE: June 7, 2017

I. Purpose

It is the policy of Omnitrans to maintain a work environment that is safe for all persons, including the community, and conducive to attaining high work standards. To achieve these objectives, the Agency prohibits the possession of firearms and weapons in the work place, regardless of any license or permit that an individual may have which otherwise authorizes the individual to carry firearms or weapons.

It is illegal and a criminal violation to possess weapons in public buildings (California Penal Code 171b and 171.7).

II. Scope

This policy applies to all Omnitrans employees, including but not limited to staffing agency workers and contractors working for or with the Agency at any time, regardless of whether the Agency is the actual employer.

Possession of firearms and weapons is prohibited at all Omnitrans' offices, parking lots, agency vehicles and job sites, and in all Agency vehicles.

The following person/s are exempt from this policy as stated: a guard of a contract carrier operating an armored vehicle, and any law enforcement officer who is carrying out official duties engaged in protecting and preserving property or life within the scope of his or her employment.

Omnitrans will strictly enforce this policy. Violation of this policy will result in immediate disciplinary action, up to and including termination.

III. Procedure

A. COMMUNICATION OF POLICY

- (a) Each employee of the Agency shall receive a copy of this policy at the time of his/her hire and shall sign a copy of the acknowledgment. Employees who were employed before the effective date of this policy shall also receive a copy of this policy and shall sign a copy of the acknowledgment. A copy of the signed acknowledgment and of all new and revised policies throughout the employee's employment shall be maintained in each employee's personnel file.
- (b) A copy of this policy shall be attached to each contractor's contract, and shall become a part of its contract. The contractor shall be responsible for communicating this policy to its employees and any subcontractors to which the contractor sublets any portion of its contract.



POLICY 707 PAGE 2 OF 6

SUBJECT

PROHIBITING WEAPONS IN THE WORKPLACE

APPROVED BY OMNITRANS BOARD OF DIRECTORS

DATE: June 7, 2017

B. PROHIBITED CONDUCT

- (a) The transportation of firearms or weapons in Agency vehicles is prohibited. This includes but is not limited to:
 - (1) to and from work,
 - (2) when conducting Agency business,
 - (3) at all times in Agency-owned or leased vehicles.
- (b) The possession or carrying of permitted and non-permitted firearms or weapons while at Agency buildings, parking lots, sponsored events, and job sites.
- (c) Exception: Power actuated tools which are manufactured for the use of fastening building materials and sanctioned tools for the purpose of performing Agency job duties are not subject to this policy.

C. SEARCH

- (a) Omnitrans reserves the right to conduct reasonable, unannounced searches of Agency premises and personal searches of employees and others while entering, on, or leaving Agency premises, including, but not limited to, personal effects, vehicles, lockers, desks, tool boxes, clothing, meal containers, and baggage. Searches will be conducted when the Agency has a reasonable suspicion to believe that a particular employee may be in possession of a weapon or firearm.
- (b) "Reasonable suspicion" is defined as a suspicion that is based on specific personal observations such as an employee's manner, disposition, behavior, speech, information provided to management by an employee, by law enforcement officials, by a security service, or by other persons believed to be reliable, or a suspicion that is based on other surrounding circumstances.
- (c) Individuals refusing to allow an inspection will not be detained or forced to submit to the inspection. Refusal violates Agency policy and constitutes an act of insubordination constituting disciplinary action, up to and including separation of the employment relationship. Non-employees who refuse to allow an inspection will not be permitted on Agency premises and will be required to immediately leave the premises. Employees will be relieved of all duties while pending investigation.

D. <u>DISCIPLINE</u>

(a) Violations of any portion of this policy will subject the employee to discipline,



POLICY 707 PAGE 3 OF 6

SUBJECT

PROHIBITING WEAPONS IN THE WORKPLACE

APPROVED BY OMNITRANS BOARD OF DIRECTORS

DATE: June 7, 2017

up to and including separation of employment.

(b) Violations by a contractor's employee or subcontractor of any portion of this policy may constitute a breach of contract and regardless will mandate the immediate removal of the contractor's employee from Agency premises, prohibition against the individual accessing Agency premises in the future, and may also constitute a breach of contract.

E. REPORT OF VIOLATIONS

1. Employee Violations

Employees are required to report violations of this policy without regard to the relationship between the individual who initiates the prohibited behavior and the individual reporting it. An employee who believes that another employee may be in violation of this policy must report the alleged violation to the employee's manager or supervisor, the department director, security, or the appropriate departmental Human Resources representative.

Departments are responsible for implementing this policy. The Agency will promptly investigate allegations of violations of this policy.

Omnitrans reserves the right to authorize searches for prohibited weapons on its property when a violation is reported or when probable cause or reasonable suspicion is present consistent with law.

Employees should be aware that there is no reasonable expectation of privacy with respect to weapons in the workplace. The Agency's right to conduct searches includes, but is not limited to, such areas and items as lockers, desks, workstations, offices, purses, briefcases, bags, toolboxes, and lunch bags.

Searches of the employee's work area and belongings, as described above, may be conducted by the Security & Emergency Preparedness Coordinator, or designee. Searches of all types, including surrounding agency property, personal property and the employee may be conducted by law enforcement in accordance with law should reasonable suspicion be present. Any weapon found in violation of this policy may be confiscated. Refusal to permit a search may result in discipline, up to and including separation.

2. Visitor Violations

Visitors are not allowed to carry a weapon on the premises. Any visitor carrying a weapon into a posted no-carry agency facility is creating an elevated risk to security and safety that warrants a response leading to compliance with the law. If the visitor



POLICY 707 PAGE 4 OF 6

SUBJECT

PROHIBITING WEAPONS IN THE WORKPLACE

APPROVED BY OMNITRANS BOARD OF DIRECTORS

DATE: June 7, 2017

poses an immediate risk to security or safety, law enforcement shall be notified immediately by calling 9-911. The visitor shall be considered an immediate risk to safety and security if he/she is acting in an aggressive, belligerent, confrontational, suspicious or in an otherwise questionable manner while carrying a weapon.

F. FALSE REPORTS

Employees making intentionally false and malicious complaints of weapons in the workplace will be subject to disciplinary action, up to and including separation and/or will be reported to the proper authorities as appropriate.

G. ROLES AND RESPONSIBILITIES

Employees are responsible for understanding and complying with the Policy Prohibiting Weapons in the Workplace.

Whenever there is a question as to whether an instrument, article or substance is considered a weapon in violation of this policy, it is the employee's responsibility to seek clarification. Employees seeking clarification should direct their questions to the agency's Security & Emergency Preparedness Coordinator at 909-379-7117 prior to bringing the item(s) to Omnitrans work sites and events, as well as agency-owned or leased facilities or vehicles.

H. SAFETY FIRST

In applying this policy, no employee shall take any action that will risk his or her own safety or the safety of other individuals. No attempt should ever be made by an employee to restrain or forcibly evict an armed person from agency premises.

An individual's continued non-compliance after being properly informed of the law (California Penal Code 171 (b)) will result in notification to law enforcement and discipline, up to and including separation of employment. Employees should notify security immediately.

An employee who feels an imminent danger to his or her own safety or the safety or security of others, should avoid any interaction with the individual. Immediately contact law enforcement by calling 9-911 and security at 909-379-7117.

I. ANTI-RETALIATION PROVISION

Omnitrans strictly prohibits any retaliation against an employee who has reported a possible breach of policy. If an employee feels that he or she has been subjected to retaliation in violation of this policy, the employee must immediately report it to his or her supervisor or other designated Human Resources representative.



POLICY 707 PAGE 5 OF 6

SUBJECT

PROHIBITING WEAPONS IN THE WORKPLACE

APPROVED BY OMNITRANS BOARD OF DIRECTORS

DATE: June 7, 2017

J. DEFINITIONS

- 1. Firearm or weapon includes, but is not limited to: A weapon, a pistol or rifle, whether loaded or unloaded, capable of firing a projectile and using an explosive as a propellant.
 - A firearm, whether loaded or unloaded, from which a shot may be discharged including but not limited to handguns, pistols, revolvers, shotguns, rifles, and bb guns;
 - A gun that can discharge a shot or a projectile by means of an explosive or gas, or compressed air;
 - A device designed to be used as a weapon, from which can be expelled a
 projectile by the force of any explosion or force of combustion;
 - Any weapon (including a starter gun) which will or is designed to or may readily be converted to expel a projectile by the action of an explosive;
 - · Any destructive device;
 - Any device designed as a weapon and capable of producing great bodily harm, including but not limited to, stun guns, stun batons;
 - An electric weapon such as a taser gun;
 - Any combustible or flammable liquid, or other substance, device, or instrumentality that, in a manner it is used or intended to be used, is calculated or likely to produce death or great bodily harm, or any fire that is used to produce death or great bodily harm;
 - Any knife that is carried with intention or calculation to produce death or
 great bodily harm having a blade length in excess of four (4) inches, the
 blade of which is fixed or is capable of being fixed in an unguarded
 position by the use of one or two hands. Switchblades are specifically
 prohibited. (Knives intended to be used as eating utensils, and stored or
 maintained in office kitchens or lunchrooms do not represent a violation of
 this policy.)
- 2. **Office**: All permanent facilities, all mobile facilities, all leased facilities, and any facility designated as an office by the agency.
- Parking lot: All lots at permanent facility, park and rides, lots at project sites, any lot that the agency designates as a parking lot that is not at a permanent facility or project site.
- 4. Agency vehicle: All agency-owned buses/vehicles, all agency-leased buses/vehicles, all agency-rental buses/vehicles, and all personal vehicles for which the owner receives a vehicle allowance, all personal vehicles where the owner receives reimbursement for mileage.



POLICY 707 PAGE 6 OF 6

SUBJECT

PROHIBITING WEAPONS IN THE WORKPLACE

APPROVED BY OMNITRANS BOARD OF DIRECTORS

DATE: June 7, 2017

- 5. Search: To examine in order to find something concealed.
- 6. **Job sites**: Any and all locations where the agency conducts business.

SIGNS

- 1. At each entrance to buildings, parking lots, and project sites, a sign shall be posted in a location that is conspicuous to all who could enter a building, parking lot, or project site.
- 2. Signs shall have wording or pictogram that prohibits firearms, weapons and give notice of video surveillance. Signs shall be vandalism resistant and of the quality that they will not fade due to the elements.



CONTRACT AGREEMENT

between

| CONTRACTOR Southern Counties Oil Co. dba SC Fuels | CONTRACT DOCUMENTS |
|--|---|
| 1800 W. Katella, Suite 400 Orange, CA 92867 | CONTRACT NO. MNT18-60B |
| Crange, CA 92007 | AUTOMATIC TRANSMISSION FLUID |
| (hereinafter "CONTRACTOR") Telephone: (714) 516-7337 Email: fuelbids@scfuels.com | |
| | |
| And | Contract Amount: \$30,000 |
| |)) |
| | |
| Omnitrans 1700 West Fifth Street San Bernardino, CA 92411 (hereinafter "OMNITRANS") | Omnitrans Project Manager: Name: Rick Barone Title: Materials Manager Telephone: (909) 379-7204 Email: rick.barone@omnitrans.org |
| | Contract Administrator: Name: Krystal N. Turner Title: Contract Administrator Telephone: (909) 379-7202 Email: krystal.turner@omnitrans.org |
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This Agreement is made and entered into as of this <u>4th</u> day of <u>April, 2018</u>, and between Omnitrans (hereinafter referred to as "OMNITRANS") and <u>Southern Counties Oil Co. dba SC Fuels</u> (hereinafter referred to as "CONTRACTOR").

RECITALS

WHEREAS, OMNITRANS is a joint powers authority organized under Section 6500 et seq. of the California Government 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 term of this Agreement shall be from the date of execution of this Agreement and continue in effect through <u>April 3, 2020</u>, unless terminated as specified in Section 10 and 11 of this Agreement. Omnitrans has no obligation to purchase any specified amount of products/services. All applicable indemnification provisions in this Agreement shall remain in effect following the termination of this Agreement.

3. CONTRACT OPTIONS

- A. Omnitrans will have the unilateral right in the contract by which, for a specified time, Omnitrans may elect to purchase additional services called for by the contract, or may elect to extend the term of the contract. The requirements below apply:
 - Any options that were requested by Omnitrans and/or contained in the Contractor's PROPOSAL or offer must have been evaluated in making the contract award prior to exercising any such options.
 - Since Contractor's proposed pricing for the option years and additional services are considered in evaluating the Contractor's original proposal and form the basis for awarding the contract, Contractor shall be bound by the proposal pricing for additional services and/or option years, unless otherwise provided herein.
- B. Omnitrans will provide a minimum of thirty days (30) written notice to the Contractor of Omnitrans' exercise of its option to extend the contract years. Omnitrans may give notice of its exercise of the option for additional services at any time during the term of the contract. The minimum time for the written notice may be waived by mutual agreement.

4. COMPENSATION

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 C, and subject to the maximum cumulative payment obligation.

OMNITRANS' maximum cumulative payment obligation under this Agreement shall not exceed Thirty Thousand Dollars (\$30,000), 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.

5. 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
Accountspayable@omnitrans.org

A separate invoice shall be used for each shipment. Each invoice shall include, at minimum, the following information:

- Contract number
- Invoice number
- Description of delivery
- Delivery Date
- Total quantity delivered
- Information as requested by OMNITRANS
- B. OMNITRANS shall remit payment within thirty (30) calendar days of approval of the invoices by OMNITRANS' Project Manager.

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.

C. TITLE

- a. Title shall pass to Omnitrans at the time of payment.
- b. The title transferred as above shall in each case be good, and free and clear from any and all security interests, liens, and/or other encumbrances.
- c. The transfer of title as specified above shall not imply Acceptance by Omnitrans, nor relieve the Contractor from the responsibility for strict compliance with the Contract, including warranty as specified in the Article entitled Warranty of Work, and for any loss of or damage to the Work.
- d. The Contractor at its own expense shall promptly execute, acknowledge, and deliver to the Omnitrans proper bills of sale or other written instruments of title in a form as required by Omnitrans; said instruments shall convey to

the Omnitrans' title free and clear of debts, claims, liens, mortgages, taxes, and/or encumbrances.

e. Contractor shall have title to and bear the risk of any loss of or damage to Work purchased hereunder until they are delivered, unloaded, and received by Omnitrans at the FOB Destination specified herein. Contractor's responsibility for loss or damage except for loss or damage resulting from Contractor's negligence, shall cease when title passes to Omnitrans.

6. 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.

7. 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: Krystal N. Turner Title: Contract Administrator Southern Counties Oil dba SC Fuels 1800 W. Katella, Suite 400 Orange, CA 9287 Attn: Dennis Giardina Title: Account Manager

8. 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: Maintenance.

- a. 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:
 - 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>

Role

Dennis Giardina

Business Development Manager

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.

9. DISPUTE RESOLUTION

Any disputes between the successful CONTRACTOR and OMNITRANS relating to the implementation or administration of the Contract shall be resolved in accordance with this section.

- A. The parties shall first attempt to resolve the dispute informally in meetings or communications between proposer and OMNITRANS.
- B. If the dispute remains unresolved fifteen (15) days after it first arises, proposer may request that Omnitrans' CEO/General Manager issue a recommended decision on the matter in dispute. Omnitrans' CEO/General Manager shall issue the recommended decision in writing and provide a copy to proposer.
- C. If the dispute remains unresolved after review by Omnitrans' CEO/General Manager, either party may seek judicial resolution of the dispute in an appropriate Court of the State of California.
- D. Pending final resolution of a dispute under this section, proposer shall proceed diligently with performance in accordance with the Contract and Omnitrans' CEO/General Manager's recommended decision.

10. 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.

11. 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 28, 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 10, 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.

12. 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.

13. 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.

CONTRACTOR shall not, without the express written consent of Omnitrans, either:

- a. Substitute any person, firm, or corporation as subcontractor in place of the subcontractors identified below; or
- b. Permit any subcontract to be assigned or transferred; or
- c. Allow work to be performed by anyone other than the original subcontractor listed below.

| Subcontractor's Name and Address | Work to Be Performed |
|----------------------------------|----------------------|
| N/A | |
| | |
| | |
| | |

14. 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.

15. INSURANCE

A. INSURANCE REQUIREMENTS

1) General Requirements for Contractor

- a. Without limiting or diminishing the Contractor's obligation to indemnify or hold Omnitrans harmless, Contractor shall procure, prior to commencement of the services required under this contract and maintain for the duration of the contract at its own expense, insurance of the kinds and in the amounts as indicated below;
- b. Provide Omnitrans with valid original certificates of insurance and endorsements showing Omnitrans as an additional insured.

2) Deductibles or Self-Insured Retention (SIR)

SIR must be declared to and approved by Omnitrans. At the option of Omnitrans, either: the insurer shall reduce or eliminate such deductibles or SIR or Contractor shall procure a bond guaranteeing payment of losses and related investigations, claim administration and defense expenses.

3) Other Insurance Provisions

a. Commercial General Liability and Automobile Liability

Commercial General Liability insurance coverage, including but not limited to, premises liability, contractual liability, products and completed operations liability, personal and advertising injury covering claims which may arise from or out of Contractor's performance of its obligations hereunder and if Contractor's vehicles or mobile equipment are used in the performance of the obligations under this Agreement, then Contractor shall maintain liability insurance for all owned, non-owned or hired vehicles so used. Policy shall name Omnitrans, its officers, officials, employees, agents and volunteers as additional insured as respects: liability arising out of activities performed by or on behalf of Contractor; products and completed operations of Contractor; premises owned, occupied or used by Contractor; or automobiles owned, leased, hired or borrowed by Contractor. The coverage shall contain no special limitations of the scope of protection afforded Omnitrans, its officers, officials, employees, agents, and volunteers.

 For any claims related to this project, Contractor's insurance coverage shall be primary insurance as respects Omnitrans, its officers, officials, employees, agents, and volunteers. Any insurance and/or deductibles and/or self-insured retentions or self-insured programs maintained by Omnitrans, its officers, officials, employees, agents, and volunteers shall be excess of Contractor's insurance and shall not be construed as contributory.

- Contractor's insurance shall apply separately to each insured against whom claim is made or suit is brought, except with respect to the limits of the insurer's liability.
- 3. Each insurance policy required by this clause shall be endorsed to state that coverage shall not be suspended, voided, cancelled by either party, reduced in coverage or in limits except after thirty (30) days prior written notice has been given to Omnitrans.

b. Workers' Compensation

If the Contractor has employees as defined by the State of California, the Contractor shall maintain statutory Workers' compensation Insurance (Coverage A) as prescribed by the laws of the State of California. Policy shall include Employers' Liability (Coverage B) including Occupational Disease with limits not less than \$1,000,000 per person per accident. The policy shall be endorsed to waive subrogation in favor of Omnitrans and, if applicable, to provide a Borrowed Servant/Alternate Employer Endorsement.

c. Care, Custody, and Control

Contractor shall insure any Omnitrans property while under its Care, Custody, and Control according to the requirements listed in the insurance coverage required.

4) Acceptability of Insurers

Insurance companies shall be State of California admitted or approved and have a current **A.M. Best's** rating of no less than **A:VIII.**

5) Verification of Coverage

- a. Contractor shall furnish Omnitrans with original endorsements affecting coverage required by this clause. The endorsements are to be signed by a person authorized by that insurer to bind coverage on its behalf. All insurance certificates and endorsements are to be received and approved by Omnitrans before work commences.
- b. As an alternative, Contractor's insurer may provide complete, certified copies of all required insurance policies, including endorsements affecting the coverage required by these specifications.

c. In lieu of purchasing insurance and providing original endorsements and or certificates of insurance, the Contractor may provide proof of self-insurance; such proof must be to the satisfaction of Omnitrans.

6) Subcontractors

Contractor shall include all subcontractors as insureds under its policies or shall furnish separate certificates and endorsements for each subcontractor. All coverage for subcontractors shall be subject to all of the requirements stated herein.

7) Notification of Terminated Insurance

Insurance shall not be terminated or expire without thirty (30) days written or electronic notice, and are required to be maintained in force until completion of the contract.

B. MINIMUM INSURANCE COVERAGE

If the Contractor maintains broader coverage and/or higher limits than the minimum requirements shown below, Omnitrans requires and shall be entitled to the broader coverage and/or higher limits maintained by the Contractor.

| 1) | |
|----|--|
| 2) | Automobile Liability: \$1,000,000; per occurrence for bodily and property damage liability and aggregate; Omnitrans named and endorsed as an Additional Insured. |
| 3) | ☐ Errors and Omissions Liability: \$1,000,000; combined single limit bodily and property damage liability per occurrence and \$3,000,000 aggregate or, |
| 4) | Professional Liability: \$1,000,000; per occurrence and aggregate. |
| 5) | Workers' Compensation: statutory limits or, |
| 6) | Self Insurance Program: a State Approved program in an amount and form that meets all applicable requirements of the Labor Code of the State of California. |
| 7) | Employer's Liability: \$1,000,000; per occurrence. |
| 8) | ☐ Environmental Liability: \$1,000,000; per occurrence and aggregate; Omnitrans named and endorsed as an Additional Insured. |

| 9) | Additional coverage for the above policies, <i>Omnitrans Additional Insured</i> . |
|-----|---|
| 10) | All drivers making deliveries of products specified on this solicitation shall have Hazardous Materials Endorsements on their |
| | Commercial Drivers License, and such other Endorsements as |

may be required by relevant laws and/or regulations.

16. 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.

17. 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.

18. 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.

19. 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.

20. 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.

21. 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.

22. 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.

23. 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.

24. 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.

25. 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.

26. 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).

27. COMPLIANCE WITH LAW

- A. 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.
- B. Government regulations that directly affect the CONTRACTOR'S performance of this contract and unforeseen impacts, which neither party could have contemplated at the onset of the contract and have an unconscionable impact on the CONTRACTOR may be given special pricing consideration. The

parties, in good faith, shall review established rates and may adopt any mutually agreed new rates, which shall only be effective as agreed upon by the parties. Thorough documentation including all cost elements is required to support the Contractor's claim to any relief under this clause.

28. 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.

29. 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.

30. 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.

31. 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.

32. 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.

33. 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.

34. 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.

35. 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.

36. LICENSING, PERMITS AND INSPECTION COSTS

- Α. The CONTRACTOR warrants that it has all necessary licenses and permits required by the laws of the United States, State of California, and the County of San Bernardino, the Local Jurisdictions, and all other appropriate governmental agencies, and agrees to maintain these licenses and permits in effect for the duration of the Agreement. Further, FIRM warrants that its employees, agents, and contractors and subcontractors shall conduct themselves in compliance with such laws and licensure requirements including, without limitation, compliance with laws applicable to nondiscrimination, sexual harassment and ethical behavior throughout the duration of this Agreement. CONTRACTOR further warrants that it shall not retain or employ an unlicensed subcontractor to perform work on this Project. CONTRACTOR shall notify OMNITRANS immediately and in writing of its employees', agents', contractors' or subcontractors' inability to obtain or maintain, irrespective of the pendency of any appeal, any such licenses, permits, approvals, certificates, waivers, exemptions, inability shall be cause for termination of this Agreement.
- B. CONTRACTOR shall procure all permits and licenses; pay all charges, assessments and fees, as may be required by the ordinances and regulations of the public agencies having jurisdiction over the areas in which the work is located, and shall comply with all the terms and conditions thereof and with all lawful orders and regulations of each such public agency relating to construction operations under the jurisdiction of such agency.

37. PRECEDENCE

Conflicting provisions hereof, if any, shall prevail in the following descending order of precedence: (1) the provisions of this Agreement, and any and all of its Amendments, Appendices, Exhibits and Attachments; (2) provisions of IFB-MNT18-60 and any and all of its Addenda, Appendices, Exhibits and Attachments; and (3) CONTRACTOR's bid dated February 6, 2018 and its Appendices, Exhibits, Attachments.

38. 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.

| SOUTHERN COUNTIES OIL CO., DBA SC FUELS |
|---|
| Name: Patrick W. Barnecut Title: President |
| Date |
| l Tax I.D. No. <u>34-0488996</u> |
| |
| - |

1. STATEMENT OF WORK

Contractor shall provide Automatic Transmission Fluid (ATF) for Omnitrans' East Valley and West Valley fixed route operations facilities.

GENERAL

- 1) Contractor shall provide and deliver lubricants to Omnitrans' bulk storage facilities located at the East Valley operations site in San Bernardino, California, and West Valley operations site in Montclair, California. If Contractor elects to utilize drums/barrels, the Contractor shall be responsible for the labor and equipment required to pump the ATF into Omnitrans' bulk storage tanks.
- 2) Contractor shall make every effort to avoid Drum/Barrel charges to invoice by informing Omnitrans representative at time of delivery how many Drums/Barrels were delivered and make every effort to take back an equal amount to offset charges.
- 3) Contractor shall provide and deliver Automatic Transmission Fluid to Omnitrans' designated locations.
 - a) Contractor may be required to provide samples of products upon demand.
- 4) Contractor shall furnish all trucks, trailers, off-loading hose(s), tools, equipment, resources, apparatus, facilities, transportation, labor and materials necessary to furnish the services described herein.
- 5) Contractor must provide Omnitrans with proof of compliance, upon request, of relevant local, state, and federal laws/regulations, and contractor must notify Omnitrans of any changes, updates, addendums, and modifications in relevant regulations, laws, statutes and policies.
- 6) Contractor shall notify Omnitrans prior to the delivery of any reformulation of products supplied under this contract, and changes shall not be accepted without the prior written consent of Omnitrans. In the event of a reformulation of a product, Contractor shall promptly provide Omnitrans' Project Manager with an updated Safety Data Sheet (SDS).

2. LUBRICANT REQUIREMENTS

1) AUTOMATIC TRANSMISSION FLUID (ATF) FOR ALLISON AND VOITH TRANSMISSIONS

a) Quantities. It is anticipated that automatic transmission fluid requirements are as follows:

| East & West Valley Facility | Est. Annual Usage (gal) |
|-------------------------------|-------------------------|
| March 1, 2018 - June 30, 2018 | 2,000 |
| July 1, 2018 - June 30, 2019 | 2,000 |
| July 1, 2019 - June 30, 2020 | 2,000 |
| July 1, 2020 - June 30, 2021 | 2,300 |
| July 1, 2021 - June 30, 2022 | 2,300 |

b) Type of Automatic Transmission Fluid

- (1) Omnitrans wishes to use only one brand of fluid in both Allison and Voith transmissions. Contractor shall provide one fluid that meets both manufactures' approved fluids requirements. Omnitrans has identified only 4 brands that meet the approval for extended warranty of transmissions. They brands are as follows;
 - Castrol Transynd
 - BP Autran Syn 295
 - Mobil Delvac Synthetic ATF
 - Shell Spirax S6 ATF A295

NOTE: Only these brands will be approved.

c) Storage Capacity for Automatic Transmission Fluid.

- (1) East Valley Facility 2,000 gallons (two 1000 gallon tanks) or 55 gallon drums if needed.
- (2) West Valley Facility 1,000 gallons (two 500 gallon tanks) or 55 gallon drums if needed.

d) Supplier Responsibilities

- (1) Only California-compliant fluids shall be supplied to Omnitrans to ensure regulatory compliance is maintained in accordance with all Federal Environmental Protection Agency, California Air Resources Board and South Coast Air Quality Management District emissions standards.
- (2) In the event an improper grade of automatic transmission fluid is delivered, or in the event of the automatic transmission fluid being delivered into the wrong storage tank, causing existing fluid to become contaminated, the supplier shall, at its own expense, dispose of and replace the

contaminated product, and clean the affected storage tank, on a timely basis so as not to interrupt service.

(3) Contractor shall notify Omnitrans prior to delivery of any reformulation of products supplied under this contract.

Applicable Taxes. At the current time, automatic transmission fluid is subject to California State Sales Tax at a rate of 8.00%.

3. PREPARATION AND DELIVERY

- 1) The lubricant delivery hours will be between 7 a.m. and 4 p.m. Monday through Sunday each week, except holidays
- 2) Availability of product is to be within 48 hours of order date.
- 3) All freight costs to be included in the Contractors price as the terms shall be F.O.B. Omnitrans.
- 4) Contractor shall assume full responsibility for providing tankers or transportation containers suitable for delivery of the lubricants to the appropriate Omnitrans bulk storage tank(s).
 - a) Contractor shall be responsible for unloading lubricants into Omnitrans' bulk storage tanks and providing trained personnel capable of performing the unloading of lubricants without assistance from Omnitrans personnel.
 - b) All tanker trucks making deliveries shall be properly certified by the State of California including but not limited to Vehicle Tank Measurement Certificates, and in accordance with Federal Department of Transportation regulations, policies, and procedures.
 - (1) If requested, the Contractor shall provide copies of requested certificates within three (3) days after notification is received from a designated Omnitrans representative.
 - c) All drivers making deliveries of lubricants to Omnitrans shall have Hazardous Materials Endorsements on their Commercial Driver's License, and such other Endorsement as may be required by relevant laws and/or regulations.
- 5) Contractor, its agents or employees, must notify Omnitrans' shop supervisor, or his/her designee, upon delivery of lubricant, as all lubricant deliveries to Omnitrans' bulk storage tanks must be acknowledged by designated Omnitrans representative.
 - a) Contractor shall, at its expense, make every reasonable effort necessary to maintain minimum lubricant levels. Contractor

agrees to notify Omnitrans' designated representative if, at any time, it appears that the delivery schedule set forth may not be met.

- (1) Such notification shall include the reasons for any possible delays, and steps being taken by Contractor to remedy any such problem(s).
- (2) Nothing herein shall be interpreted as waiving remedies otherwise available to Omnitrans.
- 6) Pricing must include all freight delivery costs and applicable fees.

4. PRICING

- A. Each Contractor's per gallon price for <u>lubricant</u> must include:
 - 1) Fixed margin/discount
 - 2) Fixed delivery charge per gallon
- B. Pricing shall include all transportation costs, including those associated with loading, transporting and unloading product from Seller's loading facility to Omnitrans' storage tanks.
- C. Taxes / Fees. Purchases by Omnitrans are subject to applicable State and local sales taxes. However, Omnitrans is exempt from the payment of Federal Excise and Transportation Taxes.
 - 1) Applicable Taxes. At the current time, the following summarizes the taxes applied to lubricants and Omnitrans' tax status regarding each:
 - a) California State Sales Tax. Omnitrans is not exempt from the California State Sales Tax.
 - 2) Applicable Fees. At the current time, the following summarizes the fees applied to lubricants and Omnitrans' tax status regarding each:
 - a) California State Lube Fee. Omnitrans is not exempt from the California State Lube Fee. This fee is paid directly to the vendor.
 - b) California Oil Recycling Fee. Omnitrans is not exempt from the California Oil Recycling Fee. This fee is applied to both diesel and gasoline and is paid directly to the vendor.

5. PERMITS AND LICENSES

- A. Contractor shall be responsible for obtaining all necessary permits and licenses required by local, state, and federal authorities for performance under the terms of this Agreement.
 - 1) Contractor shall pay all charges and fees, and furnish all notices necessary for lawful execution of the work.

- 2) Contractor shall give all required notices and comply with all federal, state, and local laws, ordinances, rules, regulations and orders of any public authority bearing on the performance of this Agreement including, but not limited to, the California Air Resources Board's (CARB) reformulated fuel regulations and the requirements of the Environmental Protection Agency (EPA).
 - a) Upon request, the Contractor shall furnish to Omnitrans certificates and/or other proof of compliance with all such laws, orders, regulations and driving records of the supplier truck drivers.
 - b) Contractor shall be fully responsible for all shipments to insure that each shipment meets relevant state and federal specifications.

6. OMNITRANS' RESPONSIBILITIES

Omnitrans' shall, at all times, provide reasonable access to the facility, and shall permit the unloading of contractor trucks at the delivery locations without undue delay.

7. EMPLOYEE HAZARDS

- A. Contractor shall perform all work in a clean, safe and professional manner, causing no hazards to Omnitrans staff, facility the environment or contractor's service personnel.
- B. All Hazardous waste must be handled, collected, stored and disposed of in accordance with federal, state and local environmental compliance regulations.

| ATTACHMENT B - PRICING | | | |
|---|--|---|--|
| MNT18-60B | 77 - 117 117 17 17 17 17 17 17 17 17 17 17 1 | | |
| MISC BULK OILS AND LUBRICANT | S | *************************************** | THE STATE OF THE S |
| Description | Unit of Measure | *Quantity | **Unit Price |
| ALLISON AND VOITH APPROVED AUTOMATIC TRANSMISSION FLUID (ATF) | GALLON | 2000 | \$23.99 |
| *Omnitrans makes no guarantee of usage of items with regard to quantity | 7717100 | | PP-7-AA |
| | | | |

^{**}The above itemized pricing shall remain fixed for quarterly intervals beginning and re-quoted the first business day of April, July, October and January.



POLICY 707 PAGE 1 OF 6

SUBJECT

PROHIBITING WEAPONS IN THE WORKPLACE

APPROVED BY OMNITRANS BOARD OF DIRECTORS

DATE: June 7, 2017

I. Purpose

It is the policy of Omnitrans to maintain a work environment that is safe for all persons, including the community, and conducive to attaining high work standards. To achieve these objectives, the Agency prohibits the possession of firearms and weapons in the work place, regardless of any license or permit that an individual may have which otherwise authorizes the individual to carry firearms or weapons.

It is illegal and a criminal violation to possess weapons in public buildings (California Penal Code 171b and 171.7).

II. Scope

This policy applies to all Omnitrans employees, including but not limited to staffing agency workers and contractors working for or with the Agency at any time, regardless of whether the Agency is the actual employer.

Possession of firearms and weapons is prohibited at all Omnitrans' offices, parking lots, agency vehicles and job sites, and in all Agency vehicles.

The following person/s are exempt from this policy as stated: a guard of a contract carrier operating an armored vehicle, and any law enforcement officer who is carrying out official duties engaged in protecting and preserving property or life within the scope of his or her employment.

Omnitrans will strictly enforce this policy. Violation of this policy will result in immediate disciplinary action, up to and including termination.

III. Procedure

A. COMMUNICATION OF POLICY

- (a) Each employee of the Agency shall receive a copy of this policy at the time of his/her hire and shall sign a copy of the acknowledgment. Employees who were employed before the effective date of this policy shall also receive a copy of this policy and shall sign a copy of the acknowledgment. A copy of the signed acknowledgment and of all new and revised policies throughout the employee's employment shall be maintained in each employee's personnel file.
- (b) A copy of this policy shall be attached to each contractor's contract, and shall become a part of its contract. The contractor shall be responsible for communicating this policy to its employees and any subcontractors to which the contractor sublets any portion of its contract.



POLICY 707 PAGE 2 OF 6

SUBJECT

PROHIBITING WEAPONS IN THE WORKPLACE

APPROVED BY OMNITRANS BOARD OF DIRECTORS

DATE: June 7, 2017

B. PROHIBITED CONDUCT

- (a) The transportation of firearms or weapons in Agency vehicles is prohibited. This includes but is not limited to:
 - (1) to and from work,
 - (2) when conducting Agency business,
 - (3) at all times in Agency-owned or leased vehicles.
- (b) The possession or carrying of permitted and non-permitted firearms or weapons while at Agency buildings, parking lots, sponsored events, and job sites.
- (c) Exception: Power actuated tools which are manufactured for the use of fastening building materials and sanctioned tools for the purpose of performing Agency job duties are not subject to this policy.

C. <u>SEARCH</u>

- (a) Omnitrans reserves the right to conduct reasonable, unannounced searches of Agency premises and personal searches of employees and others while entering, on, or leaving Agency premises, including, but not limited to, personal effects, vehicles, lockers, desks, tool boxes, clothing, meal containers, and baggage. Searches will be conducted when the Agency has a reasonable suspicion to believe that a particular employee may be in possession of a weapon or firearm.
- (b) "Reasonable suspicion" is defined as a suspicion that is based on specific personal observations such as an employee's manner, disposition, behavior, speech, information provided to management by an employee, by law enforcement officials, by a security service, or by other persons believed to be reliable, or a suspicion that is based on other surrounding circumstances.
- (c) Individuals refusing to allow an inspection will not be detained or forced to submit to the inspection. Refusal violates Agency policy and constitutes an act of insubordination constituting disciplinary action, up to and including separation of the employment relationship. Non-employees who refuse to allow an inspection will not be permitted on Agency premises and will be required to immediately leave the premises. Employees will be relieved of all duties while pending investigation.

D. DISCIPLINE

(a) Violations of any portion of this policy will subject the employee to discipline,



POLICY 707 PAGE 3 OF 6

SUBJECT

PROHIBITING WEAPONS IN THE WORKPLACE

APPROVED BY OMNITRANS BOARD OF DIRECTORS

DATE: June 7, 2017

up to and including separation of employment.

(b) Violations by a contractor's employee or subcontractor of any portion of this policy may constitute a breach of contract and regardless will mandate the immediate removal of the contractor's employee from Agency premises, prohibition against the individual accessing Agency premises in the future, and may also constitute a breach of contract.

E. <u>REPORT OF VIOLATIONS</u>

1. Employee Violations

Employees are required to report violations of this policy without regard to the relationship between the individual who initiates the prohibited behavior and the individual reporting it. An employee who believes that another employee may be in violation of this policy must report the alleged violation to the employee's manager or supervisor, the department director, security, or the appropriate departmental Human Resources representative.

Departments are responsible for implementing this policy. The Agency will promptly investigate allegations of violations of this policy.

Omnitrans reserves the right to authorize searches for prohibited weapons on its property when a violation is reported or when probable cause or reasonable suspicion is present consistent with law.

Employees should be aware that there is no reasonable expectation of privacy with respect to weapons in the workplace. The Agency's right to conduct searches includes, but is not limited to, such areas and items as lockers, desks, workstations, offices, purses, briefcases, bags, toolboxes, and lunch bags.

Searches of the employee's work area and belongings, as described above, may be conducted by the Security & Emergency Preparedness Coordinator, or designee. Searches of all types, including surrounding agency property, personal property and the employee may be conducted by law enforcement in accordance with law should reasonable suspicion be present. Any weapon found in violation of this policy may be confiscated. Refusal to permit a search may result in discipline, up to and including separation.

2. Visitor Violations

Visitors are not allowed to carry a weapon on the premises. Any visitor carrying a weapon into a posted no-carry agency facility is creating an elevated risk to security and safety that warrants a response leading to compliance with the law. If the visitor



POLICY 707 PAGE 4 OF 6

SUBJECT

PROHIBITING WEAPONS IN THE WORKPLACE

APPROVED BY OMNITRANS BOARD OF DIRECTORS

DATE: June 7, 2017

poses an immediate risk to security or safety, law enforcement shall be notified immediately by calling 9-911. The visitor shall be considered an immediate risk to safety and security if he/she is acting in an aggressive, belligerent, confrontational, suspicious or in an otherwise questionable manner while carrying a weapon.

F. FALSE REPORTS

Employees making intentionally false and malicious complaints of weapons in the workplace will be subject to disciplinary action, up to and including separation and/or will be reported to the proper authorities as appropriate.

G. ROLES AND RESPONSIBILITIES

Employees are responsible for understanding and complying with the Policy Prohibiting Weapons in the Workplace.

Whenever there is a question as to whether an instrument, article or substance is considered a weapon in violation of this policy, it is the employee's responsibility to seek clarification. Employees seeking clarification should direct their questions to the agency's Security & Emergency Preparedness Coordinator at 909-379-7117 prior to bringing the item(s) to Omnitrans work sites and events, as well as agency-owned or leased facilities or vehicles.

H. SAFETY FIRST

In applying this policy, no employee shall take any action that will risk his or her own safety or the safety of other individuals. No attempt should ever be made by an employee to restrain or forcibly evict an armed person from agency premises.

An individual's continued non-compliance after being properly informed of the law (California Penal Code 171 (b)) will result in notification to law enforcement and discipline, up to and including separation of employment. Employees should notify security immediately.

An employee who feels an imminent danger to his or her own safety or the safety or security of others, should avoid any interaction with the individual. Immediately contact law enforcement by calling 9-911 and security at 909-379-7117.

I. ANTI-RETALIATION PROVISION

Omnitrans strictly prohibits any retaliation against an employee who has reported a possible breach of policy. If an employee feels that he or she has been subjected to retaliation in violation of this policy, the employee must immediately report it to his or her supervisor or other designated Human Resources representative.



POLICY 707 PAGE 5 OF 6

SUBJECT

PROHIBITING WEAPONS IN THE WORKPLACE

APPROVED BY OMNITRANS BOARD OF DIRECTORS

DATE: June 7, 2017

J. <u>DEFINITIONS</u>

- 1. Firearm or weapon includes, but is not limited to: A weapon, a pistol or rifle, whether loaded or unloaded, capable of firing a projectile and using an explosive as a propellant.
 - A firearm, whether loaded or unloaded, from which a shot may be discharged including but not limited to handguns, pistols, revolvers, shotguns, rifles, and bb guns;
 - A gun that can discharge a shot or a projectile by means of an explosive or gas, or compressed air;
 - A device designed to be used as a weapon, from which can be expelled a
 projectile by the force of any explosion or force of combustion;
 - Any weapon (including a starter gun) which will or is designed to or may readily be converted to expel a projectile by the action of an explosive;
 - · Any destructive device;
 - Any device designed as a weapon and capable of producing great bodily harm, including but not limited to, stun guns, stun batons;
 - An electric weapon such as a taser gun;
 - Any combustible or flammable liquid, or other substance, device, or instrumentality that, in a manner it is used or intended to be used, is calculated or likely to produce death or great bodily harm, or any fire that is used to produce death or great bodily harm;
 - Any knife that is carried with intention or calculation to produce death or
 great bodily harm having a blade length in excess of four (4) inches, the
 blade of which is fixed or is capable of being fixed in an unguarded
 position by the use of one or two hands. Switchblades are specifically
 prohibited. (Knives intended to be used as eating utensils, and stored or
 maintained in office kitchens or lunchrooms do not represent a violation of
 this policy.)
- 2. Office: All permanent facilities, all mobile facilities, all leased facilities, and any facility designated as an office by the agency.
- 3. Parking Iot: All lots at permanent facility, park and rides, lots at project sites, any lot that the agency designates as a parking lot that is not at a permanent facility or project site.
- 4. Agency vehicle: All agency-owned buses/vehicles, all agency-leased buses/vehicles, all agency-rental buses/vehicles, and all personal vehicles for which the owner receives a vehicle allowance, all personal vehicles where the owner receives reimbursement for mileage.



POLICY 707 PAGE 6 OF 6

SUBJECT

PROHIBITING WEAPONS IN THE WORKPLACE

APPROVED BY OMNITRANS BOARD OF DIRECTORS

DATE: June 7, 2017

- 5. Search: To examine in order to find something concealed.
- 6. Job sites: Any and all locations where the agency conducts business.

SIGNS

- 1. At each entrance to buildings, parking lots, and project sites, a sign shall be posted in a location that is conspicuous to all who could enter a building, parking lot, or project site.
- 2. Signs shall have wording or pictogram that prohibits firearms, weapons and give notice of video surveillance. Signs shall be vandalism resistant and of the quality that they will not fade due to the elements.



CONTRACT AGREEMENT

between

| CONTRACTOR AAA Oil, Inc. 11621 Westminster Ave. Garden Grove, CA 92843 | CONTRACT DOCUMENTS CONTRACT NO. MNT18-60C AUTOMATIC TRANSMISSION FLUID |
|---|---|
| (hereinafter "CONTRACTOR") Telephone: (714) 530-4795 Email: jcrawley@cafueling.com |))))) |
| And | Contract Amount: \$30,000)))))) |
| Omnitrans 1700 West Fifth Street San Bernardino, CA 92411 (hereinafter "OMNITRANS") | Omnitrans Project Manager: Name: Rick Barone Title: Materials Manager Telephone: (909) 379-7204 Email: rick.barone@omnitrans.org Contract Administrator: Name: Krystal N. Turner Title: Contract Administrator Telephone: (909) 379-7202 Email: krystal.turner@omnitrans.org |



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This Agreement is made and entered into as of this <u>4th</u> day of <u>April, 2018</u>, and between Omnitrans (hereinafter referred to as "OMNITRANS") and <u>AAA Oil, Inc.</u> (hereinafter referred to as "CONTRACTOR").

RECITALS

WHEREAS, OMNITRANS is a joint powers authority organized under Section 6500 et seq. of the California Government 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 term of this Agreement shall be from the date of execution of this Agreement and continue in effect through <u>April 3, 2020</u>, unless terminated as specified in Section 10 and 11 of this Agreement. Omnitrans has no obligation to purchase any specified amount of products/services. All applicable indemnification provisions in this Agreement shall remain in effect following the termination of this Agreement.

3. CONTRACT OPTIONS

- A. Omnitrans will have the unilateral right in the contract by which, for a specified time, Omnitrans may elect to purchase additional services called for by the contract, or may elect to extend the term of the contract. The requirements below apply:
 - Any options that were requested by Omnitrans and/or contained in the Contractor's PROPOSAL or offer must have been evaluated in making the contract award prior to exercising any such options.
 - 2) Since Contractor's proposed pricing for the option years and additional services are considered in evaluating the Contractor's original proposal and form the basis for awarding the contract, Contractor shall be bound by the proposal pricing for additional services and/or option years, unless otherwise provided herein.
- B. Omnitrans will provide a minimum of thirty days (30) written notice to the Contractor of Omnitrans' exercise of its option to extend the contract years. Omnitrans may give notice of its exercise of the option for additional services at any time during the term of the contract. The minimum time for the written notice may be waived by mutual agreement.

4. COMPENSATION

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 C, and subject to the maximum cumulative payment obligation.

OMNITRANS' maximum cumulative payment obligation under this Agreement shall not exceed <u>Thirty Thousand</u> Dollars (\$30,000), 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.

5. 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 Accountspayable@omnitrans.org

A separate invoice shall be used for each shipment. Each invoice shall include, at minimum, the following information:

- Contract number
- Invoice number
- Description of delivery
- Delivery Date
- Total quantity delivered
- Information as requested by OMNITRANS
- B. OMNITRANS shall remit payment within thirty (30) calendar days of approval of the invoices by OMNITRANS' Project Manager.

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.

C. TITLE

- a. Title shall pass to Omnitrans at the time of payment.
- b. The title transferred as above shall in each case be good, and free and clear from any and all security interests, liens, and/or other encumbrances.
- c. The transfer of title as specified above shall not imply Acceptance by Omnitrans, nor relieve the Contractor from the responsibility for strict compliance with the Contract, including warranty as specified in the Article entitled Warranty of Work, and for any loss of or damage to the Work.
- d. The Contractor at its own expense shall promptly execute, acknowledge, and deliver to the Omnitrans proper bills of sale or other written instruments of title in a form as required by Omnitrans; said instruments shall convey to

the Omnitrans' title free and clear of debts, claims, liens, mortgages, taxes, and/or encumbrances.

e. Contractor shall have title to and bear the risk of any loss of or damage to Work purchased hereunder until they are delivered, unloaded, and received by Omnitrans at the FOB Destination specified herein. Contractor's responsibility for loss or damage except for loss or damage resulting from Contractor's negligence, shall cease when title passes to Omnitrans.

6. 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.

7. 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: Krystal N. Turner Title: Contract Administrator AAA Oil, Inc. 11621 Westminster Ave. Garden Grove, CA 92843 Attn: Jennifer Crawley Title: Marketing Manager

8. 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: Maintenance.

- a. 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>

Jennifer Crawley Marketing Manager

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.

9. DISPUTE RESOLUTION

Any disputes between the successful CONTRACTOR and OMNITRANS relating to the implementation or administration of the Contract shall be resolved in accordance with this section.

- A. The parties shall first attempt to resolve the dispute informally in meetings or communications between proposer and OMNITRANS.
- B. If the dispute remains unresolved fifteen (15) days after it first arises, proposer may request that Omnitrans' CEO/General Manager issue a recommended decision on the matter in dispute. Omnitrans' CEO/General Manager shall issue the recommended decision in writing and provide a copy to proposer.
- C. If the dispute remains unresolved after review by Omnitrans' CEO/General Manager, either party may seek judicial resolution of the dispute in an appropriate Court of the State of California.
- D. Pending final resolution of a dispute under this section, proposer shall proceed diligently with performance in accordance with the Contract and Omnitrans' CEO/General Manager's recommended decision.

10. 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.

11. 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 28, 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 10, 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.

12. 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.

13. 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.

CONTRACTOR shall not, without the express written consent of Omnitrans, either:

- a. Substitute any person, firm, or corporation as subcontractor in place of the subcontractors identified below; or
- b. Permit any subcontract to be assigned or transferred; or
- c. Allow work to be performed by anyone other than the original subcontractor listed below.

| Subcontractor's Name and Address | Work to Be Performed | | |
|----------------------------------|----------------------|--|--|
| N/A | | | |
| | | | |
| | | | |

14. 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.

15. INSURANCE

A. INSURANCE REQUIREMENTS

1) General Requirements for Contractor

- a. Without limiting or diminishing the Contractor's obligation to indemnify or hold Omnitrans harmless, Contractor shall procure, prior to commencement of the services required under this contract and maintain for the duration of the contract at its own expense, insurance of the kinds and in the amounts as indicated below:
- b. Provide Omnitrans with valid original certificates of insurance and endorsements showing Omnitrans as an additional insured.

2) Deductibles or Self-Insured Retention (SIR)

SIR must be declared to and approved by Omnitrans. At the option of Omnitrans, either: the insurer shall reduce or eliminate such deductibles or SIR or Contractor shall procure a bond guaranteeing payment of losses and related investigations, claim administration and defense expenses.

3) Other Insurance Provisions

a. Commercial General Liability and Automobile Liability

Commercial General Liability insurance coverage, including but not limited to, premises liability, contractual liability, products and completed operations liability, personal and advertising injury covering claims which may arise from or out of Contractor's performance of its obligations hereunder and if Contractor's vehicles or mobile equipment are used in the performance of the obligations under this Agreement, then Contractor shall maintain liability insurance for all owned, non-owned or hired vehicles so used. Policy shall name Omnitrans, its officers, officials, employees, agents and volunteers as additional insured as respects: liability arising out of activities performed by or on behalf of Contractor; products and completed operations of Contractor; premises owned, occupied or used by Contractor; or automobiles owned, leased, hired or borrowed by Contractor. The coverage shall contain no special limitations of the scope of protection afforded Omnitrans, its officers, officials, employees, agents, and volunteers.

 For any claims related to this project, Contractor's insurance coverage shall be primary insurance as respects Omnitrans, its officers, officials, employees, agents, and volunteers. Any insurance and/or deductibles and/or self-insured retentions or self-insured programs maintained by Omnitrans, its officers, officials, employees, agents, and volunteers shall be excess of Contractor's insurance and shall not be construed as contributory.

- 2. Contractor's insurance shall apply separately to each insured against whom claim is made or suit is brought, except with respect to the limits of the insurer's liability.
- 3. Each insurance policy required by this clause shall be endorsed to state that coverage shall not be suspended, voided, cancelled by either party, reduced in coverage or in limits except after thirty (30) days prior written notice has been given to Omnitrans.

b. Workers' Compensation

If the Contractor has employees as defined by the State of California, the Contractor shall maintain statutory Workers' compensation Insurance (Coverage A) as prescribed by the laws of the State of California. Policy shall include Employers' Liability (Coverage B) including Occupational Disease with limits not less than \$1,000,000 per person per accident. The policy shall be endorsed to waive subrogation in favor of Omnitrans and, if applicable, to provide a Borrowed Servant/Alternate Employer Endorsement.

c. Care, Custody, and Control

Contractor shall insure any Omnitrans property while under its Care, Custody, and Control according to the requirements listed in the insurance coverage required.

4) Acceptability of Insurers

Insurance companies shall be State of California admitted or approved and have a current **A.M. Best's** rating of no less than **A:VIII**.

5) Verification of Coverage

- a. Contractor shall furnish Omnitrans with original endorsements affecting coverage required by this clause. The endorsements are to be signed by a person authorized by that insurer to bind coverage on its behalf. All insurance certificates and endorsements are to be received and approved by Omnitrans before work commences.
- b. As an alternative, Contractor's insurer may provide complete, certified copies of all required insurance policies, including endorsements affecting the coverage required by these specifications.
- c. In lieu of purchasing insurance and providing original endorsements and or certificates of insurance, the Contractor may provide proof of self-insurance; such proof must be to the satisfaction of Omnitrans.

6) Subcontractors

Contractor shall include all subcontractors as insureds under its policies or shall furnish separate certificates and endorsements for each subcontractor. All coverage for subcontractors shall be subject to all of the requirements stated herein.

7) Notification of Terminated Insurance

Insurance shall not be terminated or expire without thirty (30) days written or electronic notice, and are required to be maintained in force until completion of the contract.

B. MINIMUM INSURANCE COVERAGE

If the Contractor maintains broader coverage and/or higher limits than the minimum requirements shown below, Omnitrans requires and shall be entitled to the broader coverage and/or higher limits maintained by the Contractor.

| 1) | Commercial General Liability including Products/Completed Operations: \$1,000,000; per occurrence for bodily and property damage liability and \$2,000,000 aggregate; Omnitrans named and endorsed as an Additional Insured. | | | | | |
|-----|--|--|--|--|--|--|
| 2) | Automobile Liability: \$1,000,000; per occurrence for bodily and property damage liability and aggregate; <i>Omnitrans named and endorsed as an Additional Insured</i> . | | | | | |
| 3) | ☐ Errors and Omissions Liability: \$1,000,000; combined single limit bodily and property damage liability per occurrence and \$3,000,000 aggregate or, | | | | | |
| 4) | Professional Liability: \$1,000,000; per occurrence and aggregate. | | | | | |
| 5) | Workers' Compensation: statutory limits or, | | | | | |
| 6) | Self Insurance Program: a State Approved program in an amount and form that meets all applicable requirements of the Labor Code of the State of California. | | | | | |
| 7) | Employer's Liability: \$1,000,000; per occurrence. | | | | | |
| 8) | ☐ Environmental Liability: \$1,000,000; per occurrence and aggregate; Omnitrans named and endorsed as an Additional Insured. | | | | | |
| 9) | Umbrella Policy: \$4,000,000; per occurrence and aggregate Additional coverage for the above policies, <i>Omnitrans Additional Insured</i> . | | | | | |
| 10) | All drivers making deliveries of products specified on this solicitation shall have Hazardous Materials Endorsements on their | | | | | |

Commercial Drivers License, and such other Endorsements as may be required by relevant laws and/or regulations.

16. 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.

17. 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.

18. 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.

19. 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.

20. OWNERSHIP RIGHTS

- Α. 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.

21. 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.

22. 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.

23. 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.

24. 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.

25. 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.

26. 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).

27. COMPLIANCE WITH LAW

- A. 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.
- B. Government regulations that directly affect the CONTRACTOR'S performance of this contract and unforeseen impacts, which neither party could have contemplated at the onset of the contract and have an unconscionable impact on the CONTRACTOR may be given special pricing consideration. The parties, in good faith, shall review established rates and may adopt any mutually agreed new rates, which shall only be effective as agreed upon by the parties. Thorough documentation including all cost elements is required to support the Contractor's claim to any relief under this clause.

28. 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.

29. 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.

30. 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.

31. 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.

32. 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.

33. 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.

34. 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.

35. 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.

36. LICENSING, PERMITS AND INSPECTION COSTS

- Α. The CONTRACTOR warrants that it has all necessary licenses and permits required by the laws of the United States, State of California, and the County of San Bernardino, the Local Jurisdictions, and all other appropriate governmental agencies, and agrees to maintain these licenses and permits in effect for the duration of the Agreement. Further, FIRM warrants that its employees, agents, and contractors and subcontractors shall conduct themselves in compliance with such laws and licensure requirements including, without limitation, compliance with laws applicable to nondiscrimination, sexual harassment and ethical behavior throughout the duration of this Agreement. CONTRACTOR further warrants that it shall not retain or employ an unlicensed subcontractor to perform work on this Project. CONTRACTOR shall notify OMNITRANS immediately and in writing of its employees', agents', contractors' or subcontractors' inability to obtain or maintain, irrespective of the pendency of any appeal, any such licenses, permits, approvals, certificates, waivers, exemptions. inability shall be cause for termination of this Agreement.
- B. CONTRACTOR shall procure all permits and licenses; pay all charges, assessments and fees, as may be required by the ordinances and regulations of the public agencies having jurisdiction over the areas in which the work is located, and shall comply with all the terms and conditions thereof and with all lawful orders and regulations of each such public agency relating to construction operations under the jurisdiction of such agency.

37. PRECEDENCE

Conflicting provisions hereof, if any, shall prevail in the following descending order of precedence: (1) the provisions of this Agreement, and any and all of its Amendments, Appendices, Exhibits and Attachments; (2) provisions of IFB-MNT18-60 and any and all of its Addenda, Appendices, Exhibits and Attachments; and (3) CONTRACTOR's bid dated February 7, 2018 and its Appendices, Exhibits, Attachments.

38. 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 | AAA OIL, INC. | |
|--|---|--|
| P. Scott Graham CEO/General Manager | Name: Jennifer Crawley Title: Marketing Manager | |
| Date | Date | |

Federal Tax I.D. No. 68-0593652

IDP

1. STATEMENT OF WORK

Contractor shall provide Automatic Transmission Fluid (ATF) for Omnitrans' East Valley and West Valley fixed route operations facilities.

GENERAL

- 1) Contractor shall provide and deliver lubricants to Omnitrans' bulk storage facilities located at the East Valley operations site in San Bernardino, California, and West Valley operations site in Montclair, California. If Contractor elects to utilize drums/barrels, the Contractor shall be responsible for the labor and equipment required to pump the ATF into Omnitrans' bulk storage tanks.
- 2) Contractor shall make every effort to avoid Drum/Barrel charges to invoice by informing Omnitrans representative at time of delivery how many Drums/Barrels were delivered and make every effort to take back an equal amount to offset charges.
- 3) Contractor shall provide and deliver Automatic Transmission Fluid to Omnitrans' designated locations.
 - a) Contractor may be required to provide samples of products upon demand.
- 4) Contractor shall furnish all trucks, trailers, off-loading hose(s), tools, equipment, resources, apparatus, facilities, transportation, labor and materials necessary to furnish the services described herein.
- 5) Contractor must provide Omnitrans with proof of compliance, upon request, of relevant local, state, and federal laws/regulations, and contractor must notify Omnitrans of any changes, updates, addendums, and modifications in relevant regulations, laws, statutes and policies.
- 6) Contractor shall notify Omnitrans prior to the delivery of any reformulation of products supplied under this contract, and changes shall not be accepted without the prior written consent of Omnitrans. In the event of a reformulation of a product, Contractor shall promptly provide Omnitrans' Project Manager with an updated Safety Data Sheet (SDS).

2. LUBRICANT REQUIREMENTS

1) AUTOMATIC TRANSMISSION FLUID (ATF) FOR ALLISON AND VOITH TRANSMISSIONS

a) Quantities. It is anticipated that automatic transmission fluid requirements are as follows:

| East & West Valley Facility | Est. Annual Usage (gal) | | |
|-------------------------------|-------------------------|--|--|
| March 1, 2018 - June 30, 2018 | 2,000 | | |
| July 1, 2018 - June 30, 2019 | 2,000 | | |
| July 1, 2019 - June 30, 2020 | 2,000 | | |
| July 1, 2020 - June 30, 2021 | 2,300 | | |
| July 1, 2021 - June 30, 2022 | 2,300 | | |

b) Type of Automatic Transmission Fluid

- (1) Omnitrans wishes to use only one brand of fluid in both Allison and Voith transmissions. Contractor shall provide **one** fluid that meets **both** manufactures' approved fluids requirements. Omnitrans has identified **only** 4 brands that meet the approval for extended warranty of transmissions. They brands are as follows;
 - Castrol Transynd
 - BP Autran Syn 295
 - Mobil Delvac Synthetic ATF
 - Shell Spirax S6 ATF A295

NOTE: Only these brands will be approved.

c) Storage Capacity for Automatic Transmission Fluid.

- (1) East Valley Facility 2,000 gallons (two 1000 gallon tanks) or 55 gallon drums if needed.
- (2) West Valley Facility 1,000 gallons (two 500 gallon tanks) or 55 gallon drums if needed.

d) Supplier Responsibilities

- (1) Only California-compliant fluids shall be supplied to Omnitrans to ensure regulatory compliance is maintained in accordance with all Federal Environmental Protection Agency, California Air Resources Board and South Coast Air Quality Management District emissions standards.
- (2) In the event an improper grade of automatic transmission fluid is delivered, or in the event of the automatic transmission fluid being delivered into the wrong storage tank, causing existing fluid to become contaminated, the supplier shall, at its own expense, dispose of and replace the

contaminated product, and clean the affected storage tank, on a timely basis so as not to interrupt service.

(3) Contractor shall notify Omnitrans prior to delivery of any reformulation of products supplied under this contract.

Applicable Taxes. At the current time, automatic transmission fluid is subject to California State Sales Tax at a rate of 8.00%.

3. PREPARATION AND DELIVERY

- 1) The lubricant delivery hours will be between 7 a.m. and 4 p.m. Monday through Sunday each week, except holidays
- 2) Availability of product is to be within 48 hours of order date.
- 3) All freight costs to be included in the Contractors price as the terms shall be F.O.B. Omnitrans.
- 4) Contractor shall assume full responsibility for providing tankers or transportation containers suitable for delivery of the lubricants to the appropriate Omnitrans bulk storage tank(s).
 - a) Contractor shall be responsible for unloading lubricants into Omnitrans' bulk storage tanks and providing trained personnel capable of performing the unloading of lubricants without assistance from Omnitrans personnel.
 - b) All tanker trucks making deliveries shall be properly certified by the State of California including but not limited to Vehicle Tank Measurement Certificates, and in accordance with Federal Department of Transportation regulations, policies, and procedures.
 - (1) If requested, the Contractor shall provide copies of requested certificates within three (3) days after notification is received from a designated Omnitrans representative.
 - c) All drivers making deliveries of lubricants to Omnitrans shall have Hazardous Materials Endorsements on their Commercial Driver's License, and such other Endorsement as may be required by relevant laws and/or regulations.
- 5) Contractor, its agents or employees, must notify Omnitrans' shop supervisor, or his/her designee, upon delivery of lubricant, as all lubricant deliveries to Omnitrans' bulk storage tanks must be acknowledged by designated Omnitrans representative.
 - a) Contractor shall, at its expense, make every reasonable effort necessary to maintain minimum lubricant levels. Contractor

agrees to notify Omnitrans' designated representative if, at any time, it appears that the delivery schedule set forth may not be met.

- (1) Such notification shall include the reasons for any possible delays, and steps being taken by Contractor to remedy any such problem(s).
- (2) Nothing herein shall be interpreted as waiving remedies otherwise available to Omnitrans.
- 6) Pricing must include all freight delivery costs and applicable fees.

4. PRICING

- A. Each Contractor's per gallon price for <u>lubricant</u> must include:
 - 1) Fixed margin/discount
 - 2) Fixed delivery charge per gallon
- B. Pricing shall include all transportation costs, including those associated with loading, transporting and unloading product from Seller's loading facility to Omnitrans' storage tanks.
- C. **Taxes / Fees.** Purchases by Omnitrans are subject to applicable State and local sales taxes. However, Omnitrans is exempt from the payment of Federal Excise and Transportation Taxes.
 - 1) Applicable Taxes. At the current time, the following summarizes the taxes applied to lubricants and Omnitrans' tax status regarding each:
 - a) California State Sales Tax. Omnitrans is not exempt from the California State Sales Tax.
 - 2) Applicable Fees. At the current time, the following summarizes the fees applied to lubricants and Omnitrans' tax status regarding each:
 - a) California State Lube Fee. Omnitrans is not exempt from the California State Lube Fee. This fee is paid directly to the vendor.
 - b) California Oil Recycling Fee. Omnitrans is not exempt from the California Oil Recycling Fee. This fee is applied to both diesel and gasoline and is paid directly to the vendor.

5. PERMITS AND LICENSES

- A. Contractor shall be responsible for obtaining all necessary permits and licenses required by local, state, and federal authorities for performance under the terms of this Agreement.
 - 1) Contractor shall pay all charges and fees, and furnish all notices necessary for lawful execution of the work.

- 2) Contractor shall give all required notices and comply with all federal, state, and local laws, ordinances, rules, regulations and orders of any public authority bearing on the performance of this Agreement including, but not limited to, the California Air Resources Board's (CARB) reformulated fuel regulations and the requirements of the Environmental Protection Agency (EPA).
 - a) Upon request, the Contractor shall furnish to Omnitrans certificates and/or other proof of compliance with all such laws, orders, regulations and driving records of the supplier truck drivers.
 - b) Contractor shall be fully responsible for all shipments to insure that each shipment meets relevant state and federal specifications.

6. OMNITRANS' RESPONSIBILITIES

Omnitrans' shall, at all times, provide reasonable access to the facility, and shall permit the unloading of contractor trucks at the delivery locations without undue delay.

7. EMPLOYEE HAZARDS

- A. Contractor shall perform all work in a clean, safe and professional manner, causing no hazards to Omnitrans staff, facility the environment or contractor's service personnel.
- B. All Hazardous waste must be handled, collected, stored and disposed of in accordance with federal, state and local environmental compliance regulations.

| ATTACHMENT B - PRICING | | | | |
|---|-----------------|-----------|--|--|
| MNT18-60C | | | | |
| MISC BULK OILS AND LUBRICANTS | | | | |
| Description | Unit of Measure | *Quantity | **Unit Price | |
| ALLISON AND VOITH APPROVED AUTOMATIC TRANSMISSION FLUID (ATF) | GALLON | 2000 | \$27.49 | |
| *Omnitrans makes no guarantee of usage of items with regard to quantity | | | 7 P. 11 P. 1 | |
| **The above itemized pricing shall remain fixed for quarterly intervals begin | | | · · · · · · · · · · · · · · · · · · · | |

^{**}The above itemized pricing shall remain fixed for quarterly intervals beginning and re-quoted the first business day of April, July, October and January.



POLICY 707 PAGE 1 OF 6

SUBJECT

PROHIBITING WEAPONS IN THE WORKPLACE

APPROVED BY OMNITRANS BOARD OF DIRECTORS

DATE: June 7, 2017

I. Purpose

It is the policy of Omnitrans to maintain a work environment that is safe for all persons, including the community, and conducive to attaining high work standards. To achieve these objectives, the Agency prohibits the possession of firearms and weapons in the work place, regardless of any license or permit that an individual may have which otherwise authorizes the individual to carry firearms or weapons.

It is illegal and a criminal violation to possess weapons in public buildings (California Penal Code 171b and 171.7).

II. Scope

This policy applies to all Omnitrans employees, including but not limited to staffing agency workers and contractors working for or with the Agency at any time, regardless of whether the Agency is the actual employer.

Possession of firearms and weapons is prohibited at all Omnitrans' offices, parking lots, agency vehicles and job sites, and in all Agency vehicles.

The following person/s are exempt from this policy as stated: a guard of a contract carrier operating an armored vehicle, and any law enforcement officer who is carrying out official duties engaged in protecting and preserving property or life within the scope of his or her employment.

Omnitrans will strictly enforce this policy. Violation of this policy will result in immediate disciplinary action, up to and including termination.

III. Procedure

A. COMMUNICATION OF POLICY

- (a) Each employee of the Agency shall receive a copy of this policy at the time of his/her hire and shall sign a copy of the acknowledgment. Employees who were employed before the effective date of this policy shall also receive a copy of this policy and shall sign a copy of the acknowledgment. A copy of the signed acknowledgment and of all new and revised policies throughout the employee's employment shall be maintained in each employee's personnel file.
- (b) A copy of this policy shall be attached to each contractor's contract, and shall become a part of its contract. The contractor shall be responsible for communicating this policy to its employees and any subcontractors to which the contractor sublets any portion of its contract.



POLICY 707 PAGE 2 OF 6

SUBJECT

PROHIBITING WEAPONS IN THE WORKPLACE

APPROVED BY OMNITRANS BOARD OF DIRECTORS

DATE: June 7, 2017

B. PROHIBITED CONDUCT

- (a) The transportation of firearms or weapons in Agency vehicles is prohibited. This includes but is not limited to:
 - (1) to and from work,
 - (2) when conducting Agency business,
 - (3) at all times in Agency-owned or leased vehicles.
- (b) The possession or carrying of permitted and non-permitted firearms or weapons while at Agency buildings, parking lots, sponsored events, and job sites.
- (c) Exception: Power actuated tools which are manufactured for the use of fastening building materials and sanctioned tools for the purpose of performing Agency job duties are not subject to this policy.

C. <u>SEARCH</u>

- (a) Omnitrans reserves the right to conduct reasonable, unannounced searches of Agency premises and personal searches of employees and others while entering, on, or leaving Agency premises, including, but not limited to, personal effects, vehicles, lockers, desks, tool boxes, clothing, meal containers, and baggage. Searches will be conducted when the Agency has a reasonable suspicion to believe that a particular employee may be in possession of a weapon or firearm.
- (b) "Reasonable suspicion" is defined as a suspicion that is based on specific personal observations such as an employee's manner, disposition, behavior, speech, information provided to management by an employee, by law enforcement officials, by a security service, or by other persons believed to be reliable, or a suspicion that is based on other surrounding circumstances.
- (c) Individuals refusing to allow an inspection will not be detained or forced to submit to the inspection. Refusal violates Agency policy and constitutes an act of insubordination constituting disciplinary action, up to and including separation of the employment relationship. Non-employees who refuse to allow an inspection will not be permitted on Agency premises and will be required to immediately leave the premises. Employees will be relieved of all duties while pending investigation.

D. <u>DISCIPLINE</u>

(a) Violations of any portion of this policy will subject the employee to discipline,



POLICY 707 PAGE 3 OF 6

SUBJECT

PROHIBITING WEAPONS IN THE WORKPLACE

APPROVED BY OMNITRANS BOARD OF DIRECTORS

DATE: June 7, 2017

up to and including separation of employment.

(b) Violations by a contractor's employee or subcontractor of any portion of this policy may constitute a breach of contract and regardless will mandate the immediate removal of the contractor's employee from Agency premises, prohibition against the individual accessing Agency premises in the future, and may also constitute a breach of contract.

E. REPORT OF VIOLATIONS

1. Employee Violations

Employees are required to report violations of this policy without regard to the relationship between the individual who initiates the prohibited behavior and the individual reporting it. An employee who believes that another employee may be in violation of this policy must report the alleged violation to the employee's manager or supervisor, the department director, security, or the appropriate departmental Human Resources representative.

Departments are responsible for implementing this policy. The Agency will promptly investigate allegations of violations of this policy.

Omnitrans reserves the right to authorize searches for prohibited weapons on its property when a violation is reported or when probable cause or reasonable suspicion is present consistent with law.

Employees should be aware that there is no reasonable expectation of privacy with respect to weapons in the workplace. The Agency's right to conduct searches includes, but is not limited to, such areas and items as lockers, desks, workstations, offices, purses, briefcases, bags, toolboxes, and lunch bags.

Searches of the employee's work area and belongings, as described above, may be conducted by the Security & Emergency Preparedness Coordinator, or designee. Searches of all types, including surrounding agency property, personal property and the employee may be conducted by law enforcement in accordance with law should reasonable suspicion be present. Any weapon found in violation of this policy may be confiscated. Refusal to permit a search may result in discipline, up to and including separation.

2. Visitor Violations

Visitors are not allowed to carry a weapon on the premises. Any visitor carrying a weapon into a posted no-carry agency facility is creating an elevated risk to security and safety that warrants a response leading to compliance with the law. If the visitor



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SUBJECT

PROHIBITING WEAPONS IN THE WORKPLACE

APPROVED BY OMNITRANS BOARD OF DIRECTORS

DATE: June 7, 2017

poses an immediate risk to security or safety, law enforcement shall be notified immediately by calling 9-911. The visitor shall be considered an immediate risk to safety and security if he/she is acting in an aggressive, belligerent, confrontational, suspicious or in an otherwise questionable manner while carrying a weapon.

F. FALSE REPORTS

Employees making intentionally false and malicious complaints of weapons in the workplace will be subject to disciplinary action, up to and including separation and/or will be reported to the proper authorities as appropriate.

G. ROLES AND RESPONSIBILITIES

Employees are responsible for understanding and complying with the Policy Prohibiting Weapons in the Workplace.

Whenever there is a question as to whether an instrument, article or substance is considered a weapon in violation of this policy, it is the employee's responsibility to seek clarification. Employees seeking clarification should direct their questions to the agency's Security & Emergency Preparedness Coordinator at 909-379-7117 prior to bringing the item(s) to Omnitrans work sites and events, as well as agency-owned or leased facilities or vehicles.

H. SAFETY FIRST

In applying this policy, no employee shall take any action that will risk his or her own safety or the safety of other individuals. No attempt should ever be made by an employee to restrain or forcibly evict an armed person from agency premises.

An individual's continued non-compliance after being properly informed of the law (California Penal Code 171 (b)) will result in notification to law enforcement and discipline, up to and including separation of employment. Employees should notify security immediately.

An employee who feels an imminent danger to his or her own safety or the safety or security of others, should avoid any interaction with the individual. Immediately contact law enforcement by calling 9-911 and security at 909-379-7117.

I. ANTI-RETALIATION PROVISION

Omnitrans strictly prohibits any retaliation against an employee who has reported a possible breach of policy. If an employee feels that he or she has been subjected to retaliation in violation of this policy, the employee must immediately report it to his or her supervisor or other designated Human Resources representative.



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SUBJECT

PROHIBITING WEAPONS IN THE WORKPLACE

APPROVED BY OMNITRANS BOARD OF DIRECTORS

DATE: June 7, 2017

J. DEFINITIONS

- 1. Firearm or weapon includes, but is not limited to: A weapon, a pistol or rifle, whether loaded or unloaded, capable of firing a projectile and using an explosive as a propellant.
 - A firearm, whether loaded or unloaded, from which a shot may be discharged including but not limited to handguns, pistols, revolvers, shotguns, rifles, and bb guns;
 - A gun that can discharge a shot or a projectile by means of an explosive or gas, or compressed air;
 - A device designed to be used as a weapon, from which can be expelled a
 projectile by the force of any explosion or force of combustion;
 - Any weapon (including a starter gun) which will or is designed to or may readily be converted to expel a projectile by the action of an explosive;
 - Any destructive device;
 - Any device designed as a weapon and capable of producing great bodily harm, including but not limited to, stun guns, stun batons;
 - An electric weapon such as a taser gun;
 - Any combustible or flammable liquid, or other substance, device, or instrumentality that, in a manner it is used or intended to be used, is calculated or likely to produce death or great bodily harm, or any fire that is used to produce death or great bodily harm;
 - Any knife that is carried with intention or calculation to produce death or
 great bodily harm having a blade length in excess of four (4) inches, the
 blade of which is fixed or is capable of being fixed in an unguarded
 position by the use of one or two hands. Switchblades are specifically
 prohibited. (Knives intended to be used as eating utensils, and stored or
 maintained in office kitchens or lunchrooms do not represent a violation of
 this policy.)
- 2. **Office**: All permanent facilities, all mobile facilities, all leased facilities, and any facility designated as an office by the agency.
- Parking lot: All lots at permanent facility, park and rides, lots at project sites, any lot that the agency designates as a parking lot that is not at a permanent facility or project site.
- 4. Agency vehicle: All agency-owned buses/vehicles, all agency-leased buses/vehicles, all agency-rental buses/vehicles, and all personal vehicles for which the owner receives a vehicle allowance, all personal vehicles where the owner receives reimbursement for mileage.



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SUBJECT

PROHIBITING WEAPONS IN THE WORKPLACE

APPROVED BY OMNITRANS BOARD OF DIRECTORS

DATE: June 7, 2017

- 5. Search: To examine in order to find something concealed.
- 6. Job sites: Any and all locations where the agency conducts business.

SIGNS

- 1. At each entrance to buildings, parking lots, and project sites, a sign shall be posted in a location that is conspicuous to all who could enter a building, parking lot, or project site.
- 2. Signs shall have wording or pictogram that prohibits firearms, weapons and give notice of video surveillance. Signs shall be vandalism resistant and of the quality that they will not fade due to the elements.



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6

PROHIBITING WEAPONS IN THE WORKPLACE

APPROVED BY OMNITRANS BOARD OF DIRECTORS

DATE: June 7, 2017

Purpose

weapons in the work place, regardless of any license or permit that an individual may have which otherwise authorizes the individual to carry firearms or weapons. To achieve these objectives, the Agency prohibits the possession of firearms and persons, including the community, and conducive to attaining high work standards It is the policy of Omnitrans to maintain a work environment that is safe for all

Penal Code 171b and 171.7). It is illegal and a criminal violation to possess weapons in public buildings (California

agency workers and contractors working for or with the Agency at any time, regardless of whether the Agency is the actual employer. This policy applies to all Omnitrans employees, including but not limited to staffing

lots, agency vehicles and job sites, and in all Agency vehicles. Possession of firearms and weapons is prohibited at all Omnitrans' offices, parking

within the scope of his or her employment. carrying out official duties engaged in protecting and preserving property or life carrier operating an armored vehicle, The following person/s are exempt from this policy as stated: a guard of a contract and any law enforcement officer who is

immediate disciplinary action, up to and including termination. Omnitrans will strictly enforce this policy. Violation of this policy will result in

III. Procedure

⋗ **COMMUNICATION OF POLICY**

- employment shall be maintained in each employee's personnel file acknowledgment and of all new and revised policies throughout the employee's policy and shall employed before the effective date of this policy shall also receive a copy of this his/her hire and shall sign a copy of the acknowledgment. Employees who were (a) Each employee of the Agency shall receive a copy of this policy at the time of sign a copy of the acknowledgment. A copy of the signed
- contractor sublets any portion of its contract. communicating this policy to its employees and any subcontractors to which the (b) A copy of this policy shall be attached to each contractor's contract, and shall part of its contract. The contractor shall be responsible



APPROVED BY OMNITRANS
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PROHIBITING WEAPONS IN THE WORKPLACE

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PROHIBITED CONDUCT

- (a) The transportation of firearms or weapons in Agency vehicles is prohibited This includes but is not limited to:
- to and from work,
- (2) when conducting Agency business,
- (3) at all times in Agency-owned or leased vehicles
- weapons while at Agency buildings, parking lots, sponsored events, and job (b) The possession or carrying of permitted and non-permitted firearms
- Agency job duties are not subject to this policy. fastening building materials and sanctioned tools for the purpose of performing (c) Exception: Power actuated tools which are manufactured for the

C. <u>SEARCH</u>

- weapon or firearm. suspicion to believe that a particular employee may be in possession of a entering, on, or leaving Agency premises, including, but not limited to, personal effects, vehicles, lockers, desks, tool boxes, clothing, meal containers, and baggage. (a) Omnitrans reserves the right to conduct reasonable, unannounced searches Agency premises and personal searches of employees and others while Searches will be conducted when the Agency has a reasonable
- enforcement officials, by a security service, or by other persons believed to be reliable, or a suspicion that is based on other surrounding circumstances speech, personal (b) "Reasonable suspicion" is defined as a suspicion that is based on specific observations such as an employee's manner, disposition, behavior, information provided to management by an employee, by law provided
- will not be permitted on Agency premises and will be required to immediately the employment relationship. Non-employees who refuse to allow an inspection submit to the inspection. Refusal violates Agency policy and constitutes an act of investigation. leave the premises. insubordination constituting disciplinary action, up to and including separation of (c) Individuals refusing to allow an inspection will not be detained or forced to Employees will be relieved of all duties while pending

D. <u>DISCIPLINE</u>

(a) Violations of any portion of this policy will subject the employee to discipline



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PROHIBITING WEAPONS IN THE WORKPLACE

APPROVED BY OMNITRANS BOARD OF DIRECTORS

DATE: June 7, 2017

up to and including separation of employment.

may also constitute a breach of contract. prohibition against the individual accessing Agency premises in the future, and immediate policy may (b) Violations by a contractor's employee or subcontractor of any portion of this removal of the contractor's employee constitute a breach of contract and regardless from Agency will mandate premises

E. <u>REPORT OF VIOLATIONS</u>

1. Employee Violations

Human Resources representative. or supervisor, the department director, security, or the appropriate departmental violation of this policy must report the alleged violation to the employee's manager individual reporting it. An employee who believes that another employee may be in relationship between the individual who initiates the prohibited behavior and the Employees are required to report violations of this policy without regard to the

promptly investigate allegations of violations of this policy. Departments are responsible for implementing this policy. The Agency will

suspicion is present consistent with law. property when a violation is reported or when probable cause Omnitrans reserves the right to authorize searches for prohibited weapons on its or reasonable

offices, purses, briefcases, bags, toolboxes, and lunch bags. includes, but is not limited to, such areas and items as lockers, desks, workstations, respect to weapons in the workplace. The Agency's right to conduct searches Employees should be aware that there is no reasonable expectation of privacy with

up to and including separation. this policy may be confiscated. Refusal to permit a search may result in discipline with law should reasonable suspicion be present. Any weapon found in violation of property and the employee may be conducted by law enforcement in accordance designee. Searches of all types, including surrounding agency property, personal Searches of the employee's work area and belongings, as described above, may conducted by the Security & Emergency Preparedness Coordinator,

Visitor Violations

and safety that warrants a response leading to compliance with the law. If the visitor weapon into a posted no-carry agency facility is creating an elevated risk to security Visitors are not allowed to carry a weapon on the premises. Any visitor carrying a



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APPROVED BY OMNITRANS
BOARD OF DIRECTORS

PROHIBITING WEAPONS IN THE WORKPLACE DATE: June 7, 2017

suspicious or in an otherwise questionable manner while carrying a weapon. safety and security if he/she is acting in an aggressive, belligerent, confrontational, immediately by calling 9-911. The visitor shall be considered an immediate risk to poses an immediate risk to security or safety, law enforcement shall be notified

F. FALSE REPORTS

and/or will be reported to the proper authorities as appropriate workplace will be subject to disciplinary action, up to and including separation Employees making intentionally false and malicious complaints of weapons in the

G. ROLES AND RESPONSIBILITIES

Prohibiting Weapons in the Workplace. Employees are responsible for understanding and complying with the Policy

seek clarification. Employees seeking clarification should direct their questions to the agency's Security & Emergency Preparedness Coordinator at 909-379-7117 owned or leased facilities or vehicles. prior to bringing the item(s) to Omnitrans work sites and events, as well as agencyconsidered a weapon in violation of this policy, it is the employee's responsibility to Whenever there is a question as to whether an instrument, article or substance is

H. SAFETY FIRST

employee to restrain or forcibly evict an armed person from agency premises. own safety or the safety of other individuals. No attempt should ever be made by an In applying this policy, no employee shall take any action that will risk his or her

security immediately. discipline, up to and including separation of employment. Employees should notify An individual's continued non-compliance after being properly informed of the law (California Penal Code 171 (b)) will result in notification to law enforcement and

contact law enforcement by calling 9-911 and security at 909-379-7117. security of others, should avoid any interaction with the individual. Immediately An employee who feels an imminent danger to his or her own safety or the safety or

I. ANTI-RETALIATION PROVISION

or her supervisor or other designated Human Resources representative retaliation in violation of this policy, the employee must immediately report it to his possible breach of policy. If an employee feels that he or she has been subjected to Omnitrans strictly prohibits any retaliation against an employee who has reported a



APPROVED BY OMNITRANS BOARD OF DIRECTORS DATE: June 7, 2017 POLICY 707 PAGE G 유 6

PROHIBITING WEAPONS IN THE WORKPLACE

DEFINITIONS

- as a propellant. whether loaded or unloaded, capable of firing a projectile and using an explosive Firearm or weapon includes, but is not limited to: A weapon, a pistol or rifle,
- discharged including but not limited to handguns, pistols, revolvers shotguns, rifles, and bb guns; A firearm, whether loaded or unloaded, from which a shot may be
- or gas, or compressed air; A gun that can discharge a shot or a projectile by means of an explosive
- projectile by the force of any explosion or force of combustion; A device designed to be used as a weapon, from which can be expelled a
- readily be converted to expel a projectile by the action of an explosive; Any weapon (including a starter gun) which will or is designed to or may
- Any destructive device;
- harm, including but not limited to, stun guns, stun batons; Any device designed as a weapon and capable of producing great bodily
- An electric weapon such as a taser gun;
- instrumentality that, in a manner it is used or intended to be used, is is used to produce death or great bodily harm; calculated or likely to produce death or great bodily harm, or any fire that Any combustible or flammable liquid, or other substance, device, or
- this policy.) maintained in office kitchens or lunchrooms do not represent a violation of prohibited. (Knives intended to be used as eating utensils, and stored or position by the use of one or two hands. Switchblades are specifically blade of which is fixed or is capable of being fixed in an unguarded great bodily harm having a blade length in excess of four (4) inches, the Any knife that is carried with intention or calculation to produce death or
- \dot{b} Office: All permanent facilities, all mobile facilities, all leased facilities, and any facility designated as an office by the agency.
- ယ Parking lot: All lots at permanent facility, park and rides, lots at project sites, any or project site lot that the agency designates as a parking lot that is not at a permanent facility
- 4. owner receives reimbursement for mileage. which the owner receives a vehicle allowance, all personal vehicles where the buses/vehicles, all agency-rental buses/vehicles, and all personal vehicles for Agency vehicle: All agency-owned buses/vehicles, all agency-leased



PERSONNEL POLICY MANUAL

POLICY APPROVED BY OMNITRANS BOARD OF DIRECTORS 707 PAGE 6 유 6

PROHIBITING WEAPONS IN THE WORKPLACE

SUBJECT

DATE: June 7, 2017

- 5 Search: To examine in order to find something concealed.
- <u>ი</u> Job sites: Any and all locations where the agency conducts business.

SIGNS

- At each entrance to buildings, parking lots, and project sites, a sign shall be posted in a location that is conspicuous to all who could enter a building, parking lot, or project site.
- 5 that they will not fade due to the elements. Signs shall have wording or pictogram that prohibits firearms, weapons and give notice of video surveillance. Signs shall be vandalism resistant and of the quality



CONTRACT AGREEMENT

between

| CONTRACTOR |) CONTRACT DOCUMENTS |
|--|--|
| Dartco Transmission Sales and Service, Inc. 1145 N. Red Gum |) CONTRACT NO. MNT18-51A |
| Anaheim, CA 92806 | ALLISON TRANSMISSION PARTS |
| (hereinafter "CONTRACTOR") Telephone: (714) 237-0911 Email: jpeek@dartcotransmission.com |))))) |
| And |))) Contract Amount: \$69,473.55) |
| Omnitrans 1700 West Fifth Street San Bernardino, CA 92411 (hereinafter "OMNITRANS") |))))))))) Omnitrans Project Manager:) Name: Rick Barone) Title: Materials Manager) Telephone: (909) 379-7402) Email: rick.barone@omnitrans.org |
| |) Contract Administrator:) Name: Krystal N. Turner) Title: Contract Administrator) Telephone: (909) 379-7202) Email: krystal.turner@omnitrans.org |
| |)))) |



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This Agreement is made and entered into as of this <u>4th</u> day of <u>April 2018</u>, by and between Omnitrans (hereinafter referred to as "OMNITRANS") and <u>Dartco Transmission Sales and Service</u>, Inc. (hereinafter referred to as "CONTRACTOR").

RECITALS

WHEREAS, OMNITRANS is a joint powers authority organized under Section 6500 et seq. of the California Government 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:

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 term of this Agreement shall be from the date of execution of this Agreement and continue in effect through <u>April 3, 2021</u>, unless terminated as specified in Section 10 and 11 of this Agreement. Omnitrans has no obligation to purchase any specified amount of products/services. All applicable indemnification provisions in this Agreement shall remain in effect following the termination of this Agreement.

Omnitrans' election to extend the Agreement beyond the Initial Term shall not diminish its right to terminate the Agreement for Omnitrans' convenience or CONTRACTORS default as provided elsewhere in this Agreement. The "maximum term" of this Agreement shall be the period extended from <u>April 4, 2021</u> through <u>April 3, 2023</u>, which period encompasses the Initial Term and the Option Year One and Option Year Two.

3. CONTRACT OPTIONS

- A. Omnitrans will have the unilateral right in the contract by which, for a specified time, Omnitrans may elect to purchase additional services called for by the contract, or may elect to extend the term of the contract. The requirements below apply:
 - Any options that were requested by Omnitrans and/or contained in the Contractor's PROPOSAL or offer must have been evaluated in making the contract award prior to exercising any such options.
 - 2) Since Contractor's proposed pricing for the option years and additional services are considered in evaluating the Contractor's original proposal and form the basis for awarding the contract, Contractor shall be bound by the proposal pricing for additional services and/or option years, unless otherwise provided herein.
- B. Omnitrans will provide a minimum of thirty days (30) written notice to the Contractor of Omnitrans' exercise of its option to extend the contract years. Omnitrans may give notice of its exercise of the option for additional services at any time during the term of the contract. The minimum time for the written notice may be waived by mutual agreement.

4. COMPENSATION

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 C, and subject to the maximum cumulative payment obligation.

OMNITRANS' maximum cumulative payment obligation under this Agreement shall not exceed <u>Sixty Nine Thousand</u>, <u>Four Hundred Seventy Three Dollars and Fifty Five Cents</u> (\$69,473.55), 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.

5. 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 Accountspayable@omnitrans.org

A separate invoice shall be used for each shipment. Each invoice shall include, at minimum, the following information:

- Contract number
- Invoice number
- Description of delivery
- Delivery Date
- Total quantity delivered
- Information as requested by OMNITRANS
- B. OMNITRANS shall remit payment within thirty (30) calendar days of approval of the invoices by OMNITRANS' Project Manager.

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.

C. TITLE

- a. Title shall pass to Omnitrans at the time of payment.
- b. The title transferred as above shall in each case be good, and free and clear from any and all security interests, liens, and/or other encumbrances.
- c. The transfer of title as specified above shall not imply Acceptance by Omnitrans, nor relieve the Contractor from the responsibility for strict compliance with the Contract, including warranty as specified in the Article entitled Warranty of Work, and for any loss of or damage to the Work.
- d. The Contractor at its own expense shall promptly execute, acknowledge, and deliver to the Omnitrans proper bills of sale or other written instruments of title in a form as required by Omnitrans; said instruments shall convey to the Omnitrans' title free and clear of debts, claims, liens, mortgages, taxes, and/or encumbrances.
- e. Contractor shall have title to and bear the risk of any loss of or damage to Work purchased hereunder until they are delivered, unloaded, and received by Omnitrans at the FOB Destination specified herein. Contractor's responsibility for loss or damage except for loss or damage resulting from Contractor's negligence, shall cease when title passes to Omnitrans.

6. 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.

7. 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: Krystal Turner

Title: Contract Administrator

Dartco Transmission Sales and Service,

Inc.

1145 N. Red Gum Anaheim, CA 92806

Attn: Jim Peek

Title: Vice President

8. 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: Maintenance Department.

- a. 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> |
|-------------|----------------|
| Jim Peek | Vice President |
| | |
| | |
| | |

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.

9. DISPUTE RESOLUTION

Any disputes between the successful CONTRACTOR and OMNITRANS relating to the implementation or administration of the Contract shall be resolved in accordance with this section.

- A. The parties shall first attempt to resolve the dispute informally in meetings or communications between proposer and OMNITRANS.
- B. If the dispute remains unresolved fifteen (15) days after it first arises, proposer may request that Omnitrans' CEO/General Manager issue a recommended decision on the matter in dispute. Omnitrans' CEO/General Manager shall issue the recommended decision in writing and provide a copy to proposer.
- C. If the dispute remains unresolved after review by Omnitrans' CEO/General Manager, either party may seek judicial resolution of the dispute in an appropriate Court of the State of California.

D. Pending final resolution of a dispute under this section, proposer shall proceed diligently with performance in accordance with the Contract and Omnitrans' CEO/General Manager's recommended decision.

10. 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.

11. 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 28, 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 10, 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.

12. 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.

13. 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.

CONTRACTOR shall not, without the express written consent of Omnitrans, either:

- a. Substitute any person, firm, or corporation as subcontractor in place of the subcontractors identified below; or
- b. Permit any subcontract to be assigned or transferred; or
- c. Allow work to be performed by anyone other than the original subcontractor listed below.

| Subcontractor's Name and Address | Work to Be Performed |
|----------------------------------|----------------------|
| N/A | |
| | |
| | |

14. 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.

15. INSURANCE

A. INSURANCE REQUIREMENTS

1) General Requirements for Contractor

- a. Without limiting or diminishing the Contractor's obligation to indemnify or hold Omnitrans harmless, Contractor shall procure, prior to commencement of the services required under this contract and maintain for the duration of the contract at its own expense, insurance of the kinds and in the amounts as indicated below;
- b. Provide Omnitrans with valid original certificates of insurance and endorsements showing Omnitrans as an additional insured.

2) Deductibles or Self-Insured Retention (SIR)

SIR must be declared to and approved by Omnitrans. At the option of Omnitrans, either: the insurer shall reduce or eliminate such deductibles or SIR or Contractor shall procure a bond guaranteeing payment of losses and related investigations, claim administration and defense expenses.

3) Other Insurance Provisions

a. Commercial General Liability and Automobile Liability

Commercial General Liability insurance coverage, including but not limited to, premises liability, contractual liability, products and completed operations liability, personal and advertising injury covering claims which may arise from or out of Contractor's performance of its obligations hereunder and if Contractor's vehicles or mobile equipment are used in the performance of the obligations under this Agreement, then Contractor shall maintain liability insurance for all owned, non-owned or hired vehicles so used. Policy

shall name Omnitrans, its officers, officials, employees, agents and volunteers as additional insured as respects: liability arising out of activities performed by or on behalf of Contractor; products and completed operations of Contractor; premises owned, occupied or used by Contractor; or automobiles owned, leased, hired or borrowed by Contractor. The coverage shall contain no special limitations of the scope of protection afforded Omnitrans, its officers, officials, employees, agents, and volunteers.

- For any claims related to this project, Contractor's insurance coverage shall be primary insurance as respects Omnitrans, its officers, officials, employees, agents, and volunteers. Any insurance and/or deductibles and/or self-insured retentions or self-insured programs maintained by Omnitrans, its officers, officials, employees, agents, and volunteers shall be excess of Contractor's insurance and shall not be construed as contributory.
- 2. Contractor's insurance shall apply separately to each insured against whom claim is made or suit is brought, except with respect to the limits of the insurer's liability.
- 3. Each insurance policy required by this clause shall be endorsed to state that coverage shall not be suspended, voided, cancelled by either party, reduced in coverage or in limits except after thirty (30) days prior written notice has been given to Omnitrans.

b. Workers' Compensation

If the Contractor has employees as defined by the State of California, the Contractor shall maintain statutory Workers' compensation Insurance (Coverage A) as prescribed by the laws of the State of California. Policy shall include Employers' Liability (Coverage B) including Occupational Disease with limits not less than \$1,000,000 per person per accident. The policy shall be endorsed to waive subrogation in favor of Omnitrans and, if applicable, to provide a Borrowed Servant/Alternate Employer Endorsement.

c. Care, Custody, and Control

Contractor shall insure any Omnitrans property while under its Care, Custody, and Control according to the requirements listed in the insurance coverage required.

4) Acceptability of Insurers

Insurance companies shall be State of California admitted or approved and have a current **A.M. Best's** rating of no less than **A:VIII.**

5) Verification of Coverage

- a. Contractor shall furnish Omnitrans with original endorsements affecting coverage required by this clause. The endorsements are to be signed by a person authorized by that insurer to bind coverage on its behalf. All insurance certificates and endorsements are to be received and approved by Omnitrans before work commences.
- b. As an alternative, Contractor's insurer may provide complete, certified copies of all required insurance policies, including endorsements affecting the coverage required by these specifications.
- c. In lieu of purchasing insurance and providing original endorsements and or certificates of insurance, the Contractor may provide proof of self-insurance; such proof must be to the satisfaction of Omnitrans.

6) Subcontractors

Contractor shall include all subcontractors as insureds under its policies or shall furnish separate certificates and endorsements for each subcontractor. All coverage for subcontractors shall be subject to all of the requirements stated herein.

7) Notification of Terminated Insurance

Insurance shall not be terminated or expire without thirty (30) days written or electronic notice, and are required to be maintained in force until completion of the contract.

B. MINIMUM INSURANCE COVERAGE

If the Contractor maintains broader coverage and/or higher limits than the minimum requirements shown below, Omnitrans requires and shall be entitled to the broader coverage and/or higher limits maintained by the Contractor.

| 1) | Operations: \$1,000,000; per occurrence for bodily and property damage liability and \$2,000,000 aggregate; Omnitrans named and endorsed as an Additional Insured. |
|----|--|
| 2) | Automobile Liability: \$1,000,000; per occurrence for bodily and property damage liability and aggregate; Omnitrans named and endorsed as an Additional Insured. |
| 3) | ☐ Errors and Omissions Liability: \$1,000,000; combined single limit bodily and property damage liability per occurrence and \$3,000,000 aggregate or, |
| 4) | Professional Liability: \$1,000,000; per occurrence and aggregate. |

| 5) | |
|-----|--|
| 6) | ☐ Self Insurance Program: a State Approved program in an amount and form that meets all applicable requirements of the Labor Code of the State of California. |
| 7) | Employer's Liability: \$1,000,000; per occurrence. |
| 8) | ☐ Environmental Liability: \$1,000,000; per occurrence and aggregate; Omnitrans named and endorsed as an Additional Insured. |
| 9) | ☐ Umbrella Policy: \$4,000,000; per occurrence and aggregate Additional coverage for the above policies, <i>Omnitrans Additional Insured</i> . |
| 10) | All drivers making deliveries of products specified on this solicitation shall have Hazardous Materials Endorsements on their Commercial Drivers License, and such other Endorsements as may be required by relevant laws and/or regulations |

16. 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.

17. 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.

18. 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.

19. 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.

20. OWNERSHIP RIGHTS

Α. 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 To the extent there may be any question of rights of Programmers. 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.

21. 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.

22. 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.

23. 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.

24. 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.

25. 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.

26. 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).

27. COMPLIANCE WITH LAW

A. 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.
- B. Government regulations that directly affect the CONTRACTOR'S performance of this contract and unforeseen impacts, which neither party could have contemplated at the onset of the contract and have an unconscionable impact on the CONTRACTOR may be given special pricing consideration. The parties, in good faith, shall review established rates and may adopt any mutually agreed new rates, which shall only be effective as agreed upon by the parties. Thorough documentation including all cost elements is required to support the Contractor's claim to any relief under this clause.

28. 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.

29. 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.

30. 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.

31. 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.

32. 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.

33. 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.

34. 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.

35. 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.

36. LICENSING, PERMITS AND INSPECTION COSTS

The CONTRACTOR warrants that it has all necessary licenses and permits Α. required by the laws of the United States, State of California, and the County of San Bernardino, the Local Jurisdictions, and all other appropriate governmental agencies, and agrees to maintain these licenses and permits in effect for the duration of the Agreement. Further, FIRM warrants that its employees, agents, and contractors and subcontractors shall conduct themselves in compliance with such laws and licensure requirements including, without limitation, compliance with laws applicable to nondiscrimination, sexual harassment and ethical behavior throughout the duration of this Agreement. CONTRACTOR further warrants that it shall not retain or employ an unlicensed subcontractor to perform work on this Project. CONTRACTOR shall notify OMNITRANS immediately and in writing of its employees', agents', contractors' or subcontractors' inability to obtain or maintain, irrespective of the pendency of any appeal, any such licenses, permits, approvals, certificates, waivers, exemptions. inability shall be cause for termination of this Agreement.

B. CONTRACTOR shall procure all permits and licenses; pay all charges, assessments and fees, as may be required by the ordinances and regulations of the public agencies having jurisdiction over the areas in which the work is located, and shall comply with all the terms and conditions thereof and with all lawful orders and regulations of each such public agency relating to construction operations under the jurisdiction of such agency.

37. PRECEDENCE

Conflicting provisions hereof, if any, shall prevail in the following descending order of precedence: (1) the provisions of this Agreement, and any and all of its Amendments, Appendices, Exhibits and Attachments; (2) provisions of IFB-MNT18-51 and any and all of its Addenda, Appendices, Exhibits and Attachments; and (3) CONTRACTOR's bid dated February 16, 2018 and its Appendices, Exhibits, Attachments.

38. 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 | DARTCO TRANSMISSION SALES AND SERVICE, INC. | | |
|--|---|--|--|
| P. Scott Graham CEO/General Manager | Name: Jim Peek Title: Vice President | | |
| Date | Date | | |

Federal Tax I.D. No. <u>95-3559381</u>

IDP CONTRACT MNT 18-51A REVISED 04/17/17

ATTACHMENT A - PRICING MNT18-15A ALLISON TRANSMISSION PARTS

| Item Num | Item Code Description | Unit of Measure | Model Number | *Quantity | **Bas | e Years Pricing |
|----------|--|-----------------|---|----------------|-------|-----------------|
| 1 | 1 11866 GASKET; NF B400, THOMAS B300 FILTER | EA | 29524449 | | \$ | 1.11 |
| 2 | 18002 SELECTOR ;NF,ALLISON TRANS SHIFT | EA | 095902;122397;29538371 | | \$ | 680.32 |
| 3 | 3 18416 SOLENOID ;B400,ACCUM. RETARDER | EA | 29544455;29547934;29552377;29555434;29557354;6334198 | 1 | \$ | 215.26 |
| 4 | | EA | 142917;29536134;29537291;29538352;29541151;29541227;29543300 | 1 | \$ | 2,217.64 |
| 5 | | EA | 29534362 | 1 | \$ | 11.83 |
| 6 | | EA | 23047185 | 1 | \$ | 4.43 |
| 7 | | EA | 29507528;29544137 | 1 | \$ | 8.21 |
| 8 | <u></u> | EA | 29509637;29544139 | 1 | \$ | 67.77 |
| 9 | | EA | 29528321 | | \$ | 611.55 |
| 10 | | EA | 29502093 | | \$ | 109.02 |
| 11 | value | EA | 29537929 | | \$ | 604.91 |
| | | EA | 29506387 | | \$ | 24.94 |
| 12 | | EA | 097127;29507823;29546229 | | \$ | 2.86 |
| 13 | | EA | 29511320;1600816;TBBJ600816 | | \$ | 105.45 |
| 14 | · · · · · · · · · · · · · · · · · · · | EA | 29501360 | | \$ | 184.35 |
| 15 | | | | | \$ | 585.63 |
| 16 | | EA | 29514804 | | \$ | 89.35 |
| 17 | | EA | 29500939;29542016 | | | |
| 18 | The state of the s | EA | 29502275 | | \$ | 5.19 |
| 19 | | EA | 29502276 | | \$ | 4.87 |
| 20 | | EA | 29502277 | - | \$ | 3.97 |
| 21 | 1 30924 GASKET;NF B400R TRANS | EA | 29536742 | | \$ | 12.75 |
| 22 | 2 31336 PLATE ;ALLISON, B400 TRANS | EA | 29501424 | | \$ | 19.64 |
| 23 | 3 31948 ADAPTER ASSY ;ALLISON 8400R RING GEAR | EA | 29512130 | | \$ | 405.66 |
| 24 | 4 32110 BOLT ;ALLISON B400R & ZF TRANS 12X1.25X3 | EA | 117139;29502097 | | \$ | 3.05 |
| 25 | 5 32128 BOLT;NF B400R TRANS M6X1.00X14 | EA | 29513724 | | \$ | 2.71 |
| 26 | 6 32136 FLEXPLATE ASSY ;NF B400R TRANS | EA | 29512126 | | \$ | 52.67 |
| 27 | 7 33951 O-RING ;8400 TRANS | EA | 29512875 | 1 | \$ | 0.78 |
| 28 | | EA | 29542025 | 1 | \$ | 220.74 |
| 29 | | EA | 29500064 | 1 | \$ | 1.64 |
| 30 | | EA | 29503979 | 1 | \$ | 663.40 |
| 31 | | EA | 29535973 | 1 | \$ | 270.61 |
| 32 | | EA | 29503283 | 1 | \$ | 14.06 |
| 33 | | EA | 29535230 | 1 | \$ | 8.46 |
| 34 | | EA | 29536860;29543067 | | \$ | 38.45 |
| 35 | | EA | 29537936 | | \$ | 321,87 |
| 36 | | EA | 29514792 | | \$ | 936.69 |
| | <u> </u> | EA | 23019664 | | \$ | 0.78 |
| 37 | | EA | 29503531;29543433 | | \$ | 70.15 |
| 38 | | EA | 23048692 | | \$ | 49.36 |
| 39 | | | | | \$ | 24.22 |
| 40 | The state of the s | EA | 000004952;000050138;057861024;14-050-0032;29506195;29537755;29546986;4952;50138 | | \$ | 1,690.46 |
| 41 | | EA | 29528322;29529309 | | | |
| 42 | | EA | 23048133;29546987 | | \$ | 31.87 |
| 43 | | EA | 29531003 | | \$ | 10.89 |
| 44 | | EA | 29503288 | | \$ | 18.22 |
| 45 | The second secon | EA | 23045612;29546154 | | \$ | 4.07 |
| 46 | The state of the s | EA | 23045611;29546153 | | \$ | 4.59 |
| 47 | 7 54189 GASKET ;ALLISON B300R TRANS | EA | 29508398 | | \$ | 10.65 |
| 48 | 8 54197 O-RING ;ALLISON B300R TRANS | EA | 29509437 | | \$ | 2.48 |
| 49 | 9 54205 O-RING ;ALLISON B300R TRANS | EA | 12092195;29512863 | ooka aaraanaan | \$ | 4.39 |
| 50 | D 54221 GASKET ;ALLISON B300R TRANS | ξA | 29508400 | | \$ | 3.54 |
| 51 | | EA | 29508401;29552485 | | \$ | 2.68 |
| 52 | <u> </u> | EA | 29530092;29544144 | 1 | \$ | 287.02 |
| 53 | | EA | 29500025;2950092 | 1 | \$ | 21.10 |
| 54 | | EA | 29530450 | | Ś | 191.18 |

^{*}Omnitrans makes no guarantee of usage with regard to quantity

**Base Year Pricing - All subsequent pricing shall be determined in April of each year using the increase or decrease of Consumer Price Index (CPI).

ATTACHMENT A - PRICING MNT18-15A ALLISON TRANSMISSION PARTS

| 55 54635 STATOR F/RETARDER ;ALLI: | SON B400 EA | 29536743 | 1 \$ | 648.70 |
|---|--|-------------------------------|------|----------------|
| 56 54643 BUSHING ;ALLISON B400 T | | 29531005;29546596 | 1 \$ | 3.71 |
| 57 54775 GASKET ;TRANS B300/B400 | | 29535940 | 1 \$ | 1.80 |
| 58 55038 SENSOR ;ALLISON 8400 TR. | | 29543432 | 1 \$ | 67.84 |
| 59 55061 SHIM ;ALLISON B400 TRAN | | 29503218 | 1 \$ | 3.50 |
| 60 55079 SHIM ;ALLISON B400 TRAN | | 29503219 | 1 \$ | 3.83 |
| 61 55087 SHIM ;ALLISON 8400 TRAN | | 29503220 | 1 \$ | 3.89 |
| 62 55095 SHIM ALLISON 8400 TRAN | | 29503222 | 1 5 | 6.05 |
| 63 55103 SHIM ;ALUSON 8400 TRAN | | 29503223 | 1 \$ | 9.64 |
| 64 55111 SHIM ;ALUSON B400 TRAN | | 29503224 | 1 \$ | 7.00 |
| 65 55244 O-RING ;ALLISON B400 TRA | | 23045654;29546157 | 1 \$ | 10.30 |
| 66 55251 RING ;ALLISON 8400 TRAN | | 29503714 | 1 \$ | 15.62 |
| 67 55269 WASHER ;ALLISON B400 TR | | 29506386 | 1 \$ | 4.28 |
| 68 55293 O-RING ;ALLISON,B400 TRA | | 23047019 | 1 \$ | 25.09 |
| 69 55301 RING ;ALLISON,B400 TRAN | | 29510682 | 1 \$ | 1.89 |
| 70 55319 GASKET ;ALLISON 8400 TRAN | | 29536728 | 1 \$ | 1.13 |
| | | 29537867 | 1 5 | 19.42 |
| 71 55327 GASKET ;ALLISON B400 ST/ 72 55335 BEARING ASSY ;ALLISON,C | | 23046437 | 1 \$ | 53.06 |
| 72 55335 BEARING ASST ;ALLISON,CI | | 23046438 | 1 \$ | 23.76 |
| | EA EA | 29500034 | 1 \$ | 2.17 |
| 74 56036 FITTING ;NF,ALLISON | | 29533980 | 1 \$ | 14.86 |
| 75 56705 BRACKET ;ALLISON,SPEED | | 29546233 | 1 \$ | 24.12 |
| 76 56879 SEAL ;ALLISON TRANS OUT | | 29520396;29542084 | 1 \$ | 5,29 |
| 77 56903 SEAL ;ALLISON FEED THRO | The state of the s | 29536462;29542681 | 1 5 | 215.90 |
| 78 56911 HARNESS ;ALLISON TRANS | | 29542376 | 1 \$ | 2,071.62 |
| 79 S7596 COVER ;ALLISON TRANS RE | | | 1 \$ | 366.67 |
| 80 57901 SENSOR ;ALLISON,TRANS C | · · · · · · · · · · · · · · · · · · · | 29530105;29544668 23046274 | 1 \$ | 1.00 |
| 81 59105 O-RING ;ALLISON B400 IMI | | | 1 \$ | 2,40 |
| 82 216688 BOLT, ALLISON B400 HARN | | 29536564 | 1 \$ | 50.73 |
| 83 216718 O-RING, ALLISON TORQ CO | | 23049377 | 1 \$ | 35.38 |
| 84 216868 PLUG ASSY,ALLISON MAG | | 29510885 | 1 \$ | 35.38 17.18 |
| 85 217152 RING KIT,ALLISON B300/B4 | | 23042434 | | 6.99 |
| 86 217154 SEAL, ALLISON C1 PISTON | EA | 23045614;29546155 | 1 \$ | 7.77 |
| 87 217158 SEAL,ALLISON BALANCE PI | | 23045615;29546156 | 1 \$ | |
| 88 217163 SEAL,ALLISON CZ OUTER P | | 23045613 | 1 \$ | 10.93 |
| 89 217165 PISTON,ALLISON C3/C4 TR | | 29543065 | 1 \$ | 34.19 |
| 90 217167 BUSHING, ALLISON TRANS | EA | 29533975 | 1 \$ | 28.75 |
| 91 217170 RING KIT, ALLISON SEAL | EA | 29538448 | 1 \$ | 35.52 |
| 92 217174 O-RING, ALLISON TRANS | EA | 29503197;29546166 | 1 \$ | 29.01 |
| 93 217177 BUSHING, ALLISON TRANS | EA | 29503196;29549294 | 1 \$ | 22.28 |
| 94 217180 O-RING,ALLISON TRANS | EA | 23046868;29546165 | 1 \$ | 47.87 |
| 95 217183 O-RING,ALLISON TRANS | EA | 29503383 | 1 \$ | 1.33 |
| 96 217186 WASHER,ALLISON TRANS T | | 29511406 | 1 \$ | 2.73 |
| 97 217188 PLATE, ALLISON TRANS B | EA | 29537941 | 1 \$ | 5.91 |
| 98 217190 O-RING, ALLISON TRANS | EA | 23040579 | 1 \$ | 1.17 |
| 99 217192 CLIP,ALLISON TRANS | EA | 29501538;29539807 | 1 \$ | 9.81 |
| 100 217195 BEARING, ALLISON TRANS | EA | 29503225 | 1 \$ | 16.23 |
| 101 217197 RING, P1 INDEXING ALLISC | | 29537939 | 1 \$ | 6.70 |
| 102 217199 WASHER,ALLISON TRANS T | | 29502040 | 1 \$ | 1.11 |
| 103 217201 PLATE, ALLISON TRANS | EA | 29537940 | 1 \$ | 6.29 |
| 104 217203 BUSH,ALLISON TRANS | EA | 29531004 | 1 \$ | 6.94 |
| 105 217205 WASHER, ALLISON TRANS T | | 29502037 | 1 \$ | 1.65 |
| 106 217207 O-RING, ALLISON TRANS | EA | 23043446 | 1 \$ | 0.32 |
| 107 217209 GROMMET, ALLISON TRANS | S EA | 29536567;29544782 | 1 \$ | 3.61 |
| 108 217212 SEAL,ALLISON TRANS | EA | 23046376 | 1 \$ | 1.90 |
| 109 217214 O-RING, ALLISON TRANS | EA | 23016455 | 1 \$ | 1.83 |

^{*}Omnitrans makes no guarantee of usage with regard to quantity

^{**}Base Year Pricing - All subsequent pricing shall be determined in April of each year using the increase or decrease of Consumer Price Index (CPI).

ATTACHMENT A - PRICING MNT18-15A ALLISON TRANSMISSION PARTS

| | | | | · | |
|-----|---|----|-------------------|-----|-----------|
| 110 | 217216 O-RING,ALLISON TRANS | EA | 29503384 | 1 5 | |
| 111 | 217218 O-RING,ALLISON TRANS | EA | 29503382 | 1 1 | 2.28 |
| 112 | 217220 HARNESS ASSY,ALLISON B300/B400 | EA | 29529313 | 1 ; | \$ 111.77 |
| 113 | 217407 SELECTOR, SR1337 ALLISON TRANS SHIFT | EA | 29546170;29546210 | 1 5 | |
| 114 | 217702 ALLISON SHIFT SELECTOR SR585-709 REBUILT | EA | R29538371 | 1 1 | <u> </u> |
| 115 | 217821 BUSHING, ALLISON TRANS | EA | 29531001 | 1 9 | · |
| 116 | 218090 PIN,ALLISON TRANS PLUG | EA | 29511366;29542587 | 1 5 | |
| 117 | 218093 PIN,ALLISON TRANS PŁUG | EA | 29511371 | 1 5 | |
| 120 | 218751 CONNECTOR ACCUMULATOR ALLISON TRANS B400 | EA | 12041411;12162197 | 1 5 | |
| 121 | 219366 O-RING, B400 TRANSMISSION | EA | 29503208 | 1 ; | |
| 122 | 219869 YOKE ASSEMBLY 8400 TRANS SR1337 | EA | 29540326 | 1 9 | · |
| 125 | 220227 PISTON, C3/C4 SR1337 | EA | 29542753 | 1 5 | |
| 126 | 220241 BEARING, ROLLER SR1337 | EA | 23045816 | 1 5 | |
| 127 | 220247 BEARING,ROLLER SR1337 | EA | 29541565 | 1 5 | |
| 128 | 220253 O-RING ;ALLISON B400 TRANS OIL DRAIN | EA | 23019664 | 1 5 | |
| 130 | 221774 HOUSING, C4 | EA | 29542752 | 1 5 | |
| 131 | 221776 PLATE, MD C3/4 PIST RETURN | EA | 29542754 | 1 5 | 59,91 |
| 132 | 221778 HOUSING, MD C3 CLUTCH | EA | 29542756 | 1 5 | |
| 133 | 221838 GASKET, JUMPER MANIFOLD B400 TRANS | EA | 29536766 | 1 5 | |
| 134 | 221840 SWITCH, C-3 PRESSURE B400 TRANS | EA | 29506484 | 1 5 | |
| 135 | 221842 SOLENOID, FORWARD B400 TRANS | EA | 29537369 | 1 5 | |
| 136 | 221936 C3 CLUTCH HOUSING | EA | 29542756 | 1 5 | |
| 137 | 221938 PISTON RETURN PLATE | EA | 29542754 | 1 5 | |
| 138 | 221940 C4 CLUTCH HOUSING | EA | 29542752 | 1 5 | 90.43 |

^{*}Omnitrans makes no guarantee of usage with regard to quantity

**Base Year Pricing - All subsequent pricing shall be determined in April of each year using the increase or decrease of Consumer Price Index (CPI).



CONTRACT AGREEMENT

between

| CONTRACTOR Defen Manufacturing |) CONTRACT DOCUMENTS |
|---|---|
| Defeo Manufacturing 115 Commerce Drive Brookfield, CT 06804 |) CONTRACT NO. MNT18-51B |
| Brooklieid, CT 00004 | ALLISON TRANSMISSION PARTS |
| (hereinafter "CONTRACTOR") Telephone: (203) 775 - 0816 Email: anthony@defeomjg.com | |
| |) |
| And |) Contract Amount: \$33,509.88 |
| |))) |
| Omnitrans 1700 West Fifth Street San Bernardino, CA 92411 (hereinafter "OMNITRANS") |)) Omnitrans Project Manager:) Name: Rick Barone) Title: Materials Manager) Telephone: (909) 379-7402) Email: rick.barone@omnitrans.org) Contract Administrator:) Name: Krystal N. Turner) Title: Contract Administrator) Telephone: (909) 379-7202) Email: krystal.turner@omnitrans.org)) |
| |) |



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This Agreement is made and entered into as of this <u>4th</u> day of <u>April 2018</u>, by and between Omnitrans (hereinafter referred to as "OMNITRANS") and <u>Defeo Manufacturing</u> (hereinafter referred to as "CONTRACTOR").

RECITALS

WHEREAS, OMNITRANS is a joint powers authority organized under Section 6500 et seq. of the California Government 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 term of this Agreement shall be from the date of execution of this Agreement and continue in effect through <u>April 3, 2021</u>, unless terminated as specified in Section 10 and 11 of this Agreement. Omnitrans has no obligation to purchase any specified amount of products/services. All applicable indemnification provisions in this Agreement shall remain in effect following the termination of this Agreement.

Omnitrans' election to extend the Agreement beyond the Initial Term shall not diminish its right to terminate the Agreement for Omnitrans' convenience or CONTRACTORS default as provided elsewhere in this Agreement. The "maximum term" of this Agreement shall be the period extended from <u>April 4, 2021</u> through <u>April 3, 2023</u>, which period encompasses the Initial Term and the Option Year One and Option Year Two.

3. CONTRACT OPTIONS

- A. Omnitrans will have the unilateral right in the contract by which, for a specified time, Omnitrans may elect to purchase additional services called for by the contract, or may elect to extend the term of the contract. The requirements below apply:
 - Any options that were requested by Omnitrans and/or contained in the Contractor's PROPOSAL or offer must have been evaluated in making the contract award prior to exercising any such options.
 - 2) Since Contractor's proposed pricing for the option years and additional services are considered in evaluating the Contractor's original proposal and form the basis for awarding the contract, Contractor shall be bound by the proposal pricing for additional services and/or option years, unless otherwise provided herein.
- B. Omnitrans will provide a minimum of thirty days (30) written notice to the Contractor of Omnitrans' exercise of its option to extend the contract years. Omnitrans may give notice of its exercise of the option for additional services at any time during the term of the contract. The minimum time for the written notice may be waived by mutual agreement.

4. COMPENSATION

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 C, and subject to the maximum cumulative payment obligation.

OMNITRANS' maximum cumulative payment obligation under this Agreement shall not exceed Thirty Three Thousand, Five Hundred and Nine Dollars and Eighty Eight Cents (\$33,509.88), 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.

5. 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
Accountspayable@omnitrans.org

A separate invoice shall be used for each shipment. Each invoice shall include, at minimum, the following information:

- Contract number
- Invoice number
- Description of delivery
- Delivery Date
- Total quantity delivered
- Information as requested by OMNITRANS
- B. OMNITRANS shall remit payment within thirty (30) calendar days of approval of the invoices by OMNITRANS' Project Manager.

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.

C. TITLE

- a. Title shall pass to Omnitrans at the time of payment.
- b. The title transferred as above shall in each case be good, and free and clear from any and all security interests, liens, and/or other encumbrances.
- c. The transfer of title as specified above shall not imply Acceptance by Omnitrans, nor relieve the Contractor from the responsibility for strict compliance with the Contract, including warranty as specified in the Article entitled Warranty of Work, and for any loss of or damage to the Work.
- d. The Contractor at its own expense shall promptly execute, acknowledge, and deliver to the Omnitrans proper bills of sale or other written instruments of title in a form as required by Omnitrans; said instruments shall convey to the Omnitrans' title free and clear of debts, claims, liens, mortgages, taxes, and/or encumbrances.
- e. Contractor shall have title to and bear the risk of any loss of or damage to Work purchased hereunder until they are delivered, unloaded, and received by Omnitrans at the FOB Destination specified herein. Contractor's responsibility for loss or damage except for loss or damage resulting from Contractor's negligence, shall cease when title passes to Omnitrans.

6. 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.

7. 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: Krystal Turner

Title: Contract Administrator

Defeo Manufacturing 115 Commerce Drive Brookfield, CT 06804 Attn: Anthony Defeo

Title: President

8. **OMNITRANS' AND CONTRACTOR'S REPRESENTATIVES**

A. **OMNITRANS' Project Manager**

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

Project Manager: Maintenance Department.

- Except as expressly specified in this Agreement, the Contracting a. 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.
 - Reserve the right to remove any portion of the Work from 2. CONTRACTOR which have not been performed OMNITRANS' satisfaction.
 - 3. Subject to the review and acceptance by OMNITRANS, negotiate with CONTRACTOR all adjustments pertaining to this Agreement for revision.
- In addition to the foregoing, the Project Manager shall have those C. 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> |
|---------------|-------------|
| Anthony Defeo | President |
| | |
| | |

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.

9. DISPUTE RESOLUTION

Any disputes between the successful CONTRACTOR and OMNITRANS relating to the implementation or administration of the Contract shall be resolved in accordance with this section.

- A. The parties shall first attempt to resolve the dispute informally in meetings or communications between proposer and OMNITRANS.
- B. If the dispute remains unresolved fifteen (15) days after it first arises, proposer may request that Omnitrans' CEO/General Manager issue a recommended decision on the matter in dispute. Omnitrans' CEO/General Manager shall issue the recommended decision in writing and provide a copy to proposer.
- C. If the dispute remains unresolved after review by Omnitrans' CEO/General Manager, either party may seek judicial resolution of the dispute in an appropriate Court of the State of California.

D. Pending final resolution of a dispute under this section, proposer shall proceed diligently with performance in accordance with the Contract and Omnitrans' CEO/General Manager's recommended decision.

10. 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.

11. 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 28, 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 10, 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.

12. 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.

13. 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.

CONTRACTOR shall not, without the express written consent of Omnitrans, either:

- Substitute any person, firm, or corporation as subcontractor in place of the subcontractors identified below; or
- b. Permit any subcontract to be assigned or transferred; or
- c. Allow work to be performed by anyone other than the original subcontractor listed below.

| Subcontractor's Name and Address | Work to Be Performed |
|----------------------------------|----------------------|
| N/A | |
| | |
| | |

14. 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.

15. INSURANCE

A. INSURANCE REQUIREMENTS

1) General Requirements for Contractor

- a. Without limiting or diminishing the Contractor's obligation to indemnify or hold Omnitrans harmless, Contractor shall procure, prior to commencement of the services required under this contract and maintain for the duration of the contract at its own expense, insurance of the kinds and in the amounts as indicated below;
- b. Provide Omnitrans with valid original certificates of insurance and endorsements showing Omnitrans as an additional insured.

2) Deductibles or Self-Insured Retention (SIR)

SIR must be declared to and approved by Omnitrans. At the option of Omnitrans, either: the insurer shall reduce or eliminate such deductibles or SIR or Contractor shall procure a bond guaranteeing payment of losses and related investigations, claim administration and defense expenses.

3) Other Insurance Provisions

a. Commercial General Liability and Automobile Liability

Commercial General Liability insurance coverage, including but not limited to, premises liability, contractual liability, products and completed operations liability, personal and advertising injury covering claims which may arise from or out of Contractor's performance of its obligations hereunder and if Contractor's vehicles or mobile equipment are used in the performance of the obligations under this Agreement, then Contractor shall maintain liability insurance for all owned, non-owned or hired vehicles so used. Policy

shall name Omnitrans, its officers, officials, employees, agents and volunteers as additional insured as respects: liability arising out of activities performed by or on behalf of Contractor; products and completed operations of Contractor; premises owned, occupied or used by Contractor; or automobiles owned, leased, hired or borrowed by Contractor. The coverage shall contain no special limitations of the scope of protection afforded Omnitrans, its officers, officials, employees, agents, and volunteers.

- For any claims related to this project, Contractor's insurance coverage shall be primary insurance as respects Omnitrans, its officers, officials, employees, agents, and volunteers. Any insurance and/or deductibles and/or self-insured retentions or self-insured programs maintained by Omnitrans, its officers, officials, employees, agents, and volunteers shall be excess of Contractor's insurance and shall not be construed as contributory.
- 2. Contractor's insurance shall apply separately to each insured against whom claim is made or suit is brought, except with respect to the limits of the insurer's liability.
- 3. Each insurance policy required by this clause shall be endorsed to state that coverage shall not be suspended, voided, cancelled by either party, reduced in coverage or in limits except after thirty (30) days prior written notice has been given to Omnitrans.

b. Workers' Compensation

If the Contractor has employees as defined by the State of California, the Contractor shall maintain statutory Workers' compensation Insurance (Coverage A) as prescribed by the laws of the State of California. Policy shall include Employers' Liability (Coverage B) including Occupational Disease with limits not less than \$1,000,000 per person per accident. The policy shall be endorsed to waive subrogation in favor of Omnitrans and, if applicable, to provide a Borrowed Servant/Alternate Employer Endorsement.

c. Care, Custody, and Control

Contractor shall insure any Omnitrans property while under its Care, Custody, and Control according to the requirements listed in the insurance coverage required.

4) Acceptability of Insurers

Insurance companies shall be State of California admitted or approved and have a current **A.M. Best's** rating of no less than **A:VIII.**

5) Verification of Coverage

- a. Contractor shall furnish Omnitrans with original endorsements affecting coverage required by this clause. The endorsements are to be signed by a person authorized by that insurer to bind coverage on its behalf. All insurance certificates and endorsements are to be received and approved by Omnitrans before work commences.
- b. As an alternative, Contractor's insurer may provide complete, certified copies of all required insurance policies, including endorsements affecting the coverage required by these specifications.
- c. In lieu of purchasing insurance and providing original endorsements and or certificates of insurance, the Contractor may provide proof of self-insurance; such proof must be to the satisfaction of Omnitrans.

6) Subcontractors

Contractor shall include all subcontractors as insureds under its policies or shall furnish separate certificates and endorsements for each subcontractor. All coverage for subcontractors shall be subject to all of the requirements stated herein.

7) Notification of Terminated Insurance

Insurance shall not be terminated or expire without thirty (30) days written or electronic notice, and are required to be maintained in force until completion of the contract.

B. MINIMUM INSURANCE COVERAGE

If the Contractor maintains broader coverage and/or higher limits than the minimum requirements shown below, Omnitrans requires and shall be entitled to the broader coverage and/or higher limits maintained by the Contractor.

| 1) | Commercial General Liability including Products/Completed Operations: \$1,000,000; per occurrence for bodily and property damage liability and \$2,000,000 aggregate; Omnitrans named and endorsed as an Additional Insured. |
|----|---|
| 2) | Automobile Liability: \$1,000,000; per occurrence for bodily and property damage liability and aggregate; Omnitrans named and endorsed as an Additional Insured. |
| 3) | ☐ Errors and Omissions Liability: \$1,000,000; combined single limit bodily and property damage liability per occurrence and \$3,000,000 aggregate or, |
| 4) | Professional Liability: \$1,000,000; per occurrence and aggregate. |

| 5) | |
|-----|--|
| 6) | ☐ Self Insurance Program: a State Approved program in an amount and form that meets all applicable requirements of the Labor Code of the State of California. |
| 7) | Employer's Liability: \$1,000,000; per occurrence. |
| 8) | ☐ Environmental Liability: \$1,000,000; per occurrence and aggregate; Omnitrans named and endorsed as an Additional Insured. |
| 9) | Umbrella Policy: \$4,000,000; per occurrence and aggregate Additional coverage for the above policies, <i>Omnitrans Additional Insured</i> . |
| 10) | All drivers making deliveries of products specified on this solicitation shall have Hazardous Materials Endorsements on their Commercial Drivers License, and such other Endorsements as may be required by relevant laws and/or regulations |

16. 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.

17. 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.

18. 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.

19. 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.

20. 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 To the extent there may be any question of rights of Programmers. 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.

21. 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.

22. 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.

23. 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.

24. 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.

25. 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.

26. 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).

27. COMPLIANCE WITH LAW

A. 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.
- B. Government regulations that directly affect the CONTRACTOR'S performance of this contract and unforeseen impacts, which neither party could have contemplated at the onset of the contract and have an unconscionable impact on the CONTRACTOR may be given special pricing consideration. The parties, in good faith, shall review established rates and may adopt any mutually agreed new rates, which shall only be effective as agreed upon by the parties. Thorough documentation including all cost elements is required to support the Contractor's claim to any relief under this clause.

28. 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.

29. 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.

30. 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.

31. 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.

32. 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.

33. 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.

34. 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.

35. 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.

36. LICENSING, PERMITS AND INSPECTION COSTS

Α. The CONTRACTOR warrants that it has all necessary licenses and permits required by the laws of the United States, State of California, and the County of San Bernardino, the Local Jurisdictions, and all other appropriate governmental agencies, and agrees to maintain these licenses and permits in effect for the duration of the Agreement. Further, FIRM warrants that its employees, agents, and contractors and subcontractors shall conduct themselves in compliance with such laws and licensure requirements including, without limitation, compliance with laws applicable to nondiscrimination, sexual harassment and ethical behavior throughout the duration of this Agreement. CONTRACTOR further warrants that it shall not retain or employ an unlicensed subcontractor to perform work on this Project. CONTRACTOR shall notify OMNITRANS immediately and in writing of its employees', agents', contractors' or subcontractors' inability to obtain or maintain, irrespective of the pendency of any appeal, any such licenses, permits, approvals, certificates, waivers, exemptions. inability shall be cause for termination of this Agreement.

B. CONTRACTOR shall procure all permits and licenses; pay all charges, assessments and fees, as may be required by the ordinances and regulations of the public agencies having jurisdiction over the areas in which the work is located, and shall comply with all the terms and conditions thereof and with all lawful orders and regulations of each such public agency relating to construction operations under the jurisdiction of such agency.

37. PRECEDENCE

Conflicting provisions hereof, if any, shall prevail in the following descending order of precedence: (1) the provisions of this Agreement, and any and all of its Amendments, Appendices, Exhibits and Attachments; (2) provisions of IFB-MNT18-51 and any and all of its Addenda, Appendices, Exhibits and Attachments; and (3) CONTRACTOR's bid dated February 12, 2018 and its Appendices, Exhibits, Attachments.

38. 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 | DEFEO MANUFACTURING | | |
|--|---|--|--|
| P. Scott Graham CEO/General Manager | Name: Anthony Defeo Title: President | | |
| Date | Date | | |

Federal Tax I.D. No. 22-2546606

IDP

CONTRACT MNT18-51B REVISED 04/17/17

ATTACHMENT A - PRICING MNT18-51B ALLISON TRANSMISSION PARTS

| Item Num | Item Code | Description | Unit of Measure | Model Number | *Quantity | **Base Year Pricing |
|----------|-----------|---|-----------------|--|---------------|---------------------------------------|
| 1 | 11866 | GASKET ;NF 8400 ,THOMAS 8300 FILTER | EA | 29524449 | 1 | \$ 1.0 |
| 2 | 18002 | SELECTOR ;NF,ALLISON TRANS SHIFT | EA | 095902;122397;29538371 | 1 | \$ 625.0 |
| 3 | 18416 | SOLENOID :B400,ACCUM. RETARDER | EA | 29544455;29547934;29552377;29555434;29557354;6334198 | 1 | \$ 261.8 |
| | | | | 142917;29536134;29537291;29538352;29541151;29541227;29 | | |
| 4 | 19836 | ECU ;NF,THOMAS B400,B300 TRANS | EA | 543300 | 1 | \$ 1,725.0 |
| 5 | | PLUG ;ALLISON B400,B300 TRANS DRAIN | EA | 29534362 | 1 | \$ 10.7 |
| 6 | | O-RING ;ALLISON B400 TRANS | EA | 23047185 | 1 | \$ 3.2 |
| 7 | | SEAL ;ALLISON 8400 TRANS SHAFT | EA | 29507528;29544137 | 1 | \$ 6.2 |
| 8 | | SENSOR ;ALLISON, B400 SPEED INPUT | EA | 29509637;29544139 | 1 | \$ 49.9 |
| 9 | | HOUSING ;ALLISON B400 TRANS STATOR | EA | 29528321 | 1 | \$ 479.0 |
| 10 | | GEAR ;ALLISON B400 RING | EA | 29502093 | 1 | \$ 158.5 |
| 11 | | CARRIER ;NF WORLD TRANS B400 | EA | 29537929 | 1 | \$ 879.8 |
| 12 | | NUT :NF WORLD TRANS B400 . | EA | 29506387 | 1 | \$ 22.4 |
| 13 | | SEAL :B400B/JD REPOWER TRANS FILL TUBE | EA | 097127;29507823;29546229 | 1 | \$ 1.9 |
| 14 | | HOUSING ;ALLISON B400 TRANS,CLUTCH | EA | 29501360 | 1 | \$ 268.1 |
| 15 | | PLATE ;NF B400B TRANS BACK | EA | 29514804 | 1 | |
| 16 | | LOCKUP INF B400B TRANS PISTON | EA | 29500939;29542016 | 1 | |
| 17 | ·- | SHIMS ;NF B400B TRANS CONVERTER | EA | 29502275 | 1 | |
| 18 | | SHIMS ;NF B400B TRANS CONVERTER | EA | 29502276 | 1 | |
| 19 | | SHIMS ;NF B400B TRANS CONVERTER | EA | 29502277 | 1 | |
| 20 | | GASKET :NF B400R TRANS | EA | 29536742 | 1 | |
| 20 | | PLATE ;ALLISON, B400 TRANS | EA | 29501424 | 1 | |
| 22 | | ADAPTER ASSY ;ALLISON B400R RING GEAR | EA | 29512130 | 1 | |
| 23 | | BOLT :ALLISON B400R & ZF TRANS 12X1.25X3 | EA | 117139;29502097 | 1 | |
| 23 | | BOLT ;NF B400R TRANS M6X1.00X14 | EA | 29513724 | 1 | \$ 3.9 |
| 25 | | FLEXPLATE ASSY ;NF B400R TRANS | EA | 29512126 | | \$ 5,201.5 |
| 26 | • | O-RING ;B400 TRANS | EA | 29512875 | } | \$ 0.5 |
| 27 | | GEAR SET, ALLISON B400 TRANS | EA | 29542025 | 1 | \$ 321.0 |
| 28 | | SPRING ;B400R TRANS ACCUMINLATOR | EA | 29500064 | | \$ 1.4 |
| 28 | | TURBINE ;B400R TRANS | EA | 29503979 | } | \$ 964.9 |
| 30 | | SEAL KIT ,ALLISON ACCUMILATOR | EA | 29535973 | } | \$ 169.9 |
| 30 | | | EA | 29503283 | <u> </u> | \$ 10.9 |
| 31 | | GASKET ;NF,ALLISON B400 TRANS GASKET ;NF,B400 TRANS | EA | 29535230 | <u> </u> | \$ 8.9 |
| | | <u> </u> | EA | 29536860;29543067 | | \$ 32.4 |
| 33 | | FILTER; NF 8400 TRANS SUCTION | EA | 29537936 | | \$ 468.1 |
| 34 | | CARRIER & BUSHING ;ALLISON B400 | | | | \$ 1,348.4 |
| 35 | | PUMP ;ALLISOM B400 CONVERTOR | EA EA | 29514792 | | \$ 1,346.4 |
| 36 | ~ | O-RING ;ALLISON B400 TRANS OIL DRAIN | | 23019664 | | \$ 0.5 |
| 37 | | SENSOR ;ALLISON B400 TURBINE SPEED | EA | 29503531;29543433 23048692 | | \$ 71.8 |
| 38 | 49510 | PISTON ;ALLISON TRANS C2 | EA | | <u> </u> | 71.0 |
| | | | | 000004952;000050138;057861024;14-050- | 4 | \$ 35.2 |
| 39 | | PISTON ;ALLISON TRANS C1 | EA | 0032;29506195;29537755;29546986;4952;50138 | | |
| 40 | | HOUSING ;B400 RETARDER ASM. | EA | 29528322;29529309 | | <u> </u> |
| 41 | | PISTON ;B400 TRANS BALANCE | EA | 23048133;29546987 | | \$ 41.6 |
| 42 | | BUSHING ;B400 TRANS | EA | 29531003 | <u> </u> | \$ 6.9 |
| 43 | | GASKET ;ALLISON TRANS | EA | 29503288 | 1 | · · · · · · · · · · · · · · · · · · · |
| 44 | | SEAL, ALLISON C1 INNER PISTON | EA | 23045612;29546154 | 1 | ve recent |
| 45 | 53595 | SEAL, ALLISON C2 INNER PISTON | EA | 23045611;29546153 | 1 | \$ 4.2 |

^{*}Omnitrans makes no guarantee of usage with regard to quantity

^{**}Base Year Pricing - All subsequent pricing shall be determined in April of each year using the increase or decrease of Consumer Price Index (CPI).

ATTACHMENT A - PRICING MNT18-51B ALLISON TRANSMISSION PARTS

| 46 | 54189 GASKET ;ALLISON B300R TRANS | EA | 29508398 | 1 \$ | 8.99 |
|----|---|----|-------------------|------|----------|
| 47 | 54197 O-RING ;ALLISON B300R TRANS | EA | 29509437 | 1 \$ | 1.89 |
| 48 | 54205 O-RING ;ALLISON B300R TRANS | EA | 12092195;29512863 | 1 \$ | 2.79 |
| 49 | 54221 GASKET ;ALLISON B300R TRANS | EA | 29508400 | 1 \$ | 4.99 |
| 50 | 54239 GASKET ;ALLISON B300R TRANS | EA | 29508401;29552485 | 1 \$ | 2.99 |
| 51 | 54338 DAMPER ;B400 TRANSMISSION | EA | 29530092;29544144 | 1 \$ | 417.48 |
| 52 | 54536 RING ;ALLISON TRANS SEAL | EA | 29500025;2950092 | 1 \$ | 12.49 |
| 53 | 54619 SHAFT ;ALLISON TRANS TURBINE | EA | 29530450 | 1 \$ | 278.07 |
| 54 | 54635 STATOR F/RETARDER ;ALLISON B400 | EA | 29536743 | 1 \$ | 943.56 |
| 55 | 54643 BUSHING ;ALLISON B400 TRANS | EA | 29531005;29546596 | 1 \$ | 2.69 |
| 56 | 54775 GASKET ;TRANS B300/B400 SEPERATOR PLATE | EA | 29535940 | 1 \$ | 1.64 |
| 57 | 55038 SENSOR ;ALLISON B400 TRANS | EA | 29543432 | 1 \$ | 49.99 |
| 58 | 55061 SHIM ;ALLISON B400 TRANS | EA | 29503218 | 1 \$ | 5.09 |
| 59 | 55079 SHIM ;ALLISON B400 TRANS | EA | 29503219 | 1 \$ | 5.57 |
| 60 | 55087 SHIM ;ALLISON B400 TRANS | EA | 29503220 | 1 \$ | 5.66 |
| 61 | 55095 SHIM ;ALLISON B400 TRANS | EA | 29503222 | 1 \$ | 8.79 |
| 62 | 55103 SHIM ;ALLISON B400 TRANS | EA | 29503223 | 1 \$ | 14.02 |
| 63 | 55111 SHIM ;ALLISON B400 TRANS | EA | 29503224 | 1 \$ | 10.18 |
| 64 | 55244 O-RING ;ALLISON B400 TRANS FLAT | EA | 23045654;29546157 | 1 \$ | 9.29 |
| 65 | 55251 RING ;ALLISON B400 TRANS HOOK | EA | 29503714 | 1 \$ | 11.49 |
| 66 | 55269 WASHER ;ALLISON B400 TRANS LOCKNU | EA | 29506386 | 1 \$ | 6.23 |
| 67 | 55293 O-RING ;ALLISON,B400 TRANS 11.48 ID | EA | 23047019 | 1 \$ | 14.99 |
| 68 | 55301 RING ;ALLISON,B400 TRANS SEAL | EA | 29510682 | 1 \$ | 2.76 |
| 69 | 55319 GASKET ;ALLISON B400 TRANS RET,HSG,CVR | EA | 29536728 | 1 \$ | 0.99 |
| 70 | 55327 GASKET ;ALLISON B400 STATOR HOUSING | EA | 29537867 | 1 \$ | 12.99 |
| 71 | 55335 BEARING ASSY ;ALLISON,CONE & ROLLER | EA | 23046437 | 1 \$ | 39.00 |
| 72 | 55343 BEARING ;ALLISON B400 CUP-ROLLER | EA | 23046438 | 1 \$ | 15.99 |
| 73 | 56036 FITTING ;NF,ALLISON | EA | 29500034 | 1 \$ | 1.89 |
| 74 | 56705 BRACKET ;ALLISON,SPEED SENSOR | EA | 29533980 | 1 \$ | 21.61 |
| 75 | 56879 SEAL ;ALLISON TRANS OUTPUT | EA | 29546233 | 1 \$ | 14.99 |
| 76 | 56903 SEAL ;ALLISON FEED THROUGH | EA | 29520396;29542084 | 1 \$ | 4.19 |
| 77 | 56911 HARNESS ;ALLISON TRANS WIRING | EA | 29536462;29542681 | 1 \$ | 314.03 |
| 78 | 57596 COVER ;ALLISON TRANS REAR | EA | 29542376 | 1 \$ | 3,013.27 |
| 79 | 57901 SENSOR ;ALLISON,TRANS OIL LEVEL | EA | 29530105;29544668 | 1 \$ | 351.00 |
| 80 | 59105 O-RING ;ALLISON B400 IMPUT SHAFT | EA | 23046274 | 1 \$ | 0.79 |
| 81 | 216688 BOLT, ALLISON B400 HARNESS SHOULDER | EA | 29536564 | 1 \$ | 1.79 |
| 82 | 216718 O-RING, ALLISON TORQ CONVERTOR | EA | 23049377 | 1 \$ | 24.99 |
| 83 | 216868 PLUG ASSY,ALLISON MAG DRAIN | EA | 29510885 | 1 \$ | 32.15 |
| 84 | 217152 RING KIT,ALLISON B300/B400 TRANS SEAL | EA | 23042434 | 1 \$ | 15.99 |
| 85 | 217154 SEAL,ALLISON C1 PISTON | EA | 23045614;29546155 | 1 \$ | 5.49 |
| 86 | 217158 SEAL, ALLISON BALANCE PISTON | EA | 23045615;29546156 | 1 \$ | 6.49 |
| 87 | 217163 SEAL,ALLISON C2 OUTER PISTON | EA | 23045613 | 1 \$ | 9.89 |
| 88 | 217165 PISTON,ALLISON C3/C4 TRANS | EA | 29543065 | 1 \$ | 24.99 |
| 89 | 217167 BUSHING,ALLISON TRANS | EA | 29533975 | 1 \$ | 17.99 |
| 90 | 217170 RING KIT,ALLISON SEAL | EA | 29538448 | 1 \$ | 51.65 |
| 91 | 217174 O-RING,ALLISON TRANS | EA | 29503197;29546166 | 1 \$ | 19.49 |
| 92 | 217177 BUSHING, ALLISON TRANS | EA | 29503196;29549294 | 1 \$ | 13.99 |
| 93 | 217180 O-RING,ALLISON TRANS | EA | 23046868;29546165 | 1 \$ | 29.99 |

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^{**}Base Year Pricing - All subsequent pricing shall be determined in April of each year using the increase or decrease of Consumer Price Index (CPI).

ATTACHMENT A - PRICING MNT18-51B ALLISON TRANSMISSION PARTS

| 94 | 217183 O-RING, ALLISON TRANS | EA | 29503383 | 1 \$ | 1.05 |
|-----|---|----|-------------------|--------|--|
| 95 | 217186 WASHER,ALLISON TRANS THRUST | EA | 29511406 | 1 \$ | 3.96 |
| 96 | 217188 PLATE, ALLISON TRANS B | EA | 29537941 | 1 \$ | 8.59 |
| 97 | 217190 O-RING, ALLISON TRANS | EA | 23040579 | 1 \$ | 1.05 |
| 98 | 217192 CLIP,ALLISON TRANS | EA | 29501538;29539807 | 1 \$ | 8.49 |
| 99 | 217195 BEARING, ALLISON TRANS | EA | | 1 \$ | 23.60 |
| 100 | 217197 RING, P1 INDEXING ALLISON | EA | 29537939 | 1 \$ | 9.74 |
| 101 | 217199 WASHER,ALLISON TRANS THRUST | EA | 29502040 | 1 \$ | 1.62 |
| 102 | 217201 PLATE,ALLISON TRANS | EA | 29537940 | 1 \$ | 9.16 |
| 103 | 217203 BUSH,ALLISON TRANS | EA | 29531004 | 1 \$ | 4.79 |
| 104 | 217205 WASHER, ALLISON TRANS THRUST | EΑ | 29502037 | 1 \$ | 2.40 |
| 105 | 217207 O-RING,ALLISON TRANS | EA | 23043446 | 1 \$ | 0.29 |
| 106 | 217209 GROMMET,ALLISON TRANS | EA | 29536567;29544782 | 1 \$ | 32.49 |
| 107 | 217212 SEAL,ALLISON TRANS | EA | 23046376 | 1 \$ | 1.72 |
| 108 | 217214 O-RING,ALLISON TRANS | EA | 23016455 | 1 \$ | 1.49 |
| 109 | 217216 O-RING,ALLISON TRANS | EA | 29503384 | 1 \$ | 0.99 |
| 110 | 217218 O-RING,ALLISON TRANS | EA | 29503382 | 1 \$ | 1.95 |
| 111 | 217220 HARNESS ASSY,ALLISON B300/B400 | EA | 29529313 | 1 \$ | 162.58 |
| 112 | 217407 SELECTOR, SR1337 ALLISON TRANS SHIFT | EA | 29546170;29546210 | 1 \$ | 325.00 |
| 113 | 217702 ALLISON SHIFT SELECTOR SR585-709 REBUILT | EA | R29538371 | 1 \$ | |
| 114 | 217821 BUSHING,ALLISON TRANS | EA | 2305202 | 1 \$ | |
| 115 | 218093 PIN,ALLISON TRANS PLUG | EA | 29511371 | 1 \$ | 1.53 |
| 116 | 218751 CONNECTOR ACCUMULATOR ALLISON TRANS B400 | EA | 12041411;12162197 | 1 \$ | 12.82 |
| 117 | 219366 O-RING, B400 TRANSMISSION | EA | 29503208 | 1 \$ | |
| 118 | 219869 YOKE ASSEMBLY B400 TRANS SR1337 | EA | 29540326 | 1 \$ | 389.99 |
| 119 | 220227 PISTON, C3/C4 SR1337 | EA | 29542753 | 1 \$ | 22.25 |
| 120 | 220241 BEARING, ROLLER SR1337 | EA | 23045816 | 1 \$ | |
| 121 | 220247 BEARING,ROLLER SR1337 | EA | 29541565 | 1 \$ | 10.25 |
| 122 | 220253 O-RING ;ALLISON B400 TRANS OIL DRAIN | EA | 23019664 | 1 \$ | 0.59 |
| 123 | 221774 HOUSING, C4 | EA | 29542752 | 1 \$ | 131.53 |
| 124 | 221776 PLATE, MD C3/4 PIST RETURN | EA | 29542754 | 1 \$ | |
| 125 | 221778 HOUSING, MD C3 CLUTCH | EA | 29542756 | 1 \$ | |
| 126 | 221838 GASKET, JUMPER MANIFOLD B400 TRANS | EA | 29536766 | 1 \$ | |
| 127 | 221840 SWITCH, C-3 PRESSURE B400 TRANS | EA | 29506484 | 1 \$ | |
| 128 | 221842 SOLENOID, FORWARD B400 TRANS | EA | 29537369 | 1 \$ | |
| 129 | 221936 C3 CLUTCH HOUSING | EA | 29542756 | 1 \$ | ······································ |
| 130 | 221938 PISTON RETURN PLATE | EA | 29542754 | 1 \$ | |
| 131 | 221940 C4 CLUTCH HOUSING | EA | 29542752 | 1 \$ | 131.53 |

^{*}Omnitrans makes no guarantee of usage with regard to quantity

^{**}Base Year Pricing - All subsequent pricing shall be determined in April of each year using the increase or decrease of Consumer Price Index (CPI).



CONTRACT AGREEMENT

between

| CONTRACTOR Muncie Reclamation and Supply dba |) CONTRACT DOCUMENTS |
|---|---------------------------------------|
| Muncie Transit Supply 320 S. Madison Street | CONTRACT NO. MNT18-51C |
| Muncie, IN 47302 | ALLISON TRANSMISSION PARTS |
| (hereinafter "CONTRACTOR") Telephone: (765) 288-1971 Email: bhuff@abc-companies.com |))))) |
| And |) Contract Amount: \$500.00) |
| Omnitrans 1700 West Fifth Street San Bernardino, CA 92411 (hereinafter "OMNITRANS") |))))))))))))))))))) |
| |) |



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This Agreement is made and entered into as of this <u>4th</u> day of <u>April 2018</u>, by and between Omnitrans (hereinafter referred to as "OMNITRANS") and <u>Muncie Reclamation and Supply dba Muncie Transit Supply</u> (hereinafter referred to as "CONTRACTOR").

RECITALS

WHEREAS, OMNITRANS is a joint powers authority organized under Section 6500 et seq. of the California Government 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 term of this Agreement shall be from the date of execution of this Agreement and continue in effect through April 3, 2021, unless terminated as specified in Section 10 and 11 of this Agreement. Omnitrans has no obligation to purchase any specified amount of products/services. All applicable indemnification provisions in this Agreement shall remain in effect following the termination of this Agreement.

Omnitrans' election to extend the Agreement beyond the Initial Term shall not diminish its right to terminate the Agreement for Omnitrans' convenience or CONTRACTORS default as provided elsewhere in this Agreement. The "maximum term" of this Agreement shall be the period extended from April 4, 2021 through April 3, 2023, which period encompasses the Initial Term and the Option Year One and Option Year Two.

3. CONTRACT OPTIONS

- A. Omnitrans will have the unilateral right in the contract by which, for a specified time, Omnitrans may elect to purchase additional services called for by the contract, or may elect to extend the term of the contract. The requirements below apply:
 - Any options that were requested by Omnitrans and/or contained in the Contractor's PROPOSAL or offer must have been evaluated in making the contract award prior to exercising any such options.
 - 2) Since Contractor's proposed pricing for the option years and additional services are considered in evaluating the Contractor's original proposal and form the basis for awarding the contract, Contractor shall be bound by the proposal pricing for additional services and/or option years, unless otherwise provided herein.
- B. Omnitrans will provide a minimum of thirty days (30) written notice to the Contractor of Omnitrans' exercise of its option to extend the contract years. Omnitrans may give notice of its exercise of the option for additional services at any time during the term of the contract. The minimum time for the written notice may be waived by mutual agreement.

4. COMPENSATION

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 C, and subject to the maximum cumulative payment obligation.

OMNITRANS' maximum cumulative payment obligation under this Agreement shall not exceed <u>Five Hundred</u> Dollars (\$500.00), 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.

5. 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
Accountspayable@omnitrans.org

A separate invoice shall be used for each shipment. Each invoice shall include, at minimum, the following information:

- Contract number
- Invoice number
- Description of delivery
- Delivery Date
- Total quantity delivered
- Information as requested by OMNITRANS
- B. OMNITRANS shall remit payment within thirty (30) calendar days of approval of the invoices by OMNITRANS' Project Manager.

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.

C. TITLE

- a. Title shall pass to Omnitrans at the time of payment.
- b. The title transferred as above shall in each case be good, and free and clear from any and all security interests, liens, and/or other encumbrances.
- c. The transfer of title as specified above shall not imply Acceptance by Omnitrans, nor relieve the Contractor from the responsibility for strict compliance with the Contract, including warranty as specified in the Article entitled Warranty of Work, and for any loss of or damage to the Work.
- d. The Contractor at its own expense shall promptly execute, acknowledge, and deliver to the Omnitrans proper bills of sale or other written instruments of title in a form as required by Omnitrans; said instruments shall convey to the Omnitrans' title free and clear of debts, claims, liens, mortgages, taxes, and/or encumbrances.
- e. Contractor shall have title to and bear the risk of any loss of or damage to Work purchased hereunder until they are delivered, unloaded, and received by Omnitrans at the FOB Destination specified herein. Contractor's responsibility for loss or damage except for loss or damage resulting from Contractor's negligence, shall cease when title passes to Omnitrans.

6. 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.

7. 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: Krystal Turner

Allı. Kryslar rumer

Title: Contract Administrator

Muncie Reclamation and Supply dba Muncie Transit Supply 3720 S. Madison Street Muncie, IN 47302

Attn: Becky Huff

Title: Contract Manager

8. 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: Maintenance Department.

- a. 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> |
|-------------|-------------------|
| Becky Huff | Contracts Manager |
| | |
| A | |
| | |

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.

9. DISPUTE RESOLUTION

Any disputes between the successful CONTRACTOR and OMNITRANS relating to the implementation or administration of the Contract shall be resolved in accordance with this section.

- A. The parties shall first attempt to resolve the dispute informally in meetings or communications between proposer and OMNITRANS.
- B. If the dispute remains unresolved fifteen (15) days after it first arises, proposer may request that Omnitrans' CEO/General Manager issue a recommended decision on the matter in dispute. Omnitrans' CEO/General Manager shall issue the recommended decision in writing and provide a copy to proposer.
- C. If the dispute remains unresolved after review by Omnitrans' CEO/General Manager, either party may seek judicial resolution of the dispute in an appropriate Court of the State of California.

D. Pending final resolution of a dispute under this section, proposer shall proceed diligently with performance in accordance with the Contract and Omnitrans' CEO/General Manager's recommended decision.

10. 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.

11. 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 28, 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 10, 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.

12. 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.

13. 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.

CONTRACTOR shall not, without the express written consent of Omnitrans, either:

- a. Substitute any person, firm, or corporation as subcontractor in place of the subcontractors identified below; or
- b. Permit any subcontract to be assigned or transferred; or
- c. Allow work to be performed by anyone other than the original subcontractor listed below.

| Subcontractor's Name and Address | Work to Be Performed |
|----------------------------------|----------------------|
| N/A | |
| | |
| | |

14. 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.

15. INSURANCE

A. INSURANCE REQUIREMENTS

1) General Requirements for Contractor

- a. Without limiting or diminishing the Contractor's obligation to indemnify or hold Omnitrans harmless, Contractor shall procure, prior to commencement of the services required under this contract and maintain for the duration of the contract at its own expense, insurance of the kinds and in the amounts as indicated below;
- b. Provide Omnitrans with valid original certificates of insurance and endorsements showing Omnitrans as an additional insured.

2) Deductibles or Self-Insured Retention (SIR)

SIR must be declared to and approved by Omnitrans. At the option of Omnitrans, either: the insurer shall reduce or eliminate such deductibles or SIR or Contractor shall procure a bond guaranteeing payment of losses and related investigations, claim administration and defense expenses.

3) Other Insurance Provisions

a. Commercial General Liability and Automobile Liability

Commercial General Liability insurance coverage, including but not limited to, premises liability, contractual liability, products and completed operations liability, personal and advertising injury covering claims which may arise from or out of Contractor's performance of its obligations hereunder and if Contractor's vehicles or mobile equipment are used in the performance of the obligations under this Agreement, then Contractor shall maintain liability insurance for all owned, non-owned or hired vehicles so used. Policy

shall name Omnitrans, its officers, officials, employees, agents and volunteers as additional insured as respects: liability arising out of activities performed by or on behalf of Contractor; products and completed operations of Contractor; premises owned, occupied or used by Contractor; or automobiles owned, leased, hired or borrowed by Contractor. The coverage shall contain no special limitations of the scope of protection afforded Omnitrans, its officers, officials, employees, agents, and volunteers.

- For any claims related to this project, Contractor's insurance coverage shall be primary insurance as respects Omnitrans, its officers, officials, employees, agents, and volunteers. Any insurance and/or deductibles and/or self-insured retentions or self-insured programs maintained by Omnitrans, its officers, officials, employees, agents, and volunteers shall be excess of Contractor's insurance and shall not be construed as contributory.
- 2. Contractor's insurance shall apply separately to each insured against whom claim is made or suit is brought, except with respect to the limits of the insurer's liability.
- 3. Each insurance policy required by this clause shall be endorsed to state that coverage shall not be suspended, voided, cancelled by either party, reduced in coverage or in limits except after thirty (30) days prior written notice has been given to Omnitrans.

b. Workers' Compensation

If the Contractor has employees as defined by the State of California, the Contractor shall maintain statutory Workers' compensation Insurance (Coverage A) as prescribed by the laws of the State of California. Policy shall include Employers' Liability (Coverage B) including Occupational Disease with limits not less than \$1,000,000 per person per accident. The policy shall be endorsed to waive subrogation in favor of Omnitrans and, if applicable, to provide a Borrowed Servant/Alternate Employer Endorsement.

c. Care, Custody, and Control

Contractor shall insure any Omnitrans property while under its Care, Custody, and Control according to the requirements listed in the insurance coverage required.

4) Acceptability of Insurers

Insurance companies shall be State of California admitted or approved and have a current **A.M. Best's** rating of no less than **A:VIII**.

5) Verification of Coverage

a. Contractor shall furnish Omnitrans with original endorsements affecting coverage required by this clause. The endorsements are

to be signed by a person authorized by that insurer to bind coverage on its behalf. All insurance certificates and endorsements are to be received and approved by Omnitrans before work commences.

- b. As an alternative, Contractor's insurer may provide complete, certified copies of all required insurance policies, including endorsements affecting the coverage required by these specifications.
- c. In lieu of purchasing insurance and providing original endorsements and or certificates of insurance, the Contractor may provide proof of self-insurance; such proof must be to the satisfaction of Omnitrans.

6) Subcontractors

Contractor shall include all subcontractors as insureds under its policies or shall furnish separate certificates and endorsements for each subcontractor. All coverage for subcontractors shall be subject to all of the requirements stated herein.

7) Notification of Terminated Insurance

Insurance shall not be terminated or expire without thirty (30) days written or electronic notice, and are required to be maintained in force until completion of the contract.

B. MINIMUM INSURANCE COVERAGE

If the Contractor maintains broader coverage and/or higher limits than the minimum requirements shown below, Omnitrans requires and shall be entitled to the broader coverage and/or higher limits maintained by the Contractor.

| 1) 🔧 | |
|------|---|
| | Operations: \$1,000,000; per occurrence for bodily and property damage liability and \$2,000,000 aggregate; <i>Omnitrans named and endorsed as an Additional Insured</i> . |
| 2) | Automobile Liability: \$1,000,000; per occurrence for bodily and property damage liability and aggregate; Omnitrans named and endorsed as an Additional Insured. |
| 3) | ☐ Errors and Omissions Liability: \$1,000,000; combined single limit bodily and property damage liability per occurrence and \$3,000,000 aggregate or, |
| 4) | Professional Liability: \$1,000,000; per occurrence and aggregate. |
| 5) | Workers' Compensation: statutory limits or, |

| 6) | Self Insurance Program: a State Approved program in an amoun and form that meets all applicable requirements of the Labor Code of the State of California. |
|-----|--|
| 7) | Employer's Liability: \$1,000,000; per occurrence. |
| 8) | Environmental Liability: \$1,000,000; per occurrence and aggregate; Omnitrans named and endorsed as an Additional Insured. |
| 9) | Umbrella Policy: \$4,000,000; per occurrence and aggregate Additional coverage for the above policies, <i>Omnitrans Additional Insured</i> . |
| 10) | All drivers making deliveries of products specified on this solicitation shall have Hazardous Materials Endorsements on thei Commercial Drivers License, and such other Endorsements as may be required by relevant laws and/or regulations. |

16. 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.

17. 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.

18. 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.

19. 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.

20. OWNERSHIP RIGHTS

In the event OMNITRANS rightfully obtains copies of Proprietary Data under Α. 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 To the extent there may be any question of rights of Programmers. 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.

21. 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.

22. 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.

23. 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.

24. 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.

25. 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.

26. 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).

27. COMPLIANCE WITH LAW

A. 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.
- B. Government regulations that directly affect the CONTRACTOR'S performance of this contract and unforeseen impacts, which neither party could have contemplated at the onset of the contract and have an unconscionable impact on the CONTRACTOR may be given special pricing consideration. The parties, in good faith, shall review established rates and may adopt any mutually agreed new rates, which shall only be effective as agreed upon by the parties. Thorough documentation including all cost elements is required to support the Contractor's claim to any relief under this clause.

28. 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.

29. 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.

30. 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.

31. 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.

32. 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.

33. 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.

34. 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.

35. 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.

36. LICENSING, PERMITS AND INSPECTION COSTS

Α. The CONTRACTOR warrants that it has all necessary licenses and permits required by the laws of the United States, State of California, and the County of San Bernardino, the Local Jurisdictions, and all other appropriate governmental agencies, and agrees to maintain these licenses and permits in effect for the duration of the Agreement. Further, FIRM warrants that its employees, agents, and contractors and subcontractors shall conduct themselves in compliance with such laws and licensure requirements including, without limitation, compliance with laws applicable to nondiscrimination, sexual harassment and ethical behavior throughout the duration of this Agreement. CONTRACTOR further warrants that it shall not retain or employ an unlicensed subcontractor to perform work on this Project. CONTRACTOR shall notify OMNITRANS immediately and in writing of its employees', agents', contractors' or subcontractors' inability to obtain or maintain, irrespective of the pendency of any appeal, any such licenses, permits, approvals, certificates, waivers, exemptions. inability shall be cause for termination of this Agreement.

B. CONTRACTOR shall procure all permits and licenses; pay all charges, assessments and fees, as may be required by the ordinances and regulations of the public agencies having jurisdiction over the areas in which the work is located, and shall comply with all the terms and conditions thereof and with all lawful orders and regulations of each such public agency relating to construction operations under the jurisdiction of such agency.

37. PRECEDENCE

Conflicting provisions hereof, if any, shall prevail in the following descending order of precedence: (1) the provisions of this Agreement, and any and all of its Amendments, Appendices, Exhibits and Attachments; (2) provisions of IFB-MNT18-51 and any and all of its Addenda, Appendices, Exhibits and Attachments; and (3) CONTRACTOR's bid dated February 20, 2018 and its Appendices, Exhibits, Attachments.

38. 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 | MUNCIE RECLAMATION AND SUPPLY DBA MUNCIE TRANSIT SUPPLY |
|--|---|
| P. Scott Graham CEO/General Manager | Name: Becky Huff Title: Contract Manager |
| Date | Date |

Federal Tax I.D. No. 36-3648851

CONTRACT MNV18-510
REVISED 04/17/17

ATTACHMENT A - PRICING MNT18-51C ALLISON TRANSMISSION PARTS

| Item Num | Item Code | Description | Unit of Measure | Model Number | *Quantity | **Base Year Pricing |
|----------|-----------|--|-----------------|--------------------------|-----------|---------------------|
| 1 | 22327 | PLUG ;ALLISON B400,B300 TRANS DRAIN | EA | 29534362 | 1 | \$8.85 |
| 2 | 27102 | SEAL ;B400B/JD REPOWER TRANS FILL TUBE | EA | 097127;29507823;29546229 | 1 | \$2.95 |
| 3 | 37838 | GASKET ;NF,ALLISON B400 TRANS | EA | 29503283 | 1 | \$19.99 |
| 4 | 55301 | RING ;ALLISON,B400 TRANS SEAL | EA | 29510682 | 1 | \$0.00 |
| 5 | 58164 | PLUG ;DEUTSCH B400 TRANS ELEC. | EA | HD34-24-31ST | 1 | \$22.11 |
| 6 | 217177 | BUSHING, ALLISON TRANS | EA | 29503196;29549294 | 1 | \$8.10 |

^{*}Omnitrans makes no guarantee of usage with regard to quantity

^{**}Base Year Pricing - All subsequent pricing shall be determined in April of each year using the increase or decrease of Consumer Price Index (CPI).



CONTRACT AGREEMENT

between

| CONTRACTOR | CONTRACT DOCUMENTS |
|--|--|
| Rush Truck Centers of California, Inc. 8830 East Slauson Avenue | CONTRACT NO. MNT18-51D |
| Pico Rivera, CA 90660 | ALLISON TRANSMISSION PARTS |
| (hereinafter "CONTRACTOR") Telephone: (951) 660-4227 Email: donaldsonz@rushenterprises.com |))))) |
| And |))) Contract Amount: \$955.24)) |
| Omnitrans 1700 West Fifth Street San Bernardino, CA 92411 (hereinafter "OMNITRANS") |) Omnitrans Project Manager:) Name: Rick Barone) Title: Materials Manager) Telephone: (909) 379-7402 Email: rick.barone@omnitrans.org) Contract Administrator: Name: Krystal N. Turner Title: Contract Administrator Telephone: (909) 379-7202 Email: krystal.turner@omnitrans.org |
| |))) |



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This Agreement is made and entered into as of this <u>4th</u> day of <u>April 2018</u>, by and between Omnitrans (hereinafter referred to as "OMNITRANS") and <u>Rush Truck Centers of California</u>, Inc. (hereinafter referred to as "CONTRACTOR").

RECITALS

WHEREAS, OMNITRANS is a joint powers authority organized under Section 6500 et seq. of the California Government 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 term of this Agreement shall be from the date of execution of this Agreement and continue in effect through <u>April 3, 2021</u>, unless terminated as specified in Section 10 and 11 of this Agreement. Omnitrans has no obligation to purchase any specified amount of products/services. All applicable indemnification provisions in this Agreement shall remain in effect following the termination of this Agreement.

Omnitrans' election to extend the Agreement beyond the Initial Term shall not diminish its right to terminate the Agreement for Omnitrans' convenience or CONTRACTORS default as provided elsewhere in this Agreement. The "maximum term" of this Agreement shall be the period extended from April 4, 2021 through April 3, 2023, which period encompasses the Initial Term and the Option Year One and Option Year Two.

3. CONTRACT OPTIONS

- A. Omnitrans will have the unilateral right in the contract by which, for a specified time, Omnitrans may elect to purchase additional services called for by the contract, or may elect to extend the term of the contract. The requirements below apply:
 - Any options that were requested by Omnitrans and/or contained in the Contractor's PROPOSAL or offer must have been evaluated in making the contract award prior to exercising any such options.
 - Since Contractor's proposed pricing for the option years and additional services are considered in evaluating the Contractor's original proposal and form the basis for awarding the contract, Contractor shall be bound by the proposal pricing for additional services and/or option years, unless otherwise provided herein.
- B. Omnitrans will provide a minimum of thirty days (30) written notice to the Contractor of Omnitrans' exercise of its option to extend the contract years. Omnitrans may give notice of its exercise of the option for additional services at any time during the term of the contract. The minimum time for the written notice may be waived by mutual agreement.

4. COMPENSATION

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 C, and subject to the maximum cumulative payment obligation.

OMNITRANS' maximum cumulative payment obligation under this Agreement shall not exceed Nine Hundred Fifty Five Dollars and Twenty Four (\$955.24), 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.

5. 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 Accountspayable@omnitrans.org

A separate invoice shall be used for each shipment. Each invoice shall include, at minimum, the following information:

- Contract number
- Invoice number
- Description of delivery
- Delivery Date
- Total quantity delivered
- Information as requested by OMNITRANS
- B. OMNITRANS shall remit payment within thirty (30) calendar days of approval of the invoices by OMNITRANS' Project Manager.

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.

C. TITLE

- a. Title shall pass to Omnitrans at the time of payment.
- b. The title transferred as above shall in each case be good, and free and clear from any and all security interests, liens, and/or other encumbrances.
- c. The transfer of title as specified above shall not imply Acceptance by Omnitrans, nor relieve the Contractor from the responsibility for strict compliance with the Contract, including warranty as specified in the Article entitled Warranty of Work, and for any loss of or damage to the Work.
- d. The Contractor at its own expense shall promptly execute, acknowledge, and deliver to the Omnitrans proper bills of sale or other written instruments of title in a form as required by Omnitrans; said instruments shall convey to the Omnitrans' title free and clear of debts, claims, liens, mortgages, taxes, and/or encumbrances.
- e. Contractor shall have title to and bear the risk of any loss of or damage to Work purchased hereunder until they are delivered, unloaded, and received by Omnitrans at the FOB Destination specified herein. Contractor's responsibility for loss or damage except for loss or damage resulting from Contractor's negligence, shall cease when title passes to Omnitrans.

6. 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.

7. 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: Krystal Turner

Title: Contract Administrator

Rush Truck Centers of California, Inc. 8830 East Slauson Avenue Pico Rivera, CA 90660 Attn: Zena Donaldson

Title: Regional Operations Managers

8. 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: Maintenance Department.

- a. 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:
 - 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> |
|----------------|------------------------------|
| Zena Donaldson | Outside Sales Representative |
| | |
| | |
| | |

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.

9. DISPUTE RESOLUTION

Any disputes between the successful CONTRACTOR and OMNITRANS relating to the implementation or administration of the Contract shall be resolved in accordance with this section.

- A. The parties shall first attempt to resolve the dispute informally in meetings or communications between proposer and OMNITRANS.
- B. If the dispute remains unresolved fifteen (15) days after it first arises, proposer may request that Omnitrans' CEO/General Manager issue a recommended decision on the matter in dispute. Omnitrans' CEO/General Manager shall issue the recommended decision in writing and provide a copy to proposer.
- C. If the dispute remains unresolved after review by Omnitrans' CEO/General Manager, either party may seek judicial resolution of the dispute in an appropriate Court of the State of California.

D. Pending final resolution of a dispute under this section, proposer shall proceed diligently with performance in accordance with the Contract and Omnitrans' CEO/General Manager's recommended decision.

10. 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.

11. 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 28, 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 10, 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.

12. 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.

13. 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.

CONTRACTOR shall not, without the express written consent of Omnitrans, either:

- a. Substitute any person, firm, or corporation as subcontractor in place of the subcontractors identified below; or
- b. Permit any subcontract to be assigned or transferred; or
- c. Allow work to be performed by anyone other than the original subcontractor listed below.

| Subcontractor's | Name and Address | Work to Be F | Performed |
|-----------------|------------------|--------------|-----------|
| N/A | | | |
| | | | |
| | | | |

14. 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.

15. INSURANCE

A. INSURANCE REQUIREMENTS

1) General Requirements for Contractor

- a. Without limiting or diminishing the Contractor's obligation to indemnify or hold Omnitrans harmless, Contractor shall procure, prior to commencement of the services required under this contract and maintain for the duration of the contract at its own expense, insurance of the kinds and in the amounts as indicated below:
- Provide Omnitrans with valid original certificates of insurance and endorsements showing Omnitrans as an additional insured.

2) Deductibles or Self-Insured Retention (SIR)

SIR must be declared to and approved by Omnitrans. At the option of Omnitrans, either: the insurer shall reduce or eliminate such deductibles or SIR or Contractor shall procure a bond guaranteeing payment of losses and related investigations, claim administration and defense expenses.

3) Other Insurance Provisions

a. Commercial General Liability and Automobile Liability

Commercial General Liability insurance coverage, including but not limited to, premises liability, contractual liability, products and completed operations liability, personal and advertising injury covering claims which may arise from or out of Contractor's performance of its obligations hereunder and if Contractor's vehicles or mobile equipment are used in the performance of the obligations under this Agreement, then Contractor shall maintain liability insurance for all owned, non-owned or hired vehicles so used. Policy

shall name Omnitrans, its officers, officials, employees, agents and volunteers as additional insured as respects: liability arising out of activities performed by or on behalf of Contractor; products and completed operations of Contractor; premises owned, occupied or used by Contractor; or automobiles owned, leased, hired or borrowed by Contractor. The coverage shall contain no special limitations of the scope of protection afforded Omnitrans, its officers, officials, employees, agents, and volunteers.

- For any claims related to this project, Contractor's insurance coverage shall be primary insurance as respects Omnitrans, its officers, officials, employees, agents, and volunteers. Any insurance and/or deductibles and/or self-insured retentions or self-insured programs maintained by Omnitrans, its officers, officials, employees, agents, and volunteers shall be excess of Contractor's insurance and shall not be construed as contributory.
- 2. Contractor's insurance shall apply separately to each insured against whom claim is made or suit is brought, except with respect to the limits of the insurer's liability.
- 3. Each insurance policy required by this clause shall be endorsed to state that coverage shall not be suspended, voided, cancelled by either party, reduced in coverage or in limits except after thirty (30) days prior written notice has been given to Omnitrans.

b. Workers' Compensation

If the Contractor has employees as defined by the State of California, the Contractor shall maintain statutory Workers' compensation Insurance (Coverage A) as prescribed by the laws of the State of California. Policy shall include Employers' Liability (Coverage B) including Occupational Disease with limits not less than \$1,000,000 per person per accident. The policy shall be endorsed to waive subrogation in favor of Omnitrans and, if applicable, to provide a Borrowed Servant/Alternate Employer Endorsement.

c. Care, Custody, and Control

Contractor shall insure any Omnitrans property while under its Care, Custody, and Control according to the requirements listed in the insurance coverage required.

4) Acceptability of Insurers

Insurance companies shall be State of California admitted or approved and have a current **A.M. Best's** rating of no less than **A:VIII.**

5) Verification of Coverage

- a. Contractor shall furnish Omnitrans with original endorsements affecting coverage required by this clause. The endorsements are to be signed by a person authorized by that insurer to bind coverage on its behalf. All insurance certificates and endorsements are to be received and approved by Omnitrans before work commences.
- b. As an alternative, Contractor's insurer may provide complete, certified copies of all required insurance policies, including endorsements affecting the coverage required by these specifications.
- c. In lieu of purchasing insurance and providing original endorsements and or certificates of insurance, the Contractor may provide proof of self-insurance; such proof must be to the satisfaction of Omnitrans.

6) Subcontractors

Contractor shall include all subcontractors as insureds under its policies or shall furnish separate certificates and endorsements for each subcontractor. All coverage for subcontractors shall be subject to all of the requirements stated herein.

7) Notification of Terminated Insurance

Insurance shall not be terminated or expire without thirty (30) days written or electronic notice, and are required to be maintained in force until completion of the contract.

B. MINIMUM INSURANCE COVERAGE

If the Contractor maintains broader coverage and/or higher limits than the minimum requirements shown below, Omnitrans requires and shall be entitled to the broader coverage and/or higher limits maintained by the Contractor.

| 1) | Operations: \$1,000,000; per occurrence for bodily and property damage liability and \$2,000,000 aggregate; Omnitrans named and endorsed as an Additional Insured. |
|----|--|
| 2) | Automobile Liability: \$1,000,000; per occurrence for bodily and property damage liability and aggregate; Omnitrans named and endorsed as an Additional Insured. |
| 3) | ☐ Errors and Omissions Liability: \$1,000,000; combined single limit bodily and property damage liability per occurrence and \$3,000,000 aggregate or, |
| 4) | Professional Liability: \$1,000,000; per occurrence and aggregate. |

| 5) | Workers' Compensation: statutory limits or, |
|-----|---|
| 6) | Self Insurance Program: a State Approved program in an amount and form that meets all applicable requirements of the Labor Code of the State of California. |
| 7) | Employer's Liability: \$1,000,000; per occurrence. |
| 8) | Environmental Liability: \$1,000,000; per occurrence and aggregate; Omnitrans named and endorsed as an Additional Insured. |
| 9) | Umbrella Policy: \$4,000,000; per occurrence and aggregate Additional coverage for the above policies, <i>Omnitrans Additional Insured</i> . |
| 10) | All drivers making deliveries of products specified on this solicitation shall have Hazardous Materials Endorsements on their Commercial Drivers License, and such other Endorsements as may be required by relevant laws and/or regulations. |

16. 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.

17. 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.

18. 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.

19. 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.

20. OWNERSHIP RIGHTS

Α. 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 To the extent there may be any question of rights of Programmers. 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.

21. 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.

22. 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.

23. 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.

24. 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.

25. 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.

26. 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).

27. COMPLIANCE WITH LAW

A. 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.
- B. Government regulations that directly affect the CONTRACTOR'S performance of this contract and unforeseen impacts, which neither party could have contemplated at the onset of the contract and have an unconscionable impact on the CONTRACTOR may be given special pricing consideration. The parties, in good faith, shall review established rates and may adopt any mutually agreed new rates, which shall only be effective as agreed upon by the parties. Thorough documentation including all cost elements is required to support the Contractor's claim to any relief under this clause.

28. 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.

29. 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.

30. 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.

31. 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.

32. 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.

33. 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.

34. 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.

35. 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.

36. LICENSING, PERMITS AND INSPECTION COSTS

Α. The CONTRACTOR warrants that it has all necessary licenses and permits required by the laws of the United States, State of California, and the County of San Bernardino, the Local Jurisdictions, and all other appropriate governmental agencies, and agrees to maintain these licenses and permits in effect for the duration of the Agreement. Further, FIRM warrants that its employees, agents, and contractors and subcontractors shall conduct themselves in compliance with such laws and licensure requirements including, without limitation, compliance with laws applicable to nondiscrimination, sexual harassment and ethical behavior throughout the duration of this Agreement. CONTRACTOR further warrants that it shall not retain or employ an unlicensed subcontractor to perform work on this Project. CONTRACTOR shall notify OMNITRANS immediately and in writing of its employees', agents', contractors' or subcontractors' inability to obtain or maintain, irrespective of the pendency of any appeal, any such licenses, permits, approvals, certificates, waivers, exemptions. inability shall be cause for termination of this Agreement.

B. CONTRACTOR shall procure all permits and licenses; pay all charges, assessments and fees, as may be required by the ordinances and regulations of the public agencies having jurisdiction over the areas in which the work is located, and shall comply with all the terms and conditions thereof and with all lawful orders and regulations of each such public agency relating to construction operations under the jurisdiction of such agency.

37. PRECEDENCE

Conflicting provisions hereof, if any, shall prevail in the following descending order of precedence: (1) the provisions of this Agreement, and any and all of its Amendments, Appendices, Exhibits and Attachments; (2) provisions of IFB-MNT18-51 and any and all of its Addenda, Appendices, Exhibits and Attachments; and (3) CONTRACTOR's bid dated February 19, 2018 and its Appendices, Exhibits, Attachments.

38. 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 | RUSH TRUCK CENTERS OF CALIFORNIA, INC. |
|--|--|
| P. Scott Graham CEO/General Manager | Name: Jerry Conrad Title: General Manager |
| Date | Date |

Federal Tax I.D. No. 74-2786269

IDP _____CONTRACT MNT18-51D

MNT18-51D ALLISON TRANSMISSION PARTS ATTACHMENT A - PRICING

| Item Num | Item Num Item Code Description | Unit of | Unit of Me ModelNum | *Quantity **Base | **Base Year Pricing |
|----------|--|---------|--|------------------|---------------------|
| Н | 11866 GASKET ;NF B400 ,THOMAS B300 FILTER | Ę | 29524449 | 1 \$ | 1.11 |
| 2 | 18002 SELECTOR; NF, ALLISON TRANS SHIFT | EA | 095902;122397;29538371 | 1 \$ | 680.32 |
| 3 | 18416 SOLENOID ;B400,ACCUM. RETARDER | ΕA | 29544455;29547934;29552377;29555434;29557354;6334198 | 1 \$ | 215.26 |
| | | | 142917;29536134;29537291;29538352;29541151;29541227;29 | | |
| 4 | 19836 ECU;NF,THOMAS B400,B300 TRANS | EA | 543300 | 1 \$ | 2,217.65 |
| 5 | 22327 PLUG ;ALLISON B400,B300 TRANS DRAIN | EA | 29534362 | 1 \$ | 11.82 |
| 9 | 22343 O-RING ;ALLISON B400 TRANS | EA | 23047185 | 1 \$ | 4.43 |
| 7 | 22350 SEAL ;ALLISON B400 TRANS SHAFT | EA | 29507528,29544137 | 1 \$ | 8.21 |
| 8 | 23093 SENSOR ;ALLISON, B400 SPEED INPUT | EA | 29509637;29544139 | 1 \$ | 67.78 |
| 6 | 24307 HOUSING ;ALLISON B400 TRANS STATOR | EA | 29528321 | 1 \$ | 611.55 |
| 10 | 26229 GEAR ;ALLISON B400 RING | ΕA | 29502093 | 1 \$ | 109.02 |
| 11 | 26930 CARRIER; NF WORLD TRANS B400 | EA | 29537929 | 1 \$ | 1,064.46 |
| 12 | 26948 NUT ;NF WORLD TRANS B400 | EA | 29506387 | 1 \$ | 24.94 |
| 13 | 27102 SEAL ;B400B/JD REPOWER TRANS FILL TUBE | ΕA | 097127;29507823;29546229 | 1 \$ | 2.86 |
| 14 | 29157 MODULE ;NF,THOMAS B400,B300 3-WAY | EA | 29511320,J600816,TBBJ600816 | 1 \$ | 106.45 |
| 15 | 30379 HOUSING ;ALLISON B400 TRANS,CLUTCH | EA | 29501360 | 1 \$ | 184.34 |
| 16 | 30437 PLATE; NF B400B TRANS BACK | EA | 29514804 | 1 \$ | 585.63 |
| 17 | 30445 LOCKUP ;NF B400B TRANS PISTON | EA | 29500939;29542016 | 1 \$ | 89.36 |
| 18 | 30452 SHIMS ;NF B400B TRANS CONVERTER | EA | 29502275 | 1 \$ | 5.20 |
| 19 | 30460 SHIMS ;NF B400B TRANS CONVERTER | EA | 29502276 | 1 \$ | 4.87 |
| 20 | 30478 SHIMS ;NF B400B TRANS CONVERTER | EA | 29502277 | 1 \$ | 3.97 |
| 21 | 30924 GASKET ;NF B400R TRANS | EA | 29536742 | 1 \$ | 12.74 |
| 22 | 31336 PLATE ;ALLISON, B400 TRANS | ΕA | 29501424 | 1 \$ | 19.63 |
| 23 | 31948 ADAPTER ASSY , ALLISON B400R RING GEAR | EA | 29512130 | 1 \$ | 405.66 |
| 24 | 32110 BOLT ;ALLISON B400R & ZF TRANS 12X1.25X3 | EA | 117139;29502097 | 1 \$ | 3.05 |
| 25 | 32128 BOLT;NF B400R TRANS M6X1.00X14 | ΕA | 29513724 | 1 \$ | 2.70 |
| 26 | 32136 FLEXPLATE ASSY ;NF B400R TRANS | EA | 29512126 | 1 \$ | 52.67 |
| 27 | 33951 O-RING ;8400 TRANS | EA | 29512875 | 1 \$ | 0.78 |
| 28 | 36848 GEAR SET, ALLISON B400 TRANS | EA | 29542025 | 1 \$ | 220.74 |
| 29 | 37408 SPRING ;B400R TRANS ACCUMINLATOR | EA | 29500064 | 1 \$ | 1.64 |
| 30 | 37424 TURBINE ;B400R TRANS | EA | 29503979 | 1 \$ | 663.40 |
| 31 | 37440 SEAL KIT, ALLISON ACCUMILATOR | ΕΆ | 29535973 | 1 \$ | 270.61 |
| 32 | 37838 GASKET;NF,ALLISON B400 TRANS | EA | 29503283 | ₹. | 14.06 |
| 33 | 37846 GASKET ;NF,B400 TRANS | ΕA | 29535230 | 1 \$ | 6.13 |
| 34 | 37861 FILTER ;NF B400 TRANS SUCTION | EA | 29536860;29543067 | 1 \$ | 37.59 |
| 32 | 39867 CARRIER & BUSHING ;ALLISON B400 | ΕΆ | 29537936 | 1 \$ | 321.87 |
| 36 | | EA | 23019664 | 1 \$ | 0.78 |
| 37 | 49205 SENSOR ;ALLISON B400 TURBINE SPEED | EA | 29503531;29543433 | 1 \$ | 70.15 |
| 38 | 49510 PISTON ;ALLISON TRANS C2 | EA | 23048692 | 1 \$ | 49.36 |

^{*}Omnitrans makes no guarantee of usage with regard to quantity **Base Year Pricing - All subsequent pricing shall be determined in April of each year using the increase or decrease of Consumer Price Index (CPI).

ATTACHMENT A - PRICING MNT18-51D ALLISON TRANSMISSION PARTS

| 39 | 49528 PISTON ;ALLISON TRANS C1 | EA | 000004952;000050138;057861024;14-050- 0032;29506195;29537755;29546986;4952;50138 | 4 | 24.23 |
|-----|--|----|---|-------|----------|
| 40 | 50344 HOUSING ;B400 RETARDER ASM. | EA | 29528322;29529309 | 1 \$ | 1,690.46 |
| 41 | 51771 PISTON ;B400 TRANS BALANCE | EA | 23048133;29546987 | 1 \$ | 31.87 |
| 42 | 51987 BUSHING ;B400 TRANS | EA | 29531003 | 1 \$ | 10.89 |
| 43 | 53363 GASKET ;ALLISON TRANS | EA | 29503288 | 1 \$ | 18.22 |
| 44 | 53587 SEAL, ALLISON C1 INNER PISTON | EA | 23045612;29546154 | 1 \$ | 4.07 |
| 45 | 53595 SEAL, ALLISON C2 INNER PISTON | EA | 23045611;29546153 | 1 \$ | 4.59 |
| 46 | 54189 GASKET; ALLISON B300R TRANS | EA | 29508398 | 1 \$ | 10.65 |
| 47 | 54197 O-RING ;ALLISON B300R TRANS | EA | 29509437 | 1 \$ | 2.48 |
| 48 | 54205 O-RING;ALLISON B300R TRANS | ΕA | 12092195;29512863 | 1 \$. | 4.39 |
| 49 | 54221 GASKET ;ALLISON B300R TRANS | ΕA | 29508400 | 1 \$ | 3.54 |
| 20 | 54239 GASKET;ALLISON B300R TRANS | EA | 29508401;29552485 | 1 \$ | 2.69 |
| 51 | 54338 DAMPER ;B400 TRANSMISSION | EA | 29530092;29544144 | 1 \$ | 287.03 |
| 52 | 54536 RING ;ALLISON TRANS SEAL | ΕA | 29500025;2950092 | 1 \$ | 21.10 |
| 53 | 54619 SHAFT ;ALLISON TRANS TURBINE | EA | 29530450 | 1 \$ | 191.18 |
| 54 | 54635 STATOR F/RETARDER; ALLISON B400 | EA | 29536743 | 1 \$ | 648.70 |
| 55 | 54643 BUSHING ;ALLISON B400 TRANS | EA | 29531005;29546596 | 1 \$ | 3.71 |
| 26 | 54775 GASKET;TRANS B300/B400 SEPERATOR PLATE | EA | 29535940 | 1 \$ | 1.81 |
| 57 | 55038 SENSOR; ALLISON B400 TRANS | EA | 29543432 | 1 \$ | 67.84 |
| 58 | 55061 SHIM ;ALLISON 8400 TRANS | EA | 29503218 | 1 \$ | 3.50 |
| 59 | 55079 SHIM ;ALLISON B400 TRANS | ΕA | 29503219 | 1 \$ | 3.82 |
| 09 | 55087 SHIM;ALLISON B400 TRANS | EA | 29503220 | 1 \$ | 3.90 |
| 61 | 55095 SHIM;ALLISON B400 TRANS | EA | 29503222 | 1 \$ | 6.05 |
| 62 | 55103 SHIM ;ALLISON B400 TRANS | ΕĀ | 29503223 | 1 \$ | 9.64 |
| 63 | 55111 SHIM;ALLISON B400 TRANS | EA | 29503224 | 1 \$ | 7.00 |
| 64 | 55244 O-RING ;ALLISON 8400 TRANS FLAT | EA | 23045654;29546157 | 1 \$ | 10.30 |
| 65 | 55251 RING ;ALLISON 8400 TRANS HOOK | EA | 29503714 | 1 \$ | 15.62 |
| 99 | 55269 WASHER; ALLISON B400 TRANS LOCKNU | EA | 29506386 | 1 \$ | 4.28 |
| 29 | 55293 O-RING ;ALLISON, B400 TRANS 11.48 ID | EA | 23047019 | 1 \$ | 25.09 |
| 89 | 55301 RING ;ALLISON,B400 TRANS SEAL | EA | 29510682 | 1 \$ | 1.90 |
| 69 | 55319 GASKET ;ALLISON B400 TRANS RET,HSG,CVR | EA | 29536728 | 1 \$ | 1.14 |
| 70 | 55327 GASKET ;ALLISON B400 STATOR HOUSING | ΕΆ | 29537867 | 1 \$ | 19.42 |
| 7.1 | 55335 BEARING ASSY ;ALLISON,CONE & ROLLER | ΕÀ | 23046437 | 1 \$ | 53.07 |
| 72 | 55343 BEARING ;ALLISON B400 CUP-ROLLER | EA | 23046438 | 1 \$ | 23.76 |
| 73 | 56036 FITTING ;NF,ALLISON | EA | 29500034 | 1 \$ | 2.17 |
| 74 | 56705 BRACKET ;ALLISON,SPEED SENSOR | EA | 29533980 | 1 \$ | 14.87 |
| 75 | 56879 SEAL ;ALLISON TRANS OUTPUT | EA | 29546233 | 1 \$ | 24.13 |
| 76 | 56903 SEAL ;ALLISON FEED THROUGH | EA | 29520396;29542084 | 1 \$ | 5.30 |
| 77 | 56911 HARNESS ;ALLISON TRANS WIRING | ΕA | 29536462;29542681 | 1 \$ | 215.90 |
| 78 | 59105 O-RING ;ALLISON B400 IMPUT SHAFT | EA | 23046274 | 1 \$ | 1.00 |

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^{**}Base Year Pricing - All subsequent pricing shall be determined in April of each year using the increase or decrease of Consumer Price Index (CPI).

ATTACHMENT A - PRICING MNT18-51D ALLISON TRANSMISSION PARTS

| 79 | 216688 BOLT, ALLISON B400 HARNESS SHOULDER | EA | 129536564 | 1 \$ | 2.40 |
|-----|---|----|-------------------|--------|--------|
| 80 | 216718 O-RING, ALLISON TORQ CONVERTOR | EA | 23049377 | 1 \$ | 50.73 |
| 81 | 216868 PLUG ASSY, ALLISON MAG DRAIN | EA | 29510885 | 1 \$ | 35.38 |
| 82 | 217152 RING KIT, ALLISON B300/B400 TRANS SEAL | EA | 23042434 | 1 \$ | 17.18 |
| 83 | 217154 SEAL, ALLISON C1 PISTON | EA | 23045614;29546155 | 1 \$ | 6.99 |
| 84 | 217158 SEAL, ALLISON BALANCE PISTON | EA | 23045615;29546156 | 1 \$ | 7.77 |
| 85 | 217163 SEAL, ALLISON C2 OUTER PISTON | EA | 23045613 | 1 \$ | 10.93 |
| 98 | 217167 BUSHING, ALLISON TRANS | EA | 29533975 | 1 \$ | 28.75 |
| 87 | 217170 RING KIT, ALLISON SEAL | EA | 29538448 | 1 \$ | 35.52 |
| 88 | 217174 O-RING, ALLISON TRANS | EA | 29503197;29546166 | 1 \$ | 29.01 |
| 88 | 217177 BUSHING, ALLISON TRANS | EA | 29503196;29549294 | 7 \$ | 22.28 |
| 90 | 217180 O-RING, ALLISON TRANS | EA | 23046868;29546165 | 1 \$ | 47.88 |
| 91 | 217183 O-RING, ALLISON TRANS | EA | 29503383 | 1 \$ | 1.33 |
| 92 | 217186 WASHER, ALLISON TRANS THRUST | EA | 29511406 | ₩. | 2.73 |
| 93 | 217188 PLATE, ALLISON TRANS B | EA | 29537941 | 1 \$ | 5.91 |
| 94 | 217190 O-RING, ALLISON TRANS | EA | 23040579 | 1 \$ | 1.17 |
| 95 | 217192 CLIP,ALLISON TRANS | EA | 29501538;29539807 | \$ | 9.82 |
| 96 | 217195 BEARING, ALLISON TRANS | EA | 29503225 | 1 \$ | 16.23 |
| 97 | 217197 RING, P1 INDEXING ALLISON | EA | 29537939 | 1 \$ | 6.70 |
| 86 | 217199 WASHER, ALLISON TRANS THRUST | EA | 29502040 | 1 \$ | 1.11 |
| 66 | 217201 PLATE, ALLISON TRANS | EA | 29537940 | · 1 \$ | 6.29 |
| 100 | 217203 BUSH,ALLISON TRANS | EA | 29531004 | 1 \$ | 6.94 |
| 101 | 217205 WASHER, ALLISON TRANS THRUST | EA | 29502037 | 1 \$ | 1.65 |
| 102 | 217207 O-RING, ALLISON TRANS | EA | 23043446 | 1 \$ | 0.32 |
| 103 | 217209 GROMMET, ALLISON TRANS | EA | 29536567,29544782 | 1 \$ | 3.61 |
| 104 | 217212 SEAL, ALLISON TRANS | ΕA | 23046376 | 1 \$ | 1.90 |
| 105 | 217214 O-RING, ALLISON TRANS | EA | 23016455 | 1 \$ | 1.83 |
| 106 | 217216 O-RING, ALLISON TRANS | EA | 29503384 | 1 \$ | 1.13 |
| 107 | 217218 O-RING, ALLISON TRANS | EA | 29503382 | 1 \$ | 2.28 |
| 108 | 217220 HARNESS ASSY, ALLISON B300/B400 | EA | 29529313 | 1 \$ | 111.77 |
| 109 | 217821 BUSHING, ALLISON TRANS | EA | 29531001 | 1 \$ | 16.65 |
| 110 | 218093 PIN, ALLISON TRANS PLUG | EA | 29511371 | 1 \$ | 1.05 |
| 111 | 219366 O-RING, B400 TRANSMISSION | EA | 29503208 | 1 \$ | 2.20 |
| 112 | 219869 YOKE ASSEMBLY B400 TRANS SR1337 | EA | 29540326 | 1 \$ | 274.13 |
| 113 | 220241 BEARING, ROLLER SR1337 | EA | 23045816 | 1 \$ | 18.36 |
| 114 | 220247 BEARING, ROLLER SR1337 | EA | 29541565 | 1 \$ | 11.40 |
| 115 | 220253 O-RING; ALLISON B400 TRANS OIL DRAIN | EA | 23019664 | 1 \$ | 0.78 |
| 116 | 221774 HOUSING, C4 | EA | 29542752 | 1 \$ | 90.43 |
| 117 | 221776 PLATE, MD C3/4 PIST RETURN | ΕA | 29542754 | 1 \$ | 59.91 |
| 118 | 221778 HOUSING, MD C3 CLUTCH | ΕA | 29542756 | 1 \$ | 96.99 |
| 119 | 221838 GASKET, JUMPER MANIFOLD 8400 TRANS | EA | 29536766 | 1 \$ | 0.95 |

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ATTACHMENT A - PRICING MNT18-51D ALLISON TRANSMISSION PARTS

| 120 | 221840 SWITCH, C-3 PRESSURE B400 TRANS | EA | 29506484 | 1 \$ | 56.74 |
|-----|--|----|----------|------|-------|
| 121 | 221842 SOLENOID, FORWARD B400 TRANS | EA | 29537369 | 1 \$ | 68.45 |
| 122 | 221936 C3 CLUTCH HOUSING | EA | 29542756 | 1 \$ | 96.99 |
| 123 | 221938 PISTON RETURN PLATE | EA | 29542754 | 1 \$ | 59.91 |
| 124 | 221940 C4 CLUTCH HOUSING | EA | 29542752 | 1 \$ | 90.43 |

^{*}Omnitrans makes no guarantee of usage with regard to quantity

^{**}Base Year Pricing - All subsequent pricing shall be determined in April of each year using the increase or decrease of Consumer Price Index (CPI).



CONTRACT AGREEMENT

between

| CONTRACTOR Valley Power Systems, Inc. 425 South Hacienda Blvd. City of Industry, CA 91745 | CONTRACT DOCUMENTS CONTRACT NO. MNT18-51E ALLISON TRANSMISSION PARTS |
|---|---|
| (hereinafter "CONTRACTOR") Telephone: (626) 333-1243 Email: inquiries@vallypsi.com | |
| And |) Contract Amount: \$41,912.76)))) |
| Omnitrans 1700 West Fifth Street San Bernardino, CA 92411 (hereinafter "OMNITRANS") | Omnitrans Project Manager: Name: Rick Barone Title: Materials Manager Telephone: (909) 379-7402 Email: rick.barone@omnitrans.org Contract Administrator: Name: Krystal N. Turner Title: Contract Administrator Telephone: (909) 379-7202 Email: krystal.turner@omnitrans.org |



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This Agreement is made and entered into as of this <u>4th</u> day of <u>April 2018</u>, by and between Omnitrans (hereinafter referred to as "OMNITRANS") and <u>Valley Power Systems</u>, <u>Inc.</u> (hereinafter referred to as "CONTRACTOR").

RECITALS

WHEREAS, OMNITRANS is a joint powers authority organized under Section 6500 et seq. of the California Government 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:

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 term of this Agreement shall be from the date of execution of this Agreement and continue in effect through <u>April 3, 2021</u>, unless terminated as specified in Section 10 and 11 of this Agreement. Omnitrans has no obligation to purchase any specified amount of products/services. All applicable indemnification provisions in this Agreement shall remain in effect following the termination of this Agreement.

Omnitrans' election to extend the Agreement beyond the Initial Term shall not diminish its right to terminate the Agreement for Omnitrans' convenience or CONTRACTORS default as provided elsewhere in this Agreement. The "maximum term" of this Agreement shall be the period extended from April 4, 2021 through April 3, 2023, which period encompasses the Initial Term and the Option Year One and Option Year Two.

3. CONTRACT OPTIONS

- A. Omnitrans will have the unilateral right in the contract by which, for a specified time, Omnitrans may elect to purchase additional services called for by the contract, or may elect to extend the term of the contract. The requirements below apply:
 - Any options that were requested by Omnitrans and/or contained in the Contractor's PROPOSAL or offer must have been evaluated in making the contract award prior to exercising any such options.
 - 2) Since Contractor's proposed pricing for the option years and additional services are considered in evaluating the Contractor's original proposal and form the basis for awarding the contract, Contractor shall be bound by the proposal pricing for additional services and/or option years, unless otherwise provided herein.
- B. Omnitrans will provide a minimum of thirty days (30) written notice to the Contractor of Omnitrans' exercise of its option to extend the contract years. Omnitrans may give notice of its exercise of the option for additional services at any time during the term of the contract. The minimum time for the written notice may be waived by mutual agreement.

4. COMPENSATION

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 C, and subject to the maximum cumulative payment obligation.

OMNITRANS' maximum cumulative payment obligation under this Agreement shall not exceed Forty One Thousand Nine Hundred Twelve Dollars and Seventy Six Cents (\$41,912.76), 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.

5. 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
Accountspayable@omnitrans.org

A separate invoice shall be used for each shipment. Each invoice shall include, at minimum, the following information:

- Contract number
- Invoice number
- Description of delivery
- Delivery Date
- Total quantity delivered
- Information as requested by OMNITRANS
- B. OMNITRANS shall remit payment within thirty (30) calendar days of approval of the invoices by OMNITRANS' Project Manager.

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.

C. TITLE

- a. Title shall pass to Omnitrans at the time of payment.
- b. The title transferred as above shall in each case be good, and free and clear from any and all security interests, liens, and/or other encumbrances.
- c. The transfer of title as specified above shall not imply Acceptance by Omnitrans, nor relieve the Contractor from the responsibility for strict compliance with the Contract, including warranty as specified in the Article entitled Warranty of Work, and for any loss of or damage to the Work.
- d. The Contractor at its own expense shall promptly execute, acknowledge, and deliver to the Omnitrans proper bills of sale or other written instruments of title in a form as required by Omnitrans; said instruments shall convey to the Omnitrans' title free and clear of debts, claims, liens, mortgages, taxes, and/or encumbrances.
- e. Contractor shall have title to and bear the risk of any loss of or damage to Work purchased hereunder until they are delivered, unloaded, and received by Omnitrans at the FOB Destination specified herein. Contractor's responsibility for loss or damage except for loss or damage resulting from Contractor's negligence, shall cease when title passes to Omnitrans.

6. 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.

7. 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: Krystal Turner

Title: Contract Administrator

Valley Power Systems, Inc. 425 South Hacienda Blvd. City of Industry, CA 91745

Attn: Michael Lee Title: President

8. 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: Maintenance Department.

- a. 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:
 - 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> |
|-----------|-------------|---------------|
| Mark Pham | | Parts Manager |
| | | |
| | | |
| | | |

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.

9. DISPUTE RESOLUTION

Any disputes between the successful CONTRACTOR and OMNITRANS relating to the implementation or administration of the Contract shall be resolved in accordance with this section.

- A. The parties shall first attempt to resolve the dispute informally in meetings or communications between proposer and OMNITRANS.
- B. If the dispute remains unresolved fifteen (15) days after it first arises, proposer may request that Omnitrans' CEO/General Manager issue a recommended decision on the matter in dispute. Omnitrans' CEO/General Manager shall issue the recommended decision in writing and provide a copy to proposer.
- C. If the dispute remains unresolved after review by Omnitrans' CEO/General Manager, either party may seek judicial resolution of the dispute in an appropriate Court of the State of California.

D. Pending final resolution of a dispute under this section, proposer shall proceed diligently with performance in accordance with the Contract and Omnitrans' CEO/General Manager's recommended decision.

10. 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.

11. 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 28, 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 10, 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.

12. 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.

13. 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.

CONTRACTOR shall not, without the express written consent of Omnitrans, either:

- a. Substitute any person, firm, or corporation as subcontractor in place of the subcontractors identified below; or
- b. Permit any subcontract to be assigned or transferred; or
- c. Allow work to be performed by anyone other than the original subcontractor listed below.

| Subcontractor's | Name and Address | Work to Be Performed |
|-----------------|------------------|----------------------|
| N/A | | |
| | | |
| | | |

14. 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.

15. INSURANCE

A. INSURANCE REQUIREMENTS

1) General Requirements for Contractor

- a. Without limiting or diminishing the Contractor's obligation to indemnify or hold Omnitrans harmless, Contractor shall procure, prior to commencement of the services required under this contract and maintain for the duration of the contract at its own expense, insurance of the kinds and in the amounts as indicated below;
- b. Provide Omnitrans with valid original certificates of insurance and endorsements showing Omnitrans as an additional insured.

2) Deductibles or Self-Insured Retention (SIR)

SIR must be declared to and approved by Omnitrans. At the option of Omnitrans, either: the insurer shall reduce or eliminate such deductibles or SIR or Contractor shall procure a bond guaranteeing payment of losses and related investigations, claim administration and defense expenses.

3) Other Insurance Provisions

a. Commercial General Liability and Automobile Liability

Commercial General Liability insurance coverage, including but not limited to, premises liability, contractual liability, products and completed operations liability, personal and advertising injury covering claims which may arise from or out of Contractor's performance of its obligations hereunder and if Contractor's vehicles or mobile equipment are used in the performance of the obligations under this Agreement, then Contractor shall maintain liability insurance for all owned, non-owned or hired vehicles so used. Policy

shall name Omnitrans, its officers, officials, employees, agents and volunteers as additional insured as respects: liability arising out of activities performed by or on behalf of Contractor; products and completed operations of Contractor; premises owned, occupied or used by Contractor; or automobiles owned, leased, hired or borrowed by Contractor. The coverage shall contain no special limitations of the scope of protection afforded Omnitrans, its officers, officials, employees, agents, and volunteers.

- For any claims related to this project, Contractor's insurance coverage shall be primary insurance as respects Omnitrans, its officers, officials, employees, agents, and volunteers. Any insurance and/or deductibles and/or self-insured retentions or self-insured programs maintained by Omnitrans, its officers, officials, employees, agents, and volunteers shall be excess of Contractor's insurance and shall not be construed as contributory.
- 2. Contractor's insurance shall apply separately to each insured against whom claim is made or suit is brought, except with respect to the limits of the insurer's liability.
- 3. Each insurance policy required by this clause shall be endorsed to state that coverage shall not be suspended, voided, cancelled by either party, reduced in coverage or in limits except after thirty (30) days prior written notice has been given to Omnitrans.

b. Workers' Compensation

If the Contractor has employees as defined by the State of California, the Contractor shall maintain statutory Workers' compensation Insurance (Coverage A) as prescribed by the laws of the State of California. Policy shall include Employers' Liability (Coverage B) including Occupational Disease with limits not less than \$1,000,000 per person per accident. The policy shall be endorsed to waive subrogation in favor of Omnitrans and, if applicable, to provide a Borrowed Servant/Alternate Employer Endorsement.

c. Care, Custody, and Control

Contractor shall insure any Omnitrans property while under its Care, Custody, and Control according to the requirements listed in the insurance coverage required.

4) Acceptability of Insurers

Insurance companies shall be State of California admitted or approved and have a current **A.M. Best's** rating of no less than **A:VIII.**

5) Verification of Coverage

- a. Contractor shall furnish Omnitrans with original endorsements affecting coverage required by this clause. The endorsements are to be signed by a person authorized by that insurer to bind coverage on its behalf. All insurance certificates and endorsements are to be received and approved by Omnitrans before work commences.
- b. As an alternative, Contractor's insurer may provide complete, certified copies of all required insurance policies, including endorsements affecting the coverage required by these specifications.
- c. In lieu of purchasing insurance and providing original endorsements and or certificates of insurance, the Contractor may provide proof of self-insurance; such proof must be to the satisfaction of Omnitrans.

6) Subcontractors

Contractor shall include all subcontractors as insureds under its policies or shall furnish separate certificates and endorsements for each subcontractor. All coverage for subcontractors shall be subject to all of the requirements stated herein.

7) Notification of Terminated Insurance

Insurance shall not be terminated or expire without thirty (30) days written or electronic notice, and are required to be maintained in force until completion of the contract.

B. MINIMUM INSURANCE COVERAGE

If the Contractor maintains broader coverage and/or higher limits than the minimum requirements shown below, Omnitrans requires and shall be entitled to the broader coverage and/or higher limits maintained by the Contractor.

| 1) | |
|----|--|
| 2) | Automobile Liability: \$1,000,000; per occurrence for bodily and property damage liability and aggregate; Omnitrans named and endorsed as an Additional Insured. |
| 3) | ☐ Errors and Omissions Liability: \$1,000,000; combined single limit bodily and property damage liability per occurrence and \$3,000,000 aggregate or, |
| 4) | ☐ Professional Liability: \$1,000,000; per occurrence and aggregate. |

| 5) | Workers' Compensation: statutory limits or, |
|-----|---|
| 6) | Self Insurance Program: a State Approved program in an amount and form that meets all applicable requirements of the Labor Code of the State of California. |
| 7) | Employer's Liability: \$1,000,000; per occurrence. |
| 8) | Environmental Liability: \$1,000,000; per occurrence and aggregate; Omnitrans named and endorsed as an Additional Insured. |
| 9) | ☐ Umbrella Policy: \$4,000,000; per occurrence and aggregate Additional coverage for the above policies, <i>Omnitrans Additional Insured</i> . |
| 10) | All drivers making deliveries of products specified on this solicitation shall have Hazardous Materials Endorsements on their Commercial Drivers License, and such other Endorsements as may be required by relevant laws and/or regulations. |

16. 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.

17. 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.

18. 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.

19. 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.

20. OWNERSHIP RIGHTS

Α. 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 To the extent there may be any question of rights of Programmers. 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.

21. 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.

22. 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.

23. 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.

24. 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.

25. 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.

26. 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).

27. COMPLIANCE WITH LAW

A. 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.
- B. Government regulations that directly affect the CONTRACTOR'S performance of this contract and unforeseen impacts, which neither party could have contemplated at the onset of the contract and have an unconscionable impact on the CONTRACTOR may be given special pricing consideration. The parties, in good faith, shall review established rates and may adopt any mutually agreed new rates, which shall only be effective as agreed upon by the parties. Thorough documentation including all cost elements is required to support the Contractor's claim to any relief under this clause.

28. 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.

29. 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.

30. 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.

31. 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.

32. 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.

33. 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.

34. 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.

35. 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.

36. LICENSING, PERMITS AND INSPECTION COSTS

The CONTRACTOR warrants that it has all necessary licenses and permits Α. required by the laws of the United States, State of California, and the County of San Bernardino, the Local Jurisdictions, and all other appropriate governmental agencies, and agrees to maintain these licenses and permits in effect for the duration of the Agreement. Further, FIRM warrants that its employees, agents, and contractors and subcontractors shall conduct themselves in compliance with such laws and licensure requirements including, without limitation, compliance with laws applicable to nondiscrimination, sexual harassment and ethical behavior throughout the duration of this Agreement. CONTRACTOR further warrants that it shall not retain or employ an unlicensed subcontractor to perform work on this Project. CONTRACTOR shall notify OMNITRANS immediately and in writing of its employees', agents', contractors' or subcontractors' inability to obtain or maintain, irrespective of the pendency of any appeal, any such licenses, permits, approvals, certificates, waivers, exemptions. inability shall be cause for termination of this Agreement.

B. CONTRACTOR shall procure all permits and licenses; pay all charges, assessments and fees, as may be required by the ordinances and regulations of the public agencies having jurisdiction over the areas in which the work is located, and shall comply with all the terms and conditions thereof and with all lawful orders and regulations of each such public agency relating to construction operations under the jurisdiction of such agency.

37. PRECEDENCE

Conflicting provisions hereof, if any, shall prevail in the following descending order of precedence: (1) the provisions of this Agreement, and any and all of its Amendments, Appendices, Exhibits and Attachments; (2) provisions of IFB-MNT18-51 and any and all of its Addenda, Appendices, Exhibits and Attachments; and (3) CONTRACTOR's bid dated February 20, 2018 and its Appendices, Exhibits, Attachments.

38. 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 | VALLEY POWER SYSTEMS, INC. |
|--|---------------------------------------|
| P. Scott Graham CEO/General Manager | Name: Michael Lee Title: President |
| Date | Date |

Federal Tax I.D. No. 95-1589118

IDP

CONTRACT MNT18-51E REVISED 04/17/17

ATTACHMENT A - PRICING MNT18-51E ALLISON TRANSMISSION PARTS

| Item Num | Item Code | Item Num Item Code Description | Unit of Measure | Model Number | *Quantity * | **Base Year Pricing | icing |
|----------|-----------|---|--|--|-------------|---------------------|----------|
| | 11866 | 11866 GASKET ;NF B400 ,THOMAS B300 FILTER | EA | 29524449 | 1 \$ | | 1.28 |
| 2 | 18002 | 18002 SELECTOR ;NF,ALLISON TRANS SHIFT | EA | 095902;122397;29538371 | 1 \$ | | 785.45 |
| 3 | 18416 | SOLENOID ;8400,ACCUM. RETARDER | EA | 29544455;29547934;29552377;29555434;29557354;6334198 | 1 \$ | | 248.52 |
| | | | THE REAL PROPERTY AND ADDRESS OF THE PERTY ADDRESS OF THE PERTY ADDRESS OF THE PERTY AND ADDRESS OF THE PERTY ADDR | 142917;29536134;29537291;29538352;29541151;29541227; | | | |
| 4 | 19836 | ECU ;NF,THOMAS B400,B300 TRANS | EA | 29543300 | 1 \$ | | 2,725.37 |
| 2 | 22327 | 22327 PLUG ;ALLISON 8400,B300 TRANS DRAIN | EA | 29534362 | 1 \$ | | 13.65 |
| 9 | 22343 | 22343 O-RING ;ALLISON B400 TRANS | EA | 23047185 | 1 \$ | | 5.11 |
| 7 | 22350 | 22350 SEAL ;ALLISON B400 TRANS SHAFT | EA | 29507528;29544137 | 1 \$ | | 9.47 |
| 8 | 23093 | 23093 SENSOR ;ALLISON, 8400 SPEED INPUT | EA | 29509637;29544139 | 1 \$ | | 78.24 |
| 6 | 24307 | 24307 HOUSING ;ALLISON B400 TRANS STATOR | EA | 29528321 | 1 \$ | | 706.05 |
| 10 | 26229 | 26229 GEAR; ALLISON B400 RING | EA | 29502093 | 1 \$ | | 125.86 |
| 11 | 26930 | 26930 CARRIER; NF WORLD TRANS B400 | EA | 29537929 | 1 \$ | | 698.39 |
| 12 | 26948 | 26948 NUT; NF WORLD TRANS B400 | EA | 29506387 | 1 \$ | | 28.79 |
| 13 | 27102 | 27102 SEAL ;84008/JD REPOWER TRANS FILL TUBE | EA | 097127;29507823;29546229 | 1 \$ | | 3.30 |
| 14 | 29157 | 29157 MODULE ;NF,THOMAS B400,B300 3-WAY | EA | 29511320;J600816;TBBJ600816 | 1 \$ | | 122.89 |
| 15 | 30379 | 30379 HOUSING ;ALLISON B400 TRANS,CLUTCH | EA | 29501360 | 1 \$ | | 212.83 |
| 16 | 30437 | 30437 PLATE; NF B400B TRANS BACK | EA | 29514804 | 1 \$ | | 676.13 |
| 17 | 30445 | 30445 LOCKUP ;NF B400B TRANS PISTON | EA | 29500939;29542016 | 1 \$ | | 103.16 |
| 18 | 30452 | 30452 SHIMS; NF 8400B TRANS CONVERTER | EA | 29502275 | 1 \$ | | 5.99 |
| 19 | 30460 | 30460 SHIMS ;NF 8400B TRANS CONVERTER | EA | 29502276 | 1 \$ | | 5.62 |
| 20 | 30478 | 30478 SHIMS; NF B400B TRANS CONVERTER | EA | 29502277 | 1 \$ | | 4.58 |
| 21 | 30924 | 30924 GASKET;NF B400R TRANS | EA | 29536742 | 1 \$ | | 14.71 |
| 22 | 31336 | 31336 PLATE ;ALLISON, B400 TRANS | EA | 29501424 | 1 \$ | | 22.66 |
| 23 | 31948 | 31948 ADAPTER ASSY ;ALLISON B400R RING GEAR | EA | 29512130 | 1 \$ | | 468.35 |
| 24 | 32110 | 32110 BOLT;ALLISON B400R & ZF TRANS 12X1.25X3 | EA | 117139;29502097 | 1 \$ | | 3.51 |
| 25 | 32128 | 32128 BOLT ;NF B400R TRANS M6X1.00X14 | EA | 29513724 | 1 \$ | _ | 3.12 |
| 26 | | 32136 FLEXPLATE ASSY ;NF B400R TRANS | EA | 29512126 | 1 \$ | | 60.80 |
| 27 | 33951 | 33951 O-RING ;B400 TRANS | EA | 29512875 | 1 \$ | | 0.90 |
| 28 | 36848 | 36848 GEAR SET, ALLISON 8400 TRANS | EA | 29542025 | 1 \$ | | 254.85 |
| 29 | 37408 | 37408 SPRING ;B400R TRANS ACCUMINLATOR | EA | 29500064 | 1 \$ | | 1.89 |
| 30 | 37424 | 37424 TURBINE ;B400R TRANS | EA | 29503979 | 1 \$ | | 765.92 |
| 31 | 37440 | 37440 SEAL KIT ,ALLISON ACCUMILATOR | EA | 29535973 | 1 \$ | | 312.43 |
| 32 | 37838 | 37838 GASKET ;NF,ALLISON 8400 TRANS | EA | 29503283 | 1 \$ | | 16.23 |
| 33 | 37846 | 37846 GASKET ;NF,B400 TRANS | EA | 29535230 | 1 \$ | | 9.76 |
| 34 | 37861 | 37861 FILTER; NF B400 TRANS SUCTION | EA | 29536860;29543067 | 1 \$ | | 43.39 |
| 35 | 39867 | 39867 CARRIER & BUSHING ;ALLISON B400 | EA | 29537936 | 1 \$ | | 371.61 |
| 36 | 45328 | 45328 PUMP ;ALLISOM B400 CONVERTOR | EA | 29514792 | 1 \$ | | 1,081.45 |
| 37 | 48280 | 48280 O-RING ;ALLISON 8400 TRANS OIL DRAIN | EA | 23019664 | 1 \$ | | 0.90 |
| 38 | 49205 | 49205 SENSOR ;ALLISON B400 TURBINE SPEED | EA | 29503531;29543433 | 1 \$ | | 80.98 |
| 39 | 49510 | 49510 PISTON ;ALLISON TRANS C2 | EA | 23048692 | 1 \$ | | 56.98 |

^{*}Omnitrans makes no guarantee of usage with regard to quantity **Base Year Pricing - All subsequent pricing shall be determined in April of each year using the increase or decrease of Consumer Price Index (CPI).

ATTACHMENT A - PRICING MNT18-51E ALLISON TRANSMISSION PARTS

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| SSSS SEAL ALLISON REAL INNER PRITON EA 230465611,25946153 1 5 94189 GASKET ALLISON REAL INNER PRITON EA 230465411,25946153 1 5 94189 GASKET ALLISON BEORN TRAMS EA 230504347 1 5 94180 GASKET ALLISON BEORN TRAMS EA 120504304 1 5 94220 GASKET ALLISON BEORN TRAMS EA 120504304 1 5 94221 GASKET ALLISON BEORN TRAMS EA 120504304 1 5 94221 GASKET ALLISON BEORN TRAMS EA 120504304 1 5 94221 GASKET ALLISON BEORN TRAMS EA 120504304 1 5 94221 GASKET ALLISON BEORN TRAMS EA 120504304 1 5 94221 GASKET ALLISON BEON TRANSISSON EA 1205000223 1 5 94421 GASKET ALLISON BEON TRANSISSON EA 1205000223 1 5 94421 GASKET ALLISON BEON TRANSISSON EA 1205000223 1 5 9443 SADAR ALLISON BEON TRANSISSON EA 120500223 1 5 <td>43</td> <td>EA</td> <td>29503288</td> <td></td> <td>21.03</td> | 43 | EA | 29503288 | | 21.03 |
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| SAGES STANDOR PANAS TURBINE EA 295360450 1 \$ 5-46213 STANDOR FARTERRON BAND TRANS EA 295360450 1 \$ 5-4623 STANDOR FARTERRON BAND TRANS EA 295336045,295465396 1 \$ 5-4775 GASKET TRANS B300/PAGO SEPERATOR PLATE EA 29533604 1 \$ 5-5031 SHIM JALLISON BADO TRANS EA 29503218 1 \$ 5-5041 SHIM JALLISON BADO TRANS EA 29503218 1 \$ 5-5042 SHIM JALLISON BADO TRANS EA 29503221 1 \$ 5-5043 SHIM JALLISON BADO TRANS EA 29503222 1 \$ 5-5043 SHIM JALLISON BADO TRANS EA 29503224 1 \$ 5-5045 SHIM JALLISON BADO TRANS EA 29503224 1 \$ 5-5045 SHIM JALLISON BADO TRANS EA 2950324 1 \$ 5-5251 SHIM JALLISON BADO TRANS EA 2950324 1 \$ 5-5252 HANG JALLISON BADO TRANS BETH SECARS EA 2950324 1 \$ 5-5252 | 51 | EA | 29530092;29544144 | | 331.38 |
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| SAG643 BLUSHING ÇALLISCON BAOOT TRANS EA 29531005/29546596 1 5 SAG751 GASCEL TRANSE SAGORGOO SEPERATIOR PLATE EA 29532043 1 5 SSG03 SENIGNE, ALLISON BAOOT TRANS EA 29503218 1 5 SSG03 SHIMIA, ALLISON BAOOT TRANS EA 29503223 1 5 SSG03 SHIMIA, ALLISON BAOOT TRANS EA 29503223 1 5 SSG03 SHIMIA, ALLISON BAOOT TRANS EA 29503223 1 5 SSG03 SHIMIA, ALLISON BAOOT TRANS EA 29503223 1 5 SSG03 SHIMIA, ALLISON BAOOT TRANS EA 29503223 1 5 SSG04 SHIMIA, ALLISON BAOOT TRANS EA 29503223 1 5 SSG04 SHIMIA, ALLISON BAOOT TRANS FLAT EA 29503224 1 5 SSC344 OARNOT SANAL LOCKNU EA 29503242 1 5 SSC344 OARNOT SANAL LOCKNU EA 295034662 1 | 53 | EA | 29536743 | | 748.95 |
| 54775 GASKET ;TRANIS B330C/B40O SEPERATOR PLATE EA 29535840 1 \$ 55063 SSURISON BADOT TRANIS EA 2954343 1 \$ 55061 SHIM, ALLISON BADOT TRANIS EA 29503218 1 \$ 55063 SHIM, ALLISON BADOT TRANIS EA 29503220 1 \$ 55063 SHIM, ALLISON BADOT TRANIS EA 29503222 1 \$ 55103 SHIM, ALLISON BADOT TRANIS EA 29503223 1 \$ 55204 CHRIM, ALLISON BADOT TRANIS EAT EA 29503224 1 \$ 55254 CHRIMO, ALLISON BADOT TRANIS EAT EA 29503234 1 \$ 55254 CHRING, ALLISON BADOT TRANIS EAT EA 29503368 \$ 1 \$ 55254 CHRING, ALLISON BADOT TRANIS EAT EA 29503368 \$ 1 \$ 55254 OFRING, ALLISON BADOT TRANIS EAT EA 29506386 \$ 1 \$ 55258 WASHER, ALLISON BADOT TRANIS ET HAS | 54 | EA | 29531005;29546596 | | 4.27 |
| SSOBSI SENSOR ALLISON BADOT RANIS EA 29543432 1 \$ SSOBS SIGNALISON BADOT RANIS EA 29503218 1 \$ SSOBS SHIM, ALLISON BADOT RANIS EA 29503220 1 \$ SSOBS SHIM, ALLISON BADOT RANIS EA 29503224 1 \$ SSOBS SHIM, ALLISON BADOT TRANIS EA 29503224 1 \$ SSDBS SHIM, ALLISON BADOT TRANIS EA 29503224 1 \$ SSDBS SHIM, ALLISON BADOT TRANIS EA 29503224 1 \$ SSDB SHIM, ALLISON BADOT TRANIS EA 29503224 1 \$ SSDB SEAR MING, ALLISON BADOT TRANIS BADOT TRANIS EA 2950324 1 \$ SSDB SEAR MING, ALLISON BADOT TRANIS BADOT TRAN | 55 | EA | 29535940 | ļ | 2.08 |
| SSOGIS ISHIM JALLISON BADO TRANS EA 29503218 1 \$ SSOGYS ISHIM JALLISON BADO TRANS EA 29503219 1 \$ SSOGYS ISHIM JALLISON BADO TRANS EA 29503222 1 \$ SSOGS ISHIM JALLISON BADO TRANS EA 29503223 1 \$ SS111 SHIM JALLISON BADO TRANS EA 29503223 1 \$ S5111 SHIM JALLISON BADO TRANS FLAT EA 29503243 1 \$ S5224 OFRIGA JALLISON BADO TRANS HOOK EA 29503346 1 \$ S5235 INJA JALLISON BADO TRANS LICKNU EA 2950334 1 \$ S5234 OFRIGA JALLISON BADO TRANS LICKNU EA 2950334 1 \$ S5235 INVASHER JALLISON BADO TRANS LICKNU EA 2950334 1 \$ S5231 IRING JALLISON BADO TRANS RELI-ASG,CVR EA 29536728 1 \$ S5331 GASKET JALLISON BADO TRANS RELI-ASG,CVR EA 29536728 1 \$ S5332 GASKET JALLISON BADO TRANS RELI-ASG,CVR EA 29536728 1 \$ | 56 | EA | 29543432 | _ | 78.32 |
| SSOOP SHIMI ALLISON BAOO TRANS EA 29502210 1 \$ S509S SHIMI ALLISON BAOO TRANS EA 29503222 1 \$ S510S SHIMI ALLISON BAOO TRANS EA 29503224 1 \$ S510S SHIMI ALLISON BAOO TRANS EA 29503224 1 \$ S510S SHIMI ALLISON BAOO TRANS EA 2950324 1 \$ S510S SHIMI ALLISON BAOO TRANS EAT EA 2950324 1 \$ S524 O-RING ALLISON BAOO TRANS LOCKNU EA 2950324 1 \$ S524 O-RING ALLISON BAOO TRANS LOCKNU EA 29510662 1 \$ S5228 INASHER JALLISON BAOO TRANS TRET HSG,CVR EA 29510662 1 \$ S5230 INASKET ALLISON BAOO TRANS TRET HSG,CVR EA 29510662 1 \$ S5321 IRNG ALLISON BAOO TRANS TRET HSG,CVR EA 29510662 1 \$ S5321 IRNG ALLISON BAOO TRANS RET HSG,CVR EA 29510662 | 57 | EA | 29503218 | 1 \$ | 4.03 |
| SSOBS SHIM, JALLISON B400 TRANS EA 2950322 1 \$ S508S SHIM, JALLISON B400 TRANS EA 2950323 1 \$ S510B SHIM, JALLISON B400 TRANS EA 2950324 1 \$ S511B SHIM, JALLISON B400 TRANS FLAT EA 2950324 1 \$ S512B SHIM, JALLISON B400 TRANS FLAT EA 2950324 1 \$ S523B ASHIK, JALLISON B400 TRANS FLAT EA 2950336 1 \$ S522B MASHE ALLISON B400 TRANS LOCKNU EA 2950638 1 \$ S523B MASHE ALLISON B400 TRANS SEAL EA 29510682 1 \$ S532S GASKE TALLISON B400 TRANS SEAL EA 29510682 1 \$ S532I RING, JALLISON B400 TRANS RET/HSG,CVR EA 29537867 1 \$ S532I GASKET TALLISON B400 TRANS RET/HSG,CVR EA 2950034 1 \$ S532A GASKE TALLISON B400 CUP-ROLLER EA 2950034 1 \$ S532B EARING ALLISON LATANS WIRING EA 29533980 1 \$ <td>58</td> <td>EA</td> <td>29503219</td> <td>ļ</td> <td>4,41</td> | 58 | EA | 29503219 | ļ | 4,41 |
| SSD05 SHIMI JALLISON B400 TRANS EA 29503223 1 \$ S5103 SHIMI JALLISON B400 TRANS EA 29503234 1 \$ S5113 SHIMI JALLISON B400 TRANS FLAT EA 29503244 1 \$ S5214 CHIMI JALLISON B400 TRANS FLAT EA 29503744 1 \$ S5221 RINIG JALLISON B400 TRANS LATAR EA 29503744 1 \$ S5221 RINIG JALLISON B400 TRANS LATAR EA 29503744 1 \$ S5221 RINIG JALLISON B400 TRANS RETLASC EA 29503746 1 \$ S5231 IRING JALLISON B400 TRANS RETLASC EA 2930709 1 \$ S5327 GASKET JALLISON B400 TRANS RETLASC EA 293470 1 \$ S5323 GASKET JALLISON B400 TRANS RETLASC EA 29346437 1 \$ S5323 GASKET JALLISON B400 TRANS RELLER EA 29546438 1 \$ S5323 BEARING ASSY JALLISON, TRANS OLIPUT EA 2952039 | 59 | EA | 29503220 | 1 \$ | 4,49 |
| 55103 SHIMI JALLISON B400 TRANS EA 29503234 1 \$ 55111 SHIMI JALLISON B400 TRANS EA 29503244 1 \$ 55224 HONING JALLISON B400 TRANS FILAT EA 29503744 1 \$ 55224 IRING JALLISON B400 TRANS LOCKNU EA 29503744 1 \$ 55224 IRING JALLISON B400 TRANS LOCKNU EA 29506386 1 \$ 55223 O-RING JALLISON B400 TRANS SEAL EA 23047019 1 \$ 55233 O-RING JALLISON B400 TRANS RETJASG,CNR EA 23940637 1 \$ 55231 RING JALLISON B400 TRANS RETJASG,CNR EA 23946437 1 \$ 55232 I GASKET JALLISON B400 TRANS RETJASG,CNR EA 23946437 23946437 1 \$ 55323 GASKET JALLISON B400 TRANS RETJASG,CNR EA 23946437 23946437 1 \$ 55324 GASKET JALLISON B400 TRANS WIRING EA 23946238 23946437 1 \$ 550516 BEARING JALLISON TRANS WIRING | 9 | EA | 29503222 | | 6.98 |
| 55211 SHIMI ALLISON BA00 TRANS EA 29503224 1 \$ 55240 O-RING ALLISON BA00 TRANS FLAT EA 294056423546157 1 \$ 55240 CARLISON BA00 TRANS FLAT EA 29506386 1 \$ 55269 WASHER ALLISON BA00 TRANS SEAL EA 29506386 1 \$ 55209 POERING ALLISON BA00 TRANS SEAL EA 29510682 1 \$ 55201 RING ALLISON BA00 TRANS SEAL EA 29510682 1 \$ 55230 CARNET ALLISON BA00 TRANS RET,HSG,CVR EA 29536728 1 \$ 55321 GASKET ALLISON BA00 TRANS RET,HSG,CVR EA 29536728 1 \$ 55321 GASKET ALLISON BA00 CUP-ROLLER EA 29546437 1 \$ 55325 BEARING ASSY ALLISON BA00 CUP-ROLLER EA 2950034 1 \$ 55605 SEAL ALLISON TRANS OLTPUT EA 295036622364288 1 \$ 55605 SEAL ALLISON TRANS REAR EA 2952036622 | 61 | EA | 29503223 | | 11.12 |
| 55244 O-RING ;ALLISON B400 TRANS FLAT EA 2362546157 1 \$ 55251 RING ;ALLISON B400 TRANS LOCKNU EA 2950374 1 \$ 55253 IRING ;ALLISON B400 TRANS LOCKNU EA 2950376 1 \$ 55293 ORNIG ;ALLISON B400 TRANS 11.48 ID EA 29510682 1 \$ 55293 IRING ;ALLISON B400 TRANS SEAL EA 2953767 1 \$ 55231 GASKET ;ALLISON B400 TRANS SEAL EA 2953767 1 \$ 55327 GASKET ;ALLISON B400 TRANS REAL EA 2953767 1 \$ 55335 BEARING SASY ;ALLISON B400 CUP-ROLLER EA 2950034 1 \$ 55343 BEARING ;ALLISON B400 CUP-ROLLER EA 2950034 1 \$ 56363 FITING ;NF,ALLISON TRANS OLTPUT EA 2950034 1 \$ 56903 FAL ALLISON TRANS KERD EA 295303623542681 1 \$ 56903 FAL JALLISON TRANS REAR EA 29540338 <td>62</td> <td>EA</td> <td>29503224</td> <td></td> <td>8.07</td> | 62 | EA | 29503224 | | 8.07 |
| S5251 RING JALLISON B400 TRANS HOOK EA 2950374 1 5 S5269 WASHER, JALLISON B400 TRANS LOCKNU EA 29506386 1 \$ S5293 O-RING JALLISON, B400 TRANS SEAL EA 29510682 1 \$ S5301 RING JALLISON, B400 TRANS RET, HSG/CVR EA 29530628 1 \$ S531 RASKET JALLISON B400 TRANS RET, HSG/CVR EA 29530628 1 \$ S5321 GASKET JALLISON B400 TRANS RET, HSG/CVR EA 2953078 1 \$ S5322 GASKET JALLISON B400 CUP-ROLLER EA 2950034 1 \$ S5335 BEARING ASLISON B400 CUP-ROLLER EA 2950034 1 \$ S6363 FITTING JALLISON EA 2950034 1 \$ S6705 BRACKET JALLISON TRANS WIRING EA 29533380 1 \$ S6705 BRACKET JALLISON TRANS WIRING EA 29546233 29546234 \$ 1 \$ S6903 JEAL JALLISON TRANS WIRING <td>63</td> <td>EA</td> <td>23045654;29546157</td> <td></td> <td>11.88</td> | 63 | EA | 23045654;29546157 | | 11.88 |
| 55269 WASHER, JALLISON B400 TRANS LOCKNU EA 29506386 1 \$ 55293 O-RING; JALLISON, B400 TRANS SEAL EA 23047019 1 \$ 55293 O-RING; JALLISON, B400 TRANS RET, HSG, CVR EA 2953028 1 \$ 55319 GASKET; JALLISON B400 TRANS RET, HSG, CVR EA 29537867 1 \$ 55324 GASKET; JALLISON B400 TRANS RET, HSG, CVR EA 29537867 1 \$ 55324 GASKET; JALLISON B400 TRANS RET, HSG, CVR EA 29546437 1 \$ 55324 BEARING SALLISON B400 CUP-ROILER EA 29530034 1 \$ 56328 FITTING SIN, FALLISON B400 CUP-ROILER EA 29530034 1 \$ 56329 FALLISON FEED THROUGH EA 29534233 1 \$ 56903 SEAL, JALLISON FEED THROUGH EA 29536425,29542681 1 \$ 56911 HARNESS, JALLISON FEED THROUGH EA 2953642376 5 5 55910 SENSOR ; JALLISON TRANS REA | 49 | EA | 29503714 | | 18.03 |
| 55293 O-RING ;ALLISON,B400 TRANS 11.48 ID EA 29540682 1 \$ 55301 RING ;ALLISON,B400 TRANS REAL EA 29530628 1 \$ 55319 GASKET ;ALLISON B400 TRANS RET,HSG,CVR EA 29537867 1 \$ 55319 GASKET ;ALLISON B400 STATOR HOUSING EA 29537867 1 \$ 55331 BEARING ASSY ;ALLISON CONE & ROLLER EA 23046437 1 \$ 55333 BEARING SALLISON B400 CUP-ROLLER EA 23046438 1 \$ 56334 BEARING ;ALLISON SADO CUP-ROLLER EA 29533980 1 \$ 560705 BRACKET ;ALLISON FRANS CUTPUT EA 29540238 1 \$ 56920 SEAL ;ALLISON FRANS WIRING EA 29536462;29542681 1 \$ 56921 HARNESS ;ALLISON FRANS WIRING EA 2953642376 1 \$ 55921 SENSOR ;ALLISON FRANS WIRING EA 2953642376 1 \$ 55921 SENSOR ;ALLISON FRANS WIRING EA | 65 | EA | 29506386 | | 4.94 |
| 55301 RING 'ALLISON,BA00 TRANS SEAL EA 29530682 1 \$ 55319 GASKET 'ALLISON BA00 TRANS RET,HSG,CVR EA 29536728 1 \$ 55327 GASKET 'ALLISON BA00 TRANS RET,HSG,CVR EA 29537867 1 \$ 55332 BEARING ASSY 'ALLISON BA00 CUP-ROLLER EA 23046438 1 \$ 56343 BEARING SALLISON BA00 CUP-ROLLER EA 2950034 1 \$ 56363 FITTING ;NF, ALLISON BA00 CUP-ROLLER EA 2950034 1 \$ 563705 BRACKET ;ALLISON TRANS OUTPUT EA 29546233 1 \$ 56903 SEAL ;ALLISON TRANS WIRING EA 29546234 1 \$ 56903 SEAL ;ALLISON TRANS WIRING EA 29542376 1 \$ 56903 SEAL ;ALLISON TRANS CIL LEVEL EA 29542376 29542376 1 \$ 57590 COVER ;ALLISON TRANS CIL LEVEL EA 29542376 29542376 1 \$ 59105 O-RING ;ALLISON | 99 | EA | 23047019 | | 28.96 |
| 55319 GASKET ALLISON BA00 TRANS RET, HSG, CVR EA 29536728 1 \$ 55327 GASKET ALLISON BA00 STATOR HOUSING EA 29537867 1 \$ 55332 BEARING ASSY ALLISON BA00 STATOR HOUSING EA 23046437 1 \$ 55333 BEARING ASLUSON COP-ROLLER EA 23046438 1 \$ 56036 FITTING SALLISON BA00 CUP-ROLLER EA 2950034 1 \$ 56036 FITTING SALLISON SPEED SENSOR EA 29546233 1 \$ 56705 BRACKET JALLISON SPEED SENSOR EA 29546233 1 \$ 56879 SEAL JALLISON TRANS WIRING EA 295462236 1 \$ 56903 SEAL JALLISON TRANS REAR EA 29542376 1 \$ 57596 COVER JALLISON TRANS REAR EA 29542376 1 \$ 57590 SENDALISON TRANS REAR EA 29542376 1 \$ 57591 SENDA, JALLISON BA00 IMPUT SHAFT EA 23046274 1 \$ 51058 BOLT, ALLISON BA00 HARNESS SHOULDER EA 29536564 1 \$ < | 29 | EA | 29510682 | | 2.18 |
| 55327 GASKET ;ALLISON B400 STATOR HOUSING EA 29537867 1 \$ 55335 BEARING ASSY ;ALLISON CONE & ROLLER EA 23046437 1 \$ 55343 BEARING SALLISON B400 CUP-ROLLER EA 23046438 1 \$ 56036 FITTING ;NF,ALLISON B400 CUP-ROLLER EA 29500034 1 \$ 56036 SEAL ;ALLISON SPEED SENSOR EA 29533380 1 \$ 56879 SEAL ;ALLISON TRANS OUTPUT EA 29540233 1 \$ 56879 SEAL ;ALLISON TRANS WIRING EA 29534022084 1 \$ 56911 HARNESS ;ALLISON TRANS WIRING EA 29534022081 1 \$ 57596 COVER ;ALLISON TRANS OIL LEVEL EA 29530105;29544668 1 \$ 57901 SENSOR ;ALLISON TRANS OIL LEVEL EA 29530105;29544668 1 \$ 57902 O-RING ;ALLISON B400 IMPUT SHAFT EA 29530105;29544668 1 \$ 516688 BOLT, ALLISON B400 HARNESS SHOULDER EA 29536564 1 \$ | 89 | EA | 29536728 | | 1.30 |
| 55335 BEARING ASSY ;ALLISON,CONE & ROLLER EA 23046437 1 \$ 55343 BEARING ;ALLISON B400 CUP-ROLLER EA 29500034 1 \$ 56036 FITTING ;NF,ALLISON EA 29500034 1 \$ 560705 BRACKET ;ALLISON SPEED SENSOR EA 29546233 1 \$ 560705 SEAL ;ALLISON TRANS OUTPUT EA 29546233 1 \$ 56903 SEAL ;ALLISON TRANS WIRING EA 29546233 1 \$ 56904 SEAL ;ALLISON TRANS WIRING EA 295462,29542681 1 \$ 56911 HARNESS ;ALLISON TRANS OIL LEVEL EA 29542376 1 \$ 57901 SENSOR ;ALLISON TRANS OIL LEVEL EA 29530105;29544668 1 \$ 57904 SENSOR ;ALLISON BA00 IMPUT SHAFT EA 29530105;29544668 1 \$ 51668 BOLT,ALLISON BA00 HARNESS SHOULDER EA 29536564 1 \$ | 69 | EA | 29537867 | | 22.41 |
| 55343 BEARING ;ALLISON B400 CUP-ROLLER EA 23046438 1 \$ 56036 FITTING ;NF,ALLISON EA 29500034 1 \$ 56036 FITTING ;NF,ALLISON,SPEED SENSOR EA 29533980 1 \$ 56705 BRACKET ;ALLISON TRANS OUTPUT EA 29546233 1 \$ 56903 SEAL ;ALLISON TRANS WIRING EA 29536462;29542681 1 \$ 56911 HARNESS ;ALLISON TRANS REAR EA 2953246631 1 \$ 57904 SENSOR ;ALLISON TRANS OIL LEVEL EA 29530105;29544668 1 \$ 57901 SENSOR ;ALLISON B400 IMPUT SHAFT EA 23046274 1 \$ 59105 O-RING ;ALLISON B400 IMPUT SHAFT EA 29536564 1 \$ | 20 | ЕА | 23046437 | | 61.26 |
| 56036 FITTING ;NF,ALLISON EA 29500034 1 \$ 56705 BRACKET ;ALLISON,SPEED SENSOR EA 29546233 1 \$ 56903 SEAL ;ALLISON TRANS OUTPUT EA 29546233 1 \$ 56903 SEAL ;ALLISON FEED THROUGH EA 29520396;29542681 1 \$ 56911 HARNESS ;ALLISON TRANS WIRING EA 2953462;29542681 1 \$ 57904 COVER ;ALLISON TRANS REAR EA 29542376 1 \$ 57901 SENSOR ;ALLISON TRANS OIL LEVEL EA 29530105;29544668 1 \$ 57904 SENSOR ;ALLISON B400 IMPUT SHAFT EA 23046274 1 \$ 59105 O-RING ;ALLISON B400 HARNESS SHOULDER EA 29536564 1 \$ | 71 | EA | 23046438 | 1 | 27.43 |
| 56705 BRACKET ;ALLISON, SPEED SENSOR EA 29533980 1 \$ 56879 SEAL ;ALLISON TRANS OUTPUT EA 29546233 1 \$ 56903 SEAL ;ALLISON FEED THROUGH EA 29520396;29542681 1 \$ 56911 HARNESS ;ALLISON TRANS WIRING EA 2953462;29542681 1 \$ 57596 COVER ;ALLISON TRANS REAR EA 29532036;29544668 1 \$ 57591 SENSOR ;ALLISON BA00 IMPUT SHAFT EA 295304574 1 \$ 59105 O-RING ;ALLISON B400 IMPUT SHAFT EA 23046274 1 \$ 216688 BOLT,ALLISON B400 HARNESS SHOULDER EA 29536564 1 \$ | 72 | EA | 29500034 | 1 | 2.50 |
| 56879 SEAL ;ALLISON TRANS OUTPUT EA 29546233 1 \$ 56903 SEAL ;ALLISON FEED THROUGH EA 29520396;29542681 1 \$ 56911 HARNESS ;ALLISON TRANS WIRING EA 295362;29542681 1 \$ 57596 COVER ;ALLISON TRANS REAR EA 29542376 1 \$ 57501 SENSOR ;ALLISON BA00 IMPUT SHAFT EA 29530105;29544668 1 \$ 59105 O-RING ;ALLISON BA00 IMPUT SHAFT EA 23046274 1 \$ 216688 BOLT,ALLISON BA00 HARNESS SHOULDER EA 29536564 1 \$ | 73 | EA | 29533980 | | 17.15 |
| 56903 SEAL JALLISON FEED THROUGH EA 29520396;29542681 1 \$ 56911 HARNESS JALLISON TRANS WIRING EA 29536462;29542681 1 \$ 57596 COVER JALLISON TRANS REAR EA 29542376 1 \$ 57901 SENSOR JALLISON TRANS OIL LEVEL EA 29530105;29544668 1 \$ 59105 O-RING JALLISON B400 IMPUT SHAFT EA 23046274 1 \$ 216688 BOLT JALLISON B400 HARNESS SHOULDER EA 29536564 1 \$ | 74 | EA | 29546233 | | 27.85 |
| 56911 HARNESS ;ALLISON TRANS WIRING EA 29536462;29542681 1 \$ 57596 COVER ;ALLISON TRANS REAR EA 29542376 1 \$ 57901 SENSOR ;ALLISON TRANS OIL LEVEL EA 29530105;29544668 1 \$ 59105 O-RING ;ALLISON B400 IMPUT SHAFT EA 23046274 1 \$ 216688 BOLT,ALLISON B400 HARNESS SHOULDER EA 29536564 1 \$ | 75 | EA | 29520396;29542084 | | 6.10 |
| 57596 COVER ;ALLISON TRANS REAR EA 29542376 1 \$ 57901 SENSOR ;ALLISON,TRANS OIL LEVEL EA 23530105;29544668 1 \$ 59105 O-RING ;ALLISON B400 IMPUT SHAFT EA 23046274 1 \$ 216688 BOLT,ALLISON B400 HARNESS SHOULDER EA 29536564 1 \$ | 76 | EA | 29536462;29542681 | | 249.26 |
| 57901 SENSOR ;ALLISON,TRANS OIL LEVEL EA 29530105;29544668 1 59105 O-RING ;ALLISON B400 IMPUT SHAFT EA 23046274 1 216688 BOLT,ALLISON B400 HARNESS SHOULDER EA 29536564 1 | 77 | EA | 29542376 | ! | 2,391.77 |
| 59105 O-RING ;ALLISON B400 IMPUT SHAFT EA 23046274 1 216688 BOLT,ALLISON B400 HARNESS SHOULDER EA 29536564 1 | 78 | EA | 29530105;29544668 | | 278.61 |
| 216688 BOLT, ALLISON B400 HARNESS SHOULDER | 79 | EA | 23046274 | 1 \$ | 1.15 |
| | 80 | EA | 29536564 | 1 \$ | 2.76 |

^{*}Omnitrans makes no guarantee of usage with regard to quantity
**Base Year Pricing - All subsequent pricing shall be determined in April of each year using the increase or decrease of Consumer Price Index (CPI).

MNT18-51E ALLISON TRANSMISSION PARTS ATTACHMENT A - PRICING

| 81 | 216718 O-RING, ALLISON TORQ CONVERTOR | EA | 23049377 | 1 \$ | 58.57 |
|-----|---|----|-------------------|---------|--------|
| 82 | 216868 PLUG ASSY, ALLISON MAG DRAIN | EA | 29510885 | 1 \$ | 40.84 |
| 83 | 217152 RING KIT, ALLISON B300/B400 TRANS SEAL | EA | 23042434 | 1 \$ | 19.83 |
| 84 | 217154 SEAL, ALLISON C1 PISTON | EA | 23045614;29546155 | 1 \$ | 8.06 |
| 85 | 217158 SEAL, ALLISON BALANCE PISTON | EA | 23045615;29546156 | 1 \$ | 8.96 |
| 98 | 217163 SEAL, ALLISON C2 OUTER PISTON | EA | 23045613 | 1 \$ | 12.62 |
| 87 | | EA | 29543065 | 1 \$ | 39.47 |
| 88 | 217167 BUSHING, ALLISON TRANS | EA | 29533975 | 1 \$ | 33.19 |
| 89 | 217170 RING KIT, ALLISON SEAL | EA | 29538448 | 1 \$ | 41.00 |
| 06 | | EA | 29503197;29546166 | 1 \$ | 33.48 |
| 91 | 217177 BUSHING, ALLISON TRANS | EA | 29503196;29549294 | 1 \$ | 25.71 |
| 92 | 217180 O-RING, ALLISON TRANS | EA | 23046868;29546165 | 1 \$ | 55.27 |
| 93 | 217183 O-RING, ALLISON TRANS | EA | 29503383 | 1 \$ | 1.53 |
| 94 | 217186 WASHER, ALLISON TRANS THRUST | EA | 29511406 | 1 \$ | 3.14 |
| 95 | 217188 PLATE, ALLISON TRANS B | EA | 29537941 | 1 \$ | 6.81 |
| 96 | 217190 O-RING, ALLISON TRANS | EA | 23040579 | 1 \$ | 1.34 |
| 97 | 217192 CLIP,ALLISON TRANS | EA | 29501538;29539807 | т \$ | 11.32 |
| 86 | 217195 BEARING, ALLISON TRANS | EA | 29503225 | 1 \$ | 18.73 |
| 66 | 217197 RING, P1 INDEXING ALLISON | EA | 29537939 | 1 \$ | 7.73 |
| 100 | | EA | 29502040 | 1 \$ | 1.28 |
| 101 | 217201 PLATE, ALLISON TRANS | EA | 29537940 | 1 \$ | 7.26 |
| 102 | 217203 BUSH,ALLISON TRANS | EA | 29531004 | 1 \$ | 8.01 |
| 103 | 217205 WASHER, ALLISON TRANS THRUST | EA | 29502037 | 1 \$ | 1.90 |
| 104 | 217207 O-RING, ALLISON TRANS | EA | 23043446 | 1 \$ | 0.36 |
| 105 | 217209 GROMMET, ALLISON TRANS | EA | 29536567;29544782 | 1 \$ | 4.16 |
| 106 | 217212 SEAL, ALLISON TRANS | EA | 23046376 | 1 \$ | 2.19 |
| 107 | 217214 O-RING, ALLISON TRANS | EA | 23016455 | 1 \$ | 2.10 |
| 108 | 217216 O-RING, ALLISON TRANS | EA | 29503384 | 1 \$ | 1.30 |
| 109 | 217218 O-RING, ALLISON TRANS | EA | 29503382 | 1 \$ | 2.62 |
| 110 | 217220 HARNESS ASSY, ALLISON B300/B400 | EA | 29529313 | 1 \$ | 129.04 |
| 111 | 217407 SELECTOR, SR1337 ALLISON TRANS SHIFT | EA | 29546170;29546210 | 1 \$ | 342.23 |
| 112 | 217702 ALLISON SHIFT SELECTOR SR585-709 REBUILT | EA | R29538371 | 1 \$ | 785.45 |
| 113 | 217821 BUSHING, ALLISON TRANS | EA | 29531001 | 1 \$ | 19.22 |
| 114 | 218090 PIN,ALLISON TRANS PLUG | EA | 29511366;29542587 | 1 \$ | 5.93 |
| 115 | 218093 PIN,ALLISON TRANS PLUG | EA | 29511371 | 1 \$ | 1.20 |
| 116 | 218751 CONNECTOR ACCUMULATOR ALLISON TRANS B400 | EA | 12041411;12162197 | 1 \$ | 5.90 |
| 117 | 219366 O-RING, B400 TRANSMISSION | EA | 29503208 | 1 \$ | 2.54 |
| 118 | 219869 YOKE ASSEMBLY B400 TRANS SR1337 | EA | 29540326 | \$ 1 | 316.49 |
| 119 | 220227 PISTON, C3/C4 SR1337 | EA | 29542753 | 1 \$ | 28.27 |
| 120 | 220241 BEARING, ROLLER SR1337 | EA | 23045816 | 1 \$ | 21.19 |
| 121 | 220247 BEARING,ROLLER SR1337 | EA | 29541565 | 1 \$ | 13.15 |
| 122 | 220253 O-RING ;ALLISON B400 TRANS OIL DRAIN | EA | 23019664 | 1 \$ | 0.90 |

^{*}Omnitrans makes no guarantee of usage with regard to quantity **Base Year Pricing - All subsequent pricing shall be determined in April of each year using the increase or decrease of Consumer Price Index (CPI).

ATTACHMENT A - PRICING MNT18-51E ALLISON TRANSMISSION PARTS

| 123 | 221774 HOUSING, C4 | EA | 29542752 | 1 \$ | 104.40 |
|-----|---|----|----------|------|--------|
| 124 | 221776 PLATE, MD C3/4 PIST RETURN | EA | 29542754 | 1 \$ | 69.16 |
| 125 | 221778 HOUSING, MD C3 CLUTCH | EA | 29542756 | 1 \$ | 111.97 |
| 126 | 221838 GASKET, JUMPER MANIFOLD B400 TRANS | EA | 29536766 | 1 \$ | 1.09 |
| 127 | 221840 SWITCH, C-3 PRESSURE B400 TRANS | EA | 29506484 | 1 \$ | 65.50 |
| 128 | 221842 SOLENOID, FORWARD B400 TRANS | EA | 29537369 | 1 \$ | 79.01 |
| 129 | 221936 C3 CLUTCH HOUSING | EA | 29542756 | 1 \$ | 111.97 |
| 130 | 221938 PISTON RETURN PLATE | EA | 29542754 | 1 \$ | 69.16 |
| 131 | 221940 C4 CLUTCH HOUSING | EA | 29542752 | 1 \$ | 104.40 |

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^{**}Base Year Pricing - All subsequent pricing shall be determined in April of each year using the increase or decrease of Consumer Price Index (CPI).

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REGULATORY REQUIREMENTS

* Marks Required Subcontract Provisions that must flow down to all subcontracts as defined in the Article entitled SUBCONTRACTORS AND SUPPLIERS herein.

RR-01 ADMINISTRATIVE CODE *

A. Applicability

This Article applies to all contracts.

B. Compliance with §§1090 et. seq. and §§87100 et. seq. of the California Government Code

Contractor shall comply with all applicable provisions of §§1090 et. seq. and §§87100 et. seq. of the California Government Code. Without reducing or affecting its obligation to comply with any and all of said provisions, Contractor specifically covenants:

- 1. Contractor shall not cause or permit any member, officer, or employee of Omnitrans to have any financial interest in the Contract;
- 2. Contractor shall not enter into any Subcontract involving services or property with a person or business prohibited from transacting such business with Omnitrans;
- 3. Contractor warrants and represents that to its knowledge no Board member, officer, or employee of Omnitrans has any interest, whether contractual, non-contractual, financial or otherwise, in this Contract, or in the business or any other contract or transaction of the Contractor or any Subcontractor and that if any such interest comes to Contractor's knowledge at any time, Contractor shall make a full and complete disclosure of all such information in writing to Omnitrans.

C. Campaign Contributions

Neither Contractor nor its Agents shall give or offer to give any campaign contribution to any member of Omnitrans Board of Directors in violation of the California Government Code §§84300 et seq., or of the Administrative Code. Contractor shall submit a Certification of Campaign Contributions with all COs of two hundred thousand dollars (\$200,000) or more.

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RR-02 DISCRIMINATION *

A. Applicability

This Article applies to all contracts.

B. In connection with the performance of Work provided for under this Contract, Contractor agrees that it will not, on the grounds of race, religious creed, color, national origin, ancestry, physical disability, medical condition, marital status, sex, sexual orientation, or age, discriminate or permit discrimination against any person or group of persons in any manner prohibited by Federal, State or local laws.

RR-03 WHISTLEBLOWER REQUIREMENTS *

A. Applicability

This Article applies to all contracts.

B. Contractor shall not adopt any rule, regulation, or policy preventing an employee from disclosing information to a government or law enforcement agency, where the employee believes the information discloses violation or noncompliance with a state or Federal regulation; nor shall Contractor retaliate against an employee for taking such actions as set forth in the t. seq.

RR-04 PUBLIC RECORDS ACT *

A. Applicability

This Article applies to all contracts.

- B. Except as otherwise provided herein, all records, documents, drawings, plans, specifications, and all other information relating to the conduct of Omnitrans business, including all information and documents submitted by Contractor ("Records"), shall become the exclusive property of Omnitrans and shall be deemed public records. Said Records are subject to the provisions of the California Public Records Act (Government Code §6250 et. seq.). Omnitrans use and disclosure of its records are governed by this Act. Omnitrans will use its best efforts to inform the Contractor of any request for any financial records or documents marked "Trade Secret", "Confidential" or "Proprietary" provided by Contractor to Omnitrans. Omnitrans will not advise as to the nature or content of documents entitled to protection from disclosure under the California Public Records Act.
- C. In the event of litigation concerning the disclosure of any Records, Omnitrans sole involvement will be as a stakeholder, retaining the Records until otherwise ordered by a

RR – Page 3 Updated: January 19, 2017 court. The submitting party, at its sole expense and risk, shall be fully responsible for any and all fees for prosecuting or defending any action concerning the Records and shall indemnify and hold Omnitrans harmless from all costs and expenses including attorney's fees in connection with any such action.

RR-05 ACCESS TO RECORDS *

A. Applicability

This Article applies to all federally funded contracts.

- B. Contractor agrees to provide Omnitrans, the FTA Administrator, the Comptroller General of the United States or any of their authorized representatives access to any books, documents, papers and records of the Contractor which are directly pertinent to this Contract for the purposes of making audits, examinations, excerpts and transcriptions. Contractor also agrees, pursuant to 49 C. F. R. 633.17 to provide the FTA Administrator or the FTA's authorized representatives, including any FTA Project Management Oversight Contractor, access to Contractor's records and construction sites pertaining to a major capital project, defined at 49 U.S.C. 5302(a) 1, which is receiving federal financial assistance through the programs described at 49 U.S.C. 5307, 5309 or 5311.
- C. If this Contract is for a capital project or improvement (defined at 49 U.S.C. 5302(a) 1) and was entered in to through other than competitive bidding, the Contractor shall make records related to this Contract available to Omnitrans, the Secretary of Transportation and the Comptroller General or any authorized officer or employee of any of them for the purposes of conducting an audit and inspection.
- D. Contractor shall maintain all books, records, accounts and reports required under this Contract for a period of not less than three years after the date of termination or expiration of this Contract, except in the event of litigation or settlement of claims arising from the performance of this Contract, in which case Contractor agrees to maintain same until Omnitrans, the FTA Administrator, the Comptroller General, or any of their duly authorized representatives, have disposed of all such litigation, appeals, claims or exceptions related thereto.

RR-06 FEDERAL FUNDING, INCORPORATION OF FEDERAL TRANSIT ADMINISTRATION (FTA) TERMS, AND FEDERAL CHANGES*

A. Applicability

This Article applies to all federally funded contracts.

B. This Contract includes, in part, certain Standard Terms and Conditions required by DOT, whether or not expressly set forth in the Contract provisions. All contractual provisions

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required by DOT, as set forth in FTA Circular 4220.1F, dated November 1, 2008 and revised March 18, 2013 (including any changes), and are hereby incorporated by reference. Anything to the contrary herein notwithstanding, all FTA mandated terms shall be deemed to control in the event of a conflict with other provisions contained in this Contract. Contractor shall not perform any act, fail to perform any act, or refuse to comply with any Omnitrans requests which would cause Omnitrans to be in violation of the FTA terms and conditions.

This Contract is subject to a financial assistance agreement between Omnitrans and the Federal Transit Administration of the US Department of Transportation and all laws, regulations, guidelines, and provisions of the financial assistance agreement apply to this Contract and are incorporated by reference as if fully set forth herein.

C. Contractor shall at all times comply with all applicable federal laws and regulations, including without limitation FTA regulations, policies, procedures and directives, including those listed directly or by reference in Applicable Grant Agreements between Omnitrans and FTA, as they may be amended or promulgated from time to time during the term of this Contract collectively "Federal Requirements". These Federal Requirements may change and the changed Federal Requirements will apply to this Contract as required unless the Federal Government determines otherwise. Contractor's failure to so comply with the Federal Requirements shall constitute a material breach of this Contract.

RR-07 ENERGY CONSERVATION REQUIREMENTS

A. Applicability

This Article applies to all federally funded contracts.

B. Contractor shall comply with mandatory standards and policies relating to energy efficiency which are contained in the state energy conservation plan issued in compliance with the Energy Policy and Conservation Act 42 USC §6321 et seq.

RR-08 CIVIL RIGHTS REQUIREMENTS *

A. Applicability

This Article applies to all federally funded contracts.

B. Nondiscrimination - In accordance with Title VI of the Civil Rights Act, as amended, 42 U.S.C. § 2000d, section 303 of the Age Discrimination Act of 1975, as amended, 42 U.S.C. § 6102, section 202 of the Americans with Disabilities Act of 1990, 42 U.S.C. § 12132, and Federal transit law at 49 U.S.C. § 5332, Contractor shall not discriminate against any employee or applicant for employment because of race, color, creed, national

RR – Page 5 Updated: January 19, 2017 origin, sex, age, or disability. In addition, Contractor shall comply with applicable Federal implementing regulations and other implementing requirements FTA may issue.

C. Equal Employment Opportunity

- (a) Race, Color, Creed, National Origin, Sex - In accordance with Title VII of the Civil Rights Act, as amended, 42 U.S.C. § 2000e, and Federal transit laws at 49 U.S.C. § 5332, Contractor shall comply with all applicable equal employment opportunity requirements of U.S. Department of Labor (U.S. DOL) regulations, "Office of Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor," 41 C.F.R. Parts 60 et seq., (which implement Executive Order No. 11246, "Equal Employment Opportunity," as amended by Executive Order No. 11375, "Amending Executive Order 11246 Relating to Equal Employment Opportunity," 42 U.S.C. § 2000e note), and with any applicable Federal statutes, executive orders, regulations, and Federal policies that may in the future affect activities undertaken in the course of the Contract. Contractor shall take affirmative action to ensure that applicants are employed. and that employees are treated during employment, without regard to their race, color, creed, national origin, sex, or age. Such action shall include, but not be limited to, the following: employment, upgrading, demotion or transfer, recruitment or recruitment advertising, layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. In addition, Contractor shall comply with any implementing requirements FTA may issue.
- (b) Age In accordance with section 4 of the Age Discrimination in Employment Act of 1967, as amended, 29 U.S.C. § 623 and Federal transit law at 49 U.S.C. § 5332, Contractor shall refrain from discrimination against present and prospective employees for reason of age. In addition, Contractor shall comply with any implementing requirements FTA may issue.
- (c) Disabilities In accordance with section 102 of the Americans with Disabilities Act, as amended, 42 U.S.C. § 12112, Contractor shall comply with the requirements of U.S. Equal Employment Opportunity Commission, "Regulations to Implement the Equal Employment Provisions of the Americans with Disabilities Act," 29 C.F.R. Part 1630, pertaining to employment of persons with disabilities. In addition, Contractor shall comply with any implementing requirements FTA may issue.
- (d) Contractor shall include these requirements in each subcontract, modified only if necessary to identify parties, as required by Federal regulations.

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RR-09

NO GOVERNMENT OBLIGATION TO THIRD PARTIES *

A. Applicability

This Article applies to all federally funded contracts.

B. Notwithstanding any concurrence by the Federal Government in or approval of the solicitation or award this Contract, absent the express written consent by the Federal Government, the Federal Government is not a party to this Contract and shall not be subject to any obligations or liabilities to Omnitrans, Contractor, or any other party (whether or not a party to that Contract) pertaining to any matter resulting from this Contract.

Contractor shall include this Article in each Subcontract and shall not modify the Article, except to identify the Subcontractor who will be subject to its provisions.

RR-10 PROGRAM FRAUD AND FALSE OR FRAUDULENT STATEMENTS OR RELATED ACTS *

A. Applicability

This Article applies to all federally funded contracts.

- B. The provisions of the Program Fraud Civil Remedies Act of 1986, as amended, 31 U.S.C. § 3801 et seq. and U.S. DOT regulations, "Program Fraud Civil Remedies," 49 C.F.R. Part 31, shall apply to actions pertaining to this Contract. Upon execution of this Contract, Contractor certifies or affirms the truthfulness and accuracy of any statement it has made, it makes, it may make, or causes to be made, pertaining this Contract or the FTA assisted project for which this Contract work is being performed. In addition to other penalties that may be applicable, Contractor further acknowledges that if it makes, or causes to be made, a false, fictitious, or fraudulent claim, statement, submission, or certification, the Federal Government reserves the right to impose the penalties of the Program Fraud Civil Remedies Act of 1986 on Contractor to the extent the Federal Government deems appropriate.
- C. Contractor also acknowledges that this Contract is connected with a project that is financed in whole or in part with Federal assistance originally awarded by FTA under the authority of 49 U.S.C. § 5307 and if it makes, or causes to be made, a false, fictitious, or fraudulent claim, statement, submission, or certification to the Federal Government, the Government reserves the right to impose the penalties of 18 U.S.C. § 1001 and 49 U.S.C. § 5307(n)(1) on Contractor, to the extent the Federal Government deems appropriate.

RR – Page 7 Updated: January 19, 2017 D. Contractor shall include this Article in each subcontract financed in whole or in part with Federal assistance provided by FTA. Contractor shall not modify the Article, except to identify the Subcontractor who will be subject to the provisions.

RR-11 SUSPENSION AND DEBARMENT*

A. Applicability

This article applies to federally funded contracts and subcontracts at any level expected to equal or exceed \$25,000 as well as any contract or subcontract (at any level) for Federally required auditing services.

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

Contractor shall comply with 49 CFR 29, Subpart C and shall include the requirement to comply with 49 CFR 29, Subpart C in any lower tier covered transaction it enters into.

C. By entering into this Contract, Contractor certifies that it shall comply with the requirements of 49 CFR 29, Subpart C throughout the period of this Contract. This certification is a material representation of fact relied upon by Omnitrans. If it is later determined that Contractor knowingly rendered an erroneous certification, in addition to remedies available to Omnitrans, the Federal Government may pursue available remedies, including but not limited to suspension and/or debarment.

RR-12 RECYCLED PRODUCTS

A. Applicability

This Article applies to federally funded operations/management, construction, or materials & supplies contracts for items designated by the Environmental Protection Agency, when procuring \$10,000 or more per year.

- B. To the extent practicable and economically feasible, a competitive preference shall be given for products and services that conserve natural resources and protect the environment and are energy efficient.
- C. The Contractor agrees to comply with all the requirements of Section 6002 of the Resource Conservation and Recovery Act (RCRA), as amended (42 U.S.C. 6962), including but not limited to the regulatory provisions of 40 CFR Part 247, and Executive Order 12873, as they apply to the procurement of the items designated in Subpart B of 40 CFR Part 247.

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RR-13 CLEAN WATER AND CLEAN AIR REQUIREMENTS*

A. Applicability

This Article applies to all federally funded contracts over \$100,000.

B. CLEAN WATER REQUIREMENTS

Contractor shall comply with all applicable standards, orders or regulations issued pursuant to the Federal Water Pollution Control Act, as amended, 33 U.S.C. 1251 et seq., and all applicable clean water standards of the State of California and any state or local agency having jurisdiction. Contractor shall report each violation to Omnitrans. Omnitrans will, in turn, report each violation as required to FTA and the appropriate EPA Regional Office, and all other agencies having jurisdiction.

C. CLEAN AIR

Contractor shall comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act, as amended, 42 U.S.C. §§ 7401 et seq. and all applicable Clean Air Standards of the State of California or any state or local agency having jurisdiction. Contractor shall report each violation to Omnitrans. Omnitrans will, in turn, report each violation as required to FTA, the appropriate EPA Regional Office and all other agencies having jurisdiction.

D. Contractor shall include this Article in each subcontract exceeding \$100,000 financed in whole or in part with Federal assistance provided by FTA.

RR-14 COMPLIANCE WITH FEDERAL LOBBYING POLICY *

A. Applicability

The following Article applies to federally funded contracts over \$100,000.

B. The Byrd Anti-Lobbying Amendment, 31 U.S.C. 1352, requires that Contractors who apply or bid for an award of \$100,000 or more shall file the certification required by 49 CFR Part 20, "New Restrictions on Lobbying," attached hereto as the certification entitled, "Certification of Compliance with Federal Lobbying Requirements." As set forth in the certifications, each tier of subcontractors shall certify to the tier above that it will not and has not used Federal appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee of any agency, a member of Congress in connection with obtaining any Federal contract, grant or any other award covered by 31 U.S.C. 1352. Each tier shall also disclose the name of any registrant under the Lobbying Disclosure Act of 1995 who has made lobbying contacts on its behalf with

RR – Page 9 Updated: January 19, 2017 non-Federal funds with respect to that Federal contract, grant or award covered by 31 U.S.C. 1352. Such disclosures shall be forwarded from tier to tier up to Omnitrans.

RR-15 BUY AMERICA *

A. Applicability

The following Article applies to federally funded rolling stock purchase and construction contracts over \$150,000 and to contracts over \$150,000 for materials & supplies for steel, iron, or manufactured products.

B. Contractor shall comply with 49 U.S.C. 5323(j) and 49 CFR Part 661, which provide that Federal funds may not be obligated unless steel, iron, and manufactured products used in FTA-funded projects are produced in the United States, unless a waiver has been granted by FTA or the product is subject to a general waiver. General waivers are listed in 49 C.F.R. 661.7, and include final assembly in the United States for 15 passenger vans and 15 passenger wagons produced by Chrysler Corporation, and microcomputer equipment and software. Separate requirements for rolling stock are set out at 49 U.S.C. 5323(j)(2)(C) and 49 C.F.R. 661.11. Rolling stock must be assembled in the United States and have a 60 percent domestic content.

Omnitrans may investigate Contractor's, any Subcontractor's, and any Supplier's compliance with this Article. If an investigation is initiated, Contractor, Subcontractor, or Supplier shall document its compliance, in accordance with 49 CFR 661.15, and cooperate with the investigation. Contractor shall incorporate the Buy America conditions set forth in this Article in every subcontract or purchase order and shall enforce such conditions.

C. FTA requires a Buy America certification to be submitted with the proposal, or the proposal shall be considered non-responsive.

RR-16 CARGO PREFERENCE*

A. Applicability

The following Article applies to federally funded contracts involving equipment, materials, or commodities which may be transported by ocean vessels

B. USE OF UNITED STATES FLAG VESSELS

Contractor shall use privately owned United States-Flag commercial vessels to ship at least 50 percent of the gross tonnage (computed separately for dry bulk carriers, dry cargo liners, and tankers) involved, whenever shipping any equipment, material, or

RR – Page 10 Updated: January 19, 2017 commodities pursuant to this Contract to the extent such vessels are available at fair and reasonable rates for United States-Flag commercial vessels.

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

Contractor shall include these requirements in all subcontracts issued pursuant to this Contract when the subcontract may involve the transport of equipment, material, or commodities by ocean vessel.

RR-17 FLY AMERICA

A. Applicability

This Article applies to federally funded contracts if the contract or subcontracts may involve the international transportation of goods, equipment, or personnel by air.

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

RR-18 CONTRACT WORK HOURS AND SAFETY STANDARDS ACT *

A. Applicability

This Article applies to federally funded construction contracts over \$2,000 (including ferry vessels), rolling stock purchases over \$2,500 and to operations/management contracts over \$2,500 (except transportation services)

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- B. Pursuant to the Labor Standards Provisions Applicable to Non-construction Contracts subject to the Federal Contract Work Hours and Safety Standards Act, 40 U.S.C.A. § 327 through 332 as implemented by U.S. Department of Labor regulations, 29 CFR 5.5 (b) and (c) Contractor and Subcontractor's contracting for any part of the Contract work shall comply with the following:
 - 1. **Overtime requirements** Neither Contractor nor any Subcontractor contracting for any part of the Contract work that requires or involves the employment of laborers or mechanics shall require or permit any such laborer or mechanic in any workweek in which he or she is employed on such work to work in excess of forty hours in such workweek unless such laborer or mechanic receives compensation at a rate not less than one and one-half times the basic rate of pay for all hours worked in excess of forty hours in such workweek.
 - 2. Violation; liability for unpaid wages; liquidated damages In the event of any violation of the Article set forth in paragraph (1) of this Article Contractor and any Subcontractor responsible therefore shall be liable for the unpaid wages. In addition, Contractor and Subcontractor shall be liable to the United States for liquidated damages. Such liquidated damages shall be computed with respect to each individual laborer or mechanic, including watchmen and guards, employed in violation of the clause set forth in paragraph (1) of this Article, in the sum of ten dollars (\$10) for each calendar day on which such individual was required or permitted to work in excess of the standard workweek of forty hours without payment of the overtime wages required by the clause set forth in paragraph (1) of this Article.
 - 3. Withholding for unpaid wages and liquidated damages Omnitrans shall upon its own action or upon written request of an authorized representative of the Department of Labor withhold or cause to be withheld, from any monies payable on account of work performed by Contractor or Subcontractor under the Contract or any other Federal contract with Contractor, or any other federally-assisted contract subject to the Contract Work Hours and Safety Standards Act, which is held by Contractor, such sums as may be determined to be necessary to satisfy any liabilities of Contractor or Subcontractor for unpaid wages and liquidated damages as provided in the clause set forth in paragraph (2) of this Article.
 - 4. Subcontracts Contractor or Subcontractor shall insert this Article in any Subcontracts and also an Article requiring the Subcontractors to include this Article in any lower tier Subcontracts. Contractor shall be responsible for compliance by any Subcontractor or lower tier Subcontractor with this Article.
 - 5. Payrolls and basic records The records to be maintained hereinabove shall be made available by Contractor or Subcontractor for inspection, copying, or transcription by Omnitrans and U.S. Dept. of Labor. Contractor and Subcontractor shall maintain payrolls and basic records during the course of the work and shall preserve them for a period of three (3) years from the completion of the Contract

RR – Page 12 Updated: January 19, 2017 for all laborers and mechanics, including guards and watchmen, working on the Contract. Such records shall contain the name and address of each such employee, social security number, correct classifications, hourly rates of wages paid, daily and weekly number of hours worked, deductions made and actual wages paid.

RR-19 DISADVANTAGED BUSINESS ENTERPRISE (DBE) 49 CFR Part 26

Disadvantaged Business Enterprises

- A. This Contract is subject to the requirements of Title 49, Code of Federal Regulations, Part 26, Participation by Disadvantaged Business Enterprises in Department of Transportation Financial Assistance Programs. The agency's overall goal for DBE participation is 3.3%.
- B. Contractor shall not discriminate on the basis of race, color, national origin, or sex in the performance of this contract. Contractor shall carry out applicable requirements of 49 CFR Part 26 in the award and administration of this DOT-assisted Contract. Failure by Contractor to carry out these requirements is a material breach of this Contract, which may result in the termination of this Contract or such other remedy as Omnitrans deems appropriate. Each subcontract Contractor signs with a subcontractor must include the assurance in this paragraph (see 49 CFR 26.13(b)).
- C. Bidders are required to document sufficient DBE participation to meet these goals or, alternatively, document adequate good faith efforts to do so, as provided for in 49 CFR 26.53. Award of this contract is conditioned on submission of the following concurrent with and accompanying sealed bid concurrent with and accompanying an initial proposal prior to award:
 - 1. The names and addresses of DBE firms that will participate in this contract;
 - 2. A description of the work each DBE will perform;
 - 3. The dollar amount of the participation of each DBE firm participating;
 - 4. Written documentation of the bidder's commitment to use a DBE subcontractor whose participation it submits to meet the contract goal;
 - 5. Written confirmation from the DBE that it is participating in the contract as provided in the prime contractor's commitment; and
 - 6. If the contract goal is not met, evidence of good faith efforts to do so.

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

The successful bidder will be required to report its DBE participation obtained through race-neutral means throughout the period of performance.

D. Contractor is required to pay its subcontractors performing work related to this contract for satisfactory performance of that work no later than 7 days after the contractor's

RR – Page 13 Updated: January 19, 2017 receipt of payment for that work from the Omnitrans. In addition, Contractor is required to return any retainage payments to those subcontractors within 30 days after the subcontractor's work related to his contract is satisfactorily completed.

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

RR-20 ADA ACCESS

A. Applicability

This Article applies to federally funded Architect & Engineer, Operations/Management, Rolling Stock Purchase, and Construction contracts

B. Access Requirements for Persons with Disabilities

Contractor shall comply with:

- 1. The requirements of 49 U.S.C. § 5301(d), which states the Federal policy that elderly persons and persons with disabilities have the same right as other persons to use mass transportation service and facilities, and that special efforts shall be made in planning and designing those services and facilities to implement that policy;
- 2. All applicable requirements of section 504 of the Rehabilitation Act of 1973, as amended, 29 U.S.C. § 794, which prohibits discrimination on the basis of handicaps;
- 3. The Americans with Disabilities Act of 1990 (ADA), as amended, 42 U.S.C. § 12101 et seq., which requires that accessible facilities and services be made available to persons with disabilities, including any subsequent amendments to that Act;
- 4. The Architectural Barriers Act of 1968, as amended, 42 U.S.C. §§ 4151 et seq., which requires that buildings and public accommodations be accessible to persons with disabilities, including any subsequent amendments to that Act; and
- 5. All applicable requirements of the following regulations and any subsequent amendments thereto:

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- (1) U.S. DOT regulations, "Transportation Services for Individuals with Disabilities (ADA)," 49 C.F.R. Part 37;
- (2) U.S. DOT regulations, "Nondiscrimination on the Basis of Handicap in Programs and Activities Receiving or Benefiting from Federal Financial Assistance," 49 C.F.R. Part 27;
- (3) Joint U.S. Architectural and Transportation Barriers Compliance Board (U.S. ATBCB)/U.S. DOT regulations, "Americans With Disabilities (ADA) Accessibility Specifications for Transportation Vehicles," 36 C.F.R. Part 1192 and 49 C.F.R. Part 38;
- (4) U.S. DOJ regulations, "Nondiscrimination on the Basis of Disability in State and Local Government Services," 28 C.F.R. Part 35;
- (5) U.S. DOJ regulations, "Nondiscrimination on the Basis of Disability by Public Accommodations and in Commercial Facilities." 28 C.F.R. Part 36:
- (6) U.S. General Services Administration (U.S. GSA) regulations, "Accommodations for the Physically Handicapped," 41 C.F.R. Subpart 101-19;
- (7) U.S. Equal Employment Opportunity Commission, "Regulations to Implement the Equal Employment Provisions of the Americans with Disabilities Act," 29 C.F.R. Part 1630;
- (8) U.S. Federal Communications Commission regulations, "Telecommunications Relay Services and Related Customer Premises Equipment for the Hearing and Speech Disabled," 47 C.F.R. Part 64, Subpart F; and
- (9) U.S. ATBCB regulations, "Electronic and Information Technology Accessibility Standards," 36 C.F.R. Part 1194; and
- (10) FTA regulations, "Transportation for Elderly and Handicapped Persons," 49 C.F.R. Part 609;
- (11) Any implementing requirements FTA may issue.

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RR-21 ALCOHOL AND DRUG-FREE WORKPLACE PROGRAM *

A. Applicability

This Article applies to federally funded contracts for transit operations.

B. FTA Prevention of Alcohol Misuse and Prohibited Drug Use in Transit Operations Regulations

Contractor and its Subcontractors shall comply with the FTA anti-drug and alcohol misuse regulations (49 CFR Part 655) and the U.S. Department of Transportation (DOT) Procedures for Transportation Workplace Drug and Alcohol Testing Programs (49 CFR Part 40) to the full extent that they are, by their terms, applicable to Contractor and its Subcontractors. The regulations apply to all "contractors" that have "covered employees" that perform "safety sensitive functions" as those terms are defined in the regulations.

C. Certificate of Compliance

The CERTIFICATE OF COMPLIANCE WITH 49 CFR PARTS 655, PREVENTION OF ALCOHOL MISUSE AND PROHIBITED DRUG USE IN TRANSIT, submitted by Contractor prior to award, is incorporated as part of the Contract Documents.

D. Drug and Alcohol Testing Program

In the event that any part of the Work under this Contract falls within the scope of 49 CFR Part 655, Contractor, and its Subcontractors (as applicable), shall establish and implement a drug and alcohol testing program that complies with 49 CFR Parts 653 and 654, produce any documentation necessary to establish its compliance with Parts 653 and 654, and permit any authorized representative of the United States Department of Transportation or its operating administrations, the State Oversight Agency of California, or Omnitrans, to inspect the facilities and records associated with the implementation of the drug and alcohol testing program as required under 49 CFR Parts 653 and 654 and review the testing process. Contractor shall annually certify its compliance with Parts 653 and 65. To certify compliance the contractor shall use the "Substance Abuse Certifications" in the "Annual List of Certifications and Assurances for Federal Transit Administration Grants and Cooperative Agreements," which is published annually in the Federal Register.

E. Alcohol and Drug Free Workplace Program

In addition to the above, for Work performed on Omnitrans property, Contractor shall provide an Alcohol and Drug-free Workplace Program in accordance with FTA requirements found at http://transit-safety.fta.dot.gov/DrugAndAlcohol/default.asp

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RR-22 TRANSIT EMPLOYEE PROTECTIVE ARRANGEMENTS *

A. Applicability

Subject to the limitations in Sections B, C, and D, this Article applies if this Contract involves transit operations to be performed by employees of a Contractor recognized by FTA to be a transit operator, and if FTA has determined that it is financed in whole or in part with Federal assistance.

B. General Transit Employee Protective Requirements

If FTA has determined that this Contract involves transit operations financed in whole or in part with Federal assistance (other than Federal assistance authorized by 49 U.S.C. § 5310(a)(2) or 49 U.S.C. § 5311), and if the U.S. Secretary of Transportation has determined that the employee protective requirements of 49 U.S.C. § 5333(b) are necessary or appropriate for Omnitrans under this Contract, then Contractor shall perform the transit operations work under the Contract in compliance with terms and conditions, (a) determined by the U.S. Secretary of Labor to meet the employee protective requirements of 49 U.S.C. A 5333(b), and U.S. Department of Labor ("U. S. DOL") guidelines at 29 C.F.R. Part 215, and any amendments thereto, and (b) stated in a U. S. DOL letter of certification to FTA, the date of which is set forth in the applicable Grant Agreement or Cooperative Agreement with Omnitrans, and which is incorporated in the Form of Contract as a Contract Document entitled "U. S. DOL Certification".

C. Transit Employee Protective Requirements for Projects Authorized by 49 U.S.C. § 5310(a) (2) for Elderly Individuals and Individuals with Disabilities

If FTA has determined that this Contract involves transit operations financed in whole or in part with Federal assistance authorized by 49 U.S.C. § 5310(a)(2), and if the U.S. Secretary of Transportation has determined or determines in the future that the employee protective requirements of 49 U.S.C. § 5333(b) are necessary or appropriate for Omnitrans under the Contract, Contractor shall perform the Work in compliance with the terms and conditions determined, (a) by the U.S. Secretary of Labor to meet the requirements of 49 U.S.C. § 5333(b), U.S. DOL guidelines at 29 C.F.R. Part 215, and any amendments thereto, and (b) stated in the U.S. DOL's letter of certification to FTA, the date of which is set forth in the applicable Grant Agreement or Cooperative Agreement with Omnitrans, and which is incorporated in the Form of Contract as a Contract Document entitled "U. S. DOL Certification".

D. Transit Employee Protective Requirements for Projects Authorized by 49 U.S.C. § 5311 in Nonurbanized Areas

If FTA has determined that this Contract involves transit operations financed in whole or in part with Federal assistance authorized by 49 U.S.C. § 5311, Contractor shall comply with the terms and conditions of the Special Warranty for the Nonurbanized Area

RR – Page 17 Updated: January 19, 2017 Program agreed to by the U.S. Secretaries of Transportation and Labor, dated May 31, 1979, and the procedures implemented by U.S. DOL or any revision thereto.

E. Indemnity

Contractor shall defend, indemnify and hold harmless Omnitrans, and its Board Members, employees and agents from and against all liability, claims, demands actions, costs, judgments, penalties, damages, losses and expenses arising out of or in connection with Contractor's failure to comply with or failure to carry out its responsibilities under all applicable provisions of Sections B, C and D of this Article.

RR-23 BONDING REQUIREMENTS

Applicability to Contracts

For those construction or facility improvement contracts or subcontracts exceeding \$100,000, FTA may accept the bonding policy and requirements of the recipient, provided that they meet the minimum requirements for construction contracts as follows:

- A. A bid guarantee from each bidder equivalent to ten (10) percent of the bid price. The "bid guarantees" shall consist of a firm commitment and may be in any of the following forms: (a) cash; (b) cashier's check payment to Omnitrans; (c) a certified check payable to the city; or (d) a bidder's bond executed by an admitted surety insurer. Such as a bid bond, certifies check, or other negotiable instrument accompanying a bid as assurance that the bidder will, upon acceptance of his bid, execute such contractual documents as may be required within the time specified.
- B. A performance bond on the part of the Contractor for 100 percent of the contract price. A "performance bond" is one executed in connection with a contract to secure fulfillment of all the contractor's obligations under such contract.
- C. A payment bond on the part of the Contractor for 100 percent of the contract price. A "payment bond" is one executed in connection with a contract to assure payment, as required by law, of all persons supplying labor and material in the execution of the work provided for in the contract.

RR-24 DAVIS-BACON AND COPELAND ANTI-KICKBACK ACTS

Background and Application

The Davis-Bacon and Copeland Acts are codified at 40 USC 3141, et seq. and 18 USC 874. The Acts apply to grantee construction contracts and subcontracts that "at least partly are financed by a loan or grant from the Federal Government." 40 USC 3145(a), 29 CFR 5.2(h), 49 CFR 18.36(i) (5). The Acts apply to any construction contract over \$2,000. 40 USC 3142(a), 29 CFR 5.5(a). 'Construction,' for purposes of the Acts, includes "actual construction, alteration and/or repair, including painting and decorating." 29 CFR 5.5(a). The requirements of both Acts are

RR – Page 18 Updated: January 19, 2017 incorporated into a single clause (see 29 CFR 3.11) enumerated at 29 CFR 5.5(a) and reproduced below.

The clause language is drawn directly from 29 CFR 5.5(a) and any deviation from the model clause below should be coordinated with counsel to ensure the Acts' requirements are satisfied.

Clause Language

Davis-Bacon and Copeland Anti-Kickback Acts

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

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

- (ii)(A) The contracting officer shall require that any class of laborers or mechanics, including helpers, which is not listed in the wage determination and which is to be employed under the contract shall be classified in conformance with the wage determination. The contracting officer shall approve an additional classification and wage rate and fringe benefits therefore only when the following criteria have been met:
- (1) Except with respect to helpers as defined as 29 CFR 5.2(n)(4), the work to be performed by the classification requested is not performed by a classification in the wage determination; and
- (2) The classification is utilized in the area by the construction industry; and

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- (3) The proposed wage rate, including any bona fide fringe benefits, bears a reasonable relationship to the wage rates contained in the wage determination; and
- (4) With respect to helpers as defined in 29 CFR 5.2(n)(4), such a classification prevails in the area in which the work is performed.
- (B) If the contractor and the laborers and mechanics to be employed in the classification (if known), or their representatives, and the contracting officer agree on the classification and wage rate (including the amount designated for fringe benefits where appropriate), a report of the action taken shall be sent by the contracting officer to the Administrator of the Wage and Hour Division, Employment Standards Administration, U.S. Department of Labor, Washington, DC 20210. The Administrator, or an authorized representative, will approve, modify, or disapprove every additional classification action within 30 days of receipt and so advise the contracting officer or will notify the contracting officer within the 30-day period that additional time is necessary.
- (C) In the event the contractor, the laborers or mechanics to be employed in the classification or their representatives, and the contracting officer do not agree on the proposed classification and wage rate (including the amount designated for firinge benefits, where appropriate), the contracting officer shall refer the questions, including the views of all interested parties and the recommendation of the contracting officer, to the Administrator for determination. The Administrator, or an authorized representative, will issue a determination within 30 days of receipt and so advise the contracting officer or will notify the contracting officer within the 30-day period that additional time is necessary.
- (D) The wage rate (including fringe benefits where appropriate) determined pursuant to paragraphs (a)(1)(ii) (B) or (C) of this section, shall be paid to all workers performing work in the classification under this contract from the first day on which work is performed in the classification.
- (iii) Whenever the minimum wage rate prescribed in the contract for a class of laborers or mechanics includes a fringe benefit which is not expressed as an hourly rate, the contractor shall either pay the benefit as stated in the wage determination or shall pay another bona fide fringe benefit or an hourly cash equivalent thereof.
- (iv) If the contractor does not make payments to a trustee or other third person, the contractor may consider as part of the wages of any laborer or mechanic the amount of any costs reasonably anticipated in providing bona fide fringe benefits under a plan or program, Provided, That the Secretary of Labor has found, upon the written request of the contractor, that the applicable standards of the Davis-Bacon Act have been met. The Secretary of Labor may require the contractor to set aside in a separate account assets for the meeting of obligations under the plan or program.
- (v)(A) The contracting officer shall require that any class of laborers or mechanics which is not listed in the wage determination and which is to be employed under the contract shall be

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

- (1) The work to be performed by the classification requested is not performed by a classification in the wage determination; and
- (2) The classification is utilized in the area by the construction industry; and
- (3) The proposed wage rate, including any bona fide fringe benefits, bears a reasonable relationship to the wage rates contained in the wage determination.
- (B) If the contractor and the laborers and mechanics to be employed in the classification (if known), or their representatives, and the contracting officer agree on the classification and wage rate (including the amount designated for fringe benefits where appropriate), a report of the action taken shall be sent by the contracting officer to the Administrator of the Wage and Hour Division, Employment Standards Administration, Washington, DC 20210. The Administrator, or an authorized representative, will approve, modify, or disapprove every additional classification action within 30 days of receipt and so advise the contracting officer or will notify the contracting officer within the 30-day period that additional time is necessary.
- (C) In the event the contractor, the laborers or mechanics to be employed in the classification or their representatives, and the contracting officer do not agree on the proposed classification and wage rate (including the amount designated for fringe benefits, where appropriate), the contracting officer shall refer the questions, including the views of all interested parties and the recommendation of the contracting officer, to the Administrator for determination. The Administrator, or an authorized representative, will issue a determination with 30 days of receipt and so advise the contracting officer or will notify the contracting officer within the 30-day period that additional time is necessary.
- (D) The wage rate (including fringe benefits where appropriate) determined pursuant to paragraphs (a) (1) (v) (B) or (C) of this section, shall be paid to all workers performing work in the Classification under this contract from the first day on which work is performed in the classification.
- (2) Withholding Omnitrans shall upon its own action or upon written request of an authorized representative of the Department of Labor withhold or cause to be withheld from the contractor under this contract or any other Federal contract with the same prime contractor, or any other federally-assisted contract subject to Davis-Bacon prevailing wage requirements, which is held by the same prime contractor, so much of the accrued payments or advances as may be considered necessary to pay laborers and mechanics, including apprentices, trainees, and helpers, employed by the contractor or any subcontractor the full amount of wages required by the contract. In the event of failure to pay any laborer or mechanic, including any apprentice, trainee, or helper, employed or working on the site of the work (or under the United States Housing Act of 1937 or under the Housing Act of 1949 in the construction or development of the project), all or part of the wages required by the contract, Omnitrans may, after written notice to

RR – Page 21 Updated: January 19, 2017 the contractor, sponsor, applicant, or owner, take such action as may be necessary to cause the suspension of any further payment, advance, or guarantee of funds until such violations have ceased.

- (3) Payrolls and basic records (i) Payrolls and basic records relating thereto shall be maintained by the contractor during the course of the work and preserved for a period of three years thereafter for all laborers and mechanics working at the site of the work (or under the United States Housing Act of 1937, or under the Housing Act of 1949, in the construction or development of the project). Such records shall contain the name, address, and social security number of each such worker, his or her correct classification, hourly rates of wages paid (including rates of contributions or costs anticipated for bona fide fringe benefits or cash equivalents thereof of the types described in section 1(b) (2) (B) of the Davis-Bacon Act), daily and weekly number of hours worked, deductions made and actual wages paid. Whenever the Secretary of Labor has found under 29 CFR 5.5(a)(1)(iv) that the wages of any laborer or mechanic include the amount of any costs reasonably anticipated in providing benefits under a plan or program described in section 1(b)(2)(B) of the Davis-Bacon Act, the contractor shall maintain records which show that the commitment to provide such benefits is enforceable, that the plan or program is financially responsible, and that the plan or program has been communicated in writing to the laborers or mechanics affected, and records which show the costs anticipated or the actual cost incurred in providing such benefits. Contractors employing apprentices or trainees under approved programs shall maintain written evidence of the registration of apprenticeship programs and certification of trainee programs, the registration of the apprentices and trainees, and the ratios and wage rates prescribed in the applicable programs.
- (ii)(A) The contractor shall submit weekly for each week in which any contract work is performed a copy of all payrolls to the Omnitrans for transmission to the Federal Transit Administration. The payrolls submitted shall set out accurately and completely all of the information required to be maintained under section 5.5(a) (3) (i) of Regulations, 29 CFR part 5. This information may be submitted in any form desired. Optional Form WH-347 is available for this purpose and may be purchased from the Superintendent of Documents (Federal Stock Number 029-005-00014-1), U.S. Government Printing Office, Washington, DC 20402. The prime contractor is responsible for the submission of copies of payrolls by all subcontractors.
- (B) Each payroll submitted shall be accompanied by a "Statement of Compliance," signed by the contractor or subcontractor or his or her agent who pays or supervises the payment of the persons employed under the contract and shall certify the following:
- (1) That the payroll for the payroll period contains the information required to be maintained under section 5.5(a)(3)(i) of Regulations, 29 CFR part 5 and that such information is correct and complete;
- (2) That each laborer or mechanic (including each helper, apprentice, and trainee) employed on the contract during the payroll period has been paid the full weekly wages earned, without rebate, either directly or indirectly, and that no deductions have been made either directly or indirectly from the full wages earned, other than permissible deductions as set forth in Regulations, 29 CFR part 3;

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- (3) That each laborer or mechanic has been paid not less than the applicable wage rates and fringe benefits or cash equivalents for the classification of work performed, as specified in the applicable wage determination incorporated into the contract.
- (C) The weekly submission of a properly executed certification set forth on the reverse side of Optional Form WH-347 shall satisfy the requirement for submission of the "Statement of Compliance" required by paragraph (a)(3)(ii)(B) of this section.
- (D) The falsification of any of the above certifications may subject the contractor or subcontractor to civil or criminal prosecution under section 1001 of title 18 and section 231 of title 31 of the United States Code.
- (iii) The contractor or subcontractor shall make the records required under paragraph (a)(3)(i) of this section available for inspection, copying, or transcription by authorized representatives of the Federal Transit Administration or the Department of Labor, and shall permit such representatives to interview employees during working hours on the job. If the contractor or subcontractor fails to submit the required records or to make them available, the Federal agency may, after written notice to the contractor, sponsor, applicant, or owner, take such action as may be necessary to cause the suspension of any further payment, advance, or guarantee of funds. Furthermore, failure to submit the required records upon request or to make such records available may be grounds for debarment action pursuant to 29 CFR 5.12.
- (4) Apprentices and trainees (i) Apprentices Apprentices will be permitted to work at less than the predetermined rate for the work they performed when they are employed pursuant to and individually registered in a bona fide apprenticeship program registered with the U.S. Department of Labor, Employment and Training Administration, Bureau of Apprenticeship and Training, or with a State Apprenticeship Agency recognized by the Bureau, or if a person is employed in his or her first 90 days of probationary employment as an apprentice in such an apprenticeship program, who is not individually registered in the program, but who has been certified by the Bureau of Apprenticeship and Training or a State Apprenticeship Agency (where appropriate) to be eligible for probationary employment as an apprentice. The allowable ratio of apprentices to journeymen on the job site in any craft classification shall not be greater than the ratio permitted to the contractor as to the entire work force under the registered program. Any worker listed on a payroll at an apprentice wage rate, who is not registered or otherwise employed as stated above, shall be paid not less than the applicable wage rate on the wage determination for the classification of work actually performed. In addition, any apprentice performing work on the job site in excess of the ratio permitted under the registered program shall be paid not less than the applicable wage rate on the wage determination for the work actually performed. Where a contractor is performing construction on a project in a locality other than that in which its program is registered, the ratios and wage rates (expressed in percentages of the journeyman's hourly rate) specified in the contractor's or subcontractors registered program shall be observed. Every apprentice must be paid at not less than the rate specified in the registered program for the apprentice's level of progress, expressed as a percentage of the journeymen hourly rate specified in the applicable wage determination. Apprentices shall be paid fringe benefits in accordance with the provisions of the apprenticeship

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

- (ii) <u>Trainees</u> Except as provided in 29 CFR 5.16, trainees will not be permitted to work at less than the predetermined rate for the work performed unless they are employed pursuant to and individually registered in a program which has received prior approval, evidenced by formal certification by the U.S. Department of Labor, Employment and Training Administration. The ratio of trainees to journeymen on the job site shall not be greater than permitted under the plan approved by the Employment and Training Administration. Every trainee must be paid at not less than the rate specified in the approved program for the trainee's level of progress, expressed as a percentage of the journeyman hourly rate specified in the applicable wage determination. Trainees shall be paid fringe benefits in accordance with the provisions of the trainee program. If the trainee program does not mention fringe benefits, trainees shall be paid the full amount of fringe benefits listed on the wage determination unless the Administrator of the Wage and Hour Division determines that there is an apprenticeship program associated with the corresponding journeyman wage rate on the wage determination which provides for less than full fringe benefits for apprentices. Any employee listed on the payroll at a trainee rate that is not registered and participating in a training plan approved by the Employment and Training Administration shall be paid not less than the applicable wage rate on the wage determination for the classification of work actually performed. In addition, any trainee performing work on the job site in excess of the ratio permitted under the registered program shall be paid not less than the applicable wage rate on the wage determination for the work actually performed. In the event the Employment and Training Administration withdraws approval of a training program, the contractor will no longer be permitted to utilize trainees at less than the applicable predetermined rate for the work performed until an acceptable program is approved.
- (iii) Equal employment opportunity The utilization of apprentices, trainees and journeymen under this part shall be in conformity with the equal employment opportunity requirements of Executive Order 11246, as amended and 29 CFR part 30.
- (5) Compliance with Copeland Act requirements The contractor shall comply with the requirements of 29 CFR part 3, which are incorporated by reference in this contract.
- (6) Subcontracts The contractor or subcontractor shall insert in any subcontracts the clauses contained in 29 CFR 5.5(a)(1) through (10) and such other clauses as the Federal Transit Administration may by appropriate instructions require, and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The prime contractor shall be responsible for the compliance by any subcontractor or lower tier subcontractor with all the contract clauses in 29 CFR 5.5.

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- (7) Contract termination: debarment A breach of the contract clauses in 29 CFR 5.5 may be grounds for termination of the contract, and for debarment as a contractor and a subcontractor as provided in 29 CFR 5.12.
- (8) Compliance with Davis-Bacon and Related Act requirements All rulings and interpretations of the Davis-Bacon and Related Acts contained in 29 CFR parts 1, 3, and 5 are herein incorporated by reference in this contract.
- (9) **Disputes concerning labor standards** Disputes arising out of the labor standards provisions of this contract shall not be subject to the general disputes clause of this contract. Such disputes shall be resolved in accordance with the procedures of the Department of Labor set forth in 29 CFR parts 5, 6, and 7. Disputes within the meaning of this clause include disputes between the contractor (or any of its subcontractors) and the contracting agency, the U.S. Department of Labor, or the employees or their representatives.
- (10) Certification of eligibility (i) By entering into this contract, the contractor certifies that neither it (nor he or she) nor any person or firm who has an interest in the contractor's firm is a person or firm ineligible to be awarded Government contracts by virtue of section 3(a) of the Davis-Bacon Act or 29 CFR 5.12(a)(1).
- (ii) No part of this contract shall be subcontracted to any person or firm ineligible for award of a Government contract by virtue of section 3(a) of the Davis-Bacon Act or 29 CFR 5.12(a)(1).
- (iii) The penalty for making false statements is prescribed in the U.S. Criminal Code, 18 U.S.C. 1001.

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PRIVACY ACT - 5 U.S.C. 552

Applicability to Contracts

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

Flow Down

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

Model Clause/Language

The text of the following clause has not been mandated by statute or specific regulation, but has been developed by FTA.

RR – Page 25 Updated: January 19, 2017 Contracts Involving Federal Privacy Act Requirements - The following requirements apply to the Contractor and its employees that administer any system of records on behalf of the Federal Government under any contract:

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

RR- 26 TERMINATION 49 U.S.C. Part 18 FTA Circular 4220.1F

Applicability to Contracts

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

Flow Down

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

- a. Termination for Convenience (General Provision) Omnitrans may terminate this contract, in whole or in part, at any time by written notice to the Contractor when it is in the Government's best interest. The Contractor shall be paid its costs, including contract close-out costs, and profit on work performed up to the time of termination. The Contractor shall promptly submit its termination claim to Omnitrans to be paid the Contractor. If the Contractor has any property in its possession belonging to the Omnitrans, the Contractor will account for the same, and dispose of it in the manner the Omnitrans directs.
- b. **Opportunity to Cure (General Provision)** Omnitrans in its sole discretion may, in the case of a termination for breach or default, allow the Contractor an appropriately short period of time in which to cure the defect. In such case, the

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notice of termination will state the time period in which cure is permitted and other appropriate conditions

If Contractor fails to remedy to Omnitrans' satisfaction the breach or default of any of the terms, covenants, or conditions of this Contract within ten (10) days after receipt by Contractor of written notice from Omnitrans setting forth the nature of said breach or default, Omnitrans shall have the right to terminate the Contract without any further obligation to Contractor. Any such termination for default shall not in any way operate to preclude Omnitrans from also pursuing all available remedies against Contractor and its sureties for said breach or default.

- c. Waiver of Remedies for any Breach In the event that Omnitrans elects to waive its remedies for any breach by Contractor of any covenant, term or condition of this Contract, such waiver by Omnitrans shall not limit Omnitrans remedies for any succeeding breach of that or of any other term, covenant, or condition of this Contract.
- d. Termination for Default (Construction) If the Contractor refuses or fails to prosecute the work or any separable part, with the diligence that will insure its completion within the time specified in this contract or any extension or fails to complete the work within this time, or if the Contractor fails to comply with any other provisions of this contract, Omnitrans may terminate this contract for default. Omnitrans shall terminate by delivering to the Contractor a Notice of Termination specifying the nature of the default. In this event, Omnitrans may take over the work and compete it by contract or otherwise, and may take possession of and use any materials, appliances, and plant on the work site necessary for completing the work. The Contractor and its sureties shall be liable for any damage to Omnitrans resulting from the Contractor's refusal or failure to complete the work within specified time, whether or not the Contractor's right to proceed with the work is terminated. This liability includes any increased costs incurred by the Omnitrans in completing the work.

The Contractor's right to proceed shall not be terminated nor the Contractor charged with damages under this clause if-

- 1. The delay in completing the work arises from unforeseeable causes beyond the control and without the fault or negligence of the Contractor. Examples of such causes include: acts of God, acts of the Recipient, acts of another Contractor in the performance of a contract with the Recipient, epidemics, quarantine restrictions, strikes, freight embargoes; and
- 2. The contractor, within [10] days from the beginning of any delay, notifies Omnitrans in writing of the causes of delay. If in the judgment of Omnitrans, the delay is excusable, the time for completing the work shall be extended. The judgment of Omnitrans shall be final and conclusive on the parties, but subject to appeal under the Disputes clauses.

RR – Page 27 Updated: January 19, 2017 If, after termination of the Contractor's right to proceed, it is determined that the Contractor was not in default, or that the delay was excusable, the rights and obligations of the parties will be the same as if the termination had been issued for the convenience of Omnitrans.

RR – 27 SEISMIC SAFETY REQUIREMENTS 42 U.S.C. 7701 et seq. 49 CFR Part 41

Applicability to Contracts

The Seismic Safety requirements apply only to contracts for the construction of new buildings or additions to existing buildings.

Flow Down

The Seismic Safety requirements flow down from FTA recipients and subrecipients to first tier contractors to assure compliance, with the applicable building standards for Seismic Safety, including the work performed by all subcontractors.

Model Clauses/Language

The regulations do not provide suggested language for third-party contract clauses. The following language has been developed by FTA.

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

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BREACHES AND DISPUTE RESOLUTION 49 CFR Part 18 FTA Circular 4220.1F

Applicability to Contracts

All contracts in excess of \$100,000 shall contain provisions or conditions which will allow for administrative, contractual, or legal remedies in instances where contractors violate or breach contract terms, and provide for such sanctions and penalties as may be appropriate. This may include provisions for bonding, penalties for late or inadequate performance, retained earnings, liquidated damages or other appropriate measures.

Flow Down

The Breaches and Dispute Resolutions requirements flow down to all tiers.

Disputes - Disputes arising in the performance of this Contract which are not resolved by agreement of the parties shall be decided in writing by the Omnitrans. This decision shall be

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final and conclusive unless within ten (10) days from the date of receipt of its copy, the Contractor mails or otherwise furnishes a written appeal to Omnitrans Construction Manager. In connection with any such appeal, the Contractor shall be afforded an opportunity to be heard and to offer evidence in support of its position. The decision of Omnitrans Project Manager shall be binding upon the Contractor and the Contractor shall abide be the decision.

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

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

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

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

RR-29 VETERANS PREFERENCE

<u>Veterans Employment</u>. Contractors working on a capital project funded using FTA assistance shall give a hiring preference, to the extent practicable, to veterans (as defined in section 2108 of title 5) who have the requisite skills and abilities to perform the construction work required under the contract. This subsection shall not be understood, construed or enforced in any manner that would require an employer to give preference to any veteran over any equally qualified applicant who is a member of any racial or ethnic minority, female, an individual with a disability, or former employee.

END OF REGULATORY REQUIREMENTS

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SUBJECT

PROHIBITING WEAPONS IN THE WORKPLACE

APPROVED BY OMNITRANS BOARD OF DIRECTORS

DATE: June 7, 2017

I. Purpose

It is the policy of Omnitrans to maintain a work environment that is safe for all persons, including the community, and conducive to attaining high work standards. To achieve these objectives, the Agency prohibits the possession of firearms and weapons in the work place, regardless of any license or permit that an individual may have which otherwise authorizes the individual to carry firearms or weapons.

It is illegal and a criminal violation to possess weapons in public buildings (California Penal Code 171b and 171.7).

II. Scope

This policy applies to all Omnitrans employees, including but not limited to staffing agency workers and contractors working for or with the Agency at any time, regardless of whether the Agency is the actual employer.

Possession of firearms and weapons is prohibited at all Omnitrans' offices, parking lots, agency vehicles and job sites, and in all Agency vehicles.

The following person/s are exempt from this policy as stated: a guard of a contract carrier operating an armored vehicle, and any law enforcement officer who is carrying out official duties engaged in protecting and preserving property or life within the scope of his or her employment.

Omnitrans will strictly enforce this policy. Violation of this policy will result in immediate disciplinary action, up to and including termination.

III. Procedure

A. COMMUNICATION OF POLICY

- (a) Each employee of the Agency shall receive a copy of this policy at the time of his/her hire and shall sign a copy of the acknowledgment. Employees who were employed before the effective date of this policy shall also receive a copy of this policy and shall sign a copy of the acknowledgment. A copy of the signed acknowledgment and of all new and revised policies throughout the employee's employment shall be maintained in each employee's personnel file.
- (b) A copy of this policy shall be attached to each contractor's contract, and shall become a part of its contract. The contractor shall be responsible for communicating this policy to its employees and any subcontractors to which the contractor sublets any portion of its contract.



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APPROVED BY OMNITRANS BOARD OF DIRECTORS

DATE: June 7, 2017

B. PROHIBITED CONDUCT

- (a) The transportation of firearms or weapons in Agency vehicles is prohibited. This includes but is not limited to:
 - (1) to and from work,
 - (2) when conducting Agency business,
 - (3) at all times in Agency-owned or leased vehicles.
- (b) The possession or carrying of permitted and non-permitted firearms or weapons while at Agency buildings, parking lots, sponsored events, and job sites.
- (c) Exception: Power actuated tools which are manufactured for the use of fastening building materials and sanctioned tools for the purpose of performing Agency job duties are not subject to this policy.

C. SEARCH

- (a) Omnitrans reserves the right to conduct reasonable, unannounced searches of Agency premises and personal searches of employees and others while entering, on, or leaving Agency premises, including, but not limited to, personal effects, vehicles, lockers, desks, tool boxes, clothing, meal containers, and baggage. Searches will be conducted when the Agency has a reasonable suspicion to believe that a particular employee may be in possession of a weapon or firearm.
- (b) "Reasonable suspicion" is defined as a suspicion that is based on specific personal observations such as an employee's manner, disposition, behavior, speech, information provided to management by an employee, by law enforcement officials, by a security service, or by other persons believed to be reliable, or a suspicion that is based on other surrounding circumstances.
- (c) Individuals refusing to allow an inspection will not be detained or forced to submit to the inspection. Refusal violates Agency policy and constitutes an act of insubordination constituting disciplinary action, up to and including separation of the employment relationship. Non-employees who refuse to allow an inspection will not be permitted on Agency premises and will be required to immediately leave the premises. Employees will be relieved of all duties while pending investigation.

D. DISCIPLINE

(a) Violations of any portion of this policy will subject the employee to discipline,



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SUBJECT

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up to and including separation of employment.

(b) Violations by a contractor's employee or subcontractor of any portion of this policy may constitute a breach of contract and regardless will mandate the immediate removal of the contractor's employee from Agency premises, prohibition against the individual accessing Agency premises in the future, and may also constitute a breach of contract.

E. REPORT OF VIOLATIONS

1. Employee Violations

Employees are required to report violations of this policy without regard to the relationship between the individual who initiates the prohibited behavior and the individual reporting it. An employee who believes that another employee may be in violation of this policy must report the alleged violation to the employee's manager or supervisor, the department director, security, or the appropriate departmental Human Resources representative.

Departments are responsible for implementing this policy. The Agency will promptly investigate allegations of violations of this policy.

Omnitrans reserves the right to authorize searches for prohibited weapons on its property when a violation is reported or when probable cause or reasonable suspicion is present consistent with law.

Employees should be aware that there is no reasonable expectation of privacy with respect to weapons in the workplace. The Agency's right to conduct searches includes, but is not limited to, such areas and items as lockers, desks, workstations, offices, purses, briefcases, bags, toolboxes, and lunch bags.

Searches of the employee's work area and belongings, as described above, may be conducted by the Security & Emergency Preparedness Coordinator, or designee. Searches of all types, including surrounding agency property, personal property and the employee may be conducted by law enforcement in accordance with law should reasonable suspicion be present. Any weapon found in violation of this policy may be confiscated. Refusal to permit a search may result in discipline, up to and including separation.

2. Visitor Violations

Visitors are not allowed to carry a weapon on the premises. Any visitor carrying a weapon into a posted no-carry agency facility is creating an elevated risk to security and safety that warrants a response leading to compliance with the law. If the visitor



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poses an immediate risk to security or safety, law enforcement shall be notified immediately by calling 9-911. The visitor shall be considered an immediate risk to safety and security if he/she is acting in an aggressive, belligerent, confrontational, suspicious or in an otherwise questionable manner while carrying a weapon.

F. FALSE REPORTS

Employees making intentionally false and malicious complaints of weapons in the workplace will be subject to disciplinary action, up to and including separation and/or will be reported to the proper authorities as appropriate.

G. ROLES AND RESPONSIBILITIES

Employees are responsible for understanding and complying with the Policy Prohibiting Weapons in the Workplace.

Whenever there is a question as to whether an instrument, article or substance is considered a weapon in violation of this policy, it is the employee's responsibility to seek clarification. Employees seeking clarification should direct their questions to the agency's Security & Emergency Preparedness Coordinator at 909-379-7117 prior to bringing the item(s) to Omnitrans work sites and events, as well as agency-owned or leased facilities or vehicles.

H. SAFETY FIRST

In applying this policy, no employee shall take any action that will risk his or her own safety or the safety of other individuals. No attempt should ever be made by an employee to restrain or forcibly evict an armed person from agency premises.

An individual's continued non-compliance after being properly informed of the law (California Penal Code 171 (b)) will result in notification to law enforcement and discipline, up to and including separation of employment. Employees should notify security immediately.

An employee who feels an imminent danger to his or her own safety or the safety or security of others, should avoid any interaction with the individual. Immediately contact law enforcement by calling 9-911 and security at 909-379-7117.

I. ANTI-RETALIATION PROVISION

Omnitrans strictly prohibits any retaliation against an employee who has reported a possible breach of policy. If an employee feels that he or she has been subjected to retaliation in violation of this policy, the employee must immediately report it to his or her supervisor or other designated Human Resources representative.



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J. DEFINITIONS

- Firearm or weapon includes, but is not limited to: A weapon, a pistol or rifle, whether loaded or unloaded, capable of firing a projectile and using an explosive as a propellant.
 - A firearm, whether loaded or unloaded, from which a shot may be discharged including but not limited to handguns, pistols, revolvers, shotguns, rifles, and bb guns;
 - A gun that can discharge a shot or a projectile by means of an explosive or gas, or compressed air;
 - A device designed to be used as a weapon, from which can be expelled a
 projectile by the force of any explosion or force of combustion;
 - Any weapon (including a starter gun) which will or is designed to or may readily be converted to expel a projectile by the action of an explosive;
 - · Any destructive device;
 - Any device designed as a weapon and capable of producing great bodily harm, including but not limited to, stun guns, stun batons;
 - An electric weapon such as a taser gun;
 - Any combustible or flammable liquid, or other substance, device, or instrumentality that, in a manner it is used or intended to be used, is calculated or likely to produce death or great bodily harm, or any fire that is used to produce death or great bodily harm;
 - Any knife that is carried with intention or calculation to produce death or great bodily harm having a blade length in excess of four (4) inches, the blade of which is fixed or is capable of being fixed in an unguarded position by the use of one or two hands. Switchblades are specifically prohibited. (Knives intended to be used as eating utensils, and stored or maintained in office kitchens or lunchrooms do not represent a violation of this policy.)
- 2. **Office**: All permanent facilities, all mobile facilities, all leased facilities, and any facility designated as an office by the agency.
- 3. **Parking lot**: All lots at permanent facility, park and rides, lots at project sites, any lot that the agency designates as a parking lot that is not at a permanent facility or project site.
- 4. Agency vehicle: All agency-owned buses/vehicles, all agency-leased buses/vehicles, all agency-rental buses/vehicles, and all personal vehicles for which the owner receives a vehicle allowance, all personal vehicles where the owner receives reimbursement for mileage.



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- 5. Search: To examine in order to find something concealed.
- 6. Job sites: Any and all locations where the agency conducts business.

SIGNS

- At each entrance to buildings, parking lots, and project sites, a sign shall be posted in a location that is conspicuous to all who could enter a building, parking lot, or project site.
- 2. Signs shall have wording or pictogram that prohibits firearms, weapons and give notice of video surveillance. Signs shall be vandalism resistant and of the quality that they will not fade due to the elements.