



BOARD OF DIRECTORS MEETING
WEDNESDAY, JANUARY 14, 2015 – 8:00 A.M.
OMNITRANS METRO FACILITY
1700 WEST 5TH STREET
SAN BERNARDINO, CA 92411

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

A. CALL TO ORDER

1. Invocation
2. Pledge of Allegiance
3. Roll Call

B. ANNOUNCEMENTS/PRESENTATIONS

- A. Next Board Meeting: Wednesday, February 4, 2015
Omnitrans Metro Facility Board Room

C. COMMUNICATIONS FROM THE PUBLIC

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

D. POSSIBLE CONFLICT OF INTEREST ISSUES

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

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E. CONSENT CALENDAR

The following items are expected to be routine and non-controversial. The Board will act upon them at one time without discussion, unless the Board directs that an item be held for further discussion under Agenda Item F, Discussion Items. Any person wishing to address consent items should address the Board under Agenda Item #7, Action on Consent Calendar.

- | | |
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| 1. Approve Board Minutes – December 3, 2014 | 5 |
| 2. Receive and File Executive Committee Minutes – November 7, 2014 | 10 |
| 3. Authorize Award, Contract ITS15-59 – IT Management Software | 13 |
| 4. Authorize Award, Purchase Order ITS15-66R – Computer Equipment | 44 |
| 5. Adopt Resolution No. 277-15, Authorizing Destruction of Records | 46 |
| 6. Press Articles and Letters of Interest to the Board | 51 |
| 7. Action on Consent Calendar | |



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SAN BERNARDINO, CA 92411**

F. DISCUSSION ITEMS

The following items do not legally require any public testimony, although the Chair may open the meeting for public input.

- | | |
|---|-----|
| 1. CEO/General Manager's Report | 73 |
| 2. Adopt Investment Policy Statement for 2015 | 74 |
| 3. Authorize Award, Contract MNT14-85R1 – Parts Washers | 86 |
| 4. Authorize Award, Contract MNT15-01 – Engine Dynamometer | 142 |
| 5. Approve Memorandum of Understanding, Coach Operators Unit, Amalgamated Transit Union Local #1704 | 229 |

G. PUBLIC HEARING

- | | |
|--|-----|
| 1. Public Hearing – Federal Transit Administration Section 5310 Capital Assistance, Fiscal Year 2014, and Adopt Corresponding Resolution #278-15 | 232 |
|--|-----|

H. BOARD BUSINESS

There is no Closed Session item scheduled.

I. REMARKS AND ANNOUNCEMENTS

J. ADJOURNMENT

ITEM # D1

DATE: January 14, 2015

TO: Board Chair Alan Wapner and Members of the Omnitrans Board of Directors

THROUGH: P. Scott Graham, CEO/General Manager

FROM: Jennifer M. Sims, Director of Procurement

**SUBJECT: DISCLOSURE(S) REGARDING RECOMMENDATIONS FOR
ACTION BY THE OMNITRANS BOARD OF DIRECTORS**

FORM MOTION

Staff hereby provides a listing of principals and subcontractors associated with action items on the agenda for the Board of Director's Meeting scheduled January 14, 2015.

Item	Contract	Principals & Agents	Subcontractors
E3	Authorize Award Contract ITS15-59 IT Management Software	<i>Syntech Group, Inc. Rancho Cucamonga, CA Katherine Wetherbee CEO</i>	<i>none</i>
E4	Authorize Award Purchase Order ITS15-66R Computer Equipment	<i>CherryStoneIT, Inc. Huntington Beach, CA Keith Di Carlo President</i>	<i>none</i>
F3	Authorize Award Contract MTN14-85R1 Parts Washers	<i>FRS Environmental, Inc. Corona, CA Michelle Voss President</i>	<i>none</i>
F4	Authorize Award Contract MNT15-01 Engine Dynamometer	<i>Hamel Contracting, Inc. Murrieta, CA Grant Hamel President</i>	<i>none</i>

PSG/JMS

CONFLICT OF INTEREST FORM

PURPOSE: This form is provided to assist members of the Omnitrans Board of Directors in meeting requirements of Government Code Section 84308 and 87100 in documenting conflict of interest as related to Omnitrans Board/Committee agenda items.

INSTRUCTIONS: Under certain circumstances, Omnitrans Board Members may be required to disclose and disqualify themselves from participating in, influencing, or voting on an agenda item due to personal income, real property interests, investments, business positions, or receipt of campaign contributions. If applicable, Board Members must personally state the following information, for entry into the public record, prior to consideration of the involved agenda item(s) and turn in the completing form to the Recording Secretary prior to leaving the meeting.

BOARD MEMBER INFORMATION

BOARD MEMBER NAME	CITY/COUNTY NAME	MEETING DATE

CAMPAIGN CONTRIBUTIONS

- I have a disqualifying campaign contribution of over \$250 from _____
(Name of Company and/or Individual)
and therefore I am abstaining from participation on Agenda Item _____, Subject: _____
- I have a disqualifying campaign contribution of over \$250 from _____
(Name of Company and/or Individual)
and therefore I am abstaining from participation on Agenda Item _____, Subject: _____
- I have a disqualifying campaign contribution of over \$250 from _____
(Name of Company and/or Individual)
and therefore I am abstaining from participation on Agenda Item _____, Subject: _____

FINANCIAL INTEREST

- I have a financial interest of _____
State income, real property interest or business position

Identify company or property location
- I have a financial interest of _____
State income, real property interest or business position

SIGNATURE

Board Member Signature

Date

ITEM # E1

**BOARD OF DIRECTORS' MEETING
MINUTES OF DECEMBER 3, 2014**

A. CALL TO ORDER

Chairman Alan Wapner called the regular meeting of the Omnitrans Board of Directors to order at 8:03 a.m., Wednesday, December 3, 2014, at the Omnitrans Facility located at 1700 West 5th Street, San Bernardino, California.

1. Invocation
2. Pledge of Allegiance
3. Roll Call

BOARD MEMBERS PRESENT

Mayor Pro Tem Alan Wapner, City of Ontario – Chairman
Mayor Pro Tem Sam Spagnolo, City of Rancho Cucamonga
Council Member Ron Dailey, City of Loma Linda
Mayor Carey Davis, City of San Bernardino
Mayor Paul Eaton, City of Montclair
Mayor Pro Tem Paul Foster, City of Redlands
Council Member Ed Graham, City of Chino Hills
Supervisor Curt Hagman, County of San Bernardino
Council Member Penny Lilburn, City of Highland
Mayor Ray Musser, City of Upland
Supervisor James Ramos, County of San Bernardino
Mayor Pro Tem John Roberts, City of Fontana
Supervisor Janice Rutherford, County of San Bernardino
Mayor Walt Stanckiewicz, City of Grand Terrace
Mayor Dennis Yates, City of Chino

BOARD MEMBERS NOT PRESENT

Supervisor Josie Gonzales, County of San Bernardino
Supervisor Robert Lovingood, County of San Bernardino
Mayor Pro Tem Ed Palmer, City of Rialto
Council Member Dick Riddell, City of Yucaipa

OMNITRANS' ADMINISTRATIVE STAFF PRESENT

P. Scott Graham, CEO/General Manager
Diane Caldera, Director of Operations
Jack Dooley, Director of Maintenance
Sam Gibbs, Director of Internal Audit
Jacob Harms, Director of Information Technology
Andres Ramirez, Program Manager
Jennifer Sims, Director of Procurement
Don Walker, Director of Finance
Wendy Williams, Director of Marketing/Planning
Jeremiah Bryant, Service Planning Manager
Ray Maldonado, Employee Relations Manager
Maurice Mansion, Treasury Manager
Oscar Tostado, East Valley Maintenance Manager
Debra Nicastro, Sr. Contracts Administrator
Chris Van Matre, Contracts Administrator
Mark Crosby, Loss Prevention Supervisor
Ross Hrinko, Safety & Regulatory Compliance Specialist
Vicki Dennett, Executive Assistant to CEO/General Manager

LEGAL COUNSEL

Carol Greene

B. ANNOUNCEMENTS/PRESENTATIONS

Next Board Meeting: Wednesday, January 14, 2015, 8:00 a.m.
Omnitrans Metro Facility Board Room

Chairman Wapner recognized outgoing members Frank Gonzales and Walt Stanckiewicz for their outstanding service to the Omnitrans Board.

Chairman Wapner announced a change to the agenda, calling for Closed Session before moving to the Consent Calendar portion of the meeting.

Member James Ramos arrived at 8:11 a.m.

H. BOARD BUSINESS

The Board adjourned to Closed Session at 8:12 a.m. and reconvened to Open Session at 8:21 a.m.

M/S (Stanckiewicz/Ramos) that approved Form Motion No. 1 to add an emergency item for action by the Board of Directors pursuant to Government Code Section 54954.2(b)(2) regarding labor negotiations between Omnitrans and the Amalgamated Transit Union (ATU) Local #1704 for the Coach Operator Unit. Motion was unanimous by Members present.

M/S (Stanckiewicz/Yates) that approved Form Motion No. 2 to authorize the CEO/General Manager to pay a \$900 stipend before December 25, 2014, and approve a 2.75% increase effective December 9, 2014, the first full payroll period after ratification by the ATU. Final approval of the Memorandum of Understanding shall be brought back to the Board of Directors in January 2015. Motion was unanimous by Members present.

C. COMMUNICATIONS FROM THE PUBLIC

There were no communications from the public.

D. POSSIBLE CONFLICT OF INTEREST ISSUES

There were no Conflict of Interest Issues identified.

E. CONSENT CALENDAR

1. Approve Board Minutes – November 5, 2014
2. Receive and File Executive Committee Minutes – September 10, 2014
3. Receive and File Administrative and Finance Committee Minutes - October 9, 2014
4. Receive and File Construction Progress Report #32 through October 28, 2014, sbX E Street Corridor BRT Project
5. Receive and File, Omnitrans Transit Design Guidelines
6. Reappoint Member Lilburn to Serve Three Year Term on Consolidated Transportation Services Agency (CTSA) Board of Directors
7. Adopt Rosenberg's Rules of Order
8. Authorize Award, Contract ITS15-70, Multiprotocol Label Switching
9. Authorize Award, Purchase Order ITS15-84, Storage Area Network Arrays
10. Authorize Award, Contract MNT15-93, Coolant Supply Services
11. Authorize Release, Request for Proposals RFP-MNT15-52, Maintenance, Repair and Operations (MRO) Supplies
12. Authorize Release, Request for Proposals RFP-MNT15-99, Janitorial Services
13. Authorize CEO/General Manager to Execute Memorandum of Understanding between Omnitrans and California State University, San Bernardino, for Coach Operator Simulator
14. Press Articles and Letters of Interest to the Board

M/S (Eaton/Spagnolo) that approved the Consent Calendar. Motion was unanimous by Members present.

F. DISCUSSION ITEMS

1. CEO/General Manager's Report

CEO/General Manager Scott Graham reviewed the CEO/General Manager's Report. As a follow-up to the directive from the Board at the November meeting, an Omnitrans field supervisor went to the Arrowhead Vista Apartments and informed them that as of December 1 the bus would be returned to the stop in front of the facility. Following up

on last month's second public comment regarding the County Department of Aging & Adult Services (DAAS), Omnitrans is going to work with them to transfer a shuttle that's going out of service.

Member Curt Hagman arrived at 8:28 a.m.

Marketing/Planning Director Wendy Williams announced the recent APTA Ad Wheel awards of three first prizes, and the Grand Prize earned by Omnitrans. She presented the 30-second advertisement that won the Grand Prize.

2. Adopt Proposed Board Meeting Schedule for 2015

M/S (Eaton/Yates) that adopted the Meeting Schedule for 2015. Motion was unanimous by Members present.

3. Authorization to De-obligate and Re-obligate Federal Transit Administration and Prop 1B Funds and Authorize Award, Purchase Orders ITS15-66, Computer Equipment

M/S (Yates/Musser) that authorized the CEO/General Manager to de-obligate \$377,904.13 of Federal Transit Administration (FTA) funds and \$94,476.06 of Prop 1B funds as shown in the Funding Source section, and re-obligate these funds to the Computer Equipment Project; and that authorized the CEO/General Manager to award purchase orders to VetSource Mobility of Clarksville, TN, for the provision of one hundred (100) laptops and two hundred (200) 22" LED Lit LCD Monitors in the amount of \$331,185.46, and to CherryStoneIT, Inc., of Huntington Beach, CA, for the provision of Tower Desktops in the amount of \$126,237. The total amount of both purchase orders is \$457,422.46, plus a 3.27% Capital Allocation Plan (CAP) of \$14,957.71 for a total not-to-exceed amount of \$472,380.17. Motion was unanimous by Members present.

4. Authorize Sole Source Purchase Order, Ticket Vending Machines

M/S (Stanckiewicz/Eaton) that authorized the CEO/General Manager to award a sole source purchase order to Genfare, a Division of SPX Corporation of Elk Grove Village, IL, for the purchase of two GFI Vendstar-3 Ticket Vending Machines (TVM) in the amount of \$49,956 per unit, including tax and freight, and the option to purchase one additional TVM, in the amount of \$57,431, for a total of \$157,343 for three TVMs, plus a 3.27% Cost Allocation Plan (CAP) in the amount of \$3,512, for a total project amount not to exceed \$160,855, if option is exercised. Motion was unanimous by Members present.

5. Authorize Award, Contract ITS15-64R, Microsoft Software Assurance

M/S (Yates/Stanckiewicz) that authorized the CEO/General Manager to award Contract ITS15-64R to PCMG, Inc. dba PCM Gov, Inc. of El Segundo, CA, for the provision of Microsoft Software Assurance for a three-year period beginning December 2014 and ending December 2017, in the amount of \$202,438.41. Motion was unanimous by Members present.

G. PUBLIC HEARING

Call for a public hearing concerning the Federal Transit Administration (FTA), Section 5310 Capital Assistance for Fiscal Year 2014, to be held at 8:00 a.m. January 14, 2015 at the Omnitrans Metro Facility, 1700 West Fifth Street, San Bernardino, CA 92411.

I. REMARKS AND ANNOUNCEMENTS

There were no remarks or announcements.

J. ADJOURNMENT

The Board adjourned at 8:39 a.m. The next regular meeting is scheduled Wednesday, January 14, 2015, at 8:00 a.m., with location posted on the Omnitrans website and at Omnitrans' San Bernardino Metro Facility.

Prepared by:

Christine Vega, Administrative Secretary

ITEM # E2

**EXECUTIVE COMMITTEE MEETING
MINUTES
NOVEMBER 7, 2014**

A. CALL TO ORDER

The Executive Committee Meeting was called to order by Chair Alan Wapner at 9:00 a.m., Friday, November 7, 2014.

COMMITTEE MEMBERS ATTENDING

Mayor Pro Tem Alan Wapner, Board Chair
Mayor Pro Tem Sam Spagnolo, Vice Chair
Mayor Ed Graham, City of Chino Hills – Via Teleconference from Chino City Hall
Council Member Penny Lilburn, City of Highland
Council Member Dick Riddell, City of Yucaipa

OMNITRANS STAFF ATTENDING

P. Scott Graham, CEO/General Manager

B. ANNOUNCEMENTS/PRESENTATIONS

1. Next Committee Meeting: Friday, December 12, 2:00 p.m. (See Item E#3)
OmniTrans Metro Facility

C. COMMUNICATIONS FROM THE PUBLIC

There were no communications from the public.

D. POSSIBLE CONFLICT OF INTEREST ISSUES

There were no Conflict of Interest Issues.

E. DISCUSSION ITEMS

1. Approve Executive Committee Minutes – September 10, 2014

M/S (Spagnolo/Riddell) that approved the Executive Committee Minutes of September 10, 2014. Roll Call vote of motion was unanimous.

2. Accidents on sbX Green Line

CEO/General Manager Graham presented a video of the most recent accident on the sbX Green Line that occurred on Hospitality Lane, near Waterman Avenue, which is similar to the other accidents, eight in all, that have occurred in the sbX dedicated lane. Although some business owners and the members of the public have placed blame on Omnitrans, Omnitrans' drivers are safe. All of the accidents in the dedicated lanes have been the result of irresponsible drivers crossing the double-yellow lines, which has been confirmed by the 12 cameras installed on each sbX bus. To prevent these accidents from occurring in the future, lane delineators will be installed along the entire 5.7 miles of dedicated lanes on the sbX corridor in the near future.

The Committee discussed the process Omnitrans follows when accidents occur, including drug testing of the driver under certain circumstances. Chair Wapner suggested the video be shown to the driver to reassure him that he acted appropriately, as it would also illustrate to the Union that the videos are not only used for discipline, but are also used to protect the driver.

3. Propose Amendment to Personnel Policy #402, Salary Ranges, Management/Confidential Classifications – When Employee Reaches Top of Range

CEO/General Manager Graham explained that one individual has reached the top of the salary range for the position and inquired whether the Committee would support an amendment to Policy #402 that would permit the CEO/General Manager to give the employee three percent of salary in cash based on outstanding performance during the last year, noting that the three percent would not be added to annual salary, and therefore, would not compound.

The Committee raised concerns of giving an employee a 'bonus' and discussed other options that could be considered such as increased vacation/sick leave or longevity pay. Also discussed was whether the position should be reclassified or whether a different salary range should be applied to the position.

As this matter is specific to one individual, the Committee Chair directed that this matter be added to the next Executive Committee Meeting as a Closed Session item.

4. Reschedule December Executive Committee Meeting

As CEO/General Manager Graham will be attending a FTA Procurement Seminar in Denver on the date of the next scheduled Committee meeting, the Executive Committee meeting was rescheduled to Friday, December 5, at 9:00 a.m.

F. BOARD BUSINESS

There is no Closed Session item scheduled.

G. REMARKS AND ANNOUNCEMENTS

In response to the public comments raised at the November Board Meeting and to be more proactive, the Committee requested that staff explain the criteria/process used to determine when to eliminate, move or add bus stops, as well as how Omnitrans follows up with those who raised the comments.

H. ADJOURNMENT

The Executive Committee adjourned at 9:37 a.m. The next Executive Committee Meeting is scheduled Friday, December 5, at 9:00 a.m., with location posted on the Omnitrans website and at the Omnitrans San Bernardino Metro Facility.

Prepared by:

Vicki Dennett, Executive Assistant to CEO/General Manager

ITEM # E3

DATE: January 14, 2015

TO: Board Chair Alan Wapner and Members of the Omnitrans Board of Directors

THROUGH: P. Scott Graham, CEO/General Manager

FROM: Jennifer M. Sims, Director of Procurement

**SUBJECT: AUTHORIZE AWARD – CONTRACT ITS15-59
IT MANAGEMENT SOFTWARE**

FORM MOTION

Authorize the CEO/General Manager to award Contract ITS15-59 to Syntech Group, Inc., of Rancho Cucamonga, CA, for the provision of IT Management Software for software licenses, professional services, sales tax and annual maintenance support to enhance network security in the amount of \$83,700, plus a 10% contingency of \$8,370, beginning January 2015 and ending December 31, 2015, for a not-to-exceed amount of \$92,070, and the option to exercise two single option years for maintenance and support in the amount of \$12,125 for option year one and \$12,731.25 for option year two, for a total not-to-exceed amount of \$119,853.25 ending no later than December 31, 2017, if all options are exercised.

BACKGROUND

As part of Omnitrans cost containment efforts, the information technology support services contract with EnPointe Gov., Inc. will be discontinued. As a result, there is a need for management software that will interface with Omnitrans' existing infrastructure to monitor, manage and maintain physical and virtual network activities. IT staff will be able to manage projects, business processes, schedules, end-user privileges, sequence work flows, manage network and storage devices, and generate help-desk tickets from a single console.

On November 5, 2014, Board approved release of RFP-ITS15-59. The solicitation was posted on Omnitrans' online bidding system. One proposal was received by the December 8, 2014 deadline and was deemed responsive and responsible.

In accordance with Procurement Procedure 4050-1, Section 5, awarding a contract in response to a single bid is allowed when it can be determined that the lack of competition was not due to unfavorable terms and conditions or unduly restrictive scopes of work or technical specifications. Staff contacted potential firms that downloaded the solicitation but chose not to submit proposals. As a result of the survey, staff determined that the limited number of responses was unrelated to any term or specifications and deemed the process valid. Reissuing the RFP would not produce competition.

The proposal was evaluated based on the criteria set forth in the RFP and scored as follows:

Criteria	Points Possible	Syntech, Inc.
Responsiveness to Requirements of Scope	20	15.0
Quality of Product	40	32.5
Proven Success	25	20.0
Price	15	15.0
TOTAL	100	82.5

Syntech, Inc. proposes a technically acceptable solution that meets the requirements of the RFP. The not-to-exceed amount of \$119,853.25 is within 10% of the Independent Cost Estimate (ICE) of \$110,486 and is deemed fair and reasonable.

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

FUNDING SOURCE

The costs associated for the maintenance and support for Option Years One and Two are budgeted in IT Department's Operating budget as follows:

Department 1320
Expenditure Code 505170

Funding for the software, implementation and the first year of maintenance and support is as follows:

CAPITAL FUNDING	YEAR	PROJECT NAME	INTERNAL ORDER	AMOUNT
Prop 1B	2008	IT Management Software	D1422010B	\$19,321.27
Prop 1B	2009	IT Management Software	K091B102P	\$30,157.25
Prop 1B	2010	IT Management Software	K1031B01B	\$42,591.48
Total				\$92,070.00

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

CONCLUSION

By proceeding with this award, Omnitrans will acquire the necessary software needed to manage technical support efficiently.

PSG:JMS:EFP



CONTRACT AGREEMENT

between

Syntech Group, Inc.
9300 Santa Anita Ave Suite 100
Rancho Cucamonga, CA 91730
www.syntechgroup.com
kwetherbee@syntechgroup.com

(hereinafter "CONTRACTOR")
Telephone: 909-203-1530
Fax: 909-475-6363
Cell: 909-767-0819

And

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

CONTRACT DOCUMENTS

CONTRACT ITS15-59

IT Management Software

Contract Amount: \$83,700

Omnitrans Project Manager:

Name: Harry Morck

Title: IT

Telephone: (909) 379-7286

Fax: (909) 379-7326

Email: harry.morck@omnitrans.org

Contract Administrator:

Name: Eugenia F. Pinheiro

Title: Contracts Manager

Telephone: (909) 379-7128

Email: eugenia.pinheiro@omnitrans.org



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ATTACHMENT A - SCOPE OF WORK

ATTACHMENT B - PRICING

This Agreement is made and entered into as of this ____ day of January, 2015 by and between Omnitrans (hereinafter referred to as "OMNITRANS") and Syntech Group, Inc. (hereinafter referred to as "CONTRACTOR").

RECITALS

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

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

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

1. SCOPE OF WORK

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

2. PERIOD OF PERFORMANCE

The term of this Agreement shall be from the date of execution of this Agreement and continue in effect through December 31, 2015, unless terminated as specified in Section 8 and 9 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 December 31, 2015 Through December 31, 2017, which period encompasses the Initial Term, Option Year One and Option Year Two.

3. 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 B-Pricing, and subject to the maximum cumulative payment obligation.

OMNITRANS' maximum cumulative payment obligation under this Agreement shall not exceed Eighty Three Thousand Seven Hundred Dollars (\$83,700), including all amounts payable to CONTRACTOR for all costs, including but not limited to direct labor, other direct costs, subcontracts, indirect costs including, but not limited to, leases, materials, taxes, insurance, and profit.

4. INVOICING AND PAYMENT

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

CONTRACTOR shall submit invoices in duplicate to:

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

Email: 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.

5. AUDIT AND INSPECTION OF RECORDS

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

6. NOTIFICATION

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

To OMNITRANS:

Omnitrans
1700 West Fifth Street
San Bernardino, CA 92411
Attn: Eugenia F. Pinheiro
Eugenia.pinheiro@omnitrans.org

To CONTRACTOR:

Syntech Group, Inc.
9300 Santa Anita Ave, Ste 100
Rancho Cucamonga, CA 91730
Attn: Katherine Wetherbee
kwetherbee@syntechgroup.com

7. OMNITRANS' AND CONTRACTOR'S REPRESENTATIVES

A. OMNITRANS' Project Manager

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

Project Manager:

- 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>
Katherine Wetherbee	Chief Executive Officer
James Stover	Project Manager/Consultant

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

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

8. 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.

9. 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.

10. TERMINATION FOR BREACH OF AGREEMENT

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

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

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

11. 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.

12. SUBCONTRACTING

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

**Subcontractor's Name and
Address**

Work to Be Performed

N/A

13. 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.

14. INSURANCE

Throughout the duration of this Agreement, CONTRACTOR shall maintain the following minimum insurance coverage, which shall be full-coverage insurance

not subject to self-insurance provisions. CONTRACTOR shall not of its own initiative cause such insurance to be canceled or materially changed during the term of this Agreement.

- A. **Commercial General Liability including Products/Completed Operations:** \$1,000,000 per occurrence for bodily and property damage liability and \$2,000,000 aggregate; *Endorsement naming Omnitrans as Additional Insured.*
- B. **Automobile Liability:** \$1,000,000 combined single limit bodily and property damage liability per accident; *Endorsement naming Omnitrans as Additional Insured.*
- C. **Workers' Compensation:** statutory limits or, a State-Approved program in an amount and form that meets all applicable requirements of the Labor Code of the State of California; *waiver of subrogation that includes Omnitrans.*
- D. **Employers Liability** Applicable to the work being performed, with a limit no less than \$1,000,000 per claim or occurrence and \$2,000,000 aggregate; *Endorsement naming Omnitrans as additional insured.*
- E. **Environmental Liability:** Applicable to the work being performed, with a limit no less than \$1,000,000 per claim or occurrence and \$2,000,000 aggregate; *Endorsement naming Omnitrans as additional insured.*
- F. All drivers making deliveries of products specified on this RFQ shall have Hazardous Materials Endorsements on their Commercial Driver's License, and such other Endorsements as may be required by relevant laws and/or regulations.

Additional Insured:

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

15. 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.

16. 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.

17. 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.

18. 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.

19. 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.

20. 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.

21. 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.

22. 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.

23. 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.

24. 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.

25. 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).

26. COMPLIANCE WITH LAW

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

27. 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.

28. 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.

29. 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.

30. 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.

31. 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.

32. 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.

33. 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.

34. 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.

35. LICENSING, PERMITS AND INSPECTION COSTS

- A. 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, CONTRACTOR 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. Such 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.

36. PRECEDENCE

Conflicting provisions hereof, if any, shall prevail in the following descending order of precedence: (1) the provisions of this Agreement, (2) Attachment A, Scope of Work, (3) Attachment B, Pricing (4) provisions of RFP-ITS-15-59, IT Management Software and (5) CONTRACTOR's proposal 12-8-2014.

37. 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

SYNTECH GROUP, INC.

P. SCOTT GRAHAM
CEO/General Manager

KATHERINE WETHERBEE
CHIEF EXECUTIVE OFFICER

DATE

DATE

Federal Tax I.D. No. 27-0625486

SCOPE OF WORK

I. PURPOSE/INTENT

- A. Contractor shall provide an integrated network host management and help desk system to replace the existing network management service contract and an off the shelf integrated system for ticket management and network management (System). The System is to provide Omnitrans' Network Administrator with a tool to optimize performance and avoid or quickly resolve problems.
- B. Contractor shall provide a scalable and fully integrated solution consistent with best practices/industry standards. For illustrative purposes, the functional areas of the System have been divided into Information Technology (IT) Management (Section III), Helpdesk (Section IV), and Network Management (Section V).

II. IT Management

Network Management is essential to providing sustainable network viability and long term reliability. The System will monitor, manage and maintain physical and virtual network activities with the following key objectives:

- Provide a solution to monitor network systems.
- Provide a portal for network management.
- Deploy an integrated network management application to support Omnitrans' current and planned physical and virtual network infrastructure
- Reduce the possibility of service interruptions
- Reduce mean-time-to-resolution of network incidents
- Obtain a higher degree of network reliability
- Provide for quicker issue response time through proactive alerting
- Provide greater utilization of resources through effective management

The IT Management described in this section describes a software solution only and does not include services.

A. Microsoft (MS) Active Directory (AD) Integration

System shall monitor, test, and alert Directory Replication, File Replication, FSMO roles status, Site Configuration, Schema Consistency, Time Sync, AD data Store Size, AD Authentication, and Import User and Computer Accounts.

B. Intelligent integration with Omnitrans' Infrastructure (detailed in Section VI)

C. Manage Business Processes as it relates to IT to include:

1. Configuration Management Database (CMDB) - Relationship Mapping
2. Incident Management
3. Problem Management
4. Change Management

D. Comprehensive tracking, notification and reporting tools. Reporting tools shall include:

1. Network Report of all devices
2. Application – to identify bottlenecks
3. Helpdesk

E. Reporting – Ability to run real time reports and at regularly scheduled events; based upon certain threshold or metric being met and ad hoc queries; display reports on operator's screen and saved within the system in order to create a historic view of the network over time and provide quick re-sorting and filtering based on key sets of data.

III. Helpdesk Ticketing System

A. System shall automatically assign a unique, sequential number that is assigned to each service call for the purpose of allowing staff to identify and track progress and completion of each task. Each ticket shall be recorded with the time and date it is issued.

B. System shall notify users that action has been taken, including opening the ticket, ticket number assignment, requests for more information, resolution, and closing.

- C. System shall notify users to view and add comments to their own tickets, including all action and progress made to date. It must allow a delegate to enter and view tickets on behalf of their manager.
- D. System must allow IT staff to view and add comments to all tickets and make changes to the priority level.
- E. System must be searchable by service requestor, date, type of issue, type of equipment or software and allow for full text search of all user-available content.
- F. System shall have an Intuitive interface.
- G. System Accessibility: System shall allow for ticket entry by email and online web system, with the ability to include multiple attachments by email and online.
- H. System shall allow for a user to update tickets automatically when replied to the emails with the corresponding ticket number in a subject line.
- I. Escalates tickets after a set period of time. Escalation levels and criteria are to be customizable.
- J. Manage Projects (integrated scheduling tool for projects / IT personnel) and ticket assignments
- K. Integrate with other components of the System to associate Assets and Network Devices to users and incorporate the data into trouble tickets
- L. User privileges and sequences work flow
- M. Asset Management:
 - 1. Inventory of all hardware and software
 - 2. Agent-less scanning
 - 3. Track serial numbers
 - 4. Warranty Tracking
 - 5. Manage Service Contracts

IV. Network Management:

System shall automatically detect, diagnose and resolve performance issues on the Omnitrans network (detailed in section V). The Network Management component shall include:

- A. Web-based user interface
- B. Intuitive user interface
- C. Manage network and storage devices, applications, servers, virtual environment, bandwidth, and help-desk from single console
- D. Infrastructure Monitoring
 - 1. Hardware faults
 - 2. Software faults
 - 3. Patch Management
 - 4. Virtual environment:
 - a. Performance Monitoring – Monitors CPU usage characteristics (both percent and MHZ); monitors memory usage (such as active, consumed, balloon, swapped, overhead); monitors to check system health (such as plug-ins, kernel, drivers, Vmotion, and vpxa)
 - b. Capacity Planning – checks data store space status for critical space issues;
 - 5. Hardware Monitoring - Checks hardware health status (such as cpu, mem, hard drive, temp, fans, and power supply); provide information regarding the status of its interfaces such as bandwidth on an interface, whether an interface is up or down; and automatically discover normal traffic volumes and patterns, establish a baseline, and detect when that threshold has been exceeded.
 - a. Switches
 - i. Port Security
 - ii. Health check
 - iii. Able to upload configuration files
 - b. Routers

- i. Port Security
 - ii. Health check
 - iii. Able to upload configuration files
 - c. Storage
 - i. Health check
 - ii. Fault Notification
 - iii. Raid Management
 - iv. Capacity Forecasting
 - d. Server
 - i. Health check
 - ii. Fault Notification
 - iii. Raid Management
 - iv. Capacity Forecasting
- E. Application Monitoring
 - 1. System shall monitor and manage the performance and availability of software applications and databases detailed in Section V including volume and speed of transactions processed, transmissions, response time, availability, and end user experience.
 - 2. End-user experience monitoring will include all core application elements:
 - a. HTTP/HTTPS
 - b. SMTP
 - c. Mail Flow
 - d. FTP
 - e. Telnet
 - f. Web Server Response time
 - g. TCP Port
 - h. ICMP
 - i. Customizable Scripting of proprietary application monitoring

3. System shall provide application dependency modeling and have the ability to determine where a selected transaction is spending its time.
4. Performance metrics shall be used to generate an empirical performance baseline for each application.

F. Network Management

System shall provide tools to track, analyze, manage, and predict problems to help improve capacity utilization and meet service quality commitments. System shall be able to determine the most critical alarms and have the ability to resolve issues for multiple database platforms.

1. Bandwidth Monitor: nflow, sflow
2. Monitor site-to-site Connectivity – monitors network connectivity and usage for trouble shooting (such as packets transmitted & received, RX rate, TX rate)
3. Monitor and decode Native IP, VoIP, MPLS/VPN's
4. Generate synthetic transactions in order to check health of applications, including web-based applications and VoIP traffic.
5. Port Security
6. Monitor QOS
7. Notify when the state of physical network connections change
8. Graphical representation of the network
9. Checks disk usage & latency for troubleshooting (such as disk usage, write, read & queue latency)
10. Monitors for host errors (ESX Servers)

G. Manage IT Business Process

1. CMDB – Configuration Management Data Base, Relationship Mapping

2. Incident Management - Provide automatic instance discovery; receive global alerts for issues detected at the instance level; provide notification on cluster interconnect problems; and track cluster balance based on a variety of workload measures.
3. Problem Management & Diagnostics – Track performance using automatic detection and calculation of normal ranges for all metrics and provide real time SQL response monitoring.
4. Change Management – ability to track changes in databases.
5. Wait-state analysis – diagnose wait statistics to determine: where waits occur and what causes the event.
6. Automatic baselines – Ability to know when metrics are not “normal” by automatic calculating, storing and comparing baseline data.

H. Provide a central dashboard of overall network health

V. Overview of OMNITRANS’ Current Infrastructure:

Network Nodes	1400
Switch/Router Type	Cisco
Virtual Infrastructure	VMware 5.5 (ESX and VCenter)
WAN	MPLS
OS	MS Server 2003 R2 – 2012
Server HW	Dell
ERP	SAP
VOIP Phone System	ShoreTel 18.62.1302.0
Email System	Exchange 2003 R2
SQL Server	SQL Server 2008 R2
Storage	EqualLogic SAN
Firewalls	Juniper
Databases	MS SQL Oracle PostgreSQL Sybase

VI. Deliverables

Electronically delivery system and documentation within 15 calendar days of notice to proceed.

VII. License/Subscription

Initial Subscription Activation with the first year's subscription including System Access for up to ten (10) technicians and System Documentation. Option years and additional technicians and devices are detailed on the pricing sheet and will be include in the evaluation.

ATTACHMENT B - PRICING

Integrated Management Software	Amount
Base Year 1	\$ 80,924.90
Tax	\$ 2,775.10*
Sub-Total (A)	\$ 83,700.00
Option Year 1	\$ 12,125.00
Option Year 2	\$ 12,731.25
Total (B) (A +B)	\$ 108,556.25

*Tax includes \$71.17 for rounding. Tax rate is 8.25%.

ITEM # E4

DATE: January 14, 2015

TO: Board Chair Alan Wapner and Members of the Omnitrans Board of Directors

THROUGH: P. Scott Graham, CEO/General Manager

FROM: Jennifer M. Sims, Director of Procurement

**SUBJECT: AUTHORIZE AWARD – PURCHASE ORDER ITS15-66R
COMPUTER EQUIPMENT**

FORM MOTION

Authorize the CEO/General Manager to award a purchase order to CherryStoneIT, Inc. of Huntington Beach, CA, for the provision of twenty-one (21) ruggedized laptops and fifteen (15) vehicle mounts in the amount of \$94,833.40, plus a 3.27% Cost Allocation Plan (CAP) of \$3,101.05, for a total not-to-exceed amount of \$97,934.45.

BACKGROUND

On October 1, 2014, Omnitrans' Board of Directors authorized release of IFB-ITS15-66 for computer equipment. Purchase orders were awarded December 3, 2014 for the laptops, tower desktops and LED monitors. As only one responsive bid was received for both the ruggedized laptops and vehicle mounts, and research indicated that additional competition was available, this equipment was removed from the award and a new solicitation was reissued on Omnitrans' online bidding system for award in January.

Notices were published in two local newspapers of general circulation and posted on Omnitrans' online bidding system. Four bids were received by the December 10, 2014, deadline. Three bids were deemed responsive.

Listed below are the prices for responsive and responsible bids:

Company	Bid*
CherryStoneIT, Inc.	\$94,833.40
Frontier Technology	\$102,566.93
VetSource Mobility	\$132,430.35

*Sales tax, delivery and 3 year warranty included.

Award is recommended to the lowest, responsive and responsible bidder. Price is deemed fair and reasonable based on competition. The Independent Cost Estimate of \$111,000 was based on market research. The award represents a cost savings of \$16,167.

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

FUNDING SOURCES

FUNDING	GRANT	YEAR	PROJECT NAME	INTERNAL ORDER	AMOUNT
FTA	CA-90-Y939	2012	Computer Equipment	D1222005F	78,347.56
STA	13-10-OMN-B	2012	Computer Equipment	D1222005S	19,586.49
Total					\$97,934.05

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

CONCLUSION

Approval of this purchase order will allow Omnitrans to replace outdated or damaged equipment.

PSG:JMS:CVM

ITEM # E5

DATE: January 14, 2015

TO: Board Chair Alan Wapner and Members of the Omnitrans Board of Directors

THROUGH: P. Scott Graham, CEO/General Manager

FROM: Jacob D. Harms, Director of Information Technology

**SUBJECT: ADOPT RESOLUTION NO. 277-15
AUTHORIZING DESTRUCTION OF RECORDS**

FORM MOTION

Adopt Resolution No. 277-15, including Appendix A, authorizing destruction of records in accordance with Omnitrans' Records Management Program.

BACKGROUND

Omnitrans' current Records Management Program was initially adopted by the Board of Directors in 1998, with subsequent revisions approved in January 2006 and February 2007. The revision in 2007 incorporated the "Local Government Records Management Guidelines," which requires that a schedule of documents to be destroyed be approved by the Board of Directors on an annual basis.

CONCLUSION

Adoption of the resolution will provide Omnitrans with the authority to destroy records as defined in the Records Management Program.

PSG:JDH

RESOLUTION NO. 277-15

**A RESOLUTION OF THE OMNITRANS BOARD OF DIRECTORS, SAN
BERNARDINO COUNTY, CALIFORNIA, AUTHORIZING THE DESTRUCTION OF
OMNITRANS RECORDS LISTED ON APPENDIX "A."**

WHEREAS, California Government Code Section 34090 provides for the destruction of records that are no longer required, with the approval of the legislative body by resolution and the written consent of the Agency's Attorney; and

WHEREAS, the records listed on Appendix "A" have been determined to no longer be required by Omnitrans.

NOW THEREFORE BE IT RESOLVED that the Director of Information Technology is hereby authorized to destroy the records listed on Appendix "A".

I HEREBY CERTIFY that the foregoing resolution was duly adopted by the Omnitrans Board of Directors, at their regular meeting held on the 14th day of January 2015, by the following vote to wit:

AYES:

NOES:

ABSENT:

P. Scott Graham, CEO/General Manager
Secretary, Omnitrans Board of Directors

Alan D. Wapner, Chair
Omnitrans Board of Directors

Approved as to form:

Carol Greene
Legal Counsel for Omnitrans

APPENDIX "A"
LIST OF OMNITRANS RECORDS TO BE DESTROYED
January 14, 2015

FILE NAME

YEARS TO BE DESTROYED

ALL DEPARTMENTS

Correspondence Files	FY 2011 & prior
Departmental Copies of Budgets	FY 2010 & prior
Departmental Copies of Accounts Payable Records	FY 2010 & prior
Departmental Copies of Accounts Receivable Records	FY 2009 & prior
Employee Grievance Files - Closed	FY 2005 & prior
Desk Calendars & Diaries	CY 2013 & prior
Telephone Message Books or Slips	CY 2012 & prior
Department Monthly Reports	FY 2012 & prior

EXECUTIVE OFFICE

Statement of Economic Interests	CY 2006
Loss Runs	CY 2010 - 2011
Claims - (Resolved for more than five years)	Closed prior to 1/31/10

PROCUREMENT

Completed Contracts (if grant is closed and audited with no activity since FY 2005)	FY 2011 & prior
Formal Procurements Documents (other than resulting contracts)	FY 2011 & prior
Purchase Orders and Related Documentation	FY 2011 & prior

FINANCE

Accounts Payable Records (With Grant closed and audited for three or more years)	FY 2008 & prior
Accounts Receivable Records	FY 2008 & prior
Annual Budgets	FY 2004 & prior
Balance Sheets	FY 2009 & prior
Banking Records	FY 2009 & prior
Capital Property Records (Inventory)	FY 2007 & prior
External Audits	FY 2004 & prior
Financial Reports and Statements	FY 2004 & prior
FTA and STA Annual Reports	FY 2008 & prior
General Accounting Procedures	FY 2003 & prior
General Accounting Records	FY 2007 & prior
Investments & Insurance Policies (if no open claims)	FY 2007 & prior
Payroll Records	FY 2007 & prior
Profit & Loss Statements	FY 2004 & prior
Tax Returns & Reports	FY 2008 & prior

MARKETING

Customer Contact Forms	FY 2011	& prior
Daily Sales Report	FY 2011	& prior
Employee Rideshare Record Forms	FY 2007	& prior
Promotional Contests/Drawings	FY 2011	& prior
Rideshare Affected Sites Files	FY 2009	& prior

OPERATIONS

Dispatch Logs	FY 2011	& prior
Service Interruption Reports	FY 2011	& prior
Daily Overtime Logs	FY 2011	& prior
Alternative Transportation Logs	FY 2011	& prior
Field Supervisor Logs	FY 2011	& prior
Schedule Adherence	FY 2011	& prior
Sign-on Sheets	FY 2011	& prior
Nutrition Trip Sheets	FY 2012	
Contract Services Accident Reports (Resolved for over five years)	FY 2006-2007	
Customer Contact Forms	FY 2007-2008	
Waybills	CY 2007	& prior

HUMAN RESOURCES

Applications for Employment & Related Documents	CY 2012	& prior
Employee Accident/Incident Reports & Related Documents (Resolved for over five years)	CY 2007	& prior
Employees Personnel Files (Terminated)	CY 2004	& prior
Service Awards Annual Records	CY 2008	& prior

Safety/Health & Regulatory Compliance

Employee Health Related Records	CY 1984	& prior
Environmental Related Records (EPA)	CY 1984	& prior
Regulatory Compliance Inspection Reports (with no activity since CY 2003)	CY 2005	& prior
Internal Inspection Reports	CY 2009	& prior
Safety and Health Training Records	CY 2011	& prior

PLANNING

Access Fare Structure, Zone Maps, Requests and General Issues	CY 2005	& prior
Annual Service Plan	CY 1994	& prior
Comments on Proposed Regulations	CY 2010	& prior
Comprehensive Operational Analysis Reports	CY 1994	& prior
Cooperative Service Agreements	CY 2004	& prior
Fixed Route Summary Reports	CY 2010	& prior
Fixed Route Surveys - All Routes	CY 2010	& prior
Omnitrans ADA Plan & Workpapers	CY 2005	& prior
On-Board Survey Forms	CY 2012	& prior
Short Range Transit Plan	CY 1994	& prior
Title VI Updates	CY 2007	& prior

CY = Calendar Year FY = Fiscal Year

Note: (All documents connected to an ongoing or active investigation, audit, or legal action are excluded)

MAINTENANCE

Operators' Daily Reports	CY 2011	& prior
Supervisors' Reports/Tailgate Forms	CY 2011	& prior
Maintenance Records of Disposed Vehicles	CY 2011	& prior
Work Orders	CY 2011	& prior
A/P Receipts & Statements	CY 2011	& prior
Nextel Bills	CY 2011	& prior
Tire Mileage	CY 2011	& prior
CII List	CY 2011	& prior
Estimate Of Repair	CY 2011	& prior
Period Report Back-Up	CY 2011	& prior
AQMD Inspection Forms	CY 2011	& prior
CNG Daily Inspections	CY 2011	& prior
LCNG Fueling Station Inspection	CY 2011	& prior
Retrofit/Rebuild	CY 2011	& prior

Other
Sunday, October 19, 2014

ITEM #E6

AmericaJR NEWS, SPORTS & ENTERTAINMENT

Sunday, 19 October, 2014 11:43 PM

**Scaled back Rendezvous Back to Route 66 still chugging
along in San Bernardino**



1967 Ford Galaxie 500 at the 2nd Annual Rendezvous Back to Route 66 in San Bernardino, Calif.



by Jason Rzucidlo
americajr@americajr.com

SAN BERNARDINO, Calif. -- The Rendezvous Back to Route 66 car show returned to the San Manuel Stadium on Oct. 10 and 11 in San Bernardino, Calif. It replaced the Stater Bros. Route 66 Rendezvous, which formerly took place on the streets of San Bernardino up until its funding was cut in 2012.

"We're very excited to have it again," said Judi Penman, president and CEO of the San Bernardino Chamber of Commerce. "We're trying to re-establish the Rendezvous Back to Route 66 where it all began. Then, not necessarily because of the bankruptcy, it was more the loss of the convention and visitors bureau, which the city chose not to put any money into. Because of that loss, they were unable to continue the Rendezvous. People were missing that. The Chamber decided to step up to the plate and continue a presence of a Rendezvous Back to Route 66."

The car show featured classic and antique cars, NHRA and NASCAR race cars and drivers, dragsters, sprint cars, midget race cars, an open-header contest and People's Choice Awards.

"We're having a great time, good mix of people and cars," said Tom Bogner, director of motorsports at Lucas Oil. "I'm really happy to be here. We brought the race cars from Lucas Oil. We just kind of walked around to see what's here. It's hard to say which one is the best because there are so many nice cars. A lot of classic cars, a lot of new cars. I'm glad that Terry put this together and tried to bring this back. I think it's a great location here. It's clean. It's still fun. Obviously, I think Terry can grow this thing. We need to get San Bernardino back involved like they used to be."

Aleta Conlee from Riverside introduced me to her 1969 Mercury Cougar named "Bob." She had a silver tray on the passenger window with a burger, cupcake, soft drink and condiments on it. So I asked her the obvious question, has it ever been to Bob's Big Boy?

"Yes, I have over in Corona actually I took it to Bob's Boy Boy," she explained. "My car's name is Bob for Big Orange Beast. My husband's name is Bob and he built the whole thing for me. It has a 351 [engine] but it's been stroked to be a 393. It puts out about 400 or 500 horsepower. It had to be repainted. All of the silver rims had to be ordered because it was missing from this car. The interior was redone as well because it was badly torn up. I get a lot of stares, how about that."

Jake McCloud brought his Dean Engineering top fuel dragster to the Rendezvous Back to Route 66 as part of the Cackelfest. McCloud and several other drivers fired up their cars and made lots of smoke for attendees to enjoy.

"My late brother and I built this car in 1967," McCloud said. "We raced it for about three years. We won five straight top eliminators. We lost the sixth one in the final round. It's a 170-inch wheelbase RCS car. It's got a 400-inch Chrysler HEMI in it. It puts out between 2,500 and 3,000 horsepower. I finally put it back together as a Cackel Car and just show it. This is pretty nice here. I think they've got to get started with it, get it advertised and I think it will be a good show here. Although the downtown show where they blocked off the streets was fun also. It's good for the merchants and stuff in the area. Things like that makes for a good show also."

Juanita Bigelow from Grand Terrace won an award for her 1956 Ford Thunderbird. Horace Mann Insurance nominated her.

"It's my first Route 66 trophy," she said. "I bought it in 1959 and it's been through a complete restoration. I haven't really customized anything, I've tried to keep it as stock as possible. It used to be my work car right after I got out of high school. I was working at Norton Air Force Base. I was a key punch operator. It's a 312 engine. I don't know what the top speed is, I haven't gotten there yet."

The event also featured food vendors, creative kids games, inside park poker runs and variety merchandise vendors. The Inland Empire Health Plan (IEHP) hosted a healthy spin game show on Saturday from Noon to 5 p.m.

"I'm really glad that they're keeping it going," said attendee Bennie Hutchins from San Bernardino. "It's a little disappointing compared to what it was in the past, but at least they're trying to keep it going. We miss the cruising. The music is great."

Her friend, Tony Moreno, agreed: "I believe the city should open up, at least open up the streets to these people here to really show off their cars. People like to see the different older cars that they have. I think they should talk to the city and get the city to open up again. We just like to look around and see what we find. If there was better food like there used to be, it would be great. They had a lot of food vendors."

The Motorsports Racing Display was new this year. It featured NHRA and NASCAR race cars. Drivers Ryan Partridge, Toni McCray, Eddie Fischle and Brian Fischle and his brother, Matt Fischle.

"I like it, but it's not as good as Route 66 a few years ago," said Jim Booth, an attendee from San Bernardino. "It's making a comeback. Hopefully, each year it will get a little better. I like hot rods in general. There's a lot of nice cars here. It would be hard to pick one. I would like to see it go back to the streets in a few years. That would bring in a lot of spectators, a lot more cars. It would be a good thing for San Bernardino. I've got a Corvette and I'm building a Cobra roadster."

Visitors had the rare opportunity to meet the all-female racing team of Shawna Craig Racing. They were on hand to promote their reality show "Speed Sirens," which is in need of a TV home.

"We did film season one," said Michele Jolie, pit crew member and future driver. "We are looking to not only empower women, but we're also racing for juvenile diabetes and we're looking for other causes to race for. We actually race and work on the car. Blake, our mentor, is teaching us how to pull it all apart, work on it. Obviously, there's females out there who race, but none of them are owned by a female all-race pit crew and all-driving crew. The No. 18 car is Blake's old car. We haven't named her yet. She's a Chevy and is all track legal."

Many attendees and car owners agreed that they would like to see the Rendezvous return to the streets of downtown San Bernardino. What are the chances of that?

"It's a little difficult because of the sbX [Rapid Transit Bus]," Penman answered. It goes right down E Street. They've taken away all of the parking on E Street. We could probably have it in a different area. One of the complaints with the car owners was if it was open like that, it was kind of allowing almost anyone to come in. Some of their cars were getting a little damaged. We heard that loud and clear. So we decided to have it here. It was a safe and secure area.

Everyone seems to be pleased with that. It takes people a while to get used to a new routine. It's keeping the tradition alive in San Bernardino and also on the Route 66."

What does the future hold for next year? Who knows...Maybe a car show back on the streets of downtown San Bernardino.

For more information about the Rendezvous Back to Route 66 car show, visit www.rendezvousroute66.com.

THE PRESS-ENTERPRISE

REDLANDS: Students learn how to use public transportation

Omnitrans and The Grove School partnered up to teach teens things like how to plan a bus trip and how much it costs to ride.



Macy Joseph and some of her classmates from The Grove School in Redlands learn about public transportation while aboard an Omnitrans bus on Wednesday. ERIN WALDNER, STAFF



Students from The Grove School in Redlands depart an Omnitrans bus Wednesday at Heritage Park after receiving training on how to take the bus. ERIN WALDNER , STAFF



Students from The Grove School in Redlands depart an OmniTrans bus Wednesday at Heritage Park after receiving training on how to take the bus. ERIN WALDNER , STAFF



The Grove School in Redlands and Omnitrans partnered on Wednesday to teach the school's middle and high school students how to ride the bus. Instruction took place aboard an Omnitrans bus parked at Heritage Park. ERIN WALDNER, STAFF

BY ERIN WALDNER / STAFF WRITER

Published: Nov. 14, 2014 Updated: Nov. 15, 2014 12:15 a.m.

ABOUT OMNITRANS

The public transit agency serves the San Bernardino Valley.

Annual ridership: 15.7 million

Average weekday ridership: 50,606

Ridership under age 18: 6 percent, or 3,036 on an average weekday

Redlands ridership (average daily): 1,509

Source: Omnitrans

Sixteen-year-old Peter Casares has what may be prized above all else among teenagers – a car – but he can foresee occasions when he might leave his wheels at home and take public transportation.

The Redlands teenager said he might hop on the bus if he has to go somewhere far away, like Pomona.

"That's a lot of gas money," he said.

Omnitrans and The Grove School in Redlands partnered on Wednesday to teach Casares and other students in 10th, 11th and 12th grades how to take the bus. The school's middle school students, grades seven through nine, were trained a week earlier.

The instruction was provided on board a bus that Omnitrans brought to Heritage Park, where The Grove is located.

Head of School Ben Moudry said one reason the school contacted Omnitrans about the training was to build independence in older students.

"A lot of them don't have driver's licenses," Moudry said.

If they know how to ride the bus, they can get around town and visit various places with their friends, he said.

Ashley Vazquez, 16, said her parents drive her to school, and she usually relies on them when she needs to go somewhere.

The school is encouraging students to use alternative forms of transportation, now and in the future, Moudry said, but quite a few have never ridden the bus. The training could demystify public transportation by demonstrating that it's safe and clean and a lot of people use it.

On Wednesday, Janice Kuhn, an Omnitrans marketing specialist, showed the teenagers a video on the bus monitors and talked to them about how to plan a bus trip and decipher a bus stop sign. She told them how much it costs to ride, how to catch the bus, how to notify the driver when they want to exit and how to identify a bus on the street.

"I learned a lot of things I didn't know," Casares said, like pressing a tape to signal the driver he wants to exit. "I've been on the bus before and I never knew how to do that, but now I do."

Riders under age 18 make up a small percentage of the average daily ridership for Omnitrans, which serves the San Bernardino Valley.

Asked why more teenagers don't ride the bus, Vazquez said it might be fear. "I think they just don't know how, and it's a scary thing to try."

Contact the writer: 951-368-9552 or ewaldner@pe.com

FOREGROUND / **GOODS**



IN
TRANSIT

FROM HERE TO THERE,
WITH STYLE.

BY LISA SPECKHARDT

• **KODA XT**

In San Bernardino, California, shelters for the bus rapid transit system need to protect commuters from strong winds and sun. Gruen Associates, working under Parsons Transportation Group, designed shelters with undulating shapes that reference the San Bernardino mountains, but discovered that glass wouldn't work for the angles and curves. Koda XT panels

by 3form are made from polycarbonate, which is strong and weather resistant. Custom molds allowed the panels to fit the complex angles on the transit canopies and complete the design. •

FOR MORE INFORMATION VISIT WWW.3FORM.COM.

• **HI ROLLER BIKE RACK**

The wavy Hi Roller bike rack by Dero is made of thick steel pipe to make it sturdy, and it comes in as many as 250 different powder coat colors so it can blend with its surroundings or pop with bright, eye-catching hues. It works well with u-style bike locks and comes in four sizes: 42 inches (four bikes), 66 inches (five bikes), 90 inches (six bikes), and 114 inches (seven bikes). •

FOR MORE INFORMATION VISIT WWW.DERO.COM.



Other

Sunday, November 23, 2014

STREETSBLOG LA

Friday, November 21, 2014

What a Vermont Avenue BRT Line Could Look Like

by Joe Linton



Future Bus Rapid Transit (BRT) on Vermont Avenue could resemble the Emerald Express BRT line in Eugene, OR. Photo: ITDP

At this month's board meeting, Metro staff reported that they are hiring consultants to shepherd two Bus Rapid Transit (BRT) projects. Today, SBLA previews one of those: Vermont Avenue BRT.

For the uninitiated, what is BRT? [Bus Rapid Transit is high-quality bus service running in its own dedicated right-of-way](#). It comes in a lot of flavors, but generally operates like a rail line. There are two BRT examples locally. The best one is the [Metro Orange Line](#), which runs on bus-only roads in the San Fernando Valley. Arguably the [Metro Silver Line](#) is also BRT as it runs mostly in highway toll lanes. Read [this Daniel Jacobson editorial](#) about the potential for BRT to play key roles in L.A. County's transportation networks.

Briefly, the other BRT project will extend from the San Fernando Valley to the San Gabriel Valley. Connections would include Burbank Airport, and the Metro Gold, Orange, and Red Lines. SBLA will cover this project more as it progresses.

The two BRT projects were given momentum by a July Metro Board motion [\[PDF\]](#) directing Metro staff to advance these projects, including developing a budget and timelines. The [Metro Board re-affirmed the July direction in this October board motion \[PDF\]](#). This month, Metro staff stated [\[audio\]](#) - item 70 at 3:04] that they are preparing scopes of

work and that consultant contracts are expected to be awarded in early 2015. Metro Board chair L.A. Mayor Eric Garcetti had pressed for Metro to pursue [federal Small Starts](#) funding for these BRTs, but Metro staff sounded pessimistic about that program, due to maximum funding of \$250 million for each project.

The Vermont Avenue BRT project route has not been finalized, but it is likely to be similar to the current Metro bus lines on Vermont Avenue. Vermont Avenue is one of the nation's highest ridership bus corridors, and [ridership is second only to Wilshire](#). The Vermont bus lines extend about 12 miles from the Metro Green Line (at the 105 Freeway) to Sunset Boulevard, including connections with Red, Purple, and Expo Lines. Depending on funding and other constraints, BRT could run on some of all of this corridor, converting to express/Rapid service in unimproved areas.

Other alternatives might be under consideration, but the Vermont line is anticipated to be "center-running" (also known as "median-aligned") BRT. Center-running BRT [has been shown to be faster and safer](#), compared to running along curbs. For a great explanation, watch [this fun Lego-animation video](#).

Here's a quick tour of some center-running BRT systems up and running elsewhere:

San Bernardino, CA



San Bernardino's sbX Green Line BRT runs in exclusive bus-only lanes. Photo: Omnitrans

Dana Gabbard [previewed](#) Omnitrans sbX Green Line BRT which opened earlier this year. The rail-type bus service includes 5.4 miles of exclusive bus-only lanes in the center of E Street and Hospitality Lane. More details at [Omnitrans](#) and [ITDP](#).

Cleveland, OH



Cleveland's Healthline runs on median-aligned bus-exclusive right-of-way. Photo: ITDP

Cleveland's 9.2 mile "HealthLine" center-running BRT serves the city's Euclid Avenue corridor. Details at [RTA](#) and [ITDP](#).

Eugene, OR (photo at top of post)

Eugene's Emerald Express (EmX) chose BRT as it would "significantly enhance transit service and achieve many of the benefits of light rail without the high cost." EmX features 5.2 miles of exclusive center-running BRT. More details at [LTD](#) and [ITDP](#).

Guadalajara, Mexico



Bus Rapid Transit in Guadalajara, Mexico. Photo: ITDP

Per ITDP:

In March 2009, Mexico's second largest city, Guadalajara, unveiled a new bus rapid transit (BRT) system. The 27-station, 16-km [10-mile] system services 130,000 passengers per day and feeds into light rail and other bus services, with fully integrated fares. The project has reduced travel time by 30 percent and is expected to cut the city's (CO₂) emissions by 36,000 metric tons per year, equivalent to removing about 7,000 cars from the roads.

Last, but not least, watch these Streetfilms showcasing BRT systems in [Guangzhou, China](#), and [Buenos Aires, Argentina](#).

At the recent board meeting, Mayor Garcetti also directed Metro to host a single-day roundtable symposium of BRT experts, to take place in March 2015.

(Thanks to the Institute for Transportation & Development Policy (ITDP) and national Streetsblog staff for background for this article.)

TRANSPORTATION

Drivers approve a 3-year contract

Omnitrans workers
will receive first wage
increase in five years

By Neil Nisperos
neil.nisperos@langnews.com
@ReporterNeil on Twitter

Omnitrans bus drivers are getting a pay raise this holiday season after the drivers union agreed to a three-year contract after nearly two years of negotiation.

The union, represented by the Amalgamated Transit Union Local 1704, ratified the contract offer on a 265-38 vote on Tuesday. The Omnitrans board approved the wage increase Wednesday and is expected to consider the full memorandum of understanding of the contract in January.

Drivers will get a 2.75 percent wage increase immediately and 2.75 percent additionally in April.

The employee benefit allowance will increase from \$970 per month for all union members to a new tiered plan. Employees with a single or two-party health care plan will receive \$1,025 on a monthly basis. Employees on a family plan receive \$1,145 monthly.

In September, the allowance will increase to \$1,075 per month for employees on single or two-party health care plans and will

CONTRACT » PAGE 4

Contract

FROM PAGE 1

remain at \$1,145 for those on a family plan. A \$900 stipend will be paid to all actively working operators.

"This successful vote shows that the majority of our coach operators supported this fair and generous offer," said Omnitrans CEO and General Manager P. Scott Graham. "We know that our customers who make 50,000 daily trips on Omnitrans buses are relieved that the service they depend on will continue uninterrupted."

Omnitrans is the public transit agency serving an area from the Chino Valley to Yucaipa. It operates local and express bus routes as well as OmniLink, a general public dial-a-ride service, and Access, a paratransit service for the disabled, according to its website.

The new contract, which represents the first wage increase for drivers in five years, will last until March 2016. The union represents about 420 Omnitrans bus drivers.

"It may have taken longer than we would have liked," said Omnitrans spokeswoman Wendy Williams. "Ultimately, we brought this to a resolution, and we're happy that our employees and bus drivers would be receiving a wage increase as well as a stipend, especially during this

holiday season."

On Wednesday, the union's president, Jeff Caldwell, an Omnitrans driver, said he hadn't personally heard from drivers, but overall reaction to the ratification on the union's Facebook page has been positive.

"If it didn't pass, the agency would have imposed the contract, and we would be striking against the contract," Caldwell said.

The new starting wage for drivers is \$15.89 per hour, with most going on to earn the top rate of \$21.29 per hour, according to Omnitrans. With the monthly benefit package of up to \$1,145, the top rate works out to about \$58,000 per year, according to Omnitrans.

"I think it was prudent that we bring a contract in since we haven't had one with any wage increases since 2009," Caldwell said.

Omnitrans and the union began contract negotiations in January 2013 before the prior contract had ended in March 31, 2013. Prior to the ratification on Tuesday, the union had rejected contract offers in March and October.

Caldwell said negotiations for the next contract are set to begin in January 2016 and will also center on wage and benefit increases.

Omnitrans has experienced one strike in its 38-year history, with a three-day walkout in 1980.

Fontana Herald News *Your Community, Your Newspaper*



Omnitrans bus drivers vote to approve three-year labor contract

Posted: Saturday, December 6, 2014 12:56 pm

Omnitrans bus drivers voted to approve a three-year labor contract offered by the transit agency to increase wages and benefits in 2014 and 2015, alleviating any fears of Omnitrans service disruptions due to a strike.

The drivers, represented by the Amalgamated Transit Union (ATU), Local 1704, voted 265 to 38 on Dec. 2 to ratify the contract offer.

A wage increase and stipend were approved by members of the Omnitrans Board of Directors at their meeting on Dec. 3. Acceptance of the full memorandum of understanding will go before the Board in January.

Drivers will get a 2.75 percent wage increase immediately and 2.75 percent more in April of 2015.

The employee benefit allowance will increase from \$970 per month for all ATU members to a new tiered plan. Employees with a single or two-party health care plan will receive \$1,025 per month. Employees on a family plan get \$1,145.

In September of 2015 the allowance will increase to \$1,075 per month for employees on single or two-party health care plans and remain at \$1,145 for those on a family plan. A \$900.00 stipend will be paid to all actively working operators.

"This successful vote shows that the majority of our coach operators supported this fair and generous offer," said P. Scott Graham, CEO/General Manager of Omnitrans. "We know that our customers who make 50,000 daily trips on Omnitrans buses are relieved that the service they depend on will continue uninterrupted."

ATU represents roughly 420 Omnitrans bus drivers.

The new starting wage rate is \$15.89 per hour. Most drivers will earn the top rate of \$21.29 per hour. With the monthly benefit package of up to \$1,145, this calculates to about \$58,000 annually.

Omnitrans and ATU began negotiating terms of a new three-year contract in January of 2013. The prior contract ended March 31, 2013. The new contract ends in March of 2016. The union rejected two previous contract offers.

Omnitrans employs about 650 people.

Fontana Herald News

Saturday, December 06, 2014

Fontana Herald News *Your Community, Your Newspaper*



Fontana families thankful for free Thanksgiving meals during huge event at Seville Park

Residents enjoy meals - Free Thanksgiving meals were served to families during the Eat and Be Well event at Seville Park. (Herald News photo by Alejandro Cano)

Thursday, December 4, 2014 10:05 am
By ALEJANDRO CANO

Four years ago, Norma Chavez, 40, was injured at work. Due to her injuries, the mother of two teenagers could not return to work and instead was placed on disability.

Her situation placed the family's finances on a paycheck-to-paycheck basis.

With rent, food, clothing and other utilities to pay, Chavez's paycheck of less than \$1,000 per month was simply not enough. Having a big dinner to celebrate Thanksgiving was only something she could dream about.

However, on Nov. 26, Chavez was overjoyed when she and her two daughters received a warm meal during the Third Annual Eat and Be Well event held at Seville Park in Fontana.

"I ask God to continue blessing them to keep giving the community so much happiness. It is truly a blessing," said Chavez after finishing the meal and receiving a turkey from Young Visionaries Youth Leadership Academy.

Founded by Christopher Suchanek and his wife Ana Karina Suchanek, the event was organized by a committee of community-minded organizations throughout the San Bernardino County such as Anchored Hope, Come As You Are Foundation, Fontana CAP and the City of Fontana, among many others.

The event, which included performers from Music Changing Lives, a non-profit organization that provides art programs to underprivileged and at-risk youth, serves between 1,100 and 1,700 plates per year, said Suchanek, CEO of Firm Media.

Excess perishables from the event were donated to local churches, soup kitchens, and missions the next day, he added.

Entire families had the opportunity to enjoy the free meal, while children were entertained by local clowns, thanks in part to several sponsors and donors such as Inland Empire 66ers Baseball, Bless and be Blessed, Burrtec, Health Net, Niagara Bottling and Omnitrans, among others.

On one side of the park, vendors such as the African American Mental Health Coalition, the American Heart Association, Health Care Options, Hope Academy Charter and Young Visionaries, among many others, offered services for participants.

Young Visionaries, for example, donated 100 turkeys and 150 backpacks filled with school supplies.

"There is a huge need out there," said Terrance Stone, president of Young Visionaries. "Events like these serve a great number of people and are very welcomed by the community, but the need still remains."

DRIVING TOWARD A BETTER LIFE

Omnitrans: Agency uses driving simulator to help train employees



WILL LESTER — STAFF PHOTOGRAPHER

Joshua Hurst, 26 from Ontario, drives a coach simulator at the Omnitrans offices in San Bernardino. Hurst is taking part in the Bridge Program, which prepares blue collar workers for training to become transportation managers.

By Ryan Hagen

ryan.hagen@langnews.com
@sbcitynow on Twitter

SAN BERNARDINO » On the third day of training, potential Omnitrans employees “crashed” their “bus” into other vehicles, ran over the sidewalk and slid across an icy street.

The only damage: a little bit of pride.

That’s because the transit agency now has a driving simulator, allowing people to step behind the wheel

and drive through a computerized version of a regular Omnitrans route as well as the worst driving conditions they could see.

Training on an Omnitrans bus normally costs \$90 in gas and other charges, said Don Frazier, fleet safety and training supervisor — setting aside the risk of crashes or other dangers.

The cost for using the new training simulator, though, is essentially nothing — it’s part of a \$340,000 grant from the Federal Transit Ad-

ministration, which aims to prepare at least 200 blue collar workers to work for Omnitrans or in a related field.

The preparation includes an overview of the transit agency, how to deal with challenges — like difficult people and emergencies — and application preparation. That means advice and practice with interviewing, workplace professionalism and other related skills.

That’s a big help for participants like Alyce Woods, 65, of Rialto.

“I worked 33 years with the Postal Service before I retired,” said Woods, who later realized her retirement income wasn’t enough to live off. “But I never had to write a resume. These are things I need to know, now, but I never had a chance to learn.”

Woods isn’t alone in that need in a county with an 8.1 percent unemployment rate, said Omnitrans spokeswoman Wendy Williams.

“FTA obviously has an

TRAINING » PAGE 4

Training

FROM PAGE 1

interest in helping Omnitrans and other transit agencies that people who successfully complete the program can apply to," Williams said. "And the program also opens the doors to a lot of other careers."

Since the "bridge program" began in October, there have been seven classes of five days each, training a total of 88 students so far, Williams said.

Two students have been hired in the transit agency, and four in other industries, she said.

The program will con-

tinue until 200 people participate.

Anyone interested in enrolling can find information at www.omnitrans.org or by emailing henry.shields2@omnitrans.org.

Shields, the former fleet safety and training supervisor for Omnitrans who was coaxed out of retirement to be bridge program instructor, said it was a good opportunity.

"When I got out of the Marines (in 1990), I was having trouble finding a job," Shields said. "Finally a friend recommended Omnitrans — city bus, she said — and the rest is history. People don't think of Omnitrans, but being a coach operator is a great career."

The Sun *December 29, 2014*

San Bernardino's E Street voted 'best urban street transformation of 2014'



view of northbound E Street on Tuesday, December 23, 2014 after the sbX bus system was installed in San Bernardino. Micah Escamilla — Staff photographer

By Ryan Hagen, The Sun

Posted: 12/29/14, 5:54 PM PST |

6 Comments

SAN BERNARDINO >> E Street represents the country's "best urban street transformation of 2014," the readers of USA Streetsblog have officially decided.

The contest ended Sunday, with San Bernardino's E Street grabbing 848 votes (48 percent of the total), compared to 427 for second-place Western Avenue in Cambridge, Mass. Streets in Minneapolis, Seattle and Pittsburg finished further back.

Blog manager Angie Schmitt confirmed in an email that San Bernardino had won the contest, which ended Sunday, and said she hoped to have an official announcement soon.

San Bernardino resident Marven Norman, a regular reader of the blog, nominated E Street — with the sbX bus rapid transit line and transit-oriented development like that advocated by Streetsblog — and Schmitt and others selected it as one of five finalists.

While many residents remain critical of sbX, and didn't hesitate to say so in social media comments as the contest continued, the contest caught the excitement of many residents who said the city needed positive recognition.

One of those was residents was Barbara Babcock, who sent an email praising other residents, clergy and media for their part in garnering votes.

"Friends of San Bernardino were posting and voting on Facebook, Twitter, Google+ etc not only in San Bernardino, the Inland Empire, and at least 15 states but around the WORLD," Babcock wrote. "Literally from A-Z, from Antigua to Zambia. Pastors were announcing in about 9 churches (that we confirmed) and at holiday dinner tables and gatherings day and night... having people vote."

The contest, which comes with no prize other than visibility, was 1 of 7 Streetsblog held at the end of the year, with another representative category asking for the "worst highway boondoggle."

December 31, 2014

SAN BERNARDINO

E Street gets top rating in blog contest

Roadway earns 'best urban street transformation of 2014' designation

By Ryan Hagen

ryan.hagen@langnews.com
@sbctynow on Twitter

SAN BERNARDINO » E Street represents the country's "best urban street transformation of 2014," the readers of USA Streetsblog have officially decided.

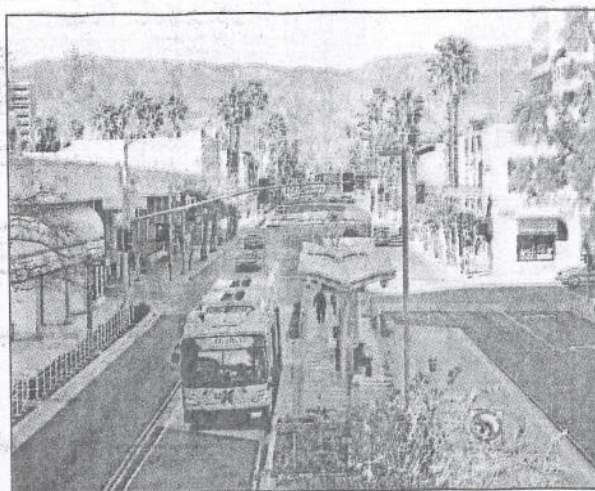
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E STREET » PAGE 7



STAFF FILE PHOTO

San Bernardino's E Street grabbed 848 votes (48 percent of the total) to win USA Streetsblog's "best urban street transformation of 2014" contest category.

E Street

FROM PAGE 1

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ITEM # F1

DATE: January 14, 2015

TO: Board Chair Alan Wapner and Members of the Omnitrans Board of Directors

FROM: P. Scott Graham, CEO/General Manager

SUBJECT: CEO/GENERAL MANAGER'S REPORT

During November 2014, Omnitrans ridership was low compared to the prior year. Systemwide ridership during the month was 1,156,379, down 9.1% compared to 1,272,097 in November 2013. This brings year-to-date ridership down 4.1% at 6,421,415 compared to 6,696,715 for the same period a year ago. Mid-sized and large Southern Californian bus operators are seeing some similar ridership trends. Of the eight (8) agencies surveyed, five (5) saw ridership declines; two of the agencies with recent fare increases both had ridership declines between -3.3% and 4.9%.

Board Chair Alan Wapner and Loma Linda Board Member Ronald Dailey spoke at Omnitrans' Veterans Fare Kickoff Event, held January 5, 2015, at the VA Hospital. The event introduced the 50% discount on bus fare and passes to those who have served our country, and also marked the beginning of free rides to active duty military members (with Uniformed Services ID or Common Access card) and police and firefighters in a Class A uniform.

Omnitrans, along with the City of San Bernardino and SANBAG, are working together to turn over the sbX easements to the City in order to close out the project once the punch list is completed. Discussions were held between the City of San Bernardino, SANBAG, and Omnitrans on December 23 regarding temporary easement issues that will require Omnitrans to request an extension from SANBAG. I am confident these issues will be resolved.

The San Bernardino Transit Center is currently under construction, with operation expected to begin early September 2015, when Omnitrans' 13 downtown routes will start serving the Transit Center. SANBAG is managing the project, which is being constructed by Kemp Brothers contractors. The construction manager is Parsons Brinckerhoff. The progress made thus far includes: road work on Rialto Avenue; site work such as construction of the bus way, shelters, and sidewalk; and framing of the 7,000-square-foot building. The building will include public restrooms, customer service/pass sales, and a passenger waiting area.

PSG:VD

ITEM # F2

DATE: January 14, 2015

TO: Board Chair Alan Wapner and Members of the Omnitrans Board of Directors

THROUGH: P. Scott Graham, CEO/General Manager

FROM: Donald Walker, Director of Finance

SUBJECT: INVESTMENT POLICY STATEMENT FOR 2015

FORM MOTION

Adopt Omnitrans' current Investment Policy Statement to carry forward for period covering January 1, 2015 through December 31, 2015.

This item was not presented to the Administrative and Finance Committee as there were no substantive changes made to the 2014 Investment Policy.

BACKGROUND

California Government Code Section 53646 requires that each legislative body review and adopt an Investment Policy Statement on an annual basis.

The Investment Policy Statement for 2014 was adopted by the Omnitrans Board of Directors on January 8, 2014. The only change to the Investment Policy Statement for 2015 is the replacement of all references to the Chief Financial Officer with the Director of Finance. A redline copy of the changes is attached.

During calendar year 2015, Omnitrans will continue to employ the services of Union Bank for its general banking needs. Union Bank was awarded a five year contract beginning October 1, 2012 and ending no later than September 30, 2017.

At Union Bank, only the projected minimum amount is maintained in the general operating account. The Public Transportation Modernization, Improvement, and Service Enhancement Account Program (PTMISEA) funds created by Proposition 1B are invested in Certificates of Deposits, U.S. Government Securities, and a Government Managed Rate Account (GMRA). All other available cash funds are invested in the Local Agency Investment Fund (LAIF) in accordance with the Investment Policy Statement.

PSG:DW



INVESTMENT POLICY STATEMENT
January 1, ~~2014~~ 2015 – December 31, ~~2014~~ 2015

1. POLICY

It is the policy of **OMNITRANS** to invest public funds in a manner which will provide maximum security with the highest investment return while meeting the daily cash flow demands of **OMNITRANS** and conforming to all state and local statutes governing the investment of public funds.

2. SCOPE

This investment policy applies to the cash funds of Omnitrans, except for its employees retirement system fund, which is administered separately by the California Public Employees' Retirement System (PERS) and the 457 Deferred Compensation Fund, administered separately by the International City/County Management Association Retirement Corporation.

These funds include Operating and Capital Funds.

3. OBJECTIVE

Investable funds shall be invested to the maximum extent feasible. The primary goal of the investment program is to maintain safety and liquidity of principal and interest while maximizing returns, minimizing risks and ensuring that funds are available to meet anticipated cash flow requirements.

In the investment of its funds, Omnitrans will be guided by the following principles in order of importance:

3(A) the primary objective is to safeguard investment principal.

- Safety

Safety and the minimizing of risk associated with investing refer to attempts to reduce the potential for loss of principal, interest or a combination of the two. The first level of risk control is found in state law which restricts the particular type of investments permissible for governmental entities. The second level of risk control is reduction of default risk by investing in instruments that appear upon examination to be the most credit worthy. The third level of risk control is reduction of market risk by investing in instruments that have maturities coinciding with planned dates of disbursement, thereby eliminating risk of loss from a forced sale.

3(B) the secondary objective is to maintain sufficient liquidity to ensure that funds are available to meet daily cash flow requirements.

- Liquidity

Liquidity refers to the ability to easily sell at any time with a minimal risk of losing some portion of principal or interest. Liquidity is an important quality for an investment to have, for at any time OMNITRANS may have unexpected or unusual circumstances that result in larger disbursements than expected, and some investments may need to be sold to meet the contingency. Most investments of OMNITRANS are highly liquid.

3(C) the third and last consideration is to achieve a reasonable rate of return or yield consistent with these objectives.

- Yield

Yield is the potential dollar earnings an investment can provide, and also is sometimes described as the rate of return. OMNITRANS attempts to obtain the highest yield possible when selecting an investment, provided that the criteria stated in the Investment Policy for safety and liquidity are met.

4. DELEGATION OF AUTHORITY

The CEO/General Manager, as the Treasurer of Omnitrans, is hereby authorized to invest or to reinvest the funds of Omnitrans, or to sell or exchange securities purchased all within the meaning, and as limited by the provisions of Government Code Section 53607.

| The ~~Chief Financial Officer~~Finance Director is designated as the Investment Officer of the Agency and is responsible for investment decisions and activities, under the direction of the CEO/General Manager. In the absence of the ~~Chief Financial Officer~~Finance Director, the CEO/General Manager will designate the temporary Investment Officer.

5. RESPONSIBILITY OF INVESTMENT OFFICERS

Cash management and investment transactions are the responsibility of the Investment Officer. The Investment Officer, acting in accordance with written procedures and exercising due diligence, shall not be held personally responsible for a specific security's credit risk or market price changes, provided that these deviations are reported immediately and that appropriate action is taken to control adverse developments.

6. INDIVIDUALS AUTHORIZED TO UNDERTAKE INVESTMENT TRANSACTIONS

The following officials are authorized to implement the cash management and investment transactions decisions of the Investment Officer by undertaking investment transactions on behalf of Omnitrans:

- CEO/General Manager
- ~~Chief Financial Officer~~
- Director of Finance
- Accounting Manager

7. PRUDENCE

Omnitrans operates its cash investments subject to the “Prudent Investor Standard” which obligates a fiduciary to ensure that:

When investing, reinvesting, purchasing, acquiring, exchanging, selling, or managing public funds, a trustee shall act with care, skill, prudence, and diligence under the circumstances then prevailing, including, but not limited to, the general economic conditions and the anticipated needs of the Agency, that a prudent person acting in the like capacity and familiarity with those matters would use in the conduct of funds of the like character and with like aims, to safeguard the principal and maintain the liquidity needs of the Agency.

Within the limitations of this standard and considering individual investments as part of an overall strategy, investments may be acquired as authorized by law.

8. SAFEKEEPING

The investment securities purchased by the Agency shall be held in safekeeping by a designated financial institution, during FY 2002-03 all accounts were moved to Union Bank. The institution shall issue a safekeeping receipt to the Agency listing the specific instrument, rate, maturity and other pertinent information.

Safekeeping procedures shall be reviewed annually by the independent auditor. The independent auditor shall conduct surprise audits of safekeeping and custodial systems.

9. ETHICS AND CONFLICTS

Officers and employees who are directly involved in the investment program shall refrain from personal business activity that could conflict with proper execution of the investment program or which could impair the ability to make impartial investment decisions.

10. MONITORING AND ADJUSTING THE PORTFOLIO

The Investment Officer will routinely monitor the contents of the portfolio, the available markets and the relative values of competing instruments, and will adjust the portfolio accordingly.

11. INTERNAL CONTROLS

Internal controls shall be reviewed annually by the independent auditor. The controls shall be designed to prevent a loss of public funds due to fraud, error, misrepresentation, unanticipated market changes or imprudent actions.

12. INVESTMENT PROCEDURES

The Finance Department is responsible for establishing separate investment procedures which adhere to and implement this Statement of Investment Policy.

13. REPORTING REQUIREMENTS

The Investment Officer shall, under the direction of the CEO/General Manager, generate a monthly report for management purposes which will include, but not be limited to:

- Type of investment
- Institution
- Date of maturity
- Amount of deposit or cost of security
- Rate of interest
- Statement relating the report to the Statement of Investment Policy
- Statement that there are sufficient funds to meet the next 30 days' obligations

14. SHORT-TERM VERSUS LONG-TERM PORTFOLIO

All funds invested for one day to six months shall be considered short-term. Funds invested for a period in excess of six months shall be considered long-term.

15. SHORT-TERM PORTFOLIO DIVERSIFICATION

The Agency will diversify use of investment instruments to avoid incurring unreasonable risk inherent in overinvesting in specific instruments, individual financial institutions or maturities.

Diversification by Instrument:

- U.S. Government Securities, or it's agencies
- Small Business Administration Loans

- Bankers Acceptance
- Commercial Paper
- Negotiable Certificates of Deposits
- Medium Term Notes
- Repurchase Agreements
- Local Agency Investment Fund (LAIF)
- California Asset Management Program (CAMP)
- California Local Agency Securities System (CLASS)

16. Maturity Scheduling:

- Investment maturities of operating funds shall be scheduled to coincide with projected cash flow needs, taking into account large routine expenditures (e.g. payroll, contractor's payments, lease payments, etc.) and considering sizeable blocks of anticipated revenue (e.g. LTF and Federal operating funds).

17. LONG-TERM PORTFOLIO DIVERSIFICATION

Instruments and diversification for the long-term portfolio shall be the same type as for the short-term portfolio, but with longer investment periods (over six months).

Maturity scheduling shall be timed according to anticipated needs.

18. AUTHORIZED INVESTMENTS (G.C. 53601)

The average maturity of Omnitrans' investments should not exceed two-and-one-half years, with no single investment being made for over five years, except with legislative approval as authorized under Section 53601 of the California Government Code. At no time should current cash flow requirements be jeopardized.

Omnitrans may invest in the following legal investments as defined in Section 53601 of the California Government Code: 53601. This section shall apply to a local agency that is a city, a district, or other local agency that does not pool money in deposits or investments with other local agencies, other than local agencies that have the same governing body. However, Section 53635 shall apply to all local agencies that pool money in deposits or investments with other local agencies that have separate governing bodies. The legislative body of a local agency having money in a sinking fund or money in its treasury not required for the immediate needs of the local agency may invest any portion of the money that it deems wise or expedient in those investments set forth below. A local agency purchasing or obtaining any securities prescribed in this section, in a negotiable, bearer, registered, or nonregistered format, shall require delivery of the securities to the local agency, including those purchased for the agency by financial advisers, consultants, or managers using the agency's funds, by book entry, physical delivery, or by third-party custodial agreement. The transfer of securities to the counterparty bank's customer book entry account may be used for book entry delivery. For purposes of this section, "counterparty" means the other party to the transaction. A counterparty bank's trust department or separate safekeeping department may be used for the physical delivery of the security if the security is held in the name of the local agency. Where this section specifies a percentage limitation for a particular category of investment, that percentage is applicable only at the date of purchase. Where this section does not specify a limitation on the term or remaining maturity at the time of

the investment, no investment shall be made in any security, other than a security underlying a repurchase or reverse repurchase agreement or securities lending agreement authorized by this section, that at the time of the investment has a term remaining to maturity in excess of five years, unless the legislative body has granted express authority to make that investment either specifically or as a part of an investment program approved by the legislative body no less than three months prior to the investment:

(a) Bonds issued by the local agency, including bonds payable solely out of the revenues from a revenue-producing property owned, controlled, or operated by the local agency or by a department, board, agency, or authority of the local agency.

(b) United States Treasury notes, bonds, bills, or certificates of indebtedness, or those for which the faith and credit of the United States are pledged for the payment of principal and interest.

(c) Registered state warrants or treasury notes or bonds of this state, including bonds payable solely out of the revenues from a revenue-producing property owned, controlled, or operated by the state or by a department, board, agency, or authority of the state.

(d) Bonds, notes, warrants, or other evidences of indebtedness of any local agency within this state, including bonds payable solely out of the revenues from a revenue-producing property owned, controlled, or operated by the local agency, or by a department, board, agency, or authority of the local agency.

(e) Federal agency or United States government-sponsored enterprise obligations, participations, or other instruments, including those issued by or fully guaranteed as to principal and interest by federal agencies or United States government-sponsored enterprises.

(f) Bankers acceptances otherwise known as bills of exchange or time drafts that are drawn on and accepted by a commercial bank. Purchases of bankers acceptances may not exceed 180 days' maturity or 40 percent of the agency's money that may be invested pursuant to this section. However, no more than 30 percent of the agency's money may be invested in the bankers acceptances of any one commercial bank pursuant to this section.

This subdivision does not preclude a municipal utility district from investing any money in its treasury in any manner authorized by the Municipal Utility District Act (Division 6 (commencing with Section 11501) of the Public Utilities Code).

(g) Commercial paper of "prime" quality of the highest ranking or of the highest letter and number rating as provided for by a nationally recognized statistical-rating organization (NRSRO). The entity that issues the commercial paper shall meet all of the following conditions in either paragraph (1) or paragraph (2):

(1) The entity meets the following criteria:

(A) Is organized and operating in the United States as a general corporation.

(B) Has total assets in excess of five hundred million dollars (\$500,000,000).

(C) Has debt other than commercial paper, if any, that is rated "A" or higher by a nationally recognized statistical-rating organization (NRSRO).

(2) The entity meets the following criteria:

(A) Is organized within the United States as a special purpose corporation, trust, or limited liability company.

(B) Has program wide credit enhancements including, but not limited to, over collateralization, letters of credit, or surety bond.

(C) Has commercial paper that is rated "A-1" or higher, or the equivalent, by a nationally recognized statistical-rating organization (NRSRO).

Eligible commercial paper shall have a maximum maturity of 270 days or less. Local agencies, other than counties or a city and county, may invest no more than 25 percent of their money in eligible commercial paper. Local agencies, other than counties or a city and county, may purchase no more than 10 percent of the outstanding commercial paper of any single issuer. Counties or a city and county may invest in commercial paper pursuant to the concentration limits in subdivision (a) of Section 53635.

(h) Negotiable certificates of deposit issued by a nationally or state-chartered bank, a savings association or a federal association (as defined by Section 5102 of the Financial Code), a state or federal credit union, or by a state-licensed branch of a foreign bank. Purchases of negotiable certificates of deposit may not exceed 30 percent of the agency's money which may be invested pursuant to this section. For purposes of this section, negotiable certificates of deposit do not come within Article 2 (commencing with Section 53630), except that the amount so invested shall be subject to the limitations of Section 53638. The legislative body of a local agency and the treasurer or other official of the local agency having legal custody of the money are prohibited from investing local agency funds, or funds in the custody of the local agency, in negotiable certificates of deposit issued by a state or federal credit union if a member of the legislative body of the local agency, or any person with investment decision-making authority in the administrative office manager's office, budget office, auditor-controller's office, or treasurer's office of the local agency also serves on the board of directors, or any committee appointed by the board of directors, or the credit committee or the supervisory committee of the state or federal credit union issuing the negotiable certificates of deposit.

(i) (1) Investments in repurchase agreements or reverse repurchase agreements or securities lending agreements of any securities authorized by this section, as long as the agreements are subject to this subdivision, including the delivery requirements specified in this section.

(2) Investments in repurchase agreements may be made, on any investment authorized in this section, when the term of the agreement does not exceed one year. The market value of securities that underlay a repurchase agreement shall be valued at 102 percent or greater of the funds borrowed against those securities and the value shall be adjusted no less than quarterly. Since the market value of the underlying securities is subject to daily market fluctuations, the investments in repurchase agreements shall be in compliance if the value of the underlying securities is brought back up to 102 percent no later than the next business day.

(3) Reverse repurchase agreements or securities lending agreements may be utilized only when all of the following conditions are met:

(A) The security to be sold on reverse repurchase agreement or securities lending agreement has been owned and fully paid for by the local agency for a minimum of 30 days prior to sale.

(B) The total of all reverse repurchase agreements and securities lending agreements on investments owned by the local agency does not exceed 20 percent of the base value of the portfolio.

(C) The agreement does not exceed a term of 92 days, unless the agreement includes a written codicil guaranteeing a minimum earning or spread for the entire period between the sale of a security using a reverse repurchase agreement or securities lending agreement and the final maturity date of the same security.

(D) Funds obtained or funds within the pool of an equivalent amount to that obtained from selling a security to a counterparty by way of a reverse repurchase agreement or securities lending agreement shall not be used to purchase another security with a maturity longer than 92 days from the initial settlement date of the reverse repurchase agreement or securities lending agreement, unless the reverse repurchase agreement or securities lending agreement includes a written codicil guaranteeing a minimum earning or spread for the entire period between the sale of a security using a reverse repurchase agreement or securities lending agreement and the final maturity date of the same security.

(4) (A) Investments in reverse repurchase agreements, securities lending agreements, or similar investments in which the local agency sells securities prior to purchase with a simultaneous agreement to repurchase the security may only be made upon prior approval of the governing body of the local agency and shall only be made with primary dealers of the Federal Reserve Bank of New York or with a nationally or state-chartered bank that has or has had a significant banking relationship with a local agency.

(B) For purposes of this chapter, "significant banking relationship" means any of the following activities of a bank:

(i) Involvement in the creation, sale, purchase, or retirement of a local agency's bonds, warrants, notes, or other evidence of indebtedness.

(ii) Financing of a local agency's activities.

(iii) Acceptance of a local agency's securities or funds as deposits.

(5) (A) "Repurchase agreement" means a purchase of securities by the local agency pursuant to an agreement by which the counterparty seller will repurchase the securities on or before a specified date and for a specified amount and the counterparty will deliver the underlying securities to the local agency by book entry, physical delivery, or by third-party custodial agreement. The transfer of underlying securities to the counterparty bank's customer book-entry account may be used for book-entry delivery.

(B) "Securities," for purpose of repurchase under this subdivision, means securities of the same issuer, description, issue date, and maturity.

(C) "Reverse repurchase agreement" means a sale of securities by the local agency pursuant to an agreement by which the local agency will repurchase the securities on or before a specified date and includes other comparable agreements.

(D) "Securities lending agreement" means an agreement under which a local agency agrees to transfer securities to a borrower who, in turn, agrees to provide collateral to the local agency. During the term of the agreement, both the securities and the collateral are held by a third party. At the conclusion of the agreement, the securities are transferred back to the local agency in return for the collateral.

(E) For purposes of this section, the base value of the local agency's pool portfolio shall be that dollar amount obtained by totaling all cash balances placed in the pool by all pool participants, excluding any amounts obtained through selling securities by way of reverse repurchase agreements, securities lending agreements, or other similar borrowing methods.

(F) For purposes of this section, the spread is the difference between the cost of funds obtained using the reverse repurchase agreement and the earnings obtained on the reinvestment of the funds.

(j) Medium-term notes, defined as all corporate and depository institution debt securities with a maximum remaining maturity of five years or less, issued by corporations organized and operating within the United States or by depository institutions licensed by the United States or any state and operating within the United States. Notes eligible for investment under this subdivision shall be rated "A" or better by a nationally recognized rating service. Purchases of medium-term notes shall not include other instruments authorized by this section and may not exceed 30 percent of the agency's money that may be invested pursuant to this section.

(k) (1) Shares of beneficial interest issued by diversified management companies that invest in the securities and obligations as authorized by subdivisions (a) to (j), inclusive, or subdivisions (m) or (n) and that comply with the investment restrictions of this article and Article 2 (commencing with Section 53630). However, notwithstanding these restrictions, a counterparty to a reverse repurchase agreement or securities lending agreement is not required to be a primary dealer of the Federal Reserve Bank of New York if the company's board of directors finds that the counterparty presents a minimal risk of default, and the value of the securities underlying a repurchase agreement or securities lending agreement may be 100 percent of the sales price if the securities are marked to market daily.

(2) Shares of beneficial interest issued by diversified management companies that are money market funds registered with the Securities and Exchange Commission under the Investment Company Act of 1940 (15 U.S.C. Sec. 80a-1 et seq.).

(3) If investment is in shares issued pursuant to paragraph (1), the company shall have met either of the following criteria:

(A) Attained the highest ranking or the highest letter and numerical rating provided by not less than two nationally recognized statistical rating organizations.

(B) Retained an investment adviser registered or exempt from registration with the Securities and Exchange Commission with not less than five years' experience investing in the securities and obligations authorized by subdivisions (a) to (j), inclusive, or subdivisions (m) or (n) and with assets under management in excess of five hundred million dollars (\$500,000,000).

(4) If investment is in shares issued pursuant to paragraph (2), the company shall have met either of the following criteria:

(A) Attained the highest ranking or the highest letter and numerical rating provided by not less than two nationally recognized statistical rating organizations.

(B) Retained an investment adviser registered or exempt from registration with the Securities and Exchange Commission with not less than five years' experience managing money market mutual funds with assets under management in excess of five hundred million dollars (\$500,000,000).

(5) The purchase price of shares of beneficial interest purchased pursuant to this subdivision shall not include any commission that the companies may charge and shall not exceed 20 percent of the agency's money that may be invested pursuant to this section. However, no more than 10 percent of the agency's funds may be invested in shares of beneficial interest of any one mutual fund pursuant to paragraph (1).

(l) Moneys held by a trustee or fiscal agent and pledged to the payment or security of bonds or other indebtedness, or obligations under a lease, installment sale, or other agreement of a local agency, or certificates of participation in those bonds, indebtedness, or lease installment sale, or other agreements, may be invested in accordance with the statutory provisions governing the issuance of those bonds, indebtedness, or lease installment sale, or other agreement, or to the extent not inconsistent therewith or if there are no specific statutory provisions, in accordance with the ordinance, resolution, indenture, or agreement of the local agency providing for the issuance.

(m) Notes, bonds, or other obligations that are at all times secured by a valid first priority security interest in securities of the types listed by Section 53651 as eligible securities for the purpose of securing local agency deposits having a market value at least equal to that required by Section 53652 for the purpose of securing local agency deposits. The securities serving as collateral shall be placed by delivery or book entry into the custody of a trust company or the trust department of a bank that is not affiliated with the issuer of the secured obligation, and the security interest shall be perfected in accordance with the requirements of the Uniform Commercial Code or federal regulations applicable to the types of securities in which the security interest is granted.

(n) Any mortgage pass-through security, collateralized mortgage obligation, mortgage-backed or other pay-through bond, equipment lease-backed certificate, consumer receivable pass-through certificate, or consumer receivable-backed bond of a maximum of five years' maturity. Securities eligible for investment under this subdivision shall be issued by an issuer having an "A" or higher rating for the issuer's debt as provided by a nationally recognized rating service and rated in a rating category of "AA" or its equivalent or better by a nationally recognized rating service. Purchase of securities authorized by this subdivision may not exceed 20 percent of the agency's surplus money that may be invested pursuant to this section.

53601.1. The authority of a local agency to invest funds pursuant to Section 53601 includes, in addition thereto, authority to invest in financial futures or financial option contracts in any of the investment categories enumerated in that section.

53601.5. The purchase by a local agency of any investment authorized pursuant to Section 53601 or 53601.1, not purchased directly from the issuer, shall be purchased either from an institution licensed by the state as a broker-dealer, as defined in Section 25004 of the Corporations Code, or from a member of a federally regulated securities exchange, from a national or state-chartered bank, from a savings association or federal association (as defined by Section 5102 of the Financial Code) or from a brokerage firm designated as a primary government dealer by the Federal Reserve bank.

53601.6. (a) A local agency shall not invest any funds pursuant to this article or pursuant to Article 2 (commencing with Section 53630) in inverse floaters, range notes, or mortgage-derived, interest-only strips.

(b) A local agency shall not invest any funds pursuant to this article or pursuant to Article 2 (commencing with Section 53630) in any security that could result in zero interest accrual if held to maturity. However, a local agency may hold prohibited instruments until their maturity dates. The limitation in this subdivision shall not apply to local agency investments in shares of beneficial interest issued by diversified management companies registered under the Investment Company Act of 1940 (15 U.S.C. Sec. 80a-1 et seq.) that are authorized for investment pursuant to subdivision (k) of Section 53601.

19. DESIGNATED AUTHORIZED INVESTMENTS

The listing shall be formally designated by Omnitrans and only investments from this designated list will be authorized.

California State Investment Pool (Local Agency Investment Fund or LAIF {Government Code Section 16429.1 – 16429.3}).

California Asset Management Program (CAMP {Government Code Section 6502; Section 53630; Section 53601 and/or 53635}).

California Local Agency Securities System (CLASS {Government Code Section 6502; Section 53630; Section 53601 and/or 53635}).

Whenever possible, bids and offers for any investment security shall be taken from a minimum of two security dealers/brokers, banks, and/or savings and loans. Awards shall be made to the highest responsible bidder or best offer.

All securities purchased must be held in safekeeping by Omnitrans' safekeeping agent, currently Union Bank. The securities shall not be held by the dealer or broker from whom they are purchased. Confirmations for all investments will be reviewed for conformity with the actual transactions. All financial institutions, whether investment banks, dealers, commercial banks or savings and loan institutions must be licensed by the National Association of Security Dealers (NASD) and be approved by the ~~Chief Financial Officer~~Finance Director before they receive Omnitrans funds or are able to conduct business with Omnitrans. Prior to approval, each financial institution will be physically visited by the ~~Chief Financial Officer~~Finance Director and/or his/her designee to meet with the principals of the firm and to inspect their offices for stability and financial capabilities. Further, these visitations will continue periodically, preferably annually, on an ongoing basis to ensure eligibility (due diligence). All firms with whom Omnitrans does business will have a strong capital base and be deemed creditworthy before conducting business with such firms. The ~~Chief Financial Officer~~Finance Director or his/her designee will prescribe minimum standards by which these firms can be judged creditworthy.

Generally, losses are acceptable on a sale of securities prior to maturity and should be taken if (a) the sale proceeds will enhance the overall yield over the life of the new security, or (b) there is a potential imminent risk of principal due to a change in the creditworthiness of the issuer or other factors jeopardizing the propriety or safety and liquidity of public funds.

Where possible, Omnitrans investments shall be placed, confirmed, held, accounted for, and/or audited by different people.

The ~~Chief Financial Officer~~Finance Director or his/her designee will perform a monthly review of the investment function. This review will consist of:

- Comparison of the investment records to the independent statements and confirmation notices received from brokers, dealers, banks and other financial institutions.
- Review of the contents of the investment portfolio to assure that it conforms with the provisions of this Statement of Investment Policy and the laws of the State of California.
- Review of the financial institutions with whom investments have been made to assure that they have been approved by the ~~Chief Financial Officer~~Finance Director.

ITEM # F3

DATE: January 14, 2015

TO: Board Chair Alan Wapner and Members of the Omnitrans Board of Directors

THROUGH: P. Scott Graham, CEO/General Manager

FROM: Jennifer M. Sims, Director of Procurement

SUBJECT: AUTHORIZE AWARD - CONTRACT MNT14-85R1, PARTS WASHERS

FORM MOTION

Authorize the CEO/General Manager to de-obligate \$12,738.40 of Federal Transit Administration (FTA) funds and \$3,184.60 of State Transit Assistance (STA) funds as shown in the Funding Source section, and re-obligate these funds to the Parts Washers.

Authorize the CEO/General Manager to award Contract MNT14-85R1 to FRS Environmental, Inc. of Corona, CA, for the purchase of parts washers in the amount of \$14,018.38, replacement parts in the amount of \$1,402.00, and a three (3) year maintenance agreement in the amount of \$59,640.00, for an amount not-to-exceed \$75,060.38, beginning February 2, 2015 and ending no later than February 1, 2018, and the authority to exercise two (2) single option years for maintenance in the amount of \$20,440.00 for option year one and \$20,720.00 for option year two, plus a 10% contingency in the amount of \$11,622.04, and Cost Allocation Plan (CAP) of 3.27% (for equipment only) in the amount of \$504.25, for a total not-to-exceed amount of \$128,346.66 ending no later than February 1, 2020, if all options are exercised.

BACKGROUND

Omnitrans' Maintenance Department utilizes parts washers for the cleaning of parts. The East Valley facility requires eight (8) Parts Washers and one (1) heated mobile Parts Washer and the West Valley facility requires four (4) Parts Washers and one (1) heated mobile Parts Washer. The contract includes preventive maintenance on all washers, replacement parts, if required, cleaning solution, and waste disposal.

On January 8, 2014, Omnitrans' Board of Directors authorized the release of Invitation for Bids IFB-MNT14-85 for the provision of Parts Washers. Two separate solicitations were posted and each resulted in receiving two (2) bids, but only one (1) deemed responsive. The solicitations were cancelled and a new solicitation was issued for equipment purchase and an optional service maintenance contract. Three (3) bids were received by the December 11, 2014 deadline. All bids were deemed responsive.

Listed below are the bid prices:

Company	Bid
Safety-Kleen Systems Inc.	\$19,422*
FRS Environmental, Inc.	\$114,818
Steam Cleaners, Inc.	\$143,109

*Bid included equipment only

Award is recommended to the lowest, responsive, responsible bidder. Price is deemed fair and reasonable based on competition. The Independent Cost Estimate of \$130,286 was based on previous purchases for Parts Washers. The award represents a cost savings of \$1,942.82.

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

FUNDING SOURCE

The cost associated with the maintenance service is budgeted in the Maintenance Department's Operating budget as follows:

Department 1200
Expenditure Code 505060

Funding for the equipment is as follows:

FUNDING	GRANT	YEAR	PROJECT NAME	INTERNAL ORDER	AMOUNT
De-obligate					
FTA	CA-90-Y939	2012	Scissors Lift	D1240310F	\$12,738.40
STA	13-09-OMN-B	2012	Scissors Lift	D1240310S	\$3,184.60
Re-obligate					
FTA	CA-90-Y939	2012	Parts Washers	D1240312F	\$12,738.40
STA	13-09-OMN-B	2012	Parts Washers	D1240312S	\$ 3,184.60
Total					\$15,923.00

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

CONCLUSION

Award of this contract will provide equipment necessary to ensure our fleet stays in excellent working condition.

PSG:JMS:KT



CONTRACT AGREEMENT

between

FRS Environmental, Inc.
1414 East Sixth Street
Corona, CA 92879

(hereinafter "CONTRACTOR")
Telephone: 951-898-1888
Fax: 951-279-4250

And

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

CONTRACT DOCUMENTS

CONTRACT NO. MNT14-85R1

Parts Washers

Contract Amount: \$75,060

Omnitrans Project Manager:

Name: Omar Bryant
Title: Maintenance Manager
Telephone: (909) 379-7482
Fax: (909) 379-7485
Email: omar.bryant@omnitrans.org

Contracts Review Analyst:

Name: Krystal Turner
Title: Contracts Review Analyst
Telephone: (909) 379-7202
Fax: (909) 379-7402
Email: krystal.turner@omnitrans.org



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ATTACHMENT A – SCOPE OF WORK

ATTACHMENT B – REGULATORY REQUIREMENTS

ATTACHMENT C – PRICING SHEET

This Agreement is made and entered into as of this 2nd day of February, 2015 by and between Omnitrans (hereinafter referred to as "OMNITRANS") and FRS Environmental, Inc. (hereinafter referred to as "CONTRACTOR").

RECITALS

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

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

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

1. SCOPE OF WORK

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

2. PERIOD OF PERFORMANCE

The term of this Agreement shall be from the date of execution of this Agreement and continue in effect through February 1, 2018 unless terminated as specified in Section 8 and 9 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 February

2, 2018 Through February 1, 2020 which period encompasses the Initial Term, Option Year 1 and Option Year 2.

3. 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 Seventy Five Thousand and Sixty Dollars (\$75,060), including all amounts payable to CONTRACTOR for all costs, including but not limited to direct labor, other direct costs, subcontracts, indirect costs including, but not limited to, leases, materials, taxes, insurance, and profit.

4. INVOICING AND PAYMENT

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

CONTRACTOR shall submit invoices in duplicate to:

OMNITRANS
1700 West Fifth Street
San Bernardino, CA 92411
Attn: Accounts Payable
Email: accounts.payables@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/services
- 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.

5. AUDIT AND INSPECTION OF RECORDS

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

6. NOTIFICATION

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

To OMNITRANS:

Omnitrans
1700 West Fifth Street
San Bernardino, CA 92411
Attn: Krystal Turner
Email: krystal.turner@omnitrans.org

To CONTRACTOR:

FRS Environmental, Inc.
1414 East Sixth Street
Corona, CA 92879
Attn: Michelle Voss
Email: m.voss@frsenvironmental.com

7. OMNITRANS' AND CONTRACTOR'S REPRESENTATIVES

A. OMNITRANS' Project Manager

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

Project Manager: Omar Byrant.

- 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>
Michelle Voss	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.

8. 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.

9. 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.

10. TERMINATION FOR BREACH OF AGREEMENT

- A. If CONTRACTOR fails to perform any of the provisions of this Agreement or so fails to make progress as to endanger timely performance of this Agreement, OMNITRANS may give CONTRACTOR written notice of such default. If CONTRACTOR does not cure such default or provide a plan to cure such default which is acceptable to OMNITRANS within the time

permitted by OMNITRANS, then OMNITRANS may terminate this Agreement due to CONTRACTOR's breach of this Agreement.

- B. If a federal or state proceeding for relief of debtors is undertaken by or against CONTRACTOR, or if CONTRACTOR makes an assignment for the benefit of creditors, then OMNITRANS may immediately terminate this Agreement.
- C. If CONTRACTOR violates Section 26, Compliance with Lobbying Policies, of this Agreement, then OMNITRANS may immediately terminate this Agreement.
- D. In the event OMNITRANS terminates this Agreement as provided in this Section, OMNITRANS may procure, upon such terms and in such manner as OMNITRANS may deem appropriate, Work similar in scope and level of effort to those so terminated, and CONTRACTOR shall be liable to OMNITRANS for all of its costs and damages, including, but not limited, any excess costs for such Work.
- E. All finished or unfinished documents and materials produced or procured under this Agreement shall become OMNITRANS' property upon date of such termination.
- F. If, after notice of termination of this Agreement under the provisions of this Section, it is determined for any reason that CONTRACTOR was not in default under the provisions of this Section, or that the default was excusable under the terms of this Agreement, the rights and obligations of the parties shall be the same as if the notice of termination had been issued pursuant to Section 8, Termination for Convenience.
- G. The rights and remedies of OMNITRANS provided in this Article shall not be exclusive and are in addition to any other rights and remedies provided by law or under this Agreement.

11. 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.

12. SUBCONTRACTING

OMNITRANS hereby consents to CONTRACTOR's subcontracting of portions of the Work to the parties identified below for the functions described in CONTRACTOR's proposal. CONTRACTOR shall include in each subcontract

agreement the stipulation that CONTRACTOR, not OMNITRANS, is solely responsible for payment to the subcontractor for all amounts owing and that the subcontractor shall have no claim, and shall take no action against OMNITRANS, Member Agencies or officers, directors, employees or sureties thereof for nonpayment by CONTRACTOR.

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

13. 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.

14. INSURANCE

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

- A. **Commercial General Liability including Products/Completed Operations:** \$1,000,000 per occurrence for bodily and property damage liability and \$2,000,000 aggregate; *Endorsement naming Omnitrans as Additional Insured.*
- B. **Automobile Liability:** \$1,000,000 combined single limit bodily and property damage liability per accident; *Endorsement naming Omnitrans as Additional Insured.*
- C. **Workers' Compensation:** statutory limits or, a State-Approved program in an amount and form that meets all applicable requirements of the Labor Code of the State of California; *waiver of subrogation that includes Omnitrans.*
- D. **Employers Liability:** \$1,000,000.00 per occurrence

Additional Insured:

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

15. 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.

16. 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.

17. 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.

18. 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.

19. 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.

20. 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.

21. 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.

22. 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.

23. 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.

24. 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.

25. 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).

26. COMPLIANCE WITH LAW

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

27. 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.

28. 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.

29. 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.

30. 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.

31. 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.

32. 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.

33. 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.

34. 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.

35. RIGHTS AND REMEDIES OF OMNITRANS FOR DEFAULT

- A. In the event any equipment, solvent, or service furnished by the Contractor in the performance of this contract should fail to conform to the specifications therefore, Omnitrans may reject the same, and it will thereupon become the duty of the Contractor to reclaim and remove the same forthwith, without expense to Omnitrans, and immediately to replace all such rejected equipment, solvent, or service with others conforming to such specifications; provided that should the Contractor fail, neglect, or refuse to do so, Omnitrans will thereupon have the right to purchase in the open market, in lieu thereof, a corresponding quantity of any such equipment, solvent, or service and to deduct from any monies due or that may thereafter become due to the Contractor the difference between the price named in this contract and the actual cost thereof to Omnitrans.
- B. In the event the Contractor fails to make prompt delivery as specified of any equipment, solvent, or service, the same conditions as to the rights of Omnitrans to purchase in the open market and to reimbursement set forth above will apply, except as otherwise provided under Force Majeure.
- C. In the event of the cancellation of this contract either in whole or in part, by reason of the default or breach thereof by the Contractor, any loss or damage sustained by Omnitrans in procuring any equipment, solvent or service which the Contractor therein agreed to supply will be borne and paid for by the Contractor.
- D. The rights and remedies of Omnitrans provided above will not be exclusive and are in addition to any other rights and remedies provided by law or under the contract.

36. LICENSING, PERMITS AND INSPECTION COSTS

- A. 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, CONTRACTOR 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. Such 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, including Attachment B, Regulatory Requirements and Attachment A, Scope of Work, (2) provisions of RFQ-MNT15-85R1 (3) CONTRACTOR's bid dated December 11, 2014.

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

FRS ENVIRONMENTAL, INC.

P. SCOTT GRAHAM
CEO/General Manager

MICHELLE VOSS
PRESIDENT

DATE

Federal Tax I.D. No. 33-0885328

ATTACHMENT A – SCOPE OF WORK, REVISED
MNT14-85R1
PARTS WASHERS

1. SCOPE OF WORK:

A. The contractor shall provide all equipment. Contractor shall install the equipment at both Omnitrans facilities.

- 1) All equipment shall be new; no used or refurbished parts.
- 2) Equipment specifications: 12- (Stationary Units)
 - a) 20 gallon capacity
 - b) Non-adjustable heaters
 - c) Heating elements non-corroding sheathing with thermostat
 - d) High density structure strength polyethylene or metal construction
 - e) Re-circulating pump
 - f) Liquid level sensor
 - g) Adjustable timer for pumps and heaters
 - h) Faucet
 - i) Flow-thru brush
 - j) Drain tray
 - k) Removable lids
 - l) Work Height – Approx. 35 -45 inches
 - m) Sink Width – Approx. 24 -35 inches
 - n) Sink Depth – Approx. 7-12 inches
 - o) Voltage – 120 VAC 60 Hz
- 3) Equipment specifications: 2- (Mobile Units)
 - a) 12 -20 gallon capacity
 - b) Non-adjustable heaters
 - c) Heating elements non-corroding sheathing with thermostat
 - d) High density structure strength polyethylene or metal construction
 - e) Re-circulating pump
 - f) Liquid level sensor
 - g) Adjustable timer for pumps and heaters
 - h) Faucet
 - i) Flow-thru brush
 - j) Drain tray
 - k) Removable lids
 - l) Work Height – Approx. 35-45 inches
 - m) Sink Width – Approx. 20-25 inches

ATTACHMENT A – SCOPE OF WORK, REVISED
MNT14-85R1
PARTS WASHERS

- n) Sink Depth – Approx. 7-12 inches
- o) Voltage – 120 VAC 60 Hz

2. WARRANTY:

- A. Contractor warrants that all equipment installed under this contract shall be in good working order shall conform to the Contractor's published specifications.
- B. The Contractor shall make all adjustments, repairs, and parts replacements necessary to maintain the equipment in this condition.
- C. All equipment shall come with a minimum five (5) year warranty beginning on the first day of installation.
- D. Contractors must submit a copy of warranty.

3. INSTALLATION AND DELIVERY DATES:

- A. Contractor shall install all required equipment in a ready-for-use condition within thirty days of issuance of the Contract.
- B. Omnitrans will provide space for the Contractor's equipment and access to the site for the purpose of installing the equipment prior to the installation date.
- C. Contractor must specify in writing the time required to install the equipment.
- D. Contractor must determine that the equipment is ready for use, and operates in conformance with Contractor's published specifications and shall certify in writing to Omnitrans that the equipment is installed and ready to be turned over to the operational control of Omnitrans.

4. TRAINING:

- A. General:
 - 1) Provide all training at Contractor's sole expense.
 - 2) Provide training at the designated Omnitrans' locations.
 - 3) Provide video, audio, and hands-on training wherever appropriate.
- B. User Training:
 - 1) Train users sufficiently to permit them to operate the equipment for day-to-day use.
 - 2) Provide training on the dates and times agreed by Omnitrans. (This will vary according to Omnitrans' requirements).
- C. Training Materials:

Provide written Training Materials that will enable a user unfamiliar with the equipment and features to operate the equipment for day-to-day use.

ATTACHMENT A – SCOPE OF WORK, REVISED
MNT14-85R1
PARTS WASHERS

5. OPTIONAL:

- A. Preventative maintenance and servicing on all parts washers at least once every five (5) weeks at both locations. Service and maintenance shall include periodic actions that serve to prevent failures, i.e., cleaning, inspection and corrective maintenance (correct failures)
- B. Maintenance and servicing shall include, but not be limited to:
 - 1) Cleaner/ degreaser and services for parts washing.
 - a) Removal and replenishment of solution
 - b) Cleaner/Degreaser shall be an aqueous cleaner developed to clean grease, oil, lubricants and other organic soils.
 - c) Contractor must supply the Material Safety Data Sheet (MSDS).
 - 2) Cleaning
 - 3) Damage inspection
 - 4) Test for proper operation
 - 5) Filter replacement
 - 6) Waste Disposal (offsite, in accordance with State and Local regulations), as necessary, depending on type of equipment.

6. CONTRACTOR PERSONNEL:

A. Control and Supervision:

The services provided by Contractor to accomplish the Scope of Work shall remain under the control, management, and supervision of Contractor.

B. Personnel:

- 1) Contractor shall provide technically competent personnel to accomplish the tasks prescribed in the Contract.
- 2) Contractor personnel must perform their duties on the premises of Omnitrans, during Omnitrans' regular work days, Monday through Friday, between the hours of 6:00 a.m. and 5:00 p.m., except as may be specifically agreed to otherwise by Omnitrans.
- 3) If a Contractor's employee is unable to perform due to illness, resignation, or other factors beyond Contractor's control, Contractor will make every reasonable effort to provide suitable substitute personnel.

End Scope of Work

ATTACHMENT B

REGULATORY REQUIREMENTS

**THESE REGULATORY REQUIREMENTS APPLY TO THE
FOLLOWING CONTRACTS**

ITEM #F3	MNT14-85R1 – PARTS WASHERS
ITEM #F4	MNT15-01 – ENGINE DYNAMOMETER

Attachment B

REGULATORY REQUIREMENT

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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.

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 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 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 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.

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.
- 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.

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.

- C. 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 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 \$100,000 and to contracts over \$100,000 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 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)

- 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 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.

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 national goal for participation of Disadvantaged Business Enterprises (DBE) is 10%. The agency's overall goal for DBE participation is 8.4%.
- 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 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:
 - (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.

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>

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 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 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
- (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 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 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 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 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) (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 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;

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

(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.

(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.

RR-25 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.

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.

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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 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 complete it by contract or otherwise, and may take possession of and use any materials, appliances, and plant on the work site necessary for completing the work. The Contractor and its sureties shall be liable for any damage to 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.

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.

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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.

RR-28

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 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 by 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 or 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.

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VETERANS PREFERENCE

Veterans Employment. 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

ATTACHMENT C - PRICING SHEET						
MNT14-85R1						
PARTS WASHERS						
Line Totals (Unit Price * Quantity)						
Item Num	Section	Item Code	Description	Unit of Measure	Quantity	FRS ENVIRONMENTAL
1	PRICING SHALL BE INCLUSIVE OF DIRECT AND INDIRECT COSTS EXCLUDING SALES TAX		PARTS WASHER STATIONARY UNITS	EA	12	\$11,100.00
2	PRICING SHALL BE INCLUSIVE OF DIRECT AND INDIRECT COSTS EXCLUDING SALES TAX		MOBILE PARTS WASHER	EA	2	\$1,850.00
3	PRICING SHALL BE INCLUSIVE OF DIRECT AND INDIRECT COSTS EXCLUDING SALES TAX		SALES TAX @ 8.25%	LOT	1	\$1,068.38
					Subtotal	\$14,018.38
4	OPTIONAL	Base Year 1	PREVENTATIVE MAINTENANCE/ SERVICE	LOT	1	\$19,600.00
5	OPTIONAL	Base Year 2	PREVENTATIVE MAINTENANCE/ SERVICE	LOT	1	\$19,880.00
6	OPTIONAL	Base Year 3	PREVENTATIVE MAINTENANCE/ SERVICE	LOT	1	\$20,160.00
7	OPTIONAL	Option Year 1	PREVENTATIVE MAINTENANCE/ SERVICE	LOT	1	\$20,440.00
8	OPTIONAL	Option Year 2	PREVENTATIVE MAINTENANCE/ SERVICE	LOT	1	\$20,720.00
					Subtotal	\$100,800.00
					Total	\$114,818.38

ITEM # F4

DATE: January 14, 2015

TO: Board Chair Alan Wapner and Members of the Omnitrans Board of Directors

THROUGH: P. Scott Graham, CEO/General Manager

FROM: Jennifer M. Sims, Director of Procurement

**SUBJECT: AUTHORIZE AWARD - CONTRACT MNT15-01
ENGINE DYNAMOMETER**

FORM MOTION

Authorize the CEO/General Manager to award Contract MNT15-01 to Hamel Contracting, Inc. of Murrieta, CA, for the provision of Engine Dynamometer in the amount of \$177,307.75, plus a five percent contingency of \$8,865.39 and a 3.27% Cost Allocation Plan (CA) of \$6,087.86, for a total amount of \$192,261.00 and three additional years warranty and on-site support in a total amount of \$27,692.25, for a project total amount not-to-exceed \$219,953.25.

BACKGROUND

Omnitrans' engine dynamometer is obsolete and can no longer perform load tests. The new dynamometer will allow the mechanics to troubleshoot various issues and guarantee engine performance prior to installing rebuilt engines into the buses.

On September 2, 2014, Board approved release of IFB-MNT15-01. The solicitation was posted on Omnitrans' online bidding system. Two bids were received by the November 19, 2014 deadline. The bid required a Class A – General Engineering Contractor and Buy America Compliance. Only one bidder, Hamel Contracting, Inc., met these and all other requirements, and was deemed responsive and responsible.

In accordance with FTA Circular 4220.1F, and Omnitrans Procurement Procedure 4050.1, Section 5, awarding a contract in response to a single bid is allowed when it can be determined that the lack of competition was not due to unfavorable terms and conditions or unduly restrictive scopes of work or technical specifications. Staff contacted firms that were notified of the solicitation but chose not to submit bids. As a result of the survey, staff determined that the limited number of responses was unrelated to any term or specifications and deemed the process valid.

Hamel Contracting, Inc.'s bid for the entire project is \$205,000. The independent cost estimate (ICE), with the addition of \$6,000 shipping charges, is \$186,000. Price is considered fair and reasonable as it is within ten percent of the ICE.

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

FUNDING SOURCE

The costs associated for the warranty and support for the additional three years are budgeted in Maintenance Department's Operating budget as follows:

Department 1200
Expenditure Code 505110

Funding for the equipment, including removal, disposal, installation, commissioning and the first year of warranty and support is as follows:

FUNDING	GRANT	YEAR	PROJECT NAME	INTERNAL ORDER	AMOUNT
FTA	CA-90-Y939	2012	Engine Dynamometer	D1240311F	\$153,809
STA	12-11-OMN-B	2012	Engine Dynamometer	D12REO04S	\$38,452
Total					\$192,261

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

CONCLUSION

Approving award of this contract allows Omnitrans the ability to test rebuilt engines and reduce the risk of engine failures prior to installation and release into revenue service.

PSG:JMS:CVM



CONTRACT AGREEMENT

between

CONTRACTOR
Hamel Contracting, Inc.
26359 Jefferson Avenue, Suite H
Murrieta, CA 92562

(hereinafter "CONTRACTOR")
Telephone: 951-600-2783 / 951-600-3951

Email: grant@hamelinc.com
avelazquez@hamelinc.com

And

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

CONTRACT DOCUMENTS

CONTRACT NO. MNT15-01

Engine Dynamometer

Contract Amount: \$205,000

Omnitrans Project Manager:

Name: Mike Bonacio
Title: Technical Services Manager
Telephone: (909) 379-7179
Email: mike.bonacio@omnitrans.org

Contract Administrator:

Name: Christine Van Matre
Title: Contract Administrator
Telephone: (909) 379-7122
Email: christine.vanmatre@omnitrans.org



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Exhibit A – Technical Specifications

Exhibit B – General Provisions

Exhibit C – Regulatory Requirements

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

RECITALS

WHEREAS, OMNITRANS is a joint powers authority organized under Sections 6500 et seq. of the California Government Code and Section 130255 of the California Public Utilities Code with power to contract for services described in Exhibit A to this Agreement entitled "Exhibit A, Technical Specifications" (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 Exhibit A, Technical Specifications 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 _____ for removal, disposal, installation and commissioning. Upon completion and acceptance, warranty and on-site support shall commence for four years through _____, unless terminated as specified in Section 9 and 10 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.

3. COMPENSATION

For CONTRACTOR's full and complete performance of its obligations under this Agreement, OMNITRANS shall pay CONTRACTOR on a LUMP SUM basis, subject to the maximum cumulative payment obligation.

No.	Description	Total Amount
1	Installation	\$14,278.50
2	Removal / Disposal	\$14,278.50
3	Commissioning	\$7,102.00
4	Software (Initial Package)	Included
5	Software License (annual fee for subsequent years)	Included
6	Dynamometer and supporting components	\$116,177.00
7	Warranty* (per year \$7,700)	\$30,800.00
8	On-site Support* (per year \$1,530.75)	\$6,123.00
9	Freight FOB Destination	\$5,785.00
10	Sales Tax	\$10,456.00
Total Amount		\$205,000.00

*OMNITRANS' will pay Warranty and On-Site Support on an annual basis.

Omnitrans maximum cumulative payment obligation under this Agreement shall not exceed Two Hundred and Five Thousand Dollars (\$205,000), 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 travel, leases, materials, taxes, insurance, and profit.

4. INVOICING AND PAYMENT

A. CONTRACTOR may 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

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. Omnitrans pays capital projects the first Thursday of each month.

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

5. AUDIT AND INSPECTION OF RECORDS

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

6. NOTIFICATION

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

To OMNITRANS:

Omnitrans
1700 West Fifth Street
San Bernardino, CA 92411
Attn: Christine Van Matre, Contract
Administrator
Email:
christine.vanmatre@omnitrans.org

To CONTRACTOR:

Hamel Contracting, Inc.
26359 Jefferson Avenue, Suite H
Murrieta, CA 92562
Attn: Grant Hamel, President
Email: grant@hamelinc.com
cc: Anna Velasquez, Estimating
Administrator
Email: avelazquez@hamelinc.com

7. OMNITRANS' AND CONTRACTOR'S REPRESENTATIVES

A. OMNITRANS' Project Manager

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

Project Manager: Mike Bonacio.

- 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>
Grant Hamel	Project Manager
Anna Velasquez	Estimating Administrator

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

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

8. 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.

9. 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.

10. TERMINATION FOR BREACH OF AGREEMENT

- A. If CONTRACTOR fails to perform any of the provisions of this Agreement or so fails to make progress as to endanger timely performance of this Agreement, OMNITRANS may give CONTRACTOR written notice of such default. If CONTRACTOR does not cure such default or provide a plan to cure such default which is acceptable to OMNITRANS within the time permitted by OMNITRANS, then OMNITRANS may terminate this Agreement due to CONTRACTOR's breach of this Agreement.
- B. If a federal or state proceeding for relief of debtors is undertaken by or against CONTRACTOR, or if CONTRACTOR makes an assignment for the benefit of creditors, then OMNITRANS may immediately terminate this Agreement.
- C. If CONTRACTOR violates Section 26, Compliance with Lobbying Policies, of this Agreement, then OMNITRANS may immediately terminate this Agreement.
- D. In the event OMNITRANS terminates this Agreement as provided in this Section, OMNITRANS may procure, upon such terms and in such manner as OMNITRANS may deem appropriate, Work similar in scope and level of effort to those so terminated, and CONTRACTOR shall be liable to OMNITRANS for all of its costs and damages, including, but not limited, any excess costs for such Work.
- E. All finished or unfinished documents and materials produced or procured under this Agreement shall become OMNITRANS' property upon date of such termination.
- F. If, after notice of termination of this Agreement under the provisions of this Section, it is determined for any reason that CONTRACTOR was not in default under the provisions of this Section, or that the default was excusable under the terms of this Agreement, the rights and obligations of the parties shall be the same as if the notice of termination had been issued pursuant to Section 8, Termination for Convenience.

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

11. 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.

12. SUBCONTRACTING

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

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

13. 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.

14. INSURANCE

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

- A. **Commercial General Liability including Products/Completed Operations:** \$1,000,000 per occurrence for bodily and property damage liability and \$2,000,000 aggregate; *Endorsement naming Omnitrans as Additional Insured.*
- B. **Automobile Liability:** \$1,000,000 combined single limit bodily and property damage liability per accident; *Endorsement naming Omnitrans as Additional Insured.*
- C. **Workers' Compensation:** statutory limits or, a State-Approved program in an amount and form that meets all applicable requirements of the Labor Code of the State of California; *waiver of subrogation that includes Omnitrans.*
- D. **Employers Liability** Applicable to the work being performed, with a limit no less than \$1,000,000 per claim or occurrence and \$2,000,000 aggregate; *Endorsement naming Omnitrans as additional insured.*
- E. All drivers making deliveries of products specified on this RFQ shall have Hazardous Materials Endorsements on their Commercial Driver's License, and such other Endorsements as may be required by relevant laws and/or regulations.

Additional Insured:

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

15. 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.

16. 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.

17. 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.

18. 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.

19. 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.

20. 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.

21. 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.

22. 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.

23. 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.

24. 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.

25. 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).

26. COMPLIANCE WITH LAW

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

27. 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.

28. 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.

29. 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.

30. 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.

31. 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.

32. 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.

33. 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.

34. 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.

35. LICENSING, PERMITS AND INSPECTION COSTS

- A. The FIRM 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. FIRM further warrants that it shall not retain or employ an unlicensed subcontractor to perform work on this Project. FIRM 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. Such 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.

36. PRECEDENCE

Conflicting provisions hereof, if any, shall prevail in the following descending order of precedence: (1) the provisions of this Agreement, including , Exhibit A, Technical Specifications, Exhibit B, General Provisions, and Exhibit C, Regulatory Requirements, (2) provisions of IFB-MNT15-01 and (3) CONTRACTOR's bid dated November 6, 2014.

37. 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

HAMEL CONTRACTING, INC.

P. Scott Graham
CEO/General Manager

Grant Hamel
President

DATE

Federal Tax I.D. No.94-3451148

DP 

CM 

EXHIBIT A – TECHNICAL SPECIFICATIONS
MNT15-01
ENGINE DYNAMOMETER

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A. GENERAL DESCRIPTION OF WORK

1. The project scope of work shall be comprised of the removal and disposition of the existing engine dynamometer (Clayton Industries, model FD-15-1000-112 10) and the installation of a new dynamometer provided by the Contractor, at Omnitrans' facility located at 1700 West 5th Street, San Bernardino, CA 92411.
2. The existing system is comprised of a complete engine dynamometer system, equipment controls, data acquisition, monitoring devices and associated plumbing and electrical.
3. The existing unit is to be replaced with a new complete engine dynamometer. The Scope of Work includes all necessary demolition, structural foundation, plumbing, electrical and control work, as required.
4. The Contractor shall be required to obtain all applicable permits as required from the City of San Bernardino Building and Safety Division, as well as coordination of any and all applicable inspections.
5. The operating components of the new engine dynamometer shall be the standard products of the dynamometer manufacturer, and be provided by a single source as a complete package to ensure the integrity of the system.
6. Work duration is estimated to be six months. Once Work is completed and accepted by Omnitrans, the four-year warranty period shall begin.

B. SPECIFICATIONS

1. The engine dynamometer shall be:
 - a. A water-brake type and support at least 500 but no more than 600 horsepower (hp). Water brake system shall be protected by a zinc anode to prevent corrosion.
 - b. Capable of forcing at least 1,200 foot-pounds torque.
 - c. Able to support speeds up to 2,500 revolutions per minute (RPM).
 - d. Able to perform bi-directional electronic communications with the engine using both J1939 and OBDII communications protocols.
 - e. Equipped with all electronics to connect engine electronic control module (ECM) power, throttle command/control and data communication to the dynamometer system.
 - f. Capable to start any engine by using a self-contained air starting system that interfaces with the dynamometer and shall not interface directly with the engine.
 - 1) The starting system shall include an air tank which can provide up to five 10-second starting attempts before it needs to be replenished.

- g. Made of all new components and hardware
 - 1) No rebuilt, used or refurbished components and/or hardware are allowed
- 2. The engine dynamometer shall support the mounting, interactivity and testing of:
 - a. Cummins ISL G 8.9 liter natural gas fueled engines.
 - b. Cummins 8.3g C+ natural gas fueled engines.
 - c. Cummins 5.9 natural gas fueled engines.
 - d. John Deere 6081HFN04 natural gas fueled engines.
- 3. The engine dynamometer shall be user-configurable to allow the adaptation, mounting and testing of future engine brands and types of similar size and power as the aforementioned and not listed within these technical specifications. The use of an engine cart is permissible with universal mounting anchored to the floor. Contractor shall provide two carts with this configuration.
- 4. Configurable features shall include, but are not limited to:
 - a. Flywheel adaptation.
 - b. ECM electronic adaptation and interactivity.
 - c. Engine mounting and positioning.
 - d. Support equipment adaptation to be replaced:
 - 1) Regulated water cooled aftercooler.
 - 2) Fuel supply lines and connections.
 - e. Forced air cooling system shall include:
 - 1) An engine cooling system that is adjustable to remove up to 150% of the tested engine's waste heat from the engine coolant.
 - 2) All hoses necessary to facilitate connections between all engines listed in B.2 and to the cooling column.
- 5. Data Acquisition
 - a. A data acquisition and control system that includes the following nodes:
 - 1) Oil pressure.
 - 2) Air box/charged air cooler pressure.
 - 3) Fuel pressure [~0-200 pounds per square inch gauge (psig) gas].
 - 4) Oil temperature.
 - 5) Coolant temperature.
 - 6) Relative humidity.

- 7) Barometric pressure.
- 8) (1) one spare temperature.
- 9) (1) one spare pressure.
- b. The data acquisition and control system shall collect at least the following data:
 - 1) Engine power.
 - 2) Engine torque.
 - 3) Engine speed.
 - 4) Node data.
 - 5) Condition warnings including high engine coolant and oil temperatures and low oil pressure.

C. REMOVAL AND DISPOSITION OF THE EXISTING CLAYTON ENGINE DYNAMOMETER SYSTEM

Contractor shall remove completely and dispose of the existing dynamometer system.

1. The system includes:
 - a. The dynamometer.
 - b. The dynamometer sub-base.
 - c. All devices not used in the new system.
 - d. Wall-mounted gauge panel.
2. The Contractor shall
 - a. Remove all sub-frame-to-floor mountings including studs and brackets.
 - b. Repair the flooring at each mounting point.
 - c. Repair and conceal all electrical circuits disturbed during the system removal except those to be used with the new system.
 - 1) Circuit removal up to the point of circuit protection is considered minimal.
 - d. Repair all fluid connections disturbed during the removal process.

D. INSTALLATION

1. General
 - a. Installation shall include the use of all NEW parts and hardware.
 - b. The sub-mount shall be affixed to the floor to withstand 200% of any force placed on it and its mountings.

- c. Electrical connections shall conform to standards published in the National Electrical Code.
 - d. Plumbing connections shall conform to standards published in the California Plumbing Code.
 - e. All other legal and regulatory compliance requirements in order to successfully install a safe and reliable system.
2. Equipment Guards
- Equipment guards shall be utilized where there is exposed rotating and/or reciprocating components or sub-components (tested engine excluded).
3. Fuel control valve
- a. The dynamometer system shall include a ¾" national pipe thread (NPT) solenoid valve rated at a minimum of 150psi and suitable for natural gas which interrupts .
 - b. The valve is controlled by the dynamometer to prevent damage to the test engine under at least the following conditions:
 - 1) High engine temperature
 - 2) Low oil pressure
 - 3) Low coolant level
 - c. This valve is in addition to an existing shut-off valve as described in Section F.6.

E. SYSTEM AND INSTALLATION ACCEPTANCE TESTING

- 1. The final installation shall be inspected by the Omnitrans Facilities Manager. The inspection shall include (but not inclusive):
 - a. Electrical component and circuit installation.
 - b. Mechanical component installation (focus on installed components).
 - c. Plumbing systems installation and integrity.
- 2. The final system installation shall be inspected by the Director of Maintenance or designee. The inspection shall include (but not inclusive):
 - a. Verification of the Facility Manager's inspection
 - b. Performance test to include a 1 hour live engine test using a Cummins 8.3 C+ or other engine specified in Section B.2.
 - c. Verification of data integrity including node outputs.
 - d. Post-test review.

3. Test Requirements
 - a. Installation integrity found to be in compliance with industry standards.
 - b. Performance integrity found to be consistent with the equipment owner operating and maintenance manuals.
 - c. Data acquisition consistent with the characteristics of the engine being tested.
4. Test Failures
 - a. If any of the tests as described in Section E fail to satisfy the requirements found in these technical specifications, Contractor shall correct the defects until all requirements are met.
 - b. The Director of Maintenance or designee may require an additional 1-hour test to ensure compliance of these technical specifications.

F. ENCLOSURE (DYNAMOMETER ROOM) SPECIFICATIONS

1. Dimensions:
 - a. Length = 20 feet
 - b. Width = 13 feet
2. Footprint of currently installed dynamometer:
 - a. Length = 15 feet
 - b. Width = 5 feet
3. Electrical power:
 - a. 110VAC is immediately available.
 - b. Other power sources are available and shall be installed and configured by the Contractor.
4. Water:
 - a. The existing dynamometer room is equipped with a 2" copper water line with a consistent 60psi to 70psi water pressure.
 - b. A high-rate drain is available for clear water only.
5. Compressed air
 - a. Up to 120psig
6. Natural gas fuel supply
 - a. The fuel supply is provided.

- b. The fuel supply is interruptible by an existing ¾" NPT solenoid valve rated at 150psi, suitable for natural gas which is controlled by a methane detection system and shall not be used with the dynamometer system.

G. SOFTWARE

1. Provide system software and licenses (2 ea.) for the purpose of archival copy.
2. Software license requirements and procedures shall be included in bid.

H. MANUALS AND DIAGRAMS

1. Two sets of traditional paper publications shall be supplied. The sets shall include:
 - a. Owner's manual.
 - b. Operating manual.
 - c. Parts manual.
 - d. Training manual.
 - e. Safety manual.
 - f. As-built drawings to include mechanical, structural, electrical and plumbing diagrams.
2. One set of electronic publications outlined in Section H.1 shall be provided in the Adobe Portable Document Format (pdf).
3. Documents including those specified in Section H.1 shall be provided on portable storage media:
 - a. One (1) each DVD set.
 - b. One (1) each 500 GB or greater portable hard drive.

I. TRAINING

1. Two training sessions shall be provided for up to eight participants each. Both sessions may be scheduled for the same day.
2. Training shall include, at a minimum:
 - a. Set-up and operation.
 - b. Gathering and reading data.
 - c. Maintenance and repair.

- d. Safety.
- e. Preventive maintenance for the engine dynamometer.

J. WARRANTY

1. Engine dynamometer must be free from defects in material and workmanship for a minimum of four (4) years.
2. Warranty shall cover 100% of the product, freight, and installation.
3. Under no circumstances will Omnitrans be responsible for any cost derived from poor product performance over the entire 4-year warranty period.
4. Include a copy of the all-inclusive 4-year warranty with the name, contact, phone number, fax and email of the service organization providing service, signed by an authorized representative of the company.

K. SUPPORT

1. Contractor shall offer technical support for the duration of the warranty period.
 - a. Technical support shall include:
 - 1) Operation
 - 2) System troubleshooting
 - 3) Software configuration
2. Contractor shall provide repair support for the duration of the warranty. Repair support shall include 100% parts cost and 100% labor costs.

End of Technical Specifications

EXHIBIT B - GENERAL PROVISIONS

A. COST BREAKDOWN

1. Within 15 calendar days after "Notice to Proceed," the CONTRACTOR shall, submit a cost breakdown of the lump sum Bid entered on the Bid Form for all construction work. This cost breakdown will form the basis for progress payments in accordance with these Specifications and shall show all of the major categories and subcategories of work and equipment requested by OMNITRANS. Additionally, all cost shall be segregated between off-site and on-site costs. Mobilization costs shall not exceed 10% of total construction costs. Bonds and insurance costs will be identified as a separate line item. Such cost breakdown shall not be required if OMNITRANS, at its sole discretion, elects to pay the CONTRACTOR in lump sum within thirty (30) calendar days of receipt of proper invoice following the CONTRACTOR's satisfactory completion and OMNITRANS' acceptance of all work.
2. Submit completed Excel file electronically on CD as well as all pages of printed backup copy of completed Excel based price proposal form. CDR-disc and case shall include the Contractor's name, Project Name, and the submittal date.

B. PROGRESS PAYMENTS

1. OMNITRANS, no later than the 15th day of each month, shall prepare a progress payment estimate based on the estimated percentage of completion of each Bid Item and on the CONTRACTOR's actually incurred allowable expenses on such Bid Items. OMNITRANS will issue the progress payment, in the amount it deems appropriate, by approximately the 15th day of the following month.
2. For purposes of calculating the progress payments, OMNITRANS will use the cost breakdown submitted by the CONTRACTOR for each Bid Item at the start of this Agreement. In no event, will OMNITRANS make a progress payment that, when added to the prior progress payments, amounts to a sum more than the CONTRACTOR's actual aggregate incurred expenses, adjusted to include CONTRACTOR's overhead and profit as allocated to such incurred expenses.
3. OMNITRANS will pay only 95% of each progress payment amount as determined above, retaining 5% as part security for the fulfillment of this Agreement by the CONTRACTOR. Unless otherwise required by law, the final payment of five percent (5%) of the value of the total price of this Agreement, if unencumbered, shall be paid no later than sixty (60) days after the date of recordation of the Notice of Completion.
4. No progress payments will be made for materials not installed.
5. Progress payments made by OMNITRANS in no way shall be deemed or

construed as acceptance by OMNITRANS of work or waiver by OMNITRANS of any rights hereunder.

6. Acceptance by CONTRACTOR of the final payment shall constitute a waiver of all claims against OMNITRANS arising from this Agreement.
7. The CONTRACTOR shall pay subcontractors, promptly upon receipt of each OMNITRANS progress payment, the respective amounts allowed the CONTRACTOR on account of the work performed by subcontractors, to the extent of each such subcontractor's interest therein. Such payments to subcontractors shall be based on estimates made pursuant to this Agreement. Any diversion by the CONTRACTOR of payments received for prosecution of a contract, or failure to reasonably account for the application or use of such payments, constitutes ground for termination of the CONTRACTOR's control over the work and for taking over the work, in addition to disciplinary action by the CONTRACTOR's State License Board. The subcontractor shall notify, in writing, the CONTRACTOR's State License Board and OMNITRANS of any payment less than the amount or percentage approved for the class or item of work as set forth in this Agreement.
8. In addition to other amounts properly withheld under this Agreement, OMNITRANS shall withhold all legally required sums for, but not necessarily limited to, stop payment notices, labor and tax liens, etc.

C. COMPLETION, ACCEPTANCE AND GUARANTEE.

1. Substantial Completion

- a. Notice: The Contractor shall provide written Notice of Substantial Completion to the Project Manager/Engineer when all of the following have occurred with respect to the Work:
 - 1) The Contractor has ensured that all Work, including correction of deficiencies, has been performed and substantially completed in accordance with the requirements of the Contract;
 - 2) Contractor has submitted a completed As Built Schedule (except for Punch List Items); and
 - 3) The Contractor has ensured that the Work is ready for operation and may be operated without damage to the any other Work or property on or off the Site, and without injury to any person.
- b. Inspection: Within a reasonable time after the Contractor provides the Project Manager/Engineer with Notice of Substantial Completion of the

Work, the Contractor and Omnitrans' Authorized Representative shall conduct an inspection of the Work to determine its status of completion.

- c. Substantial Completion. Substantial Completion of the Work shall occur on the date:
 - 1) Omnitrans determines that the Work has been completed in accordance with all requirements of the Contract;
 - 2) The Contractor has corrected all deficiencies and deviations with respect to the Work;
 - 3) Omnitrans' has accepted the As Built Schedule and has notified the Contractor in writing of its acceptance of the correction of all deficiencies;
 - 4) The Omnitrans and the Contractor have agreed to a Punch List of items remaining to be completed or corrected prior to Final Acceptance; and
 - 5) The Work is ready to use for the purpose intended.
- d. Upon Substantial Completion, the Omnitrans will issue a Certificate of Substantial Completion for the completed Work.

2. Acceptance

- a. Omnitrans may either:
 - 1) Reject the Contractor's Notice of Substantial Completion because the Work does not meet the requirements for Substantial Completion, describing deficiencies and/or deviations from the Contract requirements, or
 - 2) Issue a Certificate of Substantial Completion and issue the agreed Punch List, if any, of Work items remaining.
- b. If Omnitrans rejects the Contractor's Notice of Substantial Completion, the Contractor shall, at its own cost and expense, comply with all requirements for Substantial Completion and resubmit the Notice when the requirements have been met.

3. Completion of the Punch List

- a. All Work items on the Punch List shall be completed prior to the Final Acceptance and final payment.

- b. After Substantial Completion, the Omnitrans shall allow the Contractor reasonable access to the Work site to complete the items on the Punch List.

4. Responsibility to Complete the Work

- a. Omnitrans reserves the right to direct any and all Punch List work prior to completion of Work or Final Acceptance. Notwithstanding any other provision of this Contract that could be interpreted to the contrary (including in Contract Documents of higher precedence), it shall be the Contractor's continuing responsibility to complete and deliver every portion, and the integrated whole, of the Work in accordance with all of the requirements of the Contract.
- b. The issuance of a Certificate of Substantial Completion by Omnitrans shall not be construed to relieve the Contractor of this responsibility, or any part thereof. If, after the issuance of a Certificate of Substantial Completion, the Omnitrans discovers any deficiency, or item not completed or otherwise requiring correction or remedial action, whether or not the item appears on any Punch List or other list of clean up items, the Omnitrans may direct the work to be performed and the Contractor shall correct the deficiency, complete the item or otherwise remedy the condition to bring it in to full compliance with the Contract prior to Final Completion and the AGENCY's acceptance of the Work.

5. Final Completion

- a. Notice. The Contractor shall provide written notice to the Project Manager/Engineer upon completion of all Work, after ensuring that all Work has been performed and completed in accordance with the Contract requirements. Final completion will be considered only after all Work of the Contract is completed, regardless of the completion of any intermediate milestones.
- b. Inspection. Within a reasonable time after the Contractor provides notice of final completion, the Project Manager/Engineer and the Contractor will inspect the Work.
- c. Acceptance. If, in Project Manager/Engineer's judgment, the Work has been completed and is ready for acceptance, the Engineer will so certify and give the date of completion to Omnitrans representative, who may accept completed Work with Board approval. If the Work has not been completed, the Project Manager/Engineer will provide written notification to the Contractor with an updated Punch List of items to be completed or corrected. The Contractor shall, at its own cost and expense, comply with all requirements for Final Completion and resubmit the notice when the requirements have been met.

- d. The parties agree that no certificate given, with the exception of the certificate of final payment, shall be conclusive evidence of the full performance of the Contract, either in whole or in part, and that no payment shall be construed to be in acceptance of any defective work or improper materials. Further, the certificate of final payment shall not terminate the Contractor's obligations under his warranty hereinabove. The Contractor agrees that payment of the amount due under the Contract and the adjustments and payments due for any work done in accordance with any alterations of the same shall release the Omnitrans and its officers and employees from any and all claims or liability on account of work performed under the Contract or any alteration thereof.

6. Risk of Loss

- a. Until by the formal acceptance by Omnitrans of the work of the Contractor hereunder, the Contractor shall have the charge and care thereof, and shall bear the risk of injury or damage to any part thereof by the action of the elements or from any other cause, whether arising from the execution or from the non-execution of the work.
- b. Contractor shall rebuild, repair, restore, replace and make good all injuries or damages to any portion of that which he is obligated to improve, provide or complete hereunder occasioned by any of the above causes before completion and acceptance, and shall bear the expense thereof, except for such injuries or damages arising from the sole negligence of willful misconduct of Omnitrans, its officers, agents or employees.
- c. In case of suspension of work from any cause whatsoever, the Contractor shall be responsible for all equipment and/or materials then upon the public property and shall properly store or protect them, if necessary, and shall erect temporary structures where necessary in so doing.
- d. Nothing in this Contract shall be considered as vesting in the Contractor any right of property in materials used after they have been attached or affixed to the work or the soil upon public property; but all such materials shall, upon being so attached or so affixed, become the property of the Omnitrans.

D. CLAIMS

- 1. In accordance with Public Contract Code Sections 20104 *et seq.* and other applicable law, public works claims of \$375,000 or less which arise between the Contractor and OMNITRANS shall be resolved under the following statutory procedure unless OMNITRANS has elected to resolve the dispute pursuant to Public Contract Code Section 10240 *et seq.*
- 2. **All Claims.** All claims shall be submitted in writing and accompanied by substantiating documentation. Claims must be filed on or before the date of final payment unless other notice requirements are provided in the Contract Documents. "Claim" means a separate demand by the claimant for (1) a time

extension, (2) payment of money or damages arising from work done by or on behalf of the claimant and payment of which is not otherwise expressly provided for or the claimant is not otherwise entitled, or (3) an amount the payment of which is disputed by OMNITRANS. The Contractor shall promptly comply with the Contract Documents in the performance of Work and/or the requests of OMNITRANS even though a written claim has been filed. The Contractor and OMNITRANS shall make good faith efforts to resolve any and all claims that may arise during performance of the Work covered by this Contract.

3. **Claims Under \$50,000.** OMNITRANS shall respond in writing to the claim within 45 days of receipt of the claim, or, OMNITRANS may request, in writing, within 30 days of receipt of the claim, any additional documentation supporting the claim or relating to defenses or claims OMNITRANS may have. If additional information is needed thereafter, it shall be provided upon mutual agreement of OMNITRANS and the claimant. OMNITRANS's written response shall be submitted 15 days after receiving the additional documentation, or within the same period of time taken by the claimant to produce the additional information, whichever is greater.
4. **Claims over \$50,000 but less than or equal to \$375,000.** OMNITRANS shall respond in writing within 60 days of receipt, or, may request in writing within 30 days of receipt of the claim, any additional documents supporting the claim or relating to defenses or claims OMNITRANS may have against the claimant. If additional information is needed thereafter, it shall be provided pursuant to mutual agreement between OMNITRANS and the claimant. OMNITRANS's response shall be submitted within 30 days after receipt of the further documents, or within the same period of time taken by the claimant to produce the additional information or documents, whichever is greater. The Contractor shall make these records and documents available at all reasonable times, without any direct charge.
5. The Contractor will submit the claim written justification and documentation in the following format:
 - a. Summary of claim, merit and price, and Contract clause pursuant to which the claim is requested.
 - b. List of documents relating to the claim
 - 1) Specifications
 - 2) Drawings
 - 3) Clarifications (Requests for Information)
 - 4) Schedules
 - 5) Other
 - c. Chronology of events and correspondence

- d. Analysis of claim merit
 - e. Analysis of claim cost
 - f. Analysis of time impact analysis in CPM format
 - g. Cover letter and certification of validity of the claim
6. If the claimant disputes OMNITRANS' response, or if OMNITRANS fails to respond within the statutory time period(s), the claimant may so notify OMNITRANS within 15 calendar days of the receipt of the response or the failure to respond, and demand an informal conference to meet and confer for settlement. Upon such demand, OMNITRANS shall schedule a meet and confer conference within 30 calendar days.
 7. If following the meet and confer conference, the claim or any portion thereof remains in dispute, the claimant may file a claim pursuant to Government Code 900 et seq. and Government Code 910 et seq. For purposes of those provisions, the time within which a claim must be filed shall be tolled from the time the claimant submits the written claim until the time the claim is denied, including any time utilized for the meet and confer conference.
 8. Submission of a claim, properly certified, with all required supporting documentation, and written rejection or denial of all or part of the claim by OMNITRANS, is a condition precedent to any action, proceeding, litigation, suit, general conditions claim, or demand for arbitration by Contractor.
 9. Claims submitted by the CONTRACTOR regardless of dollar amount shall be accompanied by a notarized certificate containing the language listed below. Failure to submit the notarized certificate is cause for denying the claim.

Certificate

Under the penalty of law for perjury or falsification with specific reference to the California False Claims Act, Government Code Section 12650 et. Seq., the undersigned,

(Name)

(Title)

(Company)

herby certifies that the claim for the additional compensation and time, if any, made herein for the work on this Contract is a true statement of the actual cost incurred and time sough, and is fully documented and supported under the Contract between the parties

Dated: _____

Signature: _____

NOTARY CERTIFICATION

STATE OF _____

}SS:

COUNTY OF _____

Subscribed and sworn to before me this _____ day of _____, 20____, by _____, proved to me on the basis of satisfactory evidence to be the person(s) who appeared before me.

Signature of Notary Public _____

Printed/typed name of Notary Public _____

County of residence _____ Date commission expires _____

(SEAL)

E. FINAL PAYMENT

1. After the filing of the Notice of Completion, OMNITRANS will make a proposed final estimate, in writing, of the total amount payable to the CONTRACTOR, including therein an itemization of said amount, segregated as to contract item quantities, extra work and any other basis for payment, and shall also show therein all deductions made or to be made for prior payments and amounts to be kept or retained under the provisions of the contract. All prior estimates and payments shall be subject to correction in the proposed final estimate. Within 15 days after proposed final estimate is submitted, the CONTRACTOR shall submit to OMNITRANS written approval of proposed final estimate and/or a written statement of all claims of the contract. No claim is considered that was not included in written statement of claims, nor will any claim be allowed unless the CONTRACTOR has previously complied with the notice and protest requirements.
2. On the CONTRACTOR's approval, or if he files no claim within stated period, OMNITRANS will issue a final written estimate, in accordance with the proposed final estimate submitted to the CONTRACTOR; and 35 days after the date of filing the Notice of Completion OMNITRANS will pay the entire sum found to be due. Such final estimate and payment thereon shall be conclusive and binding against the CONTRACTOR on all questions relating to the amount of work done and the compensation payable therefore, except as otherwise provided.
3. If the CONTRACTOR within said period of 15 days files claims, OMNITRANS will issue a semi-final estimate in lieu of the final estimate submitted to the CONTRACTOR; and 35 days after the date of filing of the Notice of Completion, OMNITRANS will pay the sum found to be due. Such semi-final estimate and payment thereon shall be conclusive and binding against the CONTRACTOR on all questions relating to the amount of work done and the compensation payable therefore, except insofar as affected by the claims filed within the time and in the manner required hereunder and except as otherwise provided.
4. Upon final determination of any outstanding claims, OMNITRANS shall then make and issue a final estimate in writing and within 30 days thereafter, OMNITRANS will pay the entire sum, if any, found due. Such final estimate shall be conclusive and binding against the CONTRACTOR on all questions relating to the amount of work done and the compensation payable therefore, except as otherwise provided.

F. EXTRA WORK AND CHANGES

1. New and unforeseen work, which in the judgment of OMNITRANS is found necessary or desirable for the satisfactory completion of the work, will be classified as extra work, as well as work specifically designated as such in the plans or specifications. The CONTRACTOR shall do such extra work and furnish material and equipment therefore as directed by Omnitrans and the Engineer in writing by a change order. No extra work will be paid for or allowed unless the same was done upon written change order of Omnitrans and after all

legal requirements have been complied with. The CONTRACTOR agrees that he will accept as full compensation for extra work, so ordered, an amount to be determined by one of the following methods:

- a. Lump Sum Amount: A price mutually agreed upon in writing by the Engineer and CONTRACTOR (hereafter Agreed Price).
 - 1) For Lump Sum Change Orders, it is mutually agreed that on the agreed price, the CONTRACTOR and subcontractor(s) shall add not more than a negotiated total markup of 20% to be divided between the CONTRACTOR and subcontractor(s) as full compensation for all other expenses including overhead, profit, bond, superintendence, insurance and small tools.
- b. Unit Price: an item of work covered by a Contract Unit Price, and such change does not involve a substantial change in character of the work from that shown on the Plans or specified in the Specifications, then an adjustment in payment will be made. This adjustment will be based upon the increase or decrease in quantity and the Contract Unit Price.
 - 1) For Unit Price Change Orders, if the actual quantity of an item of work covered by a Contract Unit Price and constructed in conformance with the Plans and Specifications varies from the Bid quantity by 25 percent or less, payment will be made at the Contract Unit Price. If the actual quantity of said item of work varies from the Bid quantity by more than 25 percent, payment will be made as specified below for unit price change orders.
 - 2) Increases of More Than 25 Percent. Should the actual quantity of an item of work covered by a Contract Unit Price and constructed in conformance with the Plans and Specifications, exceed the Bid quantity by more than 25 percent, payment for the quantity in excess of 125 percent of the Bid quantity will be made on the basis of an adjustment in the Contract Unit Price mutually agreed to by the Contractor and Omnitrans, or at the option of the Project Manager/Engineer, on the basis of Extra Work per E of the General Provisions. The Extra Work per section E of the General Provisions, basis of payment, shall not include fixed costs. Fixed costs shall be deemed to have been recovered by the Contractor through payment for 125 percent of the Bid quantity at the Contract Unit Price.
 - 3) Decreases of More Than 25 Percent. Should the actual quantity of an item of work covered by a Contract Unit Price, and constructed in conformance with the Plans and Specifications, be less than 75 percent of the Bid quantity, an adjustment in payment will not be made unless so requested in writing by the Contractor. If the Contractor so requests, payment will be made on the basis of an adjustment in the Contract Unit Price mutually agreed to by the Contractor and the

Omnitrans, or at the option of the Project Manager/Engineer, on the basis of Extra Work per E of the General Provisions; however, in no case will payment be less than would be made for the actual quantity at the Contract Unit Price nor more than would be made for 75 percent of the Bid quantity at the Contract Unit Price.

- 4) Stipulated Unit Prices. Stipulated Unit Prices may be used for the adjustment of Contract changes when so specified in the Special Provisions.
 - 5) Agreed Prices. If mutual agreement can not be reached, the Project Manager/Engineer may direct the Contractor to proceed on the basis of Force Account Change per section C, subsection C of the General Provisions herein below:
- c. Force Account: New or unforeseen work will be classified as "Force Account" when the Project Manager/Engineer determines that it is not covered by Contract Unit Prices lump sum cost.
- 1) Agreed Prices. If mutual agreement cannot be reached, the Project Manager/Engineer may direct the Contractor to proceed on the basis of Force Account Change per section C, subsection C of the General Provisions.
 - 2) For a Force Account Change Order extra work is to be paid for on a Force Account Basis, compensation will be determined as follows:
 - a) Materials. A sum equal to the actual cost to the CONTRACTOR of the materials furnished by him, as shown by paid receipts, plus not more than a negotiated fifteen percent (15%) mark-up. Only installed materials shall be paid for.
 - b) Omnitrans reserves the right to approve materials and sources of supply, or to supply materials to the Contractor if necessary for the progress of the Work. No markup shall be applied to any material provided Omnitrans.
 - 3) Labor
 - a) The cost of labor shall be the actual cost for wages of workers performing the Extra Work at the time the Extra Work is done, plus employer payments of payroll taxes, workers compensation insurance, liability insurance, health and welfare, pension, vacation, apprenticeship funds, and other direct costs, resulting from Federal, State, or local laws, as well as assessments or benefits required by lawful collective bargaining agreements. The use of a labor classification which would increase the Extra Work cost will not be permitted unless the Contractor establishes the necessity for such

additional costs. Labor costs for equipment operators and helpers shall be reported only when such costs are not included in the invoice for equipment rental. The labor cost for foremen shall be proportioned to all of their assigned work and only that applicable to the Extra Work will be paid.

b) Increased Non-direct Labor Due to Changes in the Work: All increases in the Contractor's non-direct labor costs, including superintendence costs, due to changes in the work shall be included in a markup of a negotiated price not to exceed twelve percent (12%) Contractor must include proof to verify costs.

c) Equipment

i. Equipment will be paid for as a rental charge whether owned by the CONTRACTOR or not, and said rental rates listed for such equipment in the Caltrans "Labor Surcharge and Equipment Rental Rates" which is in effect on the date upon which the work is accomplished and which is a part of the contract, regardless of ownership. To the direct costs of "Equipment Rental" will be added a not more than a negotiated fifteen percent (15%) markup.

ii. All extra work at Force Account shall be adjusted daily upon report sheets prepared by the Engineer, furnished to the CONTRACTOR and signed by both parties. Said daily reports shall thereafter be considered the true record of all extra work done. The decision of the Engineer as to whether extra work has in fact been performed shall be conclusive and binding upon both parties to the contract.

d. Subcontractor

When all or any part of the Forced Account Work is performed by a subcontractor, the subcontract can receive a mark-up established in Section 3 Forced Account Work, Contractor will be entitled to an additional three percent (3%) of the base amount (not including subcontractors overhead and profit) for its supervision, coordination and other responsibilities as the Contractor.

e. Daily Reports by Contractor

i. When the price for the extra work has not been agreed upon, the Contractor shall submit a daily report to the Engineer on forms approved by the Omnitrans. Included are applicable delivery tickets, listing all labor, materials, and equipment involved for that day, and other services and expenditures when authorized. Failure to submit the daily report by the close of the next working day may waive any rights to recover

compensation for that day. An attempt shall be made to reconcile the report daily, and it shall be signed by the Project Manager/Engineer and the Contractor. In the event of disagreement, pertinent notes shall be entered by each party to explain issues which cannot be resolved immediately. Each party shall retain a signed copy of the report. Reports by Subcontractors or others shall be submitted through the Contractor.

ii. The report shall:

- List names of workers, classifications, and hours worked.
- Describe and list quantities of materials installed.
- Show type of equipment, size, identification number, and hours of operation, including loading and transportation, if applicable.
- Describe other services and expenditures in such detail as the Omnitrans may require.

2. A contract change order approved by OMNITRANS may be issued to the CONTRACTOR at any time. Should the CONTRACTOR disagree with any terms or conditions set forth in the contract change order, the CONTRACTOR shall submit a written protest to OMNITRANS within 15 days after the receipt of the contract change order. The protest shall state the points of disagreement and, the contract specification(s) and drawing(s) references, quantities and costs involved. If a written protest is not submitted within the above period, payment will be made as set forth in the approved contract change order and such payment shall constitute full compensation for all work included therein or required thereby. Such unprotested approved contract change orders will be considered as executed contract change orders.

- a. CONTRACTOR shall promptly notify OMNITRANS in writing when it receives direction, instruction, interpretation or determination from any source other than OMNITRANS or its designated representatives that may lead to or cause change in the work. Such written notification shall be given to OMNITRANS before the CONTRACTOR acts on said direction, instruction, interpretation or determination.
- b. The Contract Officer shall respond in writing to the request. Approved changes will be implemented via contract amendment or change order. Oral changes are not permitted or binding. The Proposer shall be liable for all costs resulting from and/or for satisfactorily correcting any specification change not properly ordered or approved by written modification to the contract. Disagreements that cannot be resolved within negotiations shall be resolved in accordance with the contract dispute clause herein.

- c. Both the Contractor and the Omnitrans agree and acknowledge that execution of change orders constitutes a mutual accord and satisfaction as to work covered by a Change Order, and the Contractor specifically waives and releases any and all claims, rights or interest, including, but not limited to, those for impact, disruption, loss of efficiency, ripple, or other extraordinary or consequential costs, arising directly or indirectly out of work described in Change Orders, except as specifically included in Change Order work.

G. EXTENDED FIELD OFFICE OVERHEAD COSTS

Section Not Used

H. ACCELERATION

1. OMNITRANS reserves the right to accelerate the work of the Contract at any time during its performance. In the event that OMNITRANS directs acceleration, a written directive will be given to the CONTRACTOR. The CONTRACTOR shall keep cost and other Project records related to the acceleration directive separately from normal Project cost records and shall provide a written record of acceleration costs to OMNITRANS on a daily basis.
2. In the event that the CONTRACTOR believes that some action or inaction on the part of OMNITRANS constitutes an acceleration directive, the CONTRACTOR shall immediately notify OMNITRANS in writing that the CONTRACTOR considers the actions or inactions an acceleration directive. This written notification shall detail the circumstances of the acceleration directive. The CONTRACTOR shall not accelerate their work efforts until OMNITRANS responds to the written notification. If acceleration is directed or required by OMNITRANS, all cost records referred to in section (1) shall be maintained by the CONTRACTOR and provided to OMNITRANS on a daily basis.
3. In order to recover additional costs due to acceleration, the CONTRACTOR must provide documentation of the additional expenses incurred and paid by the CONTRACTOR. Labor costs recoverable will only be overtime or shift premium costs or the cost of additional laborers brought to the site to accomplish the accelerated work effort. Equipment costs recoverable will only be the cost of added equipment mobilized to the site to accomplish the accelerated work effort.

I. VALUE ENGINEERING

1. OMNITRANS encourages the CONTRACTOR to submit Value Engineering Change Proposals (VECP's) whenever it identifies areas and/or instances in which improvements can be made, in order to avail OMNITRANS of potential cost savings. CONTRACTOR and OMNITRANS will share any savings in the manner described below.

2. A VECP applies to a Contractor developed and documented that:
 - a. Requires a change to the contract.
 - b. Reduces the total contract price without impairing essential functions or characteristics of the work.
 - c. Results in an estimated total net savings to OMNITRANS equal to or greater than \$1,000.
 - d. The VECP shall not alter any item of work's characteristics such as functionality, service life, reliability, economy of operation, ease of maintenance, and necessary standardized features and appearance.
3. At a minimum, a VECP should include the following information;
 - a. A description of the existing contract requirements that are involved in the proposed change.
 - b. A description of the proposed change, and all specifications and/or plans necessary for the complete evaluation of the proposed change. Include a written discussion of the differences between existing requirements and the proposed change, together with advantages and disadvantages of each changed item. All relevant back up documentation must be included to support the VECP.
 - c. Cost estimate for existing contract requirements correlated to the contractors' lump sum breakdown and the proposed changes in those requirements, including costs of development and implementation by the contractor.
4. CONTRACTOR shall submit the VECP to OMNITRANS. At its sole discretion, OMNITRANS may accept, in whole or in part and by change order, any VECP submitted pursuant to this section. Until a change order is agreed upon for a VECP, the Contractor shall remain obligated to perform in accordance with the contract. The decision of OMNITRANS as to the rejection or acceptance of a VECP shall be at the sole discretion of OMNITRANS.
5. If a VECP, submitted by the CONTRACTOR pursuant to this section is accepted by OMNITRANS, the total contract price shall be adjusted based upon a sharing of the net savings by the CONTRACTOR and OMNITRANS (50% OMNITRANS, 50% Contractor). Contractor's profit shall not be reduced by application of the VECP.
6. Net savings are defined as, gross savings less the Contractor's costs and less OMNITRANS costs.
 - a. CONTRACTORS cost means reasonable costs incurred by the Contractor in preparing the VECP and making the change.

- b. OMNITRANS' costs means reasonable costs incurred by OMNITRANS for evaluating and implementing the VECP.
 - c. CONTRACTOR is not entitled to share in either concurrent, collateral or future contract savings. Collateral savings are those measurable net reductions in OMNITRANS costs of operation that result from the VECP. Concurrent savings cover the reductions in the cost of performance of other contracts.
7. Contractor shall include appropriate VECP provisions in all subcontracts greater than \$25,000.

J. STOP PAYMENT NOTICES

OMNITRANS, at its sole discretion, may, at any time, retain out of any amounts due the Contractor, sums sufficient to cover claims filed pursuant to Section 9530 et. seq. of the California Civil Code.

K. ORDER OF WORK

Contractor shall perform work hereunder at such places, and in such order or precedence, as may be determined necessary by the Project Manager/Engineer to expedite completion of the required work.

L. PRECEDENCE OF CONTRACT DOCUMENTS

1. The notice to Bidders, proposal, plans, specifications, General Provisions, Special Provisions, and Regulatory Requirements are essential parts of the contract for a given project. These documents, together with the necessary bonds and Bidder's guarantee, constitute the contract as defined herein; and a requirement included in one document shall be as binding as though included in all, as they are intended to be cooperative and to provide a complete description of the work to be done. If there is a conflict between contract documents, the document of highest precedence shall control.
2. The precedence shall be:
 - a. Contract Agreement
 - b. General Provisions
 - c. Technical Specifications
 - d. Regulatory Requirements
3. Change orders, supplemental agreements and approved revisions to plans and specifications will take precedence over documents listed above. Detailed plans shall have precedence over general plans. Unless otherwise specified all work shall be constructed in accordance with the General Provisions, the Special Provisions, Technical Specifications, Project Plans, or the 2009 edition of the Standard Specifications for Public Works Construction.

M. LABOR PROVISIONS

1. Prevailing Wages

- a. Work performed by Contractor in accordance with this Contract is classified as “public work” under Labor Code § 1720, et seq. If Contractor receives federal funds, this Contract is subject to paying prevailing wages pursuant to the Davis-Bacon Act, 40 U.S.C. § 3141 et seq., and other federal laws. It is the sole responsibility of Contractor to ensure all workers performing under this Contract is paid the correct rate of prevailing wages. Contractor shall ensure that all workers entitled to the payment of prevailing wages receive the higher of the applicable State or federal prevailing wage.
- b. The Contractor and each subcontractor shall forfeit as a penalty to OMNITRANS not more than Two Hundred Dollars (\$200.00) for each calendar day, or portion thereof, for each worker paid less than the stipulated prevailing wage rate for any work done by him, or by any subcontract under him, in violation of the provisions of the Labor Code. The difference between such stipulated prevailing wage rate and the amount paid to each worker for each calendar day or portion thereof for which each worker was paid less than the stipulated prevailing wage rate shall be paid to each worker by the Contractor.
- c. The Contractor shall obtain a copy of the prevailing rates of per diem wages at the commencement of this Agreement from the website of the Division of Labor Statistics and Research of the Department of Industrial Relations located at www.dir.ca.gov/dlsr/. In the alternative, the Contractor may view a copy of the prevailing rates of per diem wages upon request to OMNITRANS. Contractor shall make copies of the prevailing rates of per diem wages for each craft, classification or type of worker needed to perform work on the Project available to interested parties upon request, and shall post copies at the Contractor’s principal place of business and at the Project Site. Contractor shall post, at appropriate conspicuous points on the Project Site, a schedule showing all determined general prevailing wage rates and all authorized deductions, if any, from unpaid wages actually earned.

2. Minimum Wages

- a. All mechanics and laborers employed or working on the site of the work will be paid unconditionally, and not less often than once a week and without subsequent deduction or rebate on any account, the full amounts due at time of payment computed at wage rates not less than those specified in the General Wage Determinations referenced in this section regardless of any contractual relationship which may be alleged to exist between the Contractor and such laborers and mechanics; and the wage determination decision shall be posted by the Contractor at the site of the

work in a prominent place where it can be easily seen by the workers. For the purpose of this clause, contributions made or cost reasonably anticipated under the Labor Code of the State of California on behalf of laborers or mechanics are considered wages paid by such Laborers or mechanics. Also for the purpose of this clause, regular contributions made or costs incurred for more than a weekly period under plans, funds or programs, but covering the particular weekly period, are deemed to be constructively made or incurred during such weekly period.

- b. OMNITRANS shall require that any class of laborers or mechanics, including apprentices and trainees, which are not listed in the General Wage Determinations and which are employed under this Contract, shall be classified conformably to such wage determinations. In the event OMNITRANS does not concur in the Contractor's proposed classification or reclassification of a particular class of laborers and mechanics (including apprentices and trainees) used, the question, accompanied by the recommendation of OMNITRANS, shall be referred to the State Director of Industrial Relations for determination.
- c. OMNITRANS shall require, 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 wage and the Contractor is obligated to pay a cash equivalent of such a fringe benefit, an hourly cash equivalent thereof to be established. In the event the interested parties cannot agree upon cash equivalent of the fringe benefit, the questions, accompanied by the recommendation of OMNITRANS, shall be referred to the State Director of Industrial Relations for determination.
- d. All disputes concerning the payment of wages or the classification of workers under this Agreement shall be promptly reported to OMNITRANS.

3. Deductions

- a. In addition to amounts which OMNITRANS may retain under other provisions of the Contract Documents, OMNITRANS will withhold payments due to Contractor as deemed necessary to cover:
 - 1) Stop Payment Notice Claims.
 - 2) Defective work not remedied.
 - 3) Failure of Contractor to make proper payments to its subcontractors and/or suppliers.
 - 4) Completion of the Contract if there exists a reasonable doubt that the work can be completed for balance then unpaid.
 - 5) Damage to another contractor or third party.
 - 6) Amounts which may be due OMNITRANS for claims against Contractor.

- 7) Failure of Contractor to keep the record ("as-built") drawings up to date.
 - 8) Failure to provide updates on the construction schedule and/or a recovery schedule if required.
 - 9) Site cleanup.
 - 10) Failure of the Contractor to comply with requirements of the Contract Documents, including but not limited to Contractor's failure to provide approved complete as-builts prior to filing of Notice of Completion.
 - 11) Liquidated damages.
 - 12) Legally permitted penalties.
- b. OMNITRANS may apply such withheld amount or amounts to payment of such claims or obligations at its discretion with the exception of subsections (a), (c) and (e) of this Article, which must be retained or applied in accordance with applicable law. In so doing, OMNITRANS shall be the agent of Contractor and any payment so made by the Contractor shall be considered as a payment made under contract by OMNITRANS to Contractor and OMNITRANS shall not be liable to Contractor for such payments made in good faith. Such payments may be made without prior judicial determination of the claim or obligations. OMNITRANS will render Contractor a proper accounting of such funds disbursed on behalf of the Contractor.
 - c. Upon completion of the Contract, OMNITRANS will reduce the final Contract amount to reflect costs charged to the Contractor, back charges or payments withheld pursuant to the Contract Documents.
 - d. All amounts owing by CONTRACTOR to OMNITRANS under the Contract shall earn interest from the date on which such amount is owing at the lesser of (i) 10% per annum or (ii) the maximum rate allowable under applicable Governmental Rules.
4. Payrolls and Basic Records
- a. Payrolls and basic records relating thereto will be maintained during the course of the work and preserved for a period of three (3) years thereafter for all laborers and mechanics working at the site of the work. Such records will contain the name, address and social security number of each such worker, the correct classification, rates of pay, daily and weekly number of hours worked, deductions made and actual wages paid.
 - b. Pursuant to Labor Code Section 1776, the Contractor and each subcontractor shall maintain weekly certified payroll records showing the name, address, social security number, work classification, straight time and overtime hours paid each day and week, and the actual per diem wages paid to each journeyman, apprentice, worker or other employee employed in connection with the work. Contractor shall certify under penalty of perjury that records maintained and submitted by Contractor are true and accurate.

Contractor shall also require subcontractor(s) to certify weekly payroll records under penalty of perjury

- c. The Contractor will submit weekly a copy of all payrolls to OMNITRANS as required in these "Labor Provisions." The copy shall be accompanied by a statement signed by the employer or its agent indicating that the payrolls are correct and complete, that the wage rates contained therein are not less than those determined by the State Director of Industrial Relations and that the classifications as set forth for each laborer or mechanic conform to the work performed. A submission of the "Weekly Statement of Compliance," which is required under this Contract, shall satisfy this requirement. The prime Contractor shall be responsible for the submission of copies of payrolls of all subcontractors. The Contractor will make the records required under the labor standard clauses of the contract available for the inspection by authorized representatives of OMNITRANS, and will permit such representatives to interview employees during working hours on the job. In the event of noncompliance with the requirements of this Section, the Contractor shall have ten (10) days in which to comply subsequent to receipt of written notice specifying any item or actions necessary to ensure compliance with this section. Should noncompliance still be evident after such ten (10) day period, the Contractor shall, as a penalty to OMNITRANS, forfeit One Hundred Dollars (\$100.00) for each day, or portion thereof, for each worker until strict compliance is effectuated. Upon the request of the DIR, such penalties shall be withheld from contract payments

5. Apprentices and Trainees

- a. Apprentices: Apprentices will be permitted to work at less than the predetermined rate for the work they perform when they are employed and individually registered in a bona fide apprenticeship program as defined in section 1777.5 of the Labor Code of the State of California. The allowable ratio of apprentices to journeymen in any craft classification shall not be greater than the ratio permitted to the Contractor as to his entire work force under the registered program. Any employee listed on a payroll at an apprentice wage rate who is not registered or otherwise employed as stated above, shall be paid the wage rate determined by the State Director of Industrial Relations for the classification of work he actually performed. The Contractor or subcontractor will be required to furnish to OMNITRANS or the State Director of Industrial Relations written evidence of the registration of his program and apprentices as well as the appropriate ratios and wage rates (expressed in percentages of the journeyman's rate contained in the applicable wage determination).
- b. Trainees: Except as provided in 29 CFR 5.15, trainees will not be permitted to work at less than the predetermined rate for the work performed unless they are employed pursuant to or 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, Bureau of

Apprenticeship and Training. The ratio of trainees to journeymen shall not be greater than that permitted under the plan approved by the Bureau of Apprenticeship and Training. Every trainee must be paid at not less than the rate specified in the approved program for his level of progress. Any employee listed on the payroll at a trainee rate who is not registered and participating in a training plan approved by the Bureau of Apprenticeship and Training shall be paid not less than the wage rate determined by the Secretary of Labor for the classification of work he actually performed. The Contractor or subcontractor will be required to furnish the contracting officer or a representative of the Wage-Hour Division of the U.S. Department of Labor written evidence of the certification of his program, the registration of the trainees, and the ratios and wage rates prescribed in that program. In the event the Bureau of Apprenticeship and Training 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.

- c. Equal Employment Opportunity: The utilization of apprentices 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.

6. Compliance with Copeland Regulations (29 CFR, Part 3)

The Contractor shall comply with the Copeland Regulations (29 CFR, Part 3) of the Secretary of Labor which is herein incorporated by reference.

7. Contract Termination; Debarment

A breach of item 1 through 6 may be grounds for termination of the contract, and for debarment as provided in 29 CFR 5.6.

8. Overtime Requirements

No Contractor or subcontractor contracting for any part of the contract work which may require or involve the employment of laborers or mechanics shall require or permit any laborer or mechanic in any work week in which he is employed on such work to work in excess of 8 hours a day or 40 hours in such work week 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 8 hours a day or 40 hours in such work week.

9. Violation; Liability for Unpaid Wages

Pursuant to section 1775 of the Labor Code of the State of California, in the event that any workman employed on this public works project is paid less than the amount specified in the General Prevailing Wage Determinations or less than is required, relative to overtime, the

Contractor and any subcontractor responsible therefore shall be liable to the affected workman for the unpaid wages. In addition, such Contractor and subcontractor shall be liable to the State of California or Omnitrans for liquidated damages. Such liquidated damages shall be computed with respect to each individual workman found to be underpaid and shall be in the amount of \$50 per calendar day that a workman was underpaid.

10. Withholding for Liquidated Damages

Omnitrans may withhold or cause to be withheld, from Contractor any monies payable on account of work performed by the Contractor or subcontractor, such sums as may administratively be determined to be necessary to satisfy any liabilities of such Contractor or subcontractor for liquidated damages as provided in this section.

11. Final Labor Summary

The Contractor and each subcontractor shall furnish to Omnitrans, upon the completion of the contract, a summary of all employment, indicating for the completed project, the total hours worked and the total amount earned.

12. Final Certificate

Upon completion of the contract, the Contractor shall submit to Omnitrans, with the voucher for a final payment for any work performed under the contract, a concerning wages and classifications for laborers and mechanics, including apprentices and trainees employed on the project, in the following form:

The undersigned, Contractor on

(Contract No.)

hereby certifies that all laborers, mechanics, apprentices and trainees employed by the Contractor or by a subcontractor performing work under the contract on the project have been paid wages at rates not less than those required by the contract provisions, and that the work performed by each such laborer, mechanic, apprentice or trainee conformed to the classifications set forth in the contract or training program provisions applicable to the wage rate paid.

Signature and Title

13. Notice to Omnitrans of Labor Dispute

Whenever the Contractor has knowledge that any actual or potential labor dispute is delaying or threatens to delay the timely performance of this

contract, the Contractor shall immediately give notice thereof, including all relevant information with respect thereto, to Omnitrans.

14. Disputes Clause

- a. All disputes concerning the payment of prevailing wage rates or classifications shall be promptly reported to Omnitrans for its referral to DOT for decision or, at the option of Omnitrans, DOT referral to the Secretary of Labor. The decision of DOT or the Secretary of Labor, as the case may be, shall be final.
- b. All questions relating to the application or interpretation of the Copeland Act, the Contract Work Hours Standards Act, the Davis-Bacon Act, or Section 13 of the Act shall be sent to the Federal Transit Administration (FTA) for referral to the Secretary of Labor for ruling or interpretation, and such ruling or interpretation shall be final.

15. Convict Labor

In connection with the performance of work under this Contract, the Contractor agrees not to employ any person-undergoing sentence of imprisonment at hard labor. This does not include convicts who are on parole or probation.

16. Insertion in Subcontracts

The Contractor shall set forth in item 1 through 15 of this Section so that all of the provisions of this section will be inserted in all construction subcontracts of any tier, and such other clauses as the Government may by appropriate instructions require.

17. Certified Payrolls

- a. OMNITRANS shall obtain from the Contractor and each subcontractor a certified copy of each weekly payroll within seven (7) days after the regular payroll date. Following a review by Omnitrans for compliance with State and Federal labor laws, the payroll copy shall be retained at the project site for later review by FTA.
- b. Contractor may use the Department of Labor Form WH-347, "Optional Payroll Form," which provides for all the necessary payroll information and certifications.
- c. If, on or before the 20th of the month, the Contractor has not submitted satisfactory payrolls covering its work and the work of all subcontractors for all payroll periods ending on or before the 6th of that month, such payrolls are considered delinquent. Regardless of the number of delinquent payrolls, an amount equal to 10% (but not less than \$1,000 or more than \$10,000) will be deducted from the estimate. Deductions will

be made separately for each estimate period in which a new delinquency appears and will be continued until payrolls have been submitted.

- d. Contractors employing apprentices or trainees under approved programs shall include a notation on the first weekly certified payrolls submitted to OMNITRANS that their employment is pursuant to an approved program and shall identify the program.

18. Compliance Monitoring

- a. This project is subject to monitoring and enforcement by the DIR per Assembly Bill No. 436 and the recently enacted Senate Bill 854. Contractor is obligated to submit certified payroll records directly to the CMU. This contract is subject to monitoring and investigative activities by the Compliance Monitoring Unit of the Division of Labor Standards Enforcement, Department of Industrial Relations (DIR), State of California, specified in Title 8 California Code of Regulations Sections 16450-16464. Requirements include the obligation for Contractor and all Subcontractors, of every tier, to furnish certified payroll records directly to the Labor Commissioner in accordance with Title 8 California Code of Regulations Section 16461.
- b. Contractors and subcontractors shall submit certified payroll reports to the CMU *at least monthly*. Note: Omnitrans will have direct and immediate access to the CPRs for this project that are submitted through the eCPR system. Omnitrans can use this information for any appropriate purpose, including monitoring compliance, identifying suspected violations, and responding to Public Records Act requests.
- c. At each job site Contractor shall post (or require the contractor to post) the notice required by 8 Cal. Code Reg. section 16451(d). The CMU provides the required posters to awarding bodies. [Posters](#) are also available on the CMU website, at the [Division of Labor Standards Enforcement District Offices](#) or by emailing a request to CMU@dir.ca.gov.
- d. Omnitrans will comply with any CMU notice requiring contract payments be withheld due to Contractor's failure to submit proper CPRs.
- e. Omnitrans and Contractor will cooperate with the CMU and DLSE in any investigation of suspected violations, and Omnitrans will withhold contract payments in accordance with any lawful order by DLSE.
- f. To access updated information regarding Senate Bill 854, you can view at: <http://www.dir.ca.gov/DIRNews/2014/2014-55.pdf>.

N. TIME EXTENSION/DELAYS

- 1. Contractor may be granted by written request a time extension of time for any portion of a delay in completion of the work due to acts of God, the public

- enemy, wars, civil unrest, fires, quarantine restrictions, or weather more severe than normal, providing that; (1) the aforesaid causes were not foreseeable and did not result from an act or omission by the Contractor, (2) Contractor has taken reasonable precautions to prevent further delays owing to such causes, and (3) Contractor notifies OMNITRANS in writing of the cause(s) for the delay within ten (10) days from the beginning of any such delay. No claims for additional compensation or damages for the foregoing delays shall be allowed to the Contractor, and the extension of time provided for herein shall be the sole remedy of the Contractor on account of any such delays.
2. An extension of time will not be granted for a delay described in the above paragraph(s) caused by a shortage of materials, except if materials are furnished by OMNITRANS, unless the Contractor supplies OMNITRANS with documented proof that every effort to obtain the materials from all known sources that; (a) such materials could have been obtained only at exorbitant prices or (b) the prices were entirely inconsistent with current rates, taking into account the quantities; and (c) such facts could not have been known or anticipated at the time the Notice To Proceed was issued. Contractor shall also submit proof, that the inability to obtain such materials when originally planned, did in fact, cause a delay in completion of the work that could not be compensated for by revising the sequence of its operations. Only the physical shortage of material will be considered as a basis for an extension of time.
 3. An extension of time for weather more severe than normal shall be granted only to the extent the work is actually delayed as determined by OMNITRANS. Normal is defined as the monthly average of the temperature and rainfall wherein the work was performed for the prior 20 years before the execution of the contract.
 4. In the event Contractor is actually and necessarily delayed by an act or omission on the part of OMNITRANS, as determined by OMNITRANS, the Contractor shall notify OMNITRANS in writing within five (5) days from the beginning of any such delay. The time for completion of the work may be extended at the sole discretion of OMNITRANS.
 5. Within 30 days after the last day of delay, Contractor shall provide OMNITRANS with detailed information concerning the circumstances of the delay, the number of days actually delayed, and the measures taken to minimize or prevent the delay. Failure to submit information shall be sufficient reason to deny the claim. OMNITRANS shall ascertain the facts and the extent of the delay; and provide the Contractor its written findings, which will be final and conclusive. Except for the additional compensation for herein and except as provided in Public Contract Code Section 7102, Contractor shall have no claim for damages or compensation for any delay or hindrance.
 6. No extension of time will be granted for any OMNITRANS caused delay or delay as defined in which (a) the performance of work would have been

concurrently delayed by Contractor induced causes, including but not limited to an act or omission of the Contractor, or (b) remedies are included or excluded by any other contract provision. Only the actual delay necessarily resulting from the causes specified in this Article shall be grounds for extension of time. Should the Contractor be delayed at any time for any period by two or more of the causes specified in this article, Contractor shall only be entitled to one time extension for the entire delay.

7. Any time extension granted to Contractor shall not release the Contractor or surety from its obligations. Work shall continue and be carried on in accordance with the contract provisions, unless formally suspended or terminated by OMNITRANS.

O. NONDISCRIMINATION

During the performance of this Contract, the Contractor agrees as follows:

1. The Contractor will not discriminate against any employee or applicant for employment because of race, creed, color or national origin. The Contractor will take affirmative action to ensure that applicants are employed, and that employees are treated during employment without regard to their race, religion, color, sex or national origin. Such action shall include, but not be limited to employment; upgrading; demotion; transfer; recruitment or recruitment advertising; layoff; termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The Contractor agrees to post, in conspicuous places available to the employees and applicants for employment, notices to be provided setting forth the provisions of this nondiscrimination clause.
2. The Contractor will, in all solicitations or advertisements for employees placed by or on behalf of the Contractor, state that all qualified applicants will receive consideration for employment without regard to race, religion, color, sex or national origin.
3. The Contractor will send to each labor union or representative of workers with which it has a collective bargaining agreement or other contract or understanding, a notice advising the said labor union or workers' representatives of the Contractor's commitments under this Section, and shall post copies of the notice in conspicuous places available to employees and applicants for employment.
4. The Contractor will comply with all provisions of Executive Order 11246 of September 24, 1965, and of the rules, regulations and relevant orders of the Secretary of Labor. The Contractor will furnish all information and reports required by Executive Order 11246 of September 24, 1965, and by rules, regulations and orders of the Secretary of Labor, or pursuant thereto, and will permit access to his books, records and accounts by the administering agency and the Secretary of Labor for purposes of investigation to ascertain compliance

with such rules, regulations and orders.

5. In the event of the Contractor's noncompliance with the nondiscrimination clauses of this Contract or with any of the said rules, regulations or orders, this Contract may be canceled, terminated or suspended in whole or in part, and the Contractor may be declared ineligible for further Government contracts or Federally assisted construction contracts in accordance with procedures authorized in Executive Order 11246 of September 24, 1965, and such other sanctions may be imposed and remedies invoked as provided in Executive Order 11246 of September 24, 1965, or by rule, regulation or order, of the Secretary of Labor, or as otherwise provided by law.
6. The Contractor will include the provisions of this Paragraph ("Nondiscrimination") in every subcontract or purchase order entered into under this Agreement unless exempted by rules, regulations or orders of the Secretary of Labor issued pursuant to Section 204 of Executive Order 11246 of September 24, 1965, so that such provisions will be binding upon each subcontractor or vendor. The Contractor will take such action with respect to any subcontract or purchase order as the administering agency may direct as a means of enforcing such provisions, including sanctions for noncompliance provided, however, that in the event a Contractor becomes involved in, or is threatened with, litigation with a subcontractor or vendor as a result of such direction by the administering agency, the Contractor may request the United States to enter into such litigation to protect the interests of the United States.
7. No person employed on the work covered by this Agreement shall be discharged or in any way discriminated against because he has filed any complaints or instituted or caused to be instituted any proceeding or has testified or is about to testify in any proceeding under or relating to the labor standards applicable hereunder to his employer.

P. TITLE VI OF THE CIVIL RIGHTS ACT OF 1964

Contractor agrees to comply with and ensure compliance by all subcontractors with all requirements of Title VI of the Civil Rights Act of 1964, as amended, 42 U.S.C. §2000d; 49 U.S.C. §5332 and Department of Transportation Regulations, "Nondiscrimination in Federally-Assisted Programs of the Department of Transportation-Effectuation of Title VI of the Civil Rights Act," 49 CFR Part 21.

Q. AFFIRMATIVE ACTION

1. Contractors and subcontractors holding a value of work of \$10,000 or more must submit a Monthly Employment Utilization Report (Form 257) to Omnitrans' Engineer by the 5th of each month or sanctions shall be applied for late submittal, non-submittal and incomplete forms returned to the Contractor and resubmitted after the due date.
2. Omnitrans is required to submit the completed forms to FTA by the 10th of each month.

3. The reporting period shall be for each calendar month.
4. The report shall include the information requested for each Contractor's aggregate work force (for all workers on all projects within San Bernardino County) and not just for workers on this project.
5. If the form is not received by the 5th of the month, a deduction of 10% (with a minimum of \$1,000 and a maximum of \$10,000) will be withheld from the monthly estimate at the option of Omnitrans.
6. The Contractor shall designate an Equal Employment Officer for the project and notify Omnitrans in writing who that person is prior to beginning of work. All workers shall also be informed who the EEO Officer is.

**R. STANDARD FEDERAL EQUAL EMPLOYMENT OPPORTUNITY
CONSTRUCTION CONTRACT SPECIFICATIONS (EXECUTIVE ORDER
11246)**

1. As used in these specifications:
 - a. "Covered area" means the geographical area described in the solicitation from which this Contract resulted;
 - b. "Director" means Director, Office of Federal Contract Compliance Programs, United States Department of Labor, or any person to whom the Director delegates AUTHORITY;
 - c. "Employer identification number" means the Federal Social Security number used on the Employer's Quarterly Federal Tax Return, U.S. Treasury Department Form 941;
 - d. "Minority" includes persons who are citizens or lawful permanent residents of the United States and are one of the following:
 - 1) Black (all persons having origins in any of the Black African racial groups not of Hispanic origin);
 - 2) Hispanic (all persons of Mexican, Puerto Rican, Cuban, Central or South American, Portuguese American or other Spanish culture or origin, regardless of race);
 - 3) Asian and Pacific Islanders (all persons having origins in any of the original peoples of the Far East, Southeast Asia, the Indian subcontinent or the Pacific Islands);
 - 4) American Indians and Alaskan Native (all persons having origins in any of the original peoples of North America and maintaining identifiable tribal affiliations through membership and participation or community identification);

- 5) Women regardless of ethnicity.
2. In order for the nonworking training hours of apprentices to be counted in for meeting the goals, such apprentices must be employed by the Contractor during the apprenticeship period, and the Contractor must have made a commitment to employ the apprentices at the completion of their training, subject to the availability of employment opportunities. Trainees must be trained pursuant to training programs approved by the U.S. Department of Labor.
3. The Contractor shall take specific affirmative actions to ensure equal employment opportunity. The evaluation of the Contractor's compliance with these specifications shall be based upon its effort to achieve maximum results from its actions. The Contractor shall document these efforts fully, and shall implement affirmative action steps at least as extensive as the following:
 - a. Ensure and maintain a working environment free of harassment, intimidation and coercion at all sites, and in all facilities at which the Contractor's employees are assigned to work. The Contractor, where possible, will assign two or more women to each construction project. The Contractor shall specifically ensure that all foremen, superintendents and other on-site supervisory personnel are aware of and carry out the Contractor's obligation to maintain such a working environment, with specific attention to minority or female individuals working at such sites or in such facilities.
 - b. Establish and maintain a current list of disadvantaged and female recruitment sources, provide written notification to minority and female recruitment sources and to community organizations when the Contractor or its unions have employment opportunities available, and maintain a record of the organization's responses.
 - c. Maintain a current file of the names, addresses and telephone numbers of each minority and female off-the-street applicant and disadvantaged or female referral from a union, a recruitment source or community organization and of what action was taken with respect to each such individual. If such individual was sent to the union hiring hall for referral and was not referred back to the Contractor by the union or, if referred, not employed by the Contractor, this shall be documented in the file with the reason therefore, along with whatever additional actions the Contractor may have taken.
 - d. Provide immediate written notification to the Director when the union or unions with which the Contractor has a collective bargaining agreement has not referred to the Contractor a disadvantaged person or woman sent by the Contractor, or when the Contractor has other information that the union referral process has impeded the Contractor's efforts to meet its obligations.
 - e. Develop on-the-site-training opportunities and/or participate in training programs for the area which expressly include minority and women,

including upgrading programs and apprenticeship and trainee programs relevant to the Contractor's employment needs, especially those programs funded or approved by the Department of Labor. The Contractor shall provide notice of these programs to the sources compiled under 3.b. above.

- f. Disseminate the Contractor's EEO policy by providing notice of the policy to unions and training programs and requesting their cooperation in assisting the Contractor in meeting its EEO obligations; by including it in any policy manual and collective bargaining agreement; by publicizing it in the company newspaper, annual report, etc.; by specific review of the policy with all management personnel and with all minority and female employees at least once a year; and by posting the company EEO policy on bulletin boards accessible to all employees at each location where construction work is performed.
- g. Review, at least annually, the company's EEO policy and affirmative action obligations under these specifications with all employees having any responsibility for hiring, assignment, layoff, termination or other employment decisions including specific review of these items with on-site supervisory personnel such as Superintendents, General Foreman, etc., prior to the initiation of construction work at any job site. A written record shall be made and maintained identifying the time and place of these meetings, persons attending, subject matter discussed and disposition of the subject matter.
- h. Disseminate the Contractor's EEO policy externally by including it in any advertising in the news media, specifically including minority and female news media, and providing written notification to and discussing the Contractor's EEO policy with other Contractors and subcontractors with whom the Contractor does or anticipates doing business.
- i. Direct its recruitment efforts, both oral and written, to minority, female and community organizations, to schools with minority and female students and to minority and female recruitment and training organizations serving the Contractors' recruitment area and employment needs. Not later than one month prior to the date of the acceptance of applications for apprenticeship or other training by any recruitment source, the Contractor shall send written notification to organizations such as the above, describing the opening, screening, procedures and tests to be used in the selection process.
- j. Encourage present minority and female employees to recruit other minority persons and women and, where reasonable, provide after school, summer and vacation employment to minority and female youth both on the site and in other areas of Contractor's work force.
- k. Validate all tests and other selection requirements where there is an obligation to do so under 41 C.F.R., Part 60-3.
- l. Conduct, at least annually, an inventory and evaluation of all minority and female personnel for promotional opportunities, and encourage these

employees to seek or to prepare for, through appropriate training, etc., such opportunities.

- m. Ensure that seniority practices, job classifications, working assignments and other personnel practices, do not have a discriminatory effect by continually monitoring all personnel and employment related activities to ensure that the EEO policy and the Contractor's obligations under these specifications are being carried out.
 - n. Ensure that all facilities and company activities are non-segregated except that separate or single-user toilet and necessary changing facilities shall be provided to assure privacy between the sexes.
 - o. Document and maintain a record of all solicitations or offers for subcontracts from disadvantaged and female construction contractors and suppliers, including circulation of solicitations, to disadvantaged and female contractor associations and other business associations.
 - p. Conduct a review, at least annually, of all supervisors' adherence to and performance under the Contractor's EEO policies and affirmative action obligations.
4. Contractors are encouraged to participate in voluntary associations, which assist in fulfilling one or more of their affirmative action obligations [3. (a) through (p)]. The efforts of a contractor association, joint contractor-union, contractor-community, or other similar group of which the Contractor is a member and participant, may be asserted as fulfilling any one or more of its obligations under 3. (a) through (p) of these specifications provided that the Contractor actively participates in the group, makes every effort to assure that the group has a positive impact on the employment of minorities and women in the industry, ensures that the concrete benefits of the program are reflected in the Contractor's minority and female work force participation, make a good faith effort to meet its individual goals and timetables, and can provide access to documentation which demonstrates the effectiveness of actions taken on behalf of the Contractor. The obligation to comply, however, is the Contractor's failure if such a group to fulfill an obligation, shall not be a defense for the Contractor's noncompliance.
5. A single goal for minorities and a separate single goal for women have been established. The Contractor, however, is required to provide equal employment opportunity and to take affirmative action for all minority groups, male and female, and all women, both minority and nonminority. Consequently, the Contractor may be in violation of the Executive Order if a particular group is employed in a substantially disparate manner (for example, even though the Contractor has achieved its goals for women generally, the Contractor may be in violation of the Executive Order 11246 if a specific minority group of women is underutilized.)
6. The Contractor shall not use the goals and timetables or affirmative action

standards to discriminate against any person because of race, color, religion, sex or national origin.

7. The Contractor shall not enter into any subcontract with a person or firm debarred from Government contracts pursuant to Executive Order 11246.
8. The Contractor shall carry out such sanctions and penalties for violation of these specifications and of the Equal Opportunity Clause, including suspension, termination and cancellation of existing subcontracts as may be imposed or ordered pursuant to Executive Order 11246, as amended, and its implementing regulations by the Office of Federal Contract Compliance Programs. Any Contractor who fails to carry out such sanctions and penalties shall be in violation of these specifications and Executive Order 11246, as amended.
9. The Contractor, in fulfilling its obligations under these specifications, shall implement specific affirmative action steps, at least as extensive as those standards prescribed in item 7 of these specifications, so as to achieve maximum results from its efforts to ensure equal employment opportunity. If the Contractor fails to comply with the requirements of the Executive Order, the implementing regulations, or these specifications, the Director shall proceed in accordance with 41 C.F.R. 60-4.8.
10. The Contractor shall designate a responsible official to monitor all employment-related activity to ensure that the company EEO policy is being carried out, to submit reports relating to the provisions hereof as may be required by the Government and to keep records. Records shall at least include for each employee the name, address, telephone numbers, construction trade, union affiliation, if any, employee identification number when assigned, social security number, race, sex, status (e.g., mechanic, apprentice, trainee, helper or laborer), dates of changes in status, hours worked per week in the indicated trade, rate of pay, and locations at which the work was performed. Records shall be maintained in an easily understandable and retrievable form; however, to the degree of existing records satisfy this requirement, Contractor shall not be required to maintain separate records.
11. Nothing herein provided shall be construed as a limitation upon the application of other laws which establish different standards of compliance or upon the application of requirements for the hiring of local or other area residents (e.g., those under the Public Works Employment Act of 1977 and the Community Development Block Grant Program).

S. GOVERNMENT INSPECTIONS

Omnitrans or Federal Government representatives shall have access to the construction site and shall have the right to inspect all project works and records.

T. LICENSING, PERMITS AND INSPECTION COSTS

1. The CONTRACTOR warrants that it has all necessary licenses and permits required by the laws of the United States, State of California, 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, CONTRACTOR 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, and exemptions. Such inability shall be cause for termination of this Agreement.
2. A California State Contractor's License, Classification "A", General Engineering Contractor, is required of the prime Contractor. All subcontractors must possess the appropriate licenses for each specialty subcontracted.
3. 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.

U. HAZARDOUS SUBSTANCES

1. CAL-OSHA Requirements

All flammable, corrosive, toxic or reactive materials being bid must have a complete CAL-OSHA Material Safety Data Sheet accompanying the submitted bid.

2. Notice of Hazardous Substances

- a. Title 8, California Code of Regulations, Section 5194 (e)(c), states that the employer must inform any contractor employers with employees working in the employer's workplace of the hazardous substances to which their employees may be exposed while performing their work. In compliance with this requirement, Omnitrans hereby gives notice to all Bidders that the following general categories of hazardous substances are present on Omnitrans' premises:

- 1) adhesives, sealant, patching and coating products

- 2) antifreeze, coolants
- 3) cleaners, detergents
- 4) paints, thinners, solvents
- 5) pesticides, petroleum products (diesel and unleaded fuel, oil products)
- 6) printing, photocopying materials
- 7) propane welding materials/compressed gases (e.g., acetylene, oxygen, nitrogen)

- b. More specific information may be obtained from Omnitrans Safety and Security Office at (909) 379-7495, and from Material Safety Data Sheets for individual products.

V. CHANGES IN FEDERAL LAWS AND REGULATIONS

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

W. MEDIA AND THE PUBLIC

Contractor shall immediately refer all inquiries from the news media or other public sources to OMNITRANS' Project Manager, or designated representative, relating to this project.

X. COORDINATION AND ACCESS

OMNITRANS may undertake or award other contracts for additional work at the project site. Contractor is responsible for coordinating its work with the work of other contractors as appropriate. The Contractor acknowledges that they do not have any exclusive access to the site or other work areas. OMNITRANS requires that certain facilities and areas may be used concurrently by Contractors and others. Contractor shall cooperate fully with OMNITRANS contractors/consultants that may be performing work in the construction area.

Y. UTILITIES RELATED DELAYS

1. Work interruptions caused by undocumented utilities, and the Contractor sustains loss which could not have been avoided by the judicious handling of forces, equipment and plant, there shall be a payment made to the Contractor an amount that OMNITRANS finds to be a fair and reasonable compensation for the part of the CONTRACTOR's actual loss, that in the opinion of OMNITRANS was unavoidable and is, determined as follows: Compensation for idle time of equipment will be determined in the same manner as determinations are made for equipment used in the performance of extra

work paid for on a force account basis, as provided in Section F. Extra Work and Changes, Item 3,c. Equipment with the following exceptions:

- a. The utility related delay factor for each classification of equipment shown in the Department of Transportation publication entitled Labor Surcharge and Equipment Rental Rates will be applied to that equipment rental rate.
 - b. The time for which the compensation is paid will be the actual normal working time during which the delay condition exists, but in no case will exceed 8 hours in any one day.
 - c. The days for which compensation will be paid will be the calendar days, excluding Saturdays, Sundays and legal holidays, during the existence of the delay, except that when the rented equipment can be returned or used elsewhere on the project, then no payment will be made for utilities related delays.
2. Actual loss shall be understood to include no items of expense other than idle time of equipment and necessary payments for idle time of workers, and cost of extra moving of equipment. Compensation for idle time of equipment will be determined as provided in this Section and compensation for idle time of workers will be determined as provided in Section F of the General Provisions, Extra Work and Changes, no markup will be added in either case for overhead, profit and Bond. The cost of extra moving of equipment will be paid for as extra work and changes as provided in Section F of General Provisions.
 3. If performance of the Contractor's work is delayed as the result of the Utilities Related Delays, an extension of time determined pursuant to the provisions in Termination for Default – Damages for Delay – Time Extensions will be granted.

Z. UTILITIES AND SUBSURFACE STRUCTURES

1. CONTRACTOR shall protect from damage utility and other subsurface structures that are to remain in place, be installed, relocated or otherwise rearranged (as used herein, rearranged includes installation, relocation, alteration or removal).
2. The right is reserved to Omnitrans, or their authorized agents, to enter upon the site for the purpose of making those changes that are necessary for the rearrangement of their facilities or for making necessary connections or repairs to their properties. CONTRACTOR shall cooperate with forces engaged in this work and shall conduct operations in such a manner as to avoid any unnecessary delay or hindrance to the work being performed by the other forces. Wherever necessary, the work of CONTRACTOR shall be coordinated with the rearrangement of utility or other non-highway facilities, and Contractor shall make arrangements with the owner of those facilities for the coordination of the work.

3. Attention is directed to the possible existence of underground main or trunk line facilities not indicated on the plans or in the special provisions and to the possibility that underground main or trunk lines may be in a location different from that which is indicated on the plans or in the special provisions. Contractor shall ascertain the exact location of underground main or trunk lines whose presence is indicated on the plans or in the special provisions, the location of their service laterals or other appurtenances, and of existing service lateral or appurtenances of any other underground facilities which can be inferred from the presence of visible facilities such as buildings, meters and junction boxes prior to doing work that may damage any of the facilities or interfere with their service.
4. If CONTRACTOR cannot locate an underground facility whose presence is indicated on the plans or in the special provisions, the Contractor shall notify OMNITRANS in writing. If the facility for which the notice is given is in a substantially different location from that indicated on the plans or in the special provisions, the additional cost of locating the facility will be paid for as extra work as provided in Section C of the General Provisions upon written authorization.
5. If CONTRACTOR discovers underground main, trunk lines or other structures and utilities not indicated on the plans or in the special provisions, Contractor shall immediately give OMNITRANS and the Utility Company written notification of the existence of those facilities. Such facilities shall be located and protected from damage as directed by Omnitrans, and the cost of that work will be paid for as extra work as provided in Section C of the General provisions upon written authorization. Contractor shall, if directed by OMNITRANS repair any damage which may occur to the main or trunk lines. The cost of that repair work, not due to the failure of the Contractor to exercise reasonable care, will be paid for as extra work as provided in Section F upon written authorization. Damage due to Contractor's failure to exercise reasonable care shall be repaired at the Contractor's cost and expense.
6. Where it is determined by OMNITRANS that the rearrangement of an underground facility is essential in order to accommodate the project work and the plans and specifications do not provide that the facility is to be rearranged, OMNITRANS will provide for the rearrangement of the facility by other forces or the rearrangement shall be performed by CONTRACTOR and will be paid for as extra work as provided in Section C of the General Provisions upon written authorization.
7. When ordered by OMNITRANS in writing, CONTRACTOR shall rearrange any utility or other subsurface structures necessary to be rearranged as a part of the project work and that work will be paid for as extra work as provided in Section C of the General Provisions.
8. Should Contractor desire to have any rearrangement made in any utility facility, or other improvement, for the Contractor's convenience in order to facilitate the Contractor's construction operations, which rearrangement is in

addition to, or different from, the rearrangements indicated on the plans or in the special provisions, the Contractor shall make whatever arrangements are necessary with the owners of the utility or other subsurface structure for the rearrangement and bear all expenses in connection therewith.

9. Contractor shall immediately notify OMNITRANS of any delays to the Contractor's operations as a direct result of underground utilities or other structures which were not indicated on the plans or were located in a position substantially different from that indicated on the plans or in the special provisions, (other than delays in connection with rearrangements made to facilitate the Contractor's construction operations or delays due to a strike or labor dispute). These delays will be considered utilities related delays within the meaning of Section X, Utilities Related Delays and compensation for the delay will be determined in conformance with the provisions in Section N, Time Extension/Delays. Contractor shall be entitled to no other compensation for that delay.

AA. LOCATION OF UNDERGROUND FACILITIES (OFFSITE WORK ONLY)

Section Not Used

BB. UNFORESEEN HAZARDOUS OR REGULATED MATERIALS

1. All known hazardous or regulated materials are indicated in the contract documents. If material that is not indicated in the contract documents is encountered that may be dangerous to human health upon disturbance during construction operations, stop that portion of work and notify OMNITRANS immediately. Intent is to identify materials such as PCB, lead paint, mercury, petroleum products, and friable and non-friable asbestos. The handling, containment and disposal of hazardous and containment material shall be in accordance with applicable State, Federal, and local environmental laws and regulations.
2. Contractor shall immediately notify OMNITRANS of any delays to the Contractor's operations as a direct result of Unforeseen Hazardous and Regulated Materials These delays will be considered utilities related delays within the meaning of Section Y, Utilities Related Delays and compensation for the delay will be determined in conformance with the provisions in Section N, Time Extension/Delays. Contractor shall be entitled to no other compensation for that delay.

CC. CONTRACTOR'S OBLIGATIONS

1. Overview of Contractor's Responsibilities

a. General:

Contractor shall furnish the following on the Project, in accordance with Omnitrans-furnished Contract Documents and all other requirements set forth

in the Contract:

- Construction Services – Contractor shall furnish labor, material and equipment necessary to construct the Project as designed in a timely manner, in accordance with all construction practices generally accepted as standards of the industry in the State of California, in a good and workmanlike manner, free from construction defects.
- b. Compliance with Requirements – Contractor shall perform all services, provide all materials and undertake all efforts necessary or appropriate (excluding only those materials, services and efforts that the Contract Documents specify will be furnished by Omnitrans or other persons) to construct the Project in accordance with the requirements of the Contract Documents, the Schedule, all applicable Laws, all Governmental Approvals, the Construction Documents provided to Omnitrans, and all other applicable safety, environmental and other requirements, taking into account physical limits resulting from constraints affecting the Project, so as to achieve Substantial Completion and Final Acceptance and to perform all required tests by the deadlines specified herein, and otherwise to do everything required by and in accordance with the Contract Documents.
- c. Professional Qualifications – Contractor shall perform the Work under the supervision of persons licensed and certified to practice the applicable function/profession in the State of California, by personnel who are careful, skilled, experienced and competent in their respective trades or professions, who are professionally qualified to perform the Work in accordance with the Contract, and who shall assume professional responsibility for the accuracy and completeness of the Work prepared or checked by them.
- d. Governing Dimensions – Before commencing any construction work, Contractor shall verify all governing dimensions at the Worksite, examine all adjoining work and activities that may have an impact on Work, and ensure that the Contract Documents (and any other documents related to the Work) accurately depict all governing and adjoining dimensions.
- e. Scheduling – Contractor shall schedule and direct its work to provide an orderly work progression, achieve on-time completion of all Milestones set forth in the Schedule, and complete its work within the Contract Time. To accomplish this goal, Contractor shall furnish such employees, materials, facilities and Equipment, and work such hours (including extra shifts, overtime operations, Sundays and holidays), as may be necessary.
- f. Means and Methods – Contractor shall be solely responsible for the performance of its Work in accordance with its own means, methods, sequences, and procedures, and for coordination of all portions of its Work in compliance with the Contract.
- g. Performance During Disputes – At all times during the term hereof, including

during any Dispute, Contractor shall perform as directed by Omnitrans, and shall comply with all provisions of the Contract.

- h. Ascertaining Facts – Contractor shall be solely responsible for its failure to ascertain the facts and take the actions described, represented, warranted, and acknowledged in this Article, and no provision of this Contract shall be construed to relieve Contractor from responsibility for such failure.
- i. Subcontractors & Suppliers – Contractor shall be responsible for the acts and omissions of its Subcontractors and Suppliers. Contractor agrees to bind every subcontractor to the terms of this Agreement as far as such terms are applicable to subcontractor's portion of the Work
- j. Assistance to Omnitrans – Contractor shall provide such assistance as is reasonably requested by Omnitrans in dealing with any Government Entity, or in prosecuting and defending Environmental lawsuits in any and all matters relating to the Work. Such assistance may include providing information and reports regarding the Work, as well as executing declarations and attending meetings and hearings. In no event shall the Contractor be required to provide legal services.
- k. Cooperation – The Contractor will cooperate with Omnitrans and its Authorized Representative(s), in their review(s) and/or inspection(s) of any portion or phase of the Work, and other matters relating to the Work.
- l. Mitigation – The Contractor will Mitigate Delay in all circumstances, to the extent reasonably possible, including the re-sequencing, reallocating or redeploying of its forces to other work, as appropriate.

DD. CONTRACTOR'S REPRESENTATIONS, WARRANTIES AND COVENANTS

Contractor represents, warrants and covenants for the benefit of Omnitrans that:

- 1. Status – If it is a corporation, limited partnership, general partnership, and/or joint venture, it is duly organized, validly existing and in good standing under the Laws of its jurisdiction of formation, and has full power and authority to own and operate its business and properties and perform the Work within the State of California.
- 2. Contractor & Subcontractor Qualifications – It and all of its Subcontractors are, and will be and will remain, fully experienced and properly qualified to perform the Work, and are, and throughout the term of this Contract shall remain, properly licensed, equipped, organized and financed to perform the Work hereunder and shall perform it in accordance with the Contract and in accordance with professional standards of skill, care, and diligence adhered to by firms recognized for their expertise, experience and knowledge in performing Work of a similar nature.

3. Control of Employees and Subcontractors – It shall maintain complete control of its employees, and its Subcontractors and Suppliers of all tiers, and shall not assign or transfer Work from itself or any listed Subcontractor or Supplier to itself or any other Subcontractor or Supplier without the written consent of Omnitrans.
4. Review of Information and Inspection of Worksites – It has, in accordance with prudent and generally accepted engineering and construction practices:
 - a. Reviewed all of the information provided in the Contract (including reports provided by Omnitrans);
 - b. Inspected and evaluated the Worksite and surrounding locations to the extent the Contractor deems necessary or advisable for performing all portions/phases of the Work under the Contract. These inspections and evaluations include without limitation:
 - 1) The character, quality, and quantity of surface and subsurface materials or obstacles to be encountered insofar as this information is reasonably ascertainable from an inspection of the Worksite, including review of the Contract Documents provided by Omnitrans.
 - 2) Conditions bearing upon transportation, disposal, handling, and storage of materials, Goods, and Equipment;
 - 3) The availability of labor, water, electric power, and roads;
 - 4) Uncertainties of weather, or physical conditions at the site;
 - 5) The conformation and conditions of the ground;
 - 6) The character of Equipment and facilities needed preliminary to and during Work performance; and
 - 7) Conditions bearing upon security and protection of material, Goods, Equipment, and Work in progress.
5. Physical Requirements – As a result of its inspection and examination of the Worksite, and other related and surrounding sites and conditions, it is familiar with and accepts the physical requirements of the Work.
6. Feasibility – As a result of its review of all the information and its inspection and examination of the Worksite, it has evaluated the feasibility of performing the Contract within the Contract Time and for the Total Contract Price, and has reasonable grounds for believing and does believe that such performance, including achievement of Substantial Completion of the Project within the Contract Time, for the Total Contract Price is feasible and practicable.

7. Legal Proceedings – There are no existing or threatened legal proceedings against Contractor that would have an adverse effect on its ability to perform its obligations under the Contract, its financial condition or its operations.
8. Governmental Approvals – Based upon its review of the Contract Documents, it shall be able to obtain and keep in effect throughout the Contract Time all Governmental Approvals the Contractor is obligated to obtain in accordance with the Contract.
9. Difficulty and Cost of Work – It has estimated the difficulty and cost of successfully performing the Work, and based upon that estimate has concluded that it can successfully perform the Work at the Total Contract Price.
10. Non-Debarment: In accordance with the provisions of the California Labor Code, contractors or subcontractors may not perform work on a public works project with a subcontractor who is ineligible to perform work on a public project pursuant section 1777.1 or section 1777.7 of the California Labor Code. Any contract on a public works project entered into between a contractor and a debarred subcontractor is void as a matter of law. A debarred subcontractor may not receive any public money for performing work as a subcontractor on a public works contract. Any public money that is paid to a debarred subcontractor by the Contractor for the Project shall be returned to Omnitrans. The Contractor shall be responsible for the payment of wages to workers of a debarred subcontractor who has been allowed to work on the Project.
11. Non-Discrimination: Contractor shall comply with all applicable federal, state, and local laws, rules, and regulations pertaining to non-discrimination, including but not limited to, Section 1735 of the California Labor Code and Section 12940 of the California Government Code. The contractor, sub recipient or subcontractor shall not discriminate on the basis of race, color, national origin, or sex in the performance of this contract. The contractor shall carry out applicable requirements of Title 49 CFR (Code of Federal Regulations) part 26 in the award and administration of US DOT assisted contracts. Failure by the contractor to carry out these requirements is a material breach of this contract, which may result in the termination of this contract or such other remedy, as the recipient deems appropriate. Each subcontract signed by the bidder must include this assurance.
12. Conflicts of Interest/ Criminal Activities: A Contractor shall not permit any official, officer or employee of Omnitrans during his tenure, or for one year thereafter, to have any interest, direct or indirect, in this Contract or the proceeds thereof. However, this subsection shall not be construed to extend to this Contract if made with a corporation for its general benefit.

Contractor, its employees, its Subcontractors or their employees shall not provide or offer to provide any campaign contribution to any member of Omnitrans in violation of California Government Code Section 84308. Further, to Contractor's knowledge, neither Contractor nor any of its employees nor its Subcontractors nor their employees has either promised or provided a campaign contribution of \$250 or more to any member of Omnitrans within 12 months prior to the award of this Contract or any subcontract of this Contract, unless an explicit statement to the contrary accompanies Contractor's bid. In no event shall gratuities (in the form of entertainment, gifts, or otherwise) be offered promised or given by Contractor, or any agent or representative of Contractor, to any official, officer or employee of Omnitrans or its Authorized Representative. Contractor or his employees shall not enter into any Contract involving services or property with a person or business prohibited from transacting such business with Omnitrans pursuant to Sections 1090 et seq. and 87100 et seq. of the Government Code of the State of California. To Contractor's knowledge, no Board member, officer, or employee of Omnitrans has any interest, whether contractual, non-contractual, financial or otherwise, in this transaction, or in the business of Contractor, unless an explicit statement to the contrary accompanies Contractor's bid. If any such transaction comes to the knowledge of Contractor at any time, a full and complete disclosure of such information shall be made to Omnitrans, even if such interest would not be considered a conflict under Sections 1090 et seq. and 87100 et seq. of the Government Code of the State of California. In the event Contractor, or any of its officers, partners, principals or employees are convicted of any crime arising out of, or in connection with, the work to be done or payment to be made under this Contract, this Contract in whole or any part thereof may, at the discretion of Omnitrans, be terminated for default. Any violation of the terms of this Section by Contractor may be considered a default of the Contract by Omnitrans and may result in termination of same pursuant to applicable provisions of this Contract. In the event of such a termination, Omnitrans shall be entitled to pursue the same remedies against Contractor as it could pursue in the event of a breach of the Contract by Contractor. Rights and remedies provided to Omnitrans by this Section are in addition to any additional rights and remedies provided by law or under the Contract.

EE. INDEPENDENT CONTRACTOR

1. Contractor, and its Subcontractors and Suppliers of any tier, are independent contractors, and nothing in this Contract shall be construed to create the relationship of agent, servant, employee, partnership, joint venture, or other association as between Contractor and Omnitrans. The employees and agents of one party shall not be, or be construed to be, the employees or agents of the other party for any purpose whatsoever.
2. Contractor, as an independent contractor, shall have responsibility for and control over the details and means for performing the Work, provided that

Contractor is in compliance with the terms of this Contract. Anything in this Contract that may appear to give Omnitrans the right to direct Contractor as to the details of the performance of the Work, or to exercise a measure of control over Contractor, shall mean that Contractor shall follow the desires of Omnitrans only as to the intended results of the Work.

FF. COMPENSATION AND BENEFITS

Contractor shall be solely liable and responsible for providing all compensation and benefits to, or on behalf of, all persons performing Work pursuant to this Contract. Omnitrans will have no liability or responsibility for the payment of any salaries, wages, unemployment benefits, disability benefits, Federal, State, or local taxes, or other compensation, benefits, or taxes for any personnel provided by or on behalf of Contractor.

GG. WORKERS' COMPENSATION INSURANCE AND LIABILITY

If Contractor employs any person to perform work in connection with this Contract, Contractor shall procure and maintain at all times during the performance of such work Workers' Compensation Insurance in conformance with the laws of the State of California and Federal laws where applicable. Employers' Liability Insurance shall not be less than \$1,000,000 per accident or disease. Prior to execution of this Contract by any such employee, Contractor shall deliver to Omnitrans a Certificate of Insurance that shall stipulate that 30 days' advance written notice of cancellation, non-renewal or reduction in limits shall be give to Omnitrans

HH. DATA COLLECTION & REPORTING

1. Contractor shall collect and preserve in written form contemporaneously during the Contractor's performance of the Work:
 - a. Daily Log – A daily log recording and summarizing, in a narrative form, all significant occurrences during the Work, including without limitation:
 - 1) Activity Log (i.e., a listing of each activity, depicted on the Critical Path Schedule, which is being actively prosecuted);
 - 2) Permit Issue Log (i.e., changes in permit status; permit problems; etc.);
 - 3) Delay Issue Log (i.e., unusual inclement weather; asserted Force Majeure events, and any other event and condition causing or threatening to cause any significant delay/disruption/interference with the progress of any of the Work);
 - 4) Safety Issue Log (i.e., significant injuries to persons or property, or events/situations which threaten significant injuries to persons or property);

- b. PCA (Potential Change Alert) Report – A daily log recording all expenses for labor, materials and Equipment that are being incurred by reason of any event, condition, or circumstance which the Contractor believes is or may become the subject of a Request for Change (RFC) or Claim against Omnitrans.
- 2. At reasonable times as requested by Omnitrans, Contractor shall provide Omnitrans with a copy of each log/report described in this Section.

II. CONTRACTOR'S REPRESENTATIVE, ORGANIZATION AND PERSONNEL

1. Organization

Before starting any Work, the Contractor shall submit for Engineer review and acceptance, an organization chart showing the proposed organization established by the Contractor for the performance of the Work, including:

- a. Lines of authority, responsibility, and communication;
- b. Office organizations, if any; and
- c. Names, titles, and functions of all the Contractor's key personnel.

2. Construction Project Manager

- a. Provide for the work a Construction Project Manager who will manage and coordinate the overall aspects of the work, including utility, equipment, and facility construction. The Construction Project Manager's qualifications and experience shall include:
 - 1) At least five years of progressively more responsible general construction experience.
 - 2) Demonstrated ability to work safely and supervise individuals in safe work
 - 3) Previous positions and experience supervising and planning work activities of construction superintendents, project engineers, and support personnel foreman and crews.
 - 4) Ability to read and understand survey, utility, and building architectural, structural, mechanical, plumbing, and electrical construction plans and specifications.
 - 5) Ability to develop and work from construction schedules.
- b. The Construction Project Manager shall have the necessary authority to receive and promptly execute instructions and orders from the Engineer or his authorized representatives, and be able to respond immediately to emergency or problem calls, 24 hours a day, 7 days a week. The

Construction Project Manager shall not be replaced without advance approval by Omnitrans.

JJ. SUPERINTENDENT

1. Provide for the work a Superintendent who will be responsible for field activities, manage field personnel and complete necessary associated office documentation. The Superintendent will report to the Construction Project Manager. Qualifications and experience shall include:
 - a. Demonstrated ability to work safely and supervise individuals in safe work.
 - b. Previous experience supervising and planning work activities of foremen and crews.
 - c. Ability to read and understand construction plans.
 - d. Five years of construction experience.
2. The Superintendent shall manage and directly oversee the safety, condition, and quality of work that has been modified by the Contractor and shall direct corrective and maintenance measures to keep the site operating safely.
3. Able to respond immediately to emergency or problem calls, 7 days a week, 24 hours a day.

KK. CHANGE IN CONTRACTOR'S REPRESENTATIVE AND KEY PERSONNEL

The Contractor shall secure the prior written acceptance of Omnitrans and the Engineer any change or reassignment of the Contractor's Representative(s) and other key personnel, submitting written documentation of the new individuals' qualifications. The Contractor shall not reassign key personnel to other projects until a satisfactory replacement is approved by Omnitrans and the Engineer.

LL. REMOVAL OF CONTRACTOR PERSONNEL

Omnitrans and the Engineer may require the Contractor to remove any person assigned by the Contractor or by any Subcontractor or Supplier from the Project performing on the Project, if Omnitrans and the Engineer consider such removal in the best interest of Omnitrans and the Work. Omnitrans' decision to require Contractor to remove any Contractor personnel, including Contractor's Representative, shall be final and binding on the Contractor. Upon such direction, Contractor shall remove the person(s) and resolve all employment or contractual issues at no cost or expense to, and shall fully indemnify, Omnitrans.

MM. WORKPLACE SAFETY

The contractor shall ensure that all of his operations strictly adhere to all Federal, State, and Local safety and environmental laws and regulations. Omnitrans, in

accordance with the dual employer provision, reserves the right to correct unsafe practices by the contractor's employees, or to stop work until the contractor makes the necessary corrections. Reference: Attachment "B", Specifications for Safety. In addition:

1. Smoking

Omnitrans uses designated areas for smoking. Smoking is not allowed at any time in the bus yard, on or in any buildings, or by the entrances to any buildings. Smoking by employees of the contractor, or his sub-contractors, shall not create a hazardous condition for themselves, co-workers, or employees and property of Omnitrans.

2. Eye Protection

- 1) Per Omnitrans eye protection policy, ANSI Z87 approved eye protection shall be worn by all persons while conducting business outside the boundaries of the established "green zone". The policy also requires that eye protection be utilized if hazardous work is being conducted within the "green zone". The contractor shall ensure that all of its employees have been provided eye protection that meets the requirement.
- 2) The project manager, or his designee, reserves the right to stop the contractor's work in the event that a contractor employee is in violation, and that work will remain stopped until the violation is corrected.

3. Vests

- 1) Contractors and their employees working or performing services in outside work zones shall wear ANSI Class 2 Safety Vests. ANSI Class 2 Safety Vests must be worn at all times in the bus yard and in the relief vehicle locations.
- 2) Safety Vests are not required while in designated, marked with painted green borders Safety Zones on Agency property or while on sidewalks, curbs, or raised pavement.

NN. TRENCHES

1. Trenches Five Feet or More in Depth. The Contractor shall submit to OMNITRANS, in advance of excavation, a detailed plan showing the design of shoring, bracing, sloping or other provisions to be made for worker protection from the hazard of caving ground during the excavation of any trench or trenches five feet or more in depth. If the plan varies from shoring system standards, the plan shall be prepared by a registered civil or structural engineer. The plan shall not be less effective than the shoring, bracing, sloping, or other provisions of the Construction Safety Orders, as defined in the California Code of Regulations.
2. Excavations Deeper than Four Feet. If work under this Contract involves digging trenches or other excavation that extends deeper than four feet below the surface, Contractor shall promptly, and before the following conditions are disturbed, notify OMNITRANS, in writing, of any:

- a. Material that the Contractor believes may be material that is hazardous waste, as defined in Section 25117 of the Health and Safety Code that is required to be removed to a Class I, Class II, or Class III disposal site in accordance with provisions of existing law.
 - b. Subsurface or latent physical conditions at the Site differing from those indicated.
 - c. Unknown physical conditions at the Site of any unusual nature, different materially from those ordinarily encountered and generally recognized as inherent in work of the character provided for in the Contract.
3. OMNITRANS shall promptly investigate the conditions, and if it finds that the conditions do so materially differ, or do involve hazardous waste, and cause a decrease or increase in Contractor's cost of, or the time required for, performance of any part of The Work, shall issue a change order under the procedures described in the Contract Documents.
4. In the event that a dispute arises between OMNITRANS and the Contractor as to whether the conditions materially differ, or involve hazardous waste, or cause a decrease or increase in the Contractor's cost of, or time required for, performance of any part of The Work, the Contractor shall not be excused from any scheduled completion date provided for by the Contract, but shall proceed with all Work to be performed under the Contract. Contractor shall retain any and all rights provided either by contract or by law which pertain to the resolution of disputes and protests between the parties.

OO. PROJECT SITE MAINTENANCE

1. Cleanup and Dust Control

- a. Throughout all phases of construction, including suspension of work, and until the final acceptance, the Contractor shall keep the site clean and free from rubbish and debris. The Contractor shall also abate dust nuisance by cleaning, sweeping and sprinkling with water, or other means as necessary. Payment for the cleanup and dust control shall be included in the price paid for other items of work. No additional payment will be made for project site maintenance.
- b. Materials and equipment shall be removed from the site as soon as they are no longer necessary. Before the final inspection, the site shall be cleared of equipment, unused materials, and rubbish so as to present a satisfactory clean and neat appearance. All cleanup costs shall be included.
- c. Care shall be taken to prevent spillage on haul routes. Any such spillage shall be removed immediately and the area cleaned.

- d. Excess excavated material from catch basins or similar structures shall be removed from the site immediately. Sufficient material may remain for use as backfill if permitted by the Specifications. Forms and form lumber shall be removed from the site as soon as practicable after stripping. Failure of the Contractor to comply with the Project Manager/Engineer's cleanup orders may result in an order to suspend work until the condition is corrected. No additional compensation will be allowed as a result of such suspension.

2. Final Cleanup

Upon completion of the project and before making application to the Project Manager/Engineer for acceptance of the work, the Contractor shall clean all the streets and grounds occupied or used by Contractor in connection with the project, of all rubbish, debris, excess material, temporary structures and equipment, leaving the entire site of the work in a neat and presentable condition.

3. Air Pollution Control

Contractor shall comply with all air pollution control rules, regulations, ordinances and statutes. All containers of paint, thinner, curing compound, solvent or liquid asphalt shall be labeled to indicate the contents fully comply with the applicable material requirements.

4. Control of Fugitive Dust

The Contractor shall comply with all rules of the South Coast Air Quality Management District, including Amended Rule 403.

5. Sanitation

- a. The Contractor shall provide and maintain a sufficient number of enclosed toilets for the use of employees engaged in the Work. These accommodations shall be maintained in a neat and sanitary condition. They shall also comply with all applicable laws, ordinances, and regulations pertaining to public health and sanitation of dwellings and camps.
- b. Wastewater shall not be interrupted. Should the Contractor disrupt existing sewer facilities, sewage shall be conveyed in closed conduits and disposed of in a sanitary sewer system.
- c. Sewage shall not be permitted to flow in trenches or be covered by backfill.

6. Temporary Light, Power, and Water

The Contractor shall furnish, install, maintain, and remove all temporary light, power, and water at its own expense. These include piping, wiring, lamps, and other equipment necessary for the Work. The Contractor shall not draw water from any fire hydrant (except to extinguish a fire), without obtaining permission from the water agency concerned.

7. Water Pollution Control

The Contractor shall exercise every reasonable precaution to protect channels, storm drains, and bodies of water from pollution. It shall conduct and schedule operations so as to minimize or avoid muddying and silting of said channels, drains, and waters. Water pollution control work shall consist of constructing those facilities, which may be required to provide prevention, control, and abatement of water pollution.

8. Drainage Control

The Contractor shall maintain drainage within and through the work areas. Earth dams will not be permitted in paved areas. Temporary dams of sandbags, asphaltic concrete, or other acceptable material will be permitted when necessary. Such dams shall be removed from the site as soon as their use is no longer necessary.

9. Technical Specifications

See Technical Specifications for any modifications to the items addressed in this Section OO "Project Site Maintenance" (if applicable).

PP. INSURANCE

1. INSURANCE REQUIREMENTS

a. General Requirements for Contractor

- 1) 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;
- 2) Provide Omnitrans with valid original certificates of insurance and endorsements showing Omnitrans as an additional insured.

b. 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.

c. Other Insurance Provisions

1) *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 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.

- a) 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.
- b) 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.
- c) 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.

2) *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.

3) *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.

d. 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.

e. Verification of Coverage

- 1) 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.
- 2) 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.
- 3) 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.

f. 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.

g. Notification of Terminated Insurance

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

2. MINIMUM INSURANCE COVERAGE

- a. ☒ 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.*
- b. ☒ Automobile Liability: \$1,000,000; per occurrence for bodily and property damage liability and aggregate; *Omnitrans named and endorsed as an Additional Insured.*
- c. ☐ Errors and Omissions Liability: \$1,000,000; combined single limit bodily and property damage liability per occurrence and \$3,000,000 aggregate or,
- d. ☐ Professional Liability: \$1,000,000; per occurrence and aggregate.

- e. ☒ Workers' Compensation: statutory limits or,
- f. ☐ 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.
- g. ☒ Employer's Liability: \$1,000,000; per occurrence.
- h. ☐ Environmental Liability: \$1,000,000; per occurrence and aggregate; *Omnitrans named and endorsed as an Additional Insured.*
- i. ☐ Umbrella Policy: \$4,000,000; per occurrence and aggregate Additional coverage for the above policies, *Omnitrans Additional Insured.*
- j. ☐ All drivers making deliveries of products specified on this IFB shall have Hazardous Materials Endorsements on their Commercial Drivers License, and such other Endorsements as may be required by relevant laws and/or regulations.

QQ. OCCUPANCY

OMNITRANS reserves the right to occupy or utilize any portion of The Work at any time before completion, and such occupancy or use shall not constitute Acceptance of any part of Work covered by this Contract. This use shall not relieve the Contractor of its responsibilities under the Contract.

RR. INDEMNIFICATION

1. OMNITRANS, the OMNITRANS's Representative, the Construction Manager, the Architect, and their members, directors, officers, employees, agents and authorized volunteers shall not be answerable or accountable in any manner for any loss or damage that may happen to the Work or any part thereof, or for any of the materials or other things used or employed in performing the Work, or for injury or damage to any person or persons, either workers, employees of Contractor or its subcontractors or the public, or for damage to adjoining or other property, from any cause whatsoever arising out of or in connection with the performance of the Work. The Contractor shall be responsible for any damage to adjoining or other property, from any cause whatsoever arising out of or in connection with the performance of the Work. The Contractor shall be responsible for any damage or injury to any person or property resulting from defects or obstructions or from any cause whatsoever arising out of or in connection with the performance of the Work; provided, however, that the Contractor shall not be liable for the sole established negligence, willful misconduct or active negligence of OMNITRANS, its members, directors, officers, employees, agents and authorized volunteers who are directly responsible to OMNITRANS.
2. Contractor shall defend (with counsel of OMNITRANS's choosing), indemnify and hold OMNITRANS, its officials, officers, agents, including but not limited to OMNITRANS's Representative, employees, representatives and authorized volunteers free and harmless from any and all claims, demands,

causes of action, costs, expenses, liabilities, losses, damages or injuries, in law or equity, regardless of whether the allegations are false, fraudulent, or groundless, to property or persons, including wrongful death, to the extent arising out of or incident to any acts, omissions or willful misconduct of Contractor, its officials, officers, employees, agents, consultants and contractors arising out of or in connection with the performance of the Work or this Contract, including claims made by subcontractors for nonpayment, including without limitation the payment of all consequential damages and attorneys fees and other related costs and expenses. Contractor shall defend, at Contractor's own cost, expense and risk, with counsel of OMNITRANS's choosing, any and all such aforesaid suits, actions or other legal proceedings of every kind that may be brought or instituted against OMNITRANS, its officials, officers, agents, employees and representatives. To the extent of its liability, Contractor shall pay and satisfy any judgment, award or decree that may be rendered against OMNITRANS, its officials, officers, employees, agents, employees and representatives, in any such suit, action or other legal proceeding. Contractor shall reimburse OMNITRANS, its officials, officers, agents, employees and representatives for any and all legal expenses and costs incurred by each of them in connection therewith or in enforcing the indemnity herein provided. The only limitations on this provision shall be those imposed by Civil Code Section 2782. OMNITRANS may retain, to the extent it deems necessary, the money due to Contractor under and by virtue of this Agreement until disposition has been made of such actions or claims for damages as specified hereinabove.

SS. TITLE

1. Title shall pass to Omnitrans at the time of payment.
2. 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.
3. 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.
4. 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.
5. 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.

TT. TERMINATION FOR CAUSE

1. OMNITRANS may, without prejudice to any other right or remedy, serve written notice upon Contractor of its intention to terminate this Contract if the Contractor: (i) refuses or fails to prosecute The Work or any part thereof with such diligence as will ensure its completion within the time required; (ii) fails to complete The Work within the required time; (iii) should file a bankruptcy petition or be adjudged a bankrupt; (iv) should make a general assignment for the benefit of its creditors; (v) should have a receiver appointed; (vi) should persistently or repeatedly refuse or fail to supply enough properly skilled workers or proper materials to complete the work; (vii) should fail to make prompt payment to subcontractors or for material or labor; (viii) persistently disregard laws, ordinances, other requirements or instructions of OMNITRANS; (ix) should violate any of the provisions of the Contract Documents; or (x) otherwise be guilty of a substantial violation of any provision of the Contract.
2. The notice of intent to terminate shall contain the reasons for such intention to terminate. Unless within ten (10) Days after the service of such notice, such condition shall cease or satisfactory arrangements (acceptable to OMNITRANS) for the required correction are made, this Contract shall be terminated. In such case, Contractor shall not be entitled to receive any further payment until the Project has been finished. In event of any such termination, OMNITRANS shall immediately serve written notice thereof upon surety and Contractor written notice of termination stating that the contract has ceased and is terminated. Surety shall have the right to investigate, take over and perform this Contract, provided, however, that if Surety, within fifteen (15) calendar days after service upon it of said notice of termination, does not give OMNITRANS written notice of its intention to take over and perform this Contract and does not commence performance thereof within twenty (20) calendar days from the date of service upon it of such notice of termination, OMNITRANS may take over and complete The Work by any method it may deem appropriate. Contractor and its surety shall be liable to OMNITRANS for any excess costs or other damages incurred by OMNITRANS to complete the Project. If OMNITRANS takes over The Work, OMNITRANS may, without liability for so doing, take possession of and utilize in completing The Work such materials, appliances, plant, and other property belonging to the Contractor as may be on the Project Site. If OMNITRANS takes over the work as herein above provided, OMNITRANS may, without liability for so doing, take possession of and utilize in completing The Work such materials, appliances, plant, and other property belonging to the Contractor as may be on the Site of The Work and necessary therefor.
3. If the unpaid balance of the Contract Price exceeds the expense of finishing work, including compensation for additional architectural, managerial, and administrative services, such excess shall be paid to Contractor. If such expense shall exceed such unpaid balance, Contractor shall pay the

difference to OMNITRANS. Expense incurred by OMNITRANS as herein provided, and damage incurred through Contractor's default, shall be certified by OMNITRANS's Representative.

UU. TERMINATION FOR CONVENIENCE

1. OMNITRANS may terminate performance of The Work in whole or, in part, if OMNITRANS determines that a termination is in OMNITRANS's interest.
 - a. The Contractor shall terminate all or any part of The Work upon delivery to the Contractor of a Notice of Termination specifying that the termination is for the convenience of OMNITRANS, the extent of termination, and the effective date of such termination.
 - b. After receipt of Notice of Termination, and except as directed by OMNITRANS, the Contractor shall, regardless of any delay in determining or adjusting any amounts due under this Termination for Convenience clause, immediately proceed with the following obligations:
 - 1) Stop Work as specified in the Notice.
 - 2) Complete any Work specified in the Notice of Termination in a least cost/shortest time manner while still maintaining the quality called for under the Contract Documents.
 - 3) Leave the property upon which the Contractor was working and upon which the facility (or facilities) forming the basis of the Contract Documents is situated in a safe and sanitary manner such that it does not pose any threat to the public health or safety.
 - 4) Terminate all subcontracts to the extent that they relate to the portions of The Work terminated.
 - 5) Place no further subcontracts or orders, except as necessary to complete the remaining portion of The Work.
 - 6) Submit to OMNITRANS, within ten (10) Days from the effective date of the Notice of Termination, all of the documentation called for by the Contract Documents to substantiate all costs incurred by the Contractor for labor, materials and equipment through the Effective Date of the Notice of Termination. Any documentation substantiating costs incurred by the Contractor solely as a result of OMNITRANS's exercise of its right to terminate this Contract pursuant to this clause, which costs the Contractor is authorized under the Contract Documents to incur, shall: (i) be submitted to and received by OMNITRANS no later than thirty (30) Days after the Effective Date of the Notice of Termination; (ii) describe the costs incurred with particularity; and (iii) be conspicuously identified as "Termination Costs Occasioned by OMNITRANS's Termination for Convenience."

- 7) These provisions are in addition to and not in limitation of any other rights or remedies available to OMNITRANS.
2. Notwithstanding any other provision of this Article, when immediate action is necessary to protect life and safety or to reduce significant exposure or liability, OMNITRANS may immediately order Contractor to cease Work on the Project until such safety or liability issues are addressed to the satisfaction of OMNITRANS or the Contract is terminated.
3. Should OMNITRANS determine that environmental considerations mandate that the underlying Project should not go forward, OMNITRANS may notify Contractor that this Contract is terminated due to environmental considerations and OMNITRANS shall only be obligated to pay Contractor for The Work that Contractor had performed at the time of notification of termination of this Contract for environmental considerations.
4. Termination of the Contract shall not relieve Surety of its obligation for any just claims arising out of or relating to The Work performed. In the event that OMNITRANS exercises its right to terminate this Contract pursuant to this provision, OMNITRANS shall pay the Contractor, upon the Contractor's submission of the documentation required by this clause and other applicable provisions of the Contract Documents, all actual reimbursable costs incurred according to the provisions of this Contract.
5. The foregoing provisions are in addition to and not in limitation of any other rights or remedies available to OMNITRANS.
6. Notwithstanding the foregoing provisions, this Contract may not be terminated or modified where a trustee-in-bankruptcy has assumed the Contract pursuant to 11 U.S.C. section 365 (Federal Bankruptcy Act)

VV. DOCUMENT RETENTION

1. In accordance with Government Code Section 8546.7, records of both OMNITRANS and the Contractor shall be subject to examination and audit by the State Auditor General for a period of three (3) years after final payment.
2. Contractor shall make available to OMNITRANS any of the Contractor's other documents related to the Project immediately upon request of OMNITRANS.
3. In addition to the State Auditor rights above, OMNITRANS shall have the right to examine and audit all books, estimates, records, contracts, documents, bid documents, subcontracts, and other data of the Contractor (including computations and projections) related to negotiating, pricing, or performing the modification in order to evaluate the accuracy and completeness of the cost or pricing data at no additional cost to OMNITRANS, for a period of four (4) years after final payment.

WW. STATE LICENSE BOARD NOTICE

Contractors are required by law to be licensed and regulated by the Contractors' State License Board which has jurisdiction to investigate complaints against contractors if a complaint regarding a patent act or omission is filed within four (4) years of the date of the alleged violation. A complaint regarding a latent act or omission pertaining to structural defects must be filed within ten (10) years of the date of the alleged violation. Any questions concerning a contractor may be referred to the Registrar, Contractors' State License Board, P.O. Box 26000, Sacramento, California 95826.

XX. APPLICABILITY OF FEDERAL GRANT CONTRACT

This contract may be subject to one or more financial assistance contracts between Omnitrans and the U.S. Department of Transportation (DOT), which incorporate the current Federal Transit Administration (FTA) Master Agreement and Circular 4220.1F. The Contractor and its Subcontractors are required to comply with all terms and conditions prescribed for third party contracts in these documents. Federal laws, regulations, policies and administrative practices may be modified or codified after the date this contract is established and may apply to this contract. To assure compliance with changing Federal requirements, acceptance of contract award indicates that the Contractor agrees to accept all changed requirements that apply to this contract.

YY. INCORPORATION OF FEDERAL TRANSIT ADMINISTRATION (FTA) TERMS

All contractual provisions required by DOT and the Master Grant Agreement, 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. The Contractor shall not perform any act, fail to perform any act, or refuse to comply with any Omnitrans request that would cause Omnitrans to be in violation of the FTA terms and conditions.

ZZ. FEDERAL FUNDING LIMITATION

Contractor understands that funds to pay for Vendor's performance under this contract are anticipated to be made available from the United States Department of Transportation through the FTA. All funds must be approved and administered by FTA. A portion of Omnitrans obligation hereunder may be payable from funds that are appropriated and allocated by FTA for the performance of this contract. If funds are not allocated, or ultimately are disapproved by FTA, Omnitrans may terminate or suspend Contractor's services without penalty. Omnitrans shall notify Contractor promptly in writing of the non-allocation, delay, or disapproval of funding.

AAA. NO FEDERAL GOVERNMENT OBLIGATION TO THIRD PARTIES

1. The Contractor acknowledges and agrees that, notwithstanding any concurrence by the Federal Government in or approval of the solicitation or award of the underlying contract, absent the express written consent by the Federal Government, the Federal Government is not a party to this contract and shall not be subject to any obligations or liabilities to the Contractor or any other party (whether or not a party to that contract) pertaining to any matter resulting from the underlying contract.
2. The Contractor agrees to include the above clause in each subcontract financed in whole or in part with Federal assistance provided by FTA. It is further agreed that the clause shall not be modified, except to identify the Subcontractor who will be subject to its provisions.

BBB. FEDERAL CHANGES

1. In the event local, state or Federal laws or regulations that were not announced or enacted at the time of the Contract award are enacted before performance of the services and such laws or regulations make standards more stringent or compliance more costly under this Contract, the Contractor shall notify Omnitrans in writing of such laws or regulations and their effects on the pricing or delivery schedule promptly after the Contractor first becomes aware of the laws and regulations and prior to incurring any such expenses.
2. Omnitrans will make a determination as to whether the Contractor should be reimbursed for any such expenses or any time extensions should be granted.
3. The Contractor shall be deemed to have had notice of any Federal law or regulation announced or enacted at the time of Contract award, even though such law or regulation did not take effect or become operative until some date after the Contract award.
4. The Contractor shall, immediately upon becoming aware of any such imposition or change of requirement, provide Omnitrans with full and detailed particulars of the changes required in the services and of cost involved therein, or shall be deemed to have waived any rights under this article. In the event any governmental requirements are removed, relaxed, or changed in any way after the date of Contract award so as to make the Contractor's performance less expensive, or less difficult, then Omnitrans shall have the option either to require the Contractor to perform pursuant to the more rigorous requirements or to receive a reduction in the price of the services affected for all savings in direct costs which may be realized by the Contractor by reason of such change and appropriate adjustments in deductions for overhead and profit made so as to reflect actual savings made by the Contractor. Omnitrans shall give the Contractor notice of Omnitrans' determination, and anticipated savings.

CCC. ASSIGNMENT

Contractor shall not assign, transfer, convey, sublet, or otherwise dispose of this Contract or any part thereof including any claims, without prior written consent of OMNITRANS. Any assignment without the written consent of OMNITRANS shall be void. Any assignment of money due or to become due under this Contract shall be subject to a prior lien for services rendered or Material supplied for performance of Work called for under the Contract Documents in favor of all persons, firms, or corporations rendering such services or supplying such Materials to the extent that claims are filed pursuant to the Civil Code, the Code of Civil Procedure or the Government Code.

DDD. WAIVER

No provision of these Contract Documents shall be deemed waived by either party unless such waiver shall be expressly specified in writing, regardless of the actions or inaction of the parties.

EEE. MISCELLANEOUS

These Contract Documents shall be interpreted in accordance with the laws of the State of California. If any action is brought to interpret or enforce any term of these Contract Documents, the action shall be brought in a state or federal court situated in the County of San Bernardino, State of California.

FFF. INTEGRATION

No oral order, objection, direction, claim or notice by any party or person shall affect or modify any of the terms or obligations contained in the Contract Documents.

ITEM # F5

DATE: January 14, 2015

TO: Board Chair Alan Wapner and Members of the Omnitrans Board of Directors

THROUGH: P. Scott Graham, CEO/General Manager

FROM: Diane Caldera, Director of Operations

**SUBJECT: APPROVE MEMORANDUM OF UNDERSTANDING BETWEEN
OMNITRANS AND AMALGAMATED TRANSIT UNION LOCAL #1704**

FORM MOTION

Approve Memorandum of Understanding (MOU) between Omnitrans and Amalgamated Transit Union Local #1704, for the Coach Operator Unit, effective April 1, 2013 through March 31, 2016.

BACKGROUND

The Omnitrans Negotiation Team of Marjorie Ewing, Human Resources/Safety & Regulatory Compliance Director, Diane Caldera, Director of Operations, Doug Stanley, Transportation Manager, and Jeremiah Bryant, Planning and Scheduling Manager, began negotiations with the Amalgamated Transit Union Local #1704 for the Coach Operator Unit in January 2013. In all, 17 negotiating sessions, 6 mediation sessions, 2 Fact Finding sessions and 5 post Fact Finding sessions were held.

On November 25, 2014, the Union agreed to present Omnitrans' contingent offer to its membership on Tuesday, December 2, 2014. The contingent offer was ratified by the ATU membership with a vote of 265 to 38.

On December 3, 2014, the Board of Directors authorized the CEO/Manager to proceed with paying the \$900 stipend to the active status Coach Operators before December 25, 2014, and to process the 2.75% pay increase effective December 14, 2014, which is the first full payroll period after ratification of the Union.

Highlights of the MOU are as follows:

ECONOMICS

Wages:

- Year #1: Wages for Yr. 2013-2014: 0.00%
- Year #2: Wages for Yr. 2014-2015: 2.75%
- Year #3: Wages for Yr. 2015-2016: 2.75%

Comprehensive Benefits:

- Year #1: Maintenance of Benefit increase for Year 2013-2014:
 - \$970.00 Current; \$0.00 Increase
- Year #2: Maintenance of Benefit increase for Year 2014-2015:
 - \$55.00 Increase; Total: \$1,025.00 Single/Two Party per month
 - \$170.00 Increase; Total: \$1,145.00 Family per month
- Year #3: Maintenance of Benefit increase for Year 2015-2016:
 - \$50.00 Increase; Total: \$1,075.00 Single/Two Party per month
 - \$0.00 Increase; Total: \$1,145.00 Family per month

Differentials:

- Coach Operator Instructor: \$3.00 per hour
- Relief Dispatcher: \$3.00 per hour
- Relief Field Supervisor: \$3.00 per hour

Leave of Absence – Union Position:

- Benefits and wages to be paid by the Agency and reimbursed by the union

BRT Services:

- New group of drivers with a \$2 increase in wages and conditions to qualify to drive sbX

NON-ECONOMICS

Shop Steward's Provision:

- Reduction of 75 8-hours days to 50 8-hour days for union business

Grievances:

- Language update to arbitration process

BRT Services:

- BRT services sunset language removed; Withdraw sbX Arbitration (15-05) and PERB (Public Employment Relations Board) Unfair Practice Charge

FUNDING SOURCE

The cost associated with this action is included in salary and benefit budget line items in the Operations Department.

Department	1100
Expenditure Code	Various

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

CONCLUSION

Upon approval of the Memorandum of Understanding, economic and non-economic changes to the MOU will be reviewed by the negotiation team prior to final printing to ensure all changes are correctly reflected in the new contract in accordance with the tentative agreement.

PSG:DC

ITEM # G1

DATE: January 14, 2015

TO: Board Chair Alan Wapner and Members of the Omnitrans Board of Directors

THROUGH: P. Scott Graham, CEO/General Manager

FROM: Maurice A. Mansion, Treasury Manager

**SUBJECT: PUBLIC HEARING, FEDERAL TRANSIT ADMINISTRATION
SECTION 5310 CAPITAL ASSISTANCE FOR FISCAL YEAR 2014**

FORM MOTION

Close the public hearing concerning the Federal Transit Administration (FTA), Section 5310 Capital Assistance for Fiscal Year 2014, held at 8:00 a.m., January 14, 2015, at the Omnitrans Metro Facility, 1700 West Fifth Street, San Bernardino, CA 92411; and

Adopt Resolution No. 278-15 certifying that no private non-profit organizations are readily available to carry out service described by Omnitrans' application for Fiscal Year 2014 relating to services under Section 5310 of the Federal Transit Administration Grant Program.

SUMMARY

- The date and time was set for the Federally required public hearing allowing comment on projects involving Federal assistance.
- A public hearing affords the opportunity to obtain views of officials and citizens regarding the proposed use of Federal assistance and community support for the amended program of projects.
- This public hearing allows public non-profit transportation providers to come forward if they are readily able to carry out the proposed services.
- This will certify to FTA, that there are no private non-profit organizations available to carry out the service described in the application submitted by Omnitrans for Fiscal Year 2014.

BACKGROUND

In order to qualify for Federal assistance through the Federal Transit Administration (FTA), Omnitrans is required to hold a public hearing on the proposed use of Federal funds. FTA also requires that Omnitrans give the public sufficient notice, that if a public non-profit is able to

provide the same service, the funds will not be sought, that any comments be incorporated into the grant application and that the notice include language which indicates that in the absence of substantive comments, the Federal assistance will be sought. Omnitrans is requesting \$1,000,000 in FTA Section 5310 capital funding to purchase ten (10) replacement paratransit vehicles and is no longer pursuing the Enhanced Access Customer Communication Booking and Notification System. This funding source is made available for the special transit needs of elderly persons and persons with disabilities. Funds are allocated based on a countywide competitive basis, and are available to fund up to 100% of the purchase price for vehicles and equipment. San Bernardino Associated Governments will determine which applicants receive funding.

Notification of award will occur by April 2015. If awarded, Omnitrans intends to use Section 5310 funding to purchase ten (10) replacement paratransit vehicles and Enhanced Access Customer Communication Booking and Notification System.

Public non-profit agencies listed in the Public and Specialized Transit Directory were contacted via e-mail and notified of the proposed hearing and service. Omnitrans intends to proceed unless one of the agencies comes forth at this hearing stating that they are able to provide the service.

ANALYSIS

In order for Omnitrans to qualify for Federal fund assistance and give the public an opportunity to comment, the Agency must hold a public hearing on the FTA Section 5310 capital assistance for Fiscal Year 2014. If no other agencies or individuals come forth at this hearing, Omnitrans is requesting to proceed with the application process. The Federal funds sought will allow Omnitrans to more efficiently and effectively provide public transportation services to elderly persons and persons with disabilities within the Agency's service area.

PSG:MM

NOTICE OF PUBLIC HEARING

OMNITRANS, the regional mass transportation carrier in San Bernardino County, will hold a public hearing to obtain comments from citizens regarding the proposed grant application for capital assistance for Fiscal Year 2014, which has been programmed for the following project:

Section 5310 Project Description	Total Cost	Federal Share
Ten (10) Replacement Paratransit Vehicles	\$1,000,000	\$1,000,000
Enhanced Access Customer Communication Booking and Notification System	\$550,000	\$550,000

Said public hearing will be in conjunction with the Omnitrans Board of Directors' meeting, as follows:

Wednesday, January 14, 2015 at 8:00 a.m
Omnitrans Metro Facility Board Room
1700 West Fifth Street
San Bernardino, California 92411

At this meeting, all interested persons or agencies will be afforded an opportunity to be heard. Any person or agency may mail comments to the address listed above until Wednesday, January 7, 2015 to the attention of the Finance Department. Detailed information may be obtained by writing to the Omnitrans Finance Department or by calling (909) 379-7169.

ENVIRONMENT

No adverse environmental impact is anticipated as a result of these projects.

IN THE ABSENCE OF ANY SUBSTANTIVE COMMENTS, THE PROPOSED GRANT APPLICATION FOR CAPITAL ASSISTANCE FOR FISCAL YEAR 2014 WILL BECOME THE FINAL GRANT APPLICATION.

P. Scott Graham
CEO/General Manager

RESOLUTION NO. 278-15

**A RESOLUTION CERTIFYING THAT
THERE ARE NO PRIVATE NON-PROFIT
ORGANIZATIONS READILY AVAILABLE TO
CARRY OUT THE SERVICE DESCRIBED BY
THE APPLICATION SUBMITTED BY
OMNITRANS FOR FISCAL YEAR 2014
RELATING TO SERVICES UNDER SECTION
5310 OF THE FEDERAL TRANSIT
ADMINISTRATION GRANT PROGRAM.**

WHEREAS, Omnitrans has provided public hearing notices in general circulation papers on December 4, 2014; and

WHEREAS, there is no public non-profit agency readily available to carry out the proposed transit services;

NOW, THEREFORE, BE IT RESOLVED that Omnitrans is eligible to apply for Federal Transit Administration Section 5310 funds as a public agency in the event there are no readily available non-profit agencies that can perform the proposed deviated fixed route service in Omnitrans service area.

BE IT FURTHER RESOLVED that, the CEO/General Manager for Omnitrans is authorized to sign the necessary grant application and any related documentation on behalf of Omnitrans.

The undersigned duly qualified CEO/General Manager acting on behalf of Omnitrans certifies that the foregoing is a true and correct copy of a resolution adopted at a legally convened meeting of the Omnitrans Board of Directors held on this 14th day of January 2015, by the following vote to wit:

AYES:

NOES:

ABSENT:

Alan D. Wapner
Chair, Omnitrans Board of Directors

P. Scott Graham
CEO/General Manager
Secretary, Omnitrans Board of Directors

The foregoing resolution is hereby approved this 14th day of January 2015.

Approved as to form:

Carol Greene
Legal Counsel for Omnitrans