



BOARD OF DIRECTORS MEETING
WEDNESDAY, JANUARY 6, 2016 – 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

1. Next Board Meeting: Wednesday, February 3, 2016 – 8:00 a.m.
Omnitrans Metro Facility Board Room

C. COMMUNICATIONS FROM THE PUBLIC

This is the time and place for the general public to address the Board for items that are not on the agenda. In accordance with rules applicable to meetings of the 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.

3

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 #E11, Action on Consent Calendar.

1. Approve Board Minutes – December 2, 2015
2. Receive and File Administrative and Finance Committee Minutes – November 12, 2015
3. Receive and File Plans and Programs Committee Minutes – August 10, 2015
4. Adopt Resolution No. 286-16 – Authorizing Destruction of Records

6
10
14
18



BOARD OF DIRECTORS MEETING
WEDNESDAY, JANUARY 6, 2016 – 8:00 A.M.
OMNITRANS METRO FACILITY
1700 WEST 5TH STREET
SAN BERNARDINO, CA 92411

E. CONSENT CALENDAR CONTINUED	
5. Adopt Resolution No. 287-16 Authorizing CEO/General Manager to Execute Certifications and Assurances for Fiscal Year 2015-2016 Low Carbon Transit Operations Program (LCTOP)	22
6. Authorize CEO/General Manager to Execute Cooperative Service Agreement with Riverside Transit Agency	25
7. Authorize CEO/General Manager to Execute Mutual Aid Agreements with Victor Valley Transit Agency and Mountain Transit	33
8. Authorize Release, Invitation for Bids IFB-MKP16-83, Permanent Fence San Bernardino Transit Center	50
9. Authorize Release, Invitation for Bids IFB-MNT16-14, New Flyer Miscellaneous Bus Parts	52
10. Press Articles and Letters of Interest to the Board	54
11. Action on Consent Calendar	
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	57
2. Adopt CEO/General Manager Evaluation Process	58
3. Authorize Award (Bench) – Contracts MKP16-49A-C – Promotional Items	64
4. Authorize Award (Bench) – Contract MNT16-30A-B – John Deere Bus Parts	134
5. Adopt 2016 Investment Policy	214
6. Authorize Disposal of Surplus Capital Assets	226
G. PUBLIC HEARING	
1. Call for Public Hearing – Federal Transit Administration Section 5307 and Section 5339 Funds – Fiscal Year 2016	230
H. BOARD BUSINESS	
Closed Session	
1. Conference with Legal Counsel, Real Property Negotiations – Government Code Section 54956.8, 12400 Arrow Route, Rancho Cucamonga, California	
I. REMARKS AND ANNOUNCEMENTS	
J. ADJOURNMENT	

ITEM # D1

DATE: January 6, 2016

TO: Board Chair Sam Spagnolo 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 6, 2016.

Item	Contract	Principals & Agents	Subcontractors
#F3	Authorize Award (Bench) Contracts MKP16-49A-C Promotional Items	<i>RED Company Long Beach, CA Carmela Roth, President</i>	<i>None</i>
		<i>Authentic Promotions.com Carmichael, CA Amy Warner, Partner</i>	<i>None</i>
		<i>Offbeat Productions, Inc. Park City, UT Shannon Nellis, CEO</i>	<i>Admints & Zagabor Bellmawr, NJ</i>
			<i>Snugz USA West Jordan, UT</i>
			<i>Evans Manufacturing, Inc. Garden Grove, CA</i>
			<i>Hit Promotional Products Largo, FL</i>
			<i>Gold Bond Worldwide Hixson, TN</i>
			<i>Norwood/Bic</i>

Item	Contract	Principals & Agents	Subcontractors
			<i>Red Wing, MN</i> <i>Gempire</i> <i>Tampa, FL</i>
#F4	Authorize Award (Bench) Contract MNT16-30A-B John Deere Bus Parts	<i>Harbor Diesel and Equipment,</i> <i>Inc.</i> <i>Long Beach, CA</i> <i>Pat Vuoso, Manager – Parts</i> <i>A-Z Bus Sales, Inc.</i> <i>Colton, CA</i> <i>Jerry Pederson, Parts Manager</i>	<i>None</i> <i>None</i>
#F6	Authorize Disposal of Surplus Capital Assets	<i>Bar None Auctions</i> <i>Rancho Cordova, CA</i> <i>Lonny Papp</i> <i>Government Accounts</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 2, 2015**

A. CALL TO ORDER

Chairman Sam Spagnolo called the regular meeting of the Omnitrans Board of Directors to order at 8:00 a.m., Wednesday, December 2, 2015, 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 Sam Spagnolo, City of Rancho Cucamonga – Chairman
Council Member Ron Dailey, City of Loma Linda – Vice Chairman
Mayor Carey Davis, City of San Bernardino
Mayor Richard DeLaRosa, City of Colton
Mayor Paul Eaton, City of Montclair
Council Member Pat Gilbreath, 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
Council Member Dick Riddell, City of Yucaipa
Council Member John Roberts, City of Fontana
Mayor Deborah Robertson, City of Rialto
Mayor Pro Tem Sylvia Robles, City of Grand Terrace
Supervisor Janice Rutherford, County of San Bernardino
Council Member Alan Wapner, City of Ontario
Mayor Dennis Yates, City of Chino

BOARD MEMBERS NOT PRESENT

Supervisor Josie Gonzales, County of San Bernardino
Supervisor Robert Lovingood, County of San Bernardino
Supervisor James Ramos, County of San Bernardino

OMNITRANS' ADMINISTRATIVE STAFF PRESENT

P. Scott Graham, CEO/General Manager
Diane Caldera, Director of Operations
Jack Dooley, Director of Maintenance
Marge Ewing, Director of Human Resources, Safety & Security
Samuel Gibbs, Director of Internal Audits
Jennifer Sims, Director of Procurement
Don Walker, Director of Finance
Wendy Williams, Director of Marketing/Planning
Jeremiah Bryant, Service Planning Manager
Maurice Mansion, Treasury Manager
Tim Campbell, Safety & Regulatory Compliance Manager
Ray Maldonado, Employee Relations Manager
Mark Montgomery, Facilities Manager
Kathy McClure, Sr. Contracts Administrator
Krystal Turner, Contracts Administrator
Christine Van Matre, Contracts Administrator
Ross Hrinko, Safety & Regulatory Compliance Specialist
Terry Morocco, Safety & Regulatory Compliance Specialist
Vicki Dennett, Executive Assistant to CEO/General Manager

LEGAL COUNSEL

Carol Greene

B. ANNOUNCEMENTS/PRESENTATIONS

1. Next Board Meeting: Wednesday, January 6, 2016, 8:00 a.m.
Omnitrans Metro Facility Board Room

C. COMMUNICATIONS FROM THE PUBLIC

1. Julia Bautista spoke through Interpreter Melissa Castillo regarding changes to the bus stops. She brought a petition containing 50 signatures, hoping that the #10 at F Street and the #11 on G Street stops would return to their former locations. Chairman Spagnolo directed CEO/General Manager Scott Graham to get in touch with Ms. Bautista outside of this meeting.

D. POSSIBLE CONFLICT OF INTEREST ISSUES

There were no Conflict of Interest Issues identified.

E. CONSENT CALENDAR

1. Approve Board Minutes – November 4, 2015
2. Receive and File Administrative and Finance Committee Minutes – October 15, 2015
3. Receive and File Executive Committee Minutes – August 7, 2015

4. Receive and File sbX Construction Progress Report #41 through October 31, 2015
5. Receive and File Summary of Risk Assessment Results and Fiscal Year 2016 Internal Audit Workplan
6. Authorize Release, Request for Proposals RFP-HRS16-31, Occupational Health Services
7. Authorize Release, Request for Proposals RFP-ITS16-93, Internet Services
8. Press Articles and Letters of Interest to the Board

M/S (Musser/Eaton) 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.

2. Adopt Proposed Board Meeting Schedule for 2016

M/S (Eaton/Lilburn) that adopted the Proposed Board Meeting Schedule for 2016, set for 8:00 a.m., the first Wednesday of each month, with the exception of the October 5 meeting, which will be changed to 8:00 a.m. on Friday, September 30, followed by the Executive Committee at 9:00 a.m. Motion was unanimous by Members present.

Members Dailey and Hagman arrived at 8:10 a.m.

3. Authorize Award (Bench), Contracts HRS16-28A-C, Temporary Employment Services

M/S (Graham/Musser) that authorized the CEO/General Manager to award Contract HRS16-28A to CathyJon Enterprises, Inc. dba: HB Staffing of Huntington Beach, CA, Contract HRS16-28B to Howroyd Wright Employment Agency, Inc., dba: AppleOne Employment Services of Glendale, CA and Contract HRS16-28C to Lloyd Staffing of Cerritos, CA for the provision of temporary employment services. Contract durations shall be for a three (3) year base period beginning January 4, 2016, and ending January 3, 2019 in the aggregate amount of \$339,158, and the authority to exercise two (2) single year options, extending the contracts to no later than January 3, 2021, in the aggregate amount of \$119,327 for Option Year One and \$122,608 for Option Year Two, totaling \$581,093, plus a 10% contingency of \$58,110, for a not-to-exceed amount of \$639,203, should all option years be exercised. Motion was unanimous by Members present.

4. Adopt Resolution No. 285-15 Accepting Designation as Consolidated Transportation Services Agency for the Valley Measure I Subarea

M/S (Wapner/DeLaRosa) that adopted Resolution No. 285-15 accepting designation as a Consolidated Transportation Services Agency for the Valley Measure I Subarea for a Five Year Term. Motion was unanimous by Members present.

G. PUBLIC HEARING

There is no Public Hearing scheduled.

H. BOARD BUSINESS

There is no Closed Session scheduled.

I. REMARKS AND ANNOUNCEMENTS

There were no remarks or announcements.

J. ADJOURNMENT

The Board adjourned at 8:15 a.m. The next regular meeting is scheduled Wednesday, January 6, 2016, 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 _____

**ADMINISTRATIVE & FINANCE COMMITTEE
MINUTES, NOVEMBER 12, 2015**

A. CALL TO ORDER

Committee Chair Ed Graham called the regular meeting of the Administrative and Finance Committee to order at 8:00 a.m., Thursday, November 12, 2015.

1. Pledge of Allegiance
2. Roll Call

Committee Members Present

Council Member Ed Graham, City of Chino Hills – Committee Chair
Mayor Carey Davis, City of San Bernardino
Mayor Paul Eaton, City of Montclair
Council Member Pat Gilbreath, City of Redlands
Mayor Ray Musser, City of Upland
Council Member Dick Riddell, City of Yucaipa
Council Member John Roberts, City of Fontana
Mayor Pro Tem Alan Wapner, City of Ontario

Committee Members Not Present

Supervisor Curt Hagman, County of San Bernardino
Mayor Pro Tem Sylvia Robles, City of Grand Terrace

Others Present

Mayor Pro Tem Sam Spagnolo, City of Rancho Cucamonga

OmniTrans Administrative Staff Present

P. Scott Graham, CEO/General Manager
Diane Caldera, Director of Operations
Jack Dooley, Director of Maintenance
Samuel Gibbs, Director of Internal Audit Services
Andres Ramirez, IPMO Manager
Jennifer Sims, Director of Procurement
Don Walker, Director of Finance
Wendy Williams, Director of Marketing/Planning
Maurice Mansion, Treasury Manager
Ray Maldonado, Employee Relations Manager
Vicki Dennett, Executive Assistant to CEO/General Manager

B. ANNOUNCEMENTS/PRESENTATIONS

The next Committee Meeting is scheduled Thursday, December 10, 2015, at 8:00 a.m.

C. COMMUNICATIONS FROM THE PUBLIC

There were no comments from the public.

D. POSSIBLE CONFLICT OF INTEREST ISSUES

There were no conflict of interest issues identified.

Member Wapner arrived at 8:02 a.m.

E. DISCUSSION ITEMS

1. Approve Administrative & Finance Committee Minutes – October 15, 2015

M/S (Eaton/Gilbreath) that approved the Committee Minutes of August 13, 2015. Motion was unanimous by Members present.

2. Adopt Proposed Administrative & Finance Committee Meeting Schedule for 2016.

The proposed schedule is the same as the current 2015 schedule, which is 8:00 a.m., the second Thursday after the Omnitrans Board Meeting.

M/S (Gilbreath/Roberts) that adopted the proposed 2016 Committee Meeting Schedule. Motion was unanimous by Members present.

3. Recommend to Board of Directors, Receive and File Construction Progress Report No. 41 through October 31, 2015 - sbX E Street Corridor BRT Project

IPMO Manager Andres Ramirez presented the Construction Progress Report No. 41 for the period through October 31, 2015.

Project Budget: \$191.7 M

Expended to Date: \$175.9 M

Estimate at Completion: \$188.4 M

Lost Time Injuries: Zero with over 488,000 MH worked.
424,000 for the Corridor
64,000 for the VMF

Vehicle Maintenance Facility:

- Achieved Substantial Completion on June 15, 2015 and began using June 16.
- Final change order with contractor complete.
- Punch-list items and close-out documents are being wrapped up.

E Street Corridor:

- World Oil work is projected to commence next week and is scheduled to take 120 days.
- 10th to Highland:
Notice to Proceed has been issued, and street work began November 9, 2015.
- PA System:
Design efforts are finalized. Projected to be presented for release by the Board in January 2016.
- Traffic Signal Synchronization:
Phase 1 Traffic Signal timing coordination is complete.

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

4. Receive and File Omnitrans' Director of Finance Report on Price of Compressed Natural Gas

Director of Finance Don Walker presented this item. The demand for natural gas is expected to increase as the weather turns cold, as is the price of natural gas. In summary, Omnitrans will continue to monitor the price of natural gas on the open market to determine if and when it would be prudent to implement a new hedging program. The current hedging price has decreased, and we would have lost money if we had continued the program beyond August 2015.

This item was received and filed by the Committee.

5. Receive and forward to the Board of Directors for receipt and file the results from the risk assessment and the FY 2016 Internal Audit Workplan

Director of Internal Audit Samuel Gibbs presented this item. Sam discussed the use of Forced Passes. Farebox exceptions are rare, and haven't happened in the last 18 months. The sub-lease of building space at I Street was discussed. There hasn't been a lease increase since 2008. Improvements to the appearance of the building continue. The Employee Recreation Club (ERC) hosts events at least monthly, and families are welcome to participate. The audit perspective to the ERC has to do with the amount of money that the ERC handles.

This item was received and will be forwarded to the Board for receipt and file.

F. ADJOURNMENT

The Administrative and Finance Committee meeting adjourned at 8:25 a.m. The next Administrative and Finance Committee Meeting is scheduled Thursday, December 10, 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 # E3

**PLANS AND PROGRAMS COMMITTEE
MINUTES
AUGUST 10, 2015**

A. CALL TO ORDER

The Plans & Programs Committee Meeting was called to order by Committee Chair Penny Lilburn at 10:01 a.m., August 10, 2015.

Committee Members Present

Council Member Penny Lilburn, City of Highland – Committee Chair
Council Member Ron Dailey, City of Loma Linda
Council Member Dick Riddell, City of Yucaipa
Mayor Pro Tem Sylvia Robles, City of Grand Terrace
Supervisor Janice Rutherford, County of San Bernardino
Mayor Pro Tem Sam Spagnolo, City of Rancho Cucamonga
Mayor Dennis Yates, City of Chino

Committee Members Not Present

Mayor Pro Tem Alan Wapner, City of Ontario

OmniTrans Administrative Staff Present

P. Scott Graham, CEO/General Manager
Diane Caldera, Director of Operations
Marge Ewing, Director of Human Resources/Safety & Security
Samuel Gibbs, Director of Internal Audits
Jacob Harms, Director of Information Technology
Andres Ramirez, Director of IPMO
Jennifer Sims, Director of Procurement
Don Walker, Director of Finance
Wendy Williams, Director of Marketing and Planning
Jeremiah Bryant, Service Planning Manager
Anna Jaiswal, Development Planning Manager
Scott Begg, Planner 1
Vicki Dennett, Executive Assistant to the CEO/General Manager

B. ANNOUNCEMENTS/PRESENTATIONS

There were no announcements.

C. COMMUNICATION FROM THE PUBLIC

There were no comments from the public.

D. POSSIBLE CONFLICT OF INTEREST ISSUES

There were no conflicts of interest issues identified.

E. DISCUSSION ITEMS

1. Approve Plans & Programs Committee Minutes – April 22, 2015

M/S (Spagnolo/Yates) that approved the minutes of April 22, 2015. Motion was approved unanimously.

2. Receive and File Planned Minor Service Change Near Chaffey College Learning Development Center

Service Planning Manager Jeremiah Bryant presented the proposed service change, explaining the history and background. Member Spagnolo commented that Chaffey College services will be expanding to weekends; Omnitrans is prepared for this, because we do offer some Saturday services.

M/S (Yates/Spagnolo) to receive and file minor proposed service change for local fixed route service near the moving Chaffey College Learning Development Center in January 2016. Motion was approved unanimously.

3. Recommend to Board of Directors, Receive and File 2015 Title VI Compliance Report

Member Robles arrived at 10:07 a.m.

Service Planning Manager Jeremiah Bryant presented the Title VI Report. Two items in this report differentiate substantially from three years ago. There are now seven identified threshold languages within our service area—the “How to Ride Guide” is now available in eight languages; and conducting a Major Service and Fare Equity Analysis to ensure we remain in compliance, prior to bringing to Board.

M/S (Yates/Spagnolo) to recommend the Board of Directors receive and file the *Omnitrans Title VI Triennial Report, September 2015* demonstrating Omnitrans’ commitment to serve low income or minority communities within the Agency’s service area consistent with federal guidelines. Motion was approved unanimously.

4. Recommend to Board of Directors, Receive and File Report, Public Comment Request for Expansion of Access Service Area Further Into Los Angeles County

Service Planning Manager Jeremiah Bryant presented this report: Casa Colina, Ability First, and Service Center for Independent Living (SCIL) are all outside San Bernardino County. Ability First, Casa Colina and SCIL are not within a $\frac{3}{4}$ mile on each side of a fixed route, which is the maximum allowable as specified by 49CFR §37.131. He explained that ADA requires comparable service be provided to ADA passengers as with the general public. Serving these locations would provide preferential treatment, and the expected annual increase in operating expenses by extending service into Los Angeles County to these three locations is \$76,000 per year. However, there are alternatives available, which can be funded through Consolidated Transportation Service Agencies (CTSA's), and VTrans is the designated CTSA in San Bernardino Valley. There doesn't appear to be any reason to cross boundaries when there are currently other options available.

M/S (Riddell/Yates) to recommend the Board of Directors receive and file this report created in response to a Board meeting public comment request for extension of Access service into Los Angeles County. Motion was approved unanimously.

5. Recommend to Board of Directors, De-Obligate and Re-Obligate Funds to West Valley Connector Corridor Project and Execute Contract MKP15-37, Architectural, Engineering and Final Design Services for West Valley Connector Corridor

M/S (Yates/Spagnolo) to recommend the Board of Directors authorize the CEO/General Manager to de-obligate \$3,183,541 of funding from the Mid-Valley facility (land value and project funds) and re-obligate it to the West Valley Connector Corridor project; and recommend the Board of Directors authorize the CEO/General Manager to execute Contract MKP15-37 to Parsons Transportation Group, Inc. (Parsons), of Ontario, CA, for the provision of Architectural, Engineering and Final Design Services for the West Valley Connector Corridor, beginning October 1, 2015 through January 31, 2020, for \$8,000,000 with optional tasks totaling \$2,024,627 for a total of \$10,024,627 plus a fifteen percent contingency of \$1,503,696.05, and 3.27% Cost Allocation Plan of \$376,976.16, for a total not-to-exceed amount of \$11,905,299.21 should all optional tasks be exercised, contingent upon sale of the property located in Rancho Cucamonga. Motion was approved unanimously.

F. REMARKS AND ANNOUNCEMENTS

There were no remarks or announcements.

G. ADJOURNMENT

Member Dailey arrived at 10:20 a.m.

The Plans & Programs Committee meeting adjourned at 10:20 a.m. There is no Committee Meeting scheduled at this time. The next Committee Meeting will be posted at Omnitrans and on the Omnitrans website.

Prepared by:

Christine Vega, Administrative Secretary

ITEM # E4

DATE: January 6, 2016

TO: Board Chair Sam Spagnolo and Members of the Omnitrans Board of Directors

FROM: P. Scott Graham, CEO/General Manager

THROUGH: Jacob D. Harms, Director of Information Technology

**SUBJECT: ADOPT RESOLUTION NO. 286-16
AUTHORIZING DESTRUCTION OF RECORDS**

FORM MOTION

Adopt Resolution No. 286-16, 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. 286-16

**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 6th day of January 2016, by the following vote to wit:

AYES:

NOES:

ABSENT:

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

Sam Spagnolo, Chair
Omnitrans Board of Directors

Approved as to form:

Carol Greene
Legal Counsel for Omnitrans

APPENDIX "A"
LIST OF RECORDS TO BE DESTROYED
January 6, 2016

FILE NAME	YEARS TO BE DESTROYED	
<u>ALL DEPARTMENTS</u>		
Correspondence Files	FY 2012	& prior
Departmental Copies of Budgets	FY 2011	& prior
Departmental Copies of Accounts Payable Records	FY 2011	& prior
Departmental Copies of Accounts Receivable Records	FY 2010	& prior
Employee Grievance Files - Closed	FY 2006	& prior
Desk Calendars & Diaries	CY 2014	& prior
Telephone Message Books or Slips	CY 2013	& prior
Department Monthly Reports	FY 2013	& prior
<u>EXECUTIVE OFFICE</u>		
Statement of Economic Interests	CY 2007	
Loss Runs	FY 2011-2012	
Claims - (Resolved for more than five years)	Closed prior to 1/31/11	
<u>PROCUREMENT</u>		
Completed Contracts - Excl. Capital (if grant is closed and audited with no activity since FY 2010)	FY 2010	& prior
Bids, IFB's, RFQ's, RFP's (if audited with no activity since FY 2011)	FY 2011	& prior
Successful (if audited with no activity since FY 2010)	FY 2010	& prior
Unsuccessful	FY 2013	& prior
Purchase Orders and Related Documentation (if audited with no activity since FY 2011)	FY 2011	& prior
Bonds - Performance (Completed Contracts - return or destroy)	FY 2013	& prior
Requisitions - Warehouse	FY 2013	& prior
<u>FINANCE</u>		
Accounts Payable Records (With Grant closed and audited for three or more years)	FY 2009	& prior
Accounts Receivable Records	FY 2009	& prior
Annual Budgets	FY 2005	& prior
Balance Sheets	FY 2010	& prior
Banking Records	FY 2010	& prior
Capital Property Records (Inventory)	FY 2008	& prior
External Audits	FY 2005	& prior
Financial Reports and Statements	FY 2005	& prior
FTA and STA Annual Reports	FY 2009	& prior
General Accounting Procedures	FY 2004	& prior
General Accounting Records	FY 2008	& prior
Investments & Insurance Policies (if no open claims)	FY 2008	& prior
Payroll Records	FY 2008	& prior
Profit & Loss Statements	FY 2005	& prior
Tax Returns & Reports	FY 2009	& prior
<u>MARKETING</u>		
Customer Contact Forms	FY 2012	& prior
Daily Sales Report	FY 2012	& prior
Employee Rideshare Record Forms	FY 2008	& prior
Promotional Contests/Drawings	FY 2012	& prior
Rideshare Affected Sites Files	FY 2010	& prior

OPERATIONS

Dispatch Logs	FY 2012	& prior
Service Interruption Reports	FY 2012	& prior
Daily Overtime Logs	FY 2012	& prior
Alternative Transportation Logs	FY 2012	& prior
Field Supervisor Logs	FY 2012	& prior
Schedule Adherence	FY 2012	& prior
Sign-on Sheets	FY 2012	& prior
Nutrition Trip Sheets	FY 2013	
Contract Services Accident Reports (Resolved for over five years)	FY 2007-2008	
Customer Contact Forms	FY 2008-2009	
Waybills	CY 2008	& prior

HUMAN RESOURCES

Applications for Employment & Related Documents	CY 2013	& prior
Employee Accident/Incident Reports & Related Documents (Resolved for over five years)	CY 2008	& prior
Employees Personnel Files (Terminated)	CY 2005	& prior
Service Awards Annual Records	CY 2009	& prior

SAFETY/HEALTH & REGULATORY COMPLIANCE

Employee Health Related Records	CY 1985	& prior
Environmental Related Records (EPA)	CY 1985	& prior
Regulatory Compliance Inspection Reports (with no activity since CY 2003)	CY 2006	& prior
Internal Inspection Reports	CY 2010	& prior
Safety and Health Training Records	CY 2012	& prior

PLANNING

Access Fare Structure, Zone Maps, Requests and General Issues	CY 2006	& prior
Annual Service Plan	CY 1995	& prior
Comments on Proposed Regulations	CY 2011	& prior
Comprehensive Operational Analysis Reports	CY 1995	& prior
Cooperative Service Agreements	CY 2005	& prior
Fixed Route Summary Reports	CY 2011	& prior
Fixed Route Surveys - All Routes	CY 2011	& prior
Omnitrans ADA Plan & Workpapers	CY 2006	& prior
On-Board Survey Forms	CY 2013	& prior
Short Range Transit Plan	CY 1995	& prior
Title VI Updates	CY 2008	& prior

FY = Fiscal Year

MAINTENANCE

Operators' Daily Reports	CY 2012	& prior
Supervisors' Reports/Tailgate Forms	CY 2012	& prior
Maintenance Records of Disposed Vehicles	CY 2012	& prior
Work Orders	CY 2012	& prior
A/P Receipts & Statements	CY 2012	& prior
Nextel Bills	CY 2012	& prior
Tire Mileage	CY 2012	& prior
CII List	CY 2012	& prior
Estimate Of Repair	CY 2012	& prior
Period Report Back-Up	CY 2012	& prior
AQMD Inspection Forms	CY 2012	& prior
CNG Daily Inspections	CY 2012	& prior
LCNG Fueling Station Inspection	CY 2012	& prior
Retrofit/Rebuild	CY 2012	& prior

CY = Calendar Year

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

RESOLUTION #287-16

**AUTHORIZATION FOR THE EXECUTION OF THE
CERTIFICATIONS AND ASSURANCES FOR FISCAL
YEAR 2015-2016 LOWCARBON TRANSIT OPERATIONS
PROGRAM (LCTOP).**

WHEREAS, OMNITRANS is an eligible project sponsor and may receive state funding from the Low Carbon Transit Operations Program (LCTOP) now or sometime in the future for transit projects; and

WHEREAS, the statutes related to state-funded transit projects require a local or regional implementing agency to abide by various regulations; and

WHEREAS, Senate Bill 862 (2014) named the Department of Transportation (Department) as the administrative agency for the LCTOP; and

WHEREAS, the Department has developed guidelines for the purpose of administering and distributing LCTOP funds to eligible project sponsors (local agencies); and

WHEREAS, OMNITRANS wishes to delegate authorization to execute these documents and any amendments thereto to the Chief Executive Officer/General Manager.

NOW, THEREFORE, BE IT RESOLVED by the Board of Directors of OMNITRANS that the fund recipient agrees to comply with all conditions and requirements set forth in the Certification and Assurances document and applicable statutes, regulations and guidelines for all LCTOP funded transit projects.

NOW THEREFORE, BE IT FURTHER RESOLVED that the Chief Executive Officer/General Manager be authorized to execute all required documents of the LCTOP program and any Amendments thereto with the California Department of Transportation.

Section 1. The fund recipient, Omnitrans, agrees to comply with all conditions and requirements set forth in the Certification and Assurances and the Authorized Agent documents and applicable statutes, regulations, and guidelines for all LCTOP funded transit projects.

Section 2. Omnitrans CEO/General Manager, P. Scott Graham, is authorized to execute all required documents of the LCTOP Program and any amendments thereto with the Department.

Section 3. The submittal of the following project nominations and allocation requests to the Department in Fiscal Year 2015/2016 LCTOP funds are hereby authorized:

Project Name: Omnitrans Route 290 Pilot Program Expansion

Amount of LCTOP Funds Requested: \$440,000

Project Description: This is a pilot freeway express program, implemented in September 2015. With additional LCTOP funding, Omnitrans will be able to increase the number of weekday trips on Route 290, adding a total of eight trips earlier and later in the day.

Contributing Sponsor: SANBAG

Project Lead: Omnitrans

Project Name: Omnitrans Freeway Express Pilot Program serving Yucaipa, Redlands, Hospitality Lane and San Bernardino Transit Center

Amount of LCTOP Funds Requested: \$300,000

Project Description: This is a freeway express pilot program, serving Yucaipa, Redlands, Hospitality Lane and San Bernardino Transit Center. This freeway express route was ranked the next highest priority freeway express project based on ridership potential, service duplication, and fit of the route into the overall network. With an allocation of LCTOP funding, Omnitrans will implement this route as a pilot program. Contributing Sponsor: SANBAG

Project Lead: Omnitrans

Project Name: Ontario Airport Shuttle Service Pilot Program

Amount of LCTOP Funds Requested: \$554,435

Project Description: The Ontario Airport Shuttle Service involves partnership with Ontario area hotels and may serve both Haven Avenue and Milliken Avenue with high-quality and high-frequency transit. The shuttle service will be developed to meet the needs of Metrolink, the Ontario Airport, and area hotels, and is expected to run with a 20 – 30 minute frequency between the hours of 5:00am and 11:00pm. The service may be utilized by tourists, travelers, local residents, and employees. Omnitrans will utilize LCTOP funds to procure four vehicles initially needed for this service and to begin operation of the service following local control of the Ontario Airport.

Contributing Sponsor: SANBAG

Project Lead: Omnitrans

Section 4. This resolution shall take effect immediately upon its adoption.

PASSED AND ADOPTED at an Omnitrans Board Meeting held on January 6, 2016.

CERTIFICATION

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 6th day of January 2016, by the following vote to wit:

AYES:

NOES:

ABSENT:

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

The foregoing resolution is hereby approved this 6th day of January 2016.

Sam Spagnolo
Chair, Omnitrans Board of Directors

Approved as to form:

Carol Greene
Counsel for Omnitrans

ITEM # E6

DATE: January 6, 2016

TO: Board Chair Sam Spagnolo and Members of the Omnitrans Board of Directors

THROUGH: P. Scott Graham, CEO/General Manager

FROM: Wendy Williams, Director of Marketing & Planning

SUBJECT: COOPERATIVE SERVICE AGREEMENT WITH RIVERSIDE TRANSIT AGENCY

FORM MOTION

Authorize the CEO/General Manager to sign the Interagency Service Agreement between Omnitrans and the Riverside Transit Agency (RTA).

This item was reviewed by the Plans and Programs Committee at its December 8, 2015, meeting, and recommended to the Board of Directors for approval. This item was also reviewed by Omnitrans' legal counsel.

BACKGROUND

Omnitrans maintains Interagency Service Agreements also called Cooperative Service Agreements (CSAs) with each of Omnitrans' neighboring transit agencies. These agreements govern the sharing of information, coordination of schedules, maintenance of shared stops and customer transfer agreements. Omnitrans currently has CSAs with Riverside Transit Agency (RTA), Foothill Transit, Victor Valley Transit Agency (VVTA), Orange County Transportation Authority (OCTA), Mountain Transit, Metrolink, and Los Angeles County Metropolitan Transportation Authority (METRO).

As agencies' services and fare practices change, the agreements require updating. Omnitrans and Riverside Transit Agency jointly requested updates to the CSA language to clarify transfer eligibility and to explicitly include new transit pass and identification information to support the addition of Veteran Discount Fares at each agency.

The current Omnitrans and RTA CSA was approved in August 2008 and has allowed for seamless fixed route bus transfers near the Riverside and San Bernardino County line, at the Jerry Pettis VA Hospital, and at the Riverside Transit Center for riders on either system that choose to use a multi-use pass such as a day pass, 7-day pass or a 31-day pass.

The main points of the August 2008 agreement remain in place in the proposed 2015 Omnitrans and RTA CSA. The new agreement:

1. Explicitly adds Veteran Fares to the list of eligible transfer passes between the two agencies where it was only implicit before;
2. Adds the Military Veteran ID accepted by each transit agency to the other transit agency's acceptable ID list in order to simplify the purchase of reduced veteran fares in either county;
3. Eliminates the contractual language that could require customers to pay an equalizing fare differential should one agency have a higher base fare on regular local bus service; and,
4. Allows Omnitrans pass holders to transfer to RTA's CommuterLink freeway express routes by paying only the premium portion of the CommuterLink fare, rather than paying the entire fare.

These contractual changes are each designed to improve the ease of transferability between the two agencies at locations where our services intersect.

Based on current business practice, approval of the proposed CSA between Omnitrans and RTA will have no fiscal impact on Omnitrans.

CONCLUSION

Approval of this Cooperative Service Agreement will improve the ease of transferability between Omnitrans and RTA while adding no additional cost to Omnitrans.

PSG:WW:JB

**INTERAGENCY SERVICE AGREEMENT BETWEEN
OMNITRANS
AND
THE RIVERSIDE TRANSIT AGENCY (RTA)**

THIS AGREEMENT is made and entered into this ____ day of _____ 2015 by and between Omnitrans, a public agency formed under a Joint Powers Agreement, 1700 W. Fifth Street, San Bernardino, California 92411 (hereinafter referred to as "OMNITRANS"); and the Riverside Transit Agency, a public agency formed under a Joint Powers Agreement, 1825 Third Street, Riverside, California 92507 (hereinafter referred to as "RTA").

RECITALS:

WHEREAS, OMNITRANS and RTA are empowered by law to provide the general public with convenient, safe and accessible transportation within their respective jurisdictions; and

WHEREAS, OMNITRANS and RTA desire to cooperate and coordinate in route planning, scheduling, stops, transfers, fares and information dissemination; and

WHEREAS, both parties agree that this Agreement shall be non-financial in nature;

WHEREAS, this agreement shall supersede any and all previous service agreements;

NOW, THEREFORE, it is mutually understood and agreed by OMNITRANS and RTA as follows:

ARTICLE 1. PUBLIC INFORMATION

OMNITRANS and RTA agree to cooperate in providing the public with specific transit information, advertising the operations of both agencies and promoting the general use of transit.

ARTICLE 2. STOPS

A. OMNITRANS and RTA agree to cooperate in the location, installation and maintenance of all jointly used bus stops, including use of the other's poles and posts at joint transfer points.

B. Each party shall be solely responsible for claims for damages arising out of its installation of its bus stop signs or passenger amenities.

C. Each party agrees to the establishment of stops in the other's service area, subject to approval of each specific stop.

D. Each party may negotiate with the other party regarding boarding restrictions within its respective service area where duplication of service or potential revenue loss may occur.

E. Each party shall be responsible for obtaining any required licenses or permits and paying any necessary fees in order to establish bus stops, install amenities or operate service in either service area.

ARTICLE 3. FARES

Fares may vary in accordance with adopted policies of each party. Each party shall retain all fares collected in the operation of their service.

ARTICLE 4. TRANSFER CONNECTIONS

OMNITRANS and RTA agree to facilitate minimization of passenger waiting time, and both parties shall coordinate schedules whenever practical.

ARTICLE 5. TRANSFER

A. OMNITRANS shall accept RTA'S transfer media valued at OMNITRANS' base fare for that service toward OMNITRANS' fixed route service at locations where OMNITRANS' and RTA's service intersect. In the event that RTA'S base fare is valued at more than OMNITRANS' base fare, no change or credit will be due the passenger. Passengers are not required to top-up their fare to cover any shortfall between the RTA and OMNITRANS base fares. Transfer media includes valid multi-use passes such as daily, weekly and

monthly passes issued for various fare categories including but not limited to full-fare, senior, disabled, Medicare, veteran, student and youth categories.

B. RTA shall accept OMNITRANS' transfer media valued at RTA'S base fare for that service toward RTA'S regular fixed route service at locations where OMNITRANS' and RTA's service intersect. Passengers are not required to top-up their fare to cover any shortfall between the OMNITRANS and RTA base fares. However, passenger must pay any equalizing (or top-up) fare, to transfer to an RTA CommuterLink buses with their applicable premium fare. In the event that OMNITRANS' base fare is valued at more than RTA'S base fare, no change or credit will be due the passenger. Transfer media includes valid multi-use passes such as daily, weekly and monthly passes issued for various fare categories including but not limited to full-fare, senior, disabled, Medicare, veteran, student and youth categories.

C. Transfer media from OMNITRANS shall only be valid on RTA'S CommuterLink buses with a top-up fare being paid (based on the difference between RTA Local and CommuterLink fares). The transfer media are not valid for RTA Dial-A-Ride service.

D. Transfer media from RTA shall not be valid on OMNITRANS', Access service.

E. Each party shall accept the other party's valid employee passes, dependent passes and retiree passes on all fixed route and commuter services in lieu of payment of fare.

F. RTA shall accept Omnitrans' Military Veteran Identification (currently issued by the County of San Bernardino Department of Veteran Affairs) for purchase of RTA's reduced Veterans fares.

F. Omnitrans shall accept RTA's Military Veteran Identification for purchase of Omnitrans' reduced Veterans fares.

ARTICLE 6. OPERATIONAL INFORMATION

Each party shall formally inform the Director of Planning of the other agency of future plans for route and schedule changes, exclusive of temporary demand and emergency situations, no later than 30 days before the changes are scheduled to be implemented.

ARTICLE 7. CONTROL AND RESPONSIBILITY

A. Each party to this Agreement, in its operations pursuant hereto, is acting as an independent contractor and agrees to indemnify and hold the other party, including its officers, directors, employees, agents, subcontractors and suppliers, harmless from and against all claims, losses, damages and expenses, including attorney's fees, on account of bodily injury to or death of any person, or for property damage arising out of the performance of services described in this Agreement, unless caused by the negligence of the other party.

B. Each party to this agreement shall indemnify, defend and hold harmless the other party, including its officers, directors, employees, agents, subcontractors and suppliers, from and against any and all liability or expense including any claim of liability and any and all losses or costs, including legal expenses and costs of expert witnesses and consultants, that may be imposed by the other party solely by virtue of the provisions of Section 895.2 of the California Government Code.

ARTICLE 8. SERVICE TO BE OPERATED

Each party may operate non-duplicating services in the other's jurisdiction with the written approval of the other agency. Every attempt shall be made to coordinate alignments, schedules, stops, fare policies, and route planning for the safety and convenience of the general public.

ARTICLE 9, COMPLIANCE WITH AMERICANS WITH DISABILITIES ACT (ADA)

Each party shall be solely responsible for complying with the Americans with Disabilities Act of 1991 (ADA) as amended, including the provision of parallel ADA demand response service along each party's fixed routes operated in the other party's service area.

ARTICLE 10, NO MONETARY CLAIMS

Neither party shall have any claims against or liabilities to the other party on account of expenses incurred or revenues received or lost as a result of this Agreement except as otherwise provided.

ARTICLE 11. TERMS OF THE AGREEMENT

This Agreement shall be effective on the date of full execution and will remain in effect until terminated by either party by giving 60 days written notice to the other party.

ARTICLE 12. NOTIFICATION AND MAILING ADDRESSES

Any requests and demands made between the parties pursuant to this Agreement are to be directed as follows:

RTA:
Riverside Transit Agency
1825 Third Street
Riverside, CA 92507
Attn: Vince Rouzaud
Chief Procurement & Logistics Officer
(951) 565-5180

OMNITRANS:
Omnitrans
1700 W. Fifth St.
San Bernardino, CA 92411
Attn: P. Scott Graham
CEO/General Manager
(909) 379-7100

Any notices of service and schedule changes are to be directed as follows:

RTA:
Riverside Transit RTA
1825 Third Street
Riverside, CA 92507
Attn: Rohan Kuruppu
Director of Planning
(951) 565-5130

OMNITRANS:
Omnitrans
1700 W. Fifth St.
San Bernardino, CA 92411
Attn: Wendy Williams
Director of Marketing & Planning
(909) 379-7251

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed on the date first above written.

RIVERSIDE TRANSIT AGENCY

OMNITRANS

By _____
Larry Rubio
Chief Executive Officer

By _____
P. Scott Graham
CEO/General Manager

APPROVED AS TO FORM:

By _____
James Donich
General Counsel

APPROVED AS TO FORM:

By _____
Carol Greene
Omnitrans Counsel

ITEM # E7

DATE: January 6, 2016

TO: Board Chair Sam Spagnolo and Members of the Omnitrans Board of Directors

THROUGH: P. Scott Graham, CEO/General Manager

FROM: Wendy Williams, Director of Marketing & Planning

SUBJECT: MUTUAL AID AGREEMENTS WITH VICTOR VALLEY TRANSIT AGENCY (VVTA) AND MOUNTAIN TRANSIT

FORM MOTION

Authorize the CEO/General Manager to sign the Mutual Aid Memorandum of Understanding between Omnitrans and Victor Valley Transit Agency (VVTA); and

Authorize the CEO/General Manager to sign the Mutual Aid Memorandum of Understanding between Omnitrans and Mountain Transit.

This item was reviewed by the Plans and Programs Committee at its December 8, 2015, meeting, and recommended to the Board of Directors for approval. The agreements were also reviewed by Omnitrans' legal counsel Burke, Williams and Sorensen.

BACKGROUND

The Victor Valley Transit Agency (VVTA) and Mountain Transit both deliver transit service into Omnitrans' service area. These services take VVTA and Mountain Transit far from their regular base of operations. For VVTA, the BV-Link service that travels into San Bernardino, Colton and Fontana is one hour outside of VVTA's core service area. For Mountain Transit, the Off-the-Mountain (OTM) Services from Big Bear and Lake Arrowhead ranges from 30 minutes to an hour outside of their core service area.

When a vehicle, customer service, weather or roadway problem occurs within Omnitrans' service area, VVTA and Mountain Transit currently send a road supervisor, mechanic, or similar personnel to respond. This is a relatively expensive and time-consuming process given the distance that ultimately slows down customer travel times. While these occurrences only happen a few times per year, the impact on transit customers can be several hours added to their travel time when they do occur.

Omnitrans, VVTA and Mountain Transit desire to create a mutual aid framework that provides the mechanism for Omnitrans to respond to these issues within the Omnitrans service area and to bill VVTA and Mountain Transit at cost for the services rendered.

These MOUs create this framework which should allow for a faster response time while reducing the combined cost to the agencies by effectively having the closest agency respond. When requested, Omnitrans agrees to respond to accidents, incidents, mechanical issues or similar occurrences for the neighboring transit agencies. Additionally, if the connecting roads are closed by fire, snow or for other reasons, Omnitrans agrees to help collect riders for VVTA and Mountain Transit, in order to have a central location to improve communication and ensure that riders have the quickest access possible to complete their trips. The anticipated collection site is the San Bernardino Transit Center.

In February 2014, SANBAG began a transit efficiency study looking for cooperative approaches that San Bernardino County transit operators could use to reduce costs and/or improve service. While this study is not yet complete, mutual aid agreements have been identified within the study as an area with a potential payoff.

CONCLUSION

Approval of both Mutual Aid agreements will establish a framework for Omnitrans to offer and bill for aid provided to partner county transit agencies.

PSG:WW:JB

MEMORANDUM OF UNDERSTANDING
Between
OMNITRANS
And
VICTOR VALLEY TRANSIT AUTHORITY
For
MUTUAL AID

This Memorandum of Understanding ("MOU") is effective on the Effective Date as defined herein, by and between Omnitrans ("OMNITRANS"), a public agency formed under a Joint Powers Agreement, whose address is 1700 West Fifth St., San Bernardino, California, 92411, and Victor Valley Transit Authority ("VVTA") whose address is address, 17150 Smoketree St., Hesperia, California, 92345. OMNITRANS and VVTA are each a "Party" and collectively the "Parties" as identified herein.

RECITALS:

WHEREAS, VVTA provides service that overlaps with the OMNITRANS service area and, should mutual aid be requested, it may be more timely and more cost-effective for OMNITRANS to respond to the incident; and

WHEREAS, the Parties desire to establish a mutual understanding to provide for OMNITRANS assistance should VVTA experience a service interruption during the course of service provision in the OMNITRANS service area; and

WHEREAS, OMNITRANS agrees to assist upon request and if manpower and equipment resources are available; and

WHEREAS, OMNITRANS shall place a high priority on responding to service disruptions which occur on VVTA routes within OMNITRANS service areas, so long as such assistance does not negatively impact OMNITRANS' own transit operations; and

WHEREAS, this MOU shall supersede any and all previous Mutual Aid service agreements between OMNITRANS and VVTA.

NOW, THEREFORE, OMNITRANS and VVTA in consideration of the mutual covenants hereinafter set forth and intending to be legally bound hereby agree as follows:

1. **Complete Agreement.** This MOU, including any exhibits and documents incorporated herein and made applicable by reference, constitutes the complete and exclusive statement of the terms and conditions of the MOU between OMNITRANS and VVTA, concerning the services provided, and supersedes all prior representations, understandings, and communications between the parties. The above-referenced Recitals are true and correct and are incorporated by reference herein.
2. **OMNITRANS Responsibilities.** OMNITRANS agrees to the following responsibilities for services provided:

- a. Services ("SERVICES") may include, but are not limited to, the temporary provision of OMNITRANS' labor and/or contractors, installation of temporary signage, equipment including rolling stock, transit supervisor assistance/investigation services, coach operator services, maintenance services, tow services, bus storage, parts, and/or fuel. The services provided by Omnitrans under this MOU have a not-to-exceed amount of \$25,000 for the duration of this MOU. The Amount shall not be exceeded unless amended in writing by the mutual consent of the Parties.
 - b. OMNITRANS shall perform SERVICES upon request by VVTA, to the extent that OMNITRANS' manpower and equipment are available and such services' provision does not interfere with OMNITRANS' own service provision.
 - c. OMNITRANS will promptly notify VVTA as soon as it is aware that its manpower and/or equipment will not be available to respond to the VVTA service interruption or request.
 - d. OMNITRANS shall submit an invoice to VVTA for SERVICES provided, by no later than the last day of the month following the month that SERVICES were provided. Each Invoice shall specify the total hours by position or service type provided, as well as any other direct costs attributed to the SERVICE provision. The invoice shall be based on the hourly rates and direct expenses identified in **Exhibit "A"**, Rate Schedule. OMNITRANS has the right to update the rate schedule in Exhibit "A" each year with written notice to VVTA.
 - e. OMNITRANS is acting as an independent contractor under this MOU and shall pay all wages, salaries, and other amounts due to their own personnel in connection with any and all SERVICES provided under this MOU, as well as that which may be required by law. OMNITRANS shall be responsible for all reports and obligations respecting their own personnel, including, but not limited to social security taxes, income tax withholding, unemployment insurance, benefits and workers compensation insurance. OMNITRANS shall have exclusive control over its employees and VVTA shall not have any authority to direct or control employees of OMNITRANS. OMNITRANS' employees or agents shall not be deemed VVTA employees or agents for any purpose.
 - f. OMNITRANS agrees to indemnify, defend and hold harmless VVTA, its member agencies, officers, directors, employees, and agents from and against any and all claims, liabilities, and actions whether legal, equitable or administrative, and costs and expenses (including attorney's fees and reasonable expenses for litigation or settlement) for any loss or damages, bodily injuries, including death, damage to or loss of use of property caused by the negligent acts, omissions, or willful misconduct by OMNITRANS, its officers, directors, employees, or agents in connection with or arising out of the performance of services under this MOU. This obligation shall not apply to negligent acts, omissions or willful misconduct of VVTA, its officers, directors, employees, or agents.
3. **VVTA Responsibilities.** VVTA agrees to the following responsibilities for services provided:
- a. VVTA management shall make a formal request for the specific OMNITRANS' SERVICES by calling the OMNITRANS Dispatcher at the telephone numbers listed in **Exhibit "B"**, Mutual Aid Contact Information and Procedures, attached. OMNITRANS will make available the OMNITRANS Dispatcher Monday through Saturday 0300 to 2345, Sunday 0400 to 2030 with the exception of our closed holidays.

- b. OMNITRANS Dispatcher on duty shall have the authority to approve each VVTA SERVICE request.
 - c. Complete and accurate invoices submitted by OMNITRANS shall be paid by VVTA within thirty (30) days of receipt.
 - d. VVTA agrees to indemnify, defend and hold harmless OMNITRANS, its member agencies, officers, directors, employees, and agents from and against any and all claims, liabilities, and actions whether legal, equitable or administrative, and costs and expenses (including attorney's fees and reasonable expenses for litigation or settlement) for any loss or damages, bodily injuries, including death, damage to or loss of use of property caused by the negligent acts, omissions, or willful misconduct by VVTA, its officers, directors, employees, or agents in connection with or arising out of the performance of this MOU. This obligation shall not apply to negligent acts, omissions or willful misconduct of OMNITRANS, its officers, directors, employees, or agents.
4. **The Parties Mutually Understand and Agree** to the following mutual responsibilities regarding the SERVICE:
- a. This MOU shall commence upon execution by the Parties, and shall continue in full force unless terminated as provided in this MOU.
 - b. This MOU may be amended in writing at any time by the mutual consent of the Parties. No amendment shall have any force or effect unless executed in writing by the Parties. The Parties agree that non-financial administrative changes, such as changes in key personnel, emergency response procedures, etc., may be approved administratively without re-approval by the Agencies' Boards of Directors.
 - c. OMNITRANS or VVTA may terminate this MOU, without cause, by delivering written notice of termination to the other Party not less than thirty (30) calendar days before the date of termination.
 - d. The persons executing this MOU on behalf of the parties hereto warrant that they are duly authorized to execute this MOU on behalf of said parties and that, by so executing this MOU, the parties hereto are formally bound to the provisions of this MOU.
 - e. All notices hereunder and communications required or permitted by this MOU, or changes thereto, or by law to be served on, given to or delivered to any other Party hereto by any other Party to this MOU shall be in writing or authorized in writing, and may be sent by regular mail, email or FAX. Any such notice shall be addressed to:

Notices to OMNITRANS:

Name: Mr. Scott Graham
Title: Chief Executive Officer/General Manager
Address: 1700 West Fifth St.
City, State Zip: San Bernardino, California, 92411
Email: Scott.Graham@omnitrans.org
FAX: 909-889-5779

Notices to VVTA:

Name: Mr. Kevin Kane
Title: Executive Director
Address: 17150 Smoketree St
City, State Zip: Hesperia, California, 92345

Email: kkane@vvta.org
FAX:

- f. The headings of all sections of this MOU are inserted solely for the convenience of reference and are not part of and not intended to govern, limit, or aid in the construction or interpretation of any terms or provision thereof.
- g. The provision of this MOU shall bind and insure to the benefit of each of the parties hereto and all successors or assigns of the parties hereto.
- h. If any term, provision, covenant, or condition of this MOU is held to be invalid, void or otherwise unenforceable, to any extent, by any court of competent jurisdiction, the remainder to this MOU shall not be affected thereby, and each term, provision, covenant or condition of this MOU shall be valid and enforceable to the fullest extent permitted by law.
- i. This MOU may be executed and delivered in any number of counterparts, each of which, when executed and delivered shall be deemed an original and all of which together shall constitute the same MOU. Secure electronic signatures will be permitted.
- j. Neither this MOU, nor any of a Party's rights, obligations or duties hereunder may be assigned in whole or in part by either Party without the prior written consent of the other Party. Any such attempt of assignment shall be deemed void and of no force and effect. Consent to one assignment shall not be deemed consent to any subsequent assignment, nor the waiver of any right to consent to such subsequent assignment.
- k. The Parties warrant that, in the performance of this MOU, they shall comply with all applicable federal, state and local laws, statutes and ordinances and lawful orders, rules and regulations promulgated thereunder.
- l. Either Party shall be excused from performing its obligations under this MOU during the time and to the extent that it is prevented from performing by an unforeseeable cause beyond its control, including but not limited to: any incidence of fire, flood, acts of God, commandeering of material, products, plants or facilities by the federal, state or local government, national fuel shortage, or a material act or omission by the other party, when satisfactory evidence of such cause is presented to the other party, and provided further that such nonperformance is unforeseeable, beyond the control and is not due to the fault or negligence of the party not performing.
- m. This MOU shall be construed and interpreted solely in accordance with the laws of the State of California.

IN WITNESS WHEREOF, this MOU constitutes the entire understanding of the Parties hereto, and there are no other requirements, premises, warranties, covenants or undertakings with respect thereto, and have made and executed this MOU as of the day and year first above written.

OMNITRANS

Victor Valley Transit Authority

By: _____

By: _____

Name: P. Scott Graham

Name: _____

Title: CEO/General Manager

Title: _____

Date: _____

Date: _____

APPROVED AS TO FORM:

APPROVED AS TO FORM:

Name: _____

Name: _____

Title: _____

Title: _____

Exhibit "A", Rate Schedule

OMNITRANS' RATE SCHEDULE AND OTHER DIRECT COSTS

Below is a list of OMNITRANS Positions that may likely be assigned to a Mutual Aid request:

Position and/or Service	Fully Burdened Hourly Rate* or Fully-Allocated Cost
Omnitrans Field Supervisor	\$39.65
Omnitrans Road Call Mechanic and Truck (2 hour minimum)	\$35.96

Other Direct Costs anticipated, may include but not be limited to:

Expense Category	Units	Cost
Omnitrans 40' Ft. Bus and Operator	Hourly Rate*	\$92.65
Contractor Access Van and Operator	Hourly Rate*	\$73.20
Fuel	TBD	Actual Cost
Parts	TBD	Actual Cost

*These rates are based on current OMNITRANS budgeted rates for fully burdened employees. Hourly rates are subject to change over time based on employee salary and benefit increases.

Exhibit “B”

Mutual Aid Contact Information and Procedures

DATE: Tuesday, September 08, 2015
SUBJECT: Transit Mutual Aid Agreements

1. Point of contact (POC):

Each agency’s Dispatcher

Ask Metrolink to make announcements on train if VVTA impacted by road closures:

“Connecting to VVTA please continue to Santa Fe Depot or SBTC”

2. Agency Dispatcher Emergency number:

Omnitrans (909) 884-9580

SANBAG (Metrolink)

MARTA (909) 963-7422

VVTA (760) 948-4021 ex 260 or 261

San Bernardino County Office of Emergency Services (OES)

3. Passenger collection point:

San Bernardino Transit Center (SBTC) Primary location

Normal hours of operations: M-F 0600 – 2100; Sat/Sun 0900 – 1700

24/7 security

Public Lobby

Public Restrooms

Nearby Grocery Store & Restaurants

San Bernardino Metrolink Lobby Alternate location

Lobby hours of operations: M-F 0400 - 2330

4. Locations of effected passenger stops (sweep locations):

VVTA SBTC, Santa Fe Depot, ARMC, Kaiser Fontana, Fontana TC

MARTA SBTC, E & Court, 40th & Waterman, Santa Fe Depot, 2nd & G, 4th & Arrowhead, Greyhound Station, Highland & Boulder

5. Location to temporarily stow buses:

San Bernardino Transit Center (SBTC) Primary location

Omnitrans - EV Alternate location

6. Fuel availability:

CNG Omnitrans (East Valley Yard)

Diesel County fueling stations

7. Accident/Incident Investigations:

VVTA desires that Omnitrans’ Field Supervisors be able to respond to accidents or incidents. Need ensure that Omnitrans forms & policies cover VVTA needs.

8. Dissemination of Information on Changes to Transit Customers:

Social Media

Apps

Facebook

Twitter

Online Resources

Websites

ie511.org (SANBAG site)

Other Agencies

VVTA emergency contact list:

GM:	Simon Herrera.....	909-208-0000
AGM:	Eduardo Espiritu.....	626-710-6363
Operations:	Lora Sanchez.....	760-792-5778
Lead Supervisor:	Brent Johnson.....	760-508-9954
Contract Administrator:	Shelly Cable.....	760-559-8041

MEMORANDUM OF UNDERSTANDING
Between
OMNITRANS
And
MOUNTAIN TRANSIT
For
MUTUAL AID

This Memorandum of Understanding ("MOU") is effective on the Effective Date as defined herein, by and between Omnitrans ("OMNITRANS"), a public agency formed under a Joint Powers Agreement, whose address is 1700 West Fifth St., San Bernardino, California, 92411, and Mountain Transit ("MOUNTAIN TRANSIT") whose address is 41939 Fox Farm Rd., Big Bear Lake, California. OMNITRANS and MOUNTAIN TRANSIT are each a "Party" and collectively the "Parties" as identified herein.

RECITALS:

WHEREAS, MOUNTAIN TRANSIT provides service that overlaps with the OMNITRANS service area and, should mutual aid be requested, it may be more timely and more cost-effective for OMNITRANS to respond to the incident; and

WHEREAS, the Parties desire to establish a mutual understanding to provide for OMNITRANS assistance should MOUNTAIN TRANSIT experience a service interruption during the course of service provision in the OMNITRANS service area; and

WHEREAS, OMNITRANS agrees to assist upon request and if manpower and equipment resources are available; and

WHEREAS, OMNITRANS shall place a high priority on responding to service disruptions which occur on MOUNTAIN TRANSIT routes within OMNITRANS service areas, so long as such assistance does not negatively impact OMNITRANS' own transit operations; and

WHEREAS, this MOU shall supersede any and all previous Mutual Aid service agreements between OMNITRANS and MOUNTAIN TRANSIT.

NOW, THEREFORE, OMNITRANS and MOUNTAIN TRANSIT in consideration of the mutual covenants hereinafter set forth and intending to be legally bound hereby agree as follows:

1. **Complete Agreement.** This MOU, including any exhibits and documents incorporated herein and made applicable by reference, constitutes the complete and exclusive statement of the terms and conditions of the MOU between OMNITRANS and MOUNTAIN TRANSIT, concerning the services provided, and supersedes all prior representations, understandings, and communications between the parties. The above-referenced Recitals are true and correct and are incorporated by reference herein.

2. **OMNITRANS Responsibilities.** OMNITRANS agrees to the following responsibilities for services provided:
- a. Services ("SERVICES") may include, but are not limited to, the temporary provision of OMNITRANS' labor and/or contractors, installation of temporary signage, equipment including rolling stock, transit supervisor assistance/investigation services, coach operator services, maintenance services, tow services, bus storage, parts, and/or fuel. The services provided by Omnitrans under this MOU have a not-to-exceed amount of \$25,000 for the duration of this MOU. The Amount shall not be exceeded unless amended in writing by the mutual consent of the Parties.
 - b. OMNITRANS shall perform SERVICES upon request by MOUNTAIN TRANSIT, to the extent that OMNITRANS' manpower and equipment are available and such services' provision does not interfere with OMNITRANS' own service provision.
 - c. OMNITRANS will promptly notify MOUNTAIN TRANSIT as soon as it is aware that its manpower and/or equipment will not be available to respond to the MOUNTAIN TRANSIT service interruption or request.
 - d. OMNITRANS shall submit an invoice to MOUNTAIN TRANSIT for SERVICES provided, by no later than the last day of the month following the month that SERVICES were provided. Each Invoice shall specify the total hours by position or service type provided, as well as any other direct costs attributed to the SERVICE provision. The invoice shall be based on the hourly rates and direct expenses identified in **Exhibit "A"**, Rate Schedule. OMNITRANS has the right to update the rate schedule in Exhibit "A" each year with written notice to MOUNTAIN TRANSIT.
 - e. OMNITRANS is acting as an independent contractor under this MOU and shall pay all wages, salaries, and other amounts due to their own personnel in connection with any and all SERVICES provided under this MOU, as well as that which may be required by law. OMNITRANS shall be responsible for all reports and obligations respecting their own personnel, including, but not limited to social security taxes, income tax withholding, unemployment insurance, benefits and workers compensation insurance. OMNITRANS shall have exclusive control over its employees and MOUNTAIN TRANSIT shall not have any authority to direct or control employees of OMNITRANS. OMNITRANS' employees or agents shall not be deemed MOUNTAIN TRANSIT employees or agents for any purpose.
 - f. OMNITRANS agrees to indemnify, defend and hold harmless MOUNTAIN TRANSIT, its member agencies, officers, directors, employees, and agents from and against any and all claims, liabilities, and actions whether legal, equitable or administrative, and costs and expenses (including attorney's fees and reasonable expenses for litigation or settlement) for any loss or damages, bodily injuries, including death, damage to or loss of use of property caused by the negligent acts, omissions, or willful misconduct by OMNITRANS, its officers, directors, employees, or agents in connection with or arising out of the performance of services under this MOU. This obligation shall not apply to negligent acts, omissions or willful misconduct of MOUNTAIN TRANSIT, its officers, directors, employees, or agents.

3. **MOUNTAIN TRANSIT Responsibilities.** MOUNTAIN TRANSIT agrees to the following responsibilities for services provided:
- a. MOUNTAIN TRANSIT management shall make a formal request for the specific OMNITRANS' SERVICES by calling the OMNITRANS Dispatcher at the telephone numbers listed in **Exhibit "B"**, Mutual Aid Contact Information and Procedures, attached. OMNITRANS will make available the OMNITRANS Dispatcher Monday through Saturday 0300 to 2345, Sunday 0400 to 2030 with the exception of Omnitrans closed holidays.
 - b. OMNITRANS Dispatcher on duty shall have the authority to approve each MOUNTAIN TRANSIT SERVICE request.
 - c. Complete and accurate invoices submitted by OMNITRANS shall be paid by MOUNTAIN TRANSIT within thirty (30) days of receipt.
 - d. MOUNTAIN TRANSIT agrees to indemnify, defend and hold harmless OMNITRANS, its member agencies, officers, directors, employees, and agents from and against any and all claims officers, directors, employees, and agents from and against any and all claims, liabilities, and actions whether legal, equitable or administrative, and costs and expenses (including attorney's fees and reasonable expenses for litigation or settlement) for any loss or damages, bodily injuries, including death, damage to or loss of use of property caused by the negligent acts, omissions, or willful misconduct by MOUNTAIN TRANSIT, its officers, directors, employees, or agents in connection with or arising out of the performance of this MOU. This obligation shall not apply to negligent acts, omissions or willful misconduct of OMNITRANS, its officers, directors, employees, or agents.
4. **The Parties Mutually Understand and Agree** to the following mutual responsibilities regarding the SERVICE:
- a. This MOU shall commence upon execution by the Parties, and shall continue in full force unless terminated as provided in this MOU.
 - b. This MOU may be amended in writing at any time by the mutual consent of the Parties. No amendment shall have any force or effect unless executed in writing by the Parties. The Parties agree that non-financial administrative changes, such as changes in key personnel, emergency response procedures, etc., may be approved administratively without re-approval by the Agencies' Boards of Directors.
 - c. OMNITRANS or MOUNTAIN TRANSIT may terminate this MOU, without cause, by delivering written notice of termination to the other Party not less than thirty (30) calendar days before the date of termination.
 - d. The persons executing this MOU on behalf of the parties hereto warrant that they are duly authorized to execute this MOU on behalf of said parties and that, by so executing this MOU, the parties hereto are formally bound to the provisions of this MOU.
 - e. All notices hereunder and communications required or permitted by this MOU, or changes thereto, or by law to be served on, given to or delivered to any other Party hereto by any other Party to this MOU shall be in writing or authorized in writing, and may be sent by regular mail, email or FAX. Any such notice shall be addressed to:

Notices to OMNITRANS:

Name: Mr. Scott Graham
Title: Chief Executive Officer/General Manager
Address: 1700 West Fifth St.
City, State Zip: San Bernardino, California, 92411
Email: Scott.Graham@omnitrans.org
FAX: 909-889-5779

Notices to MOUNTAIN TRANSIT:

Name: Ms. Kathy Hawksford
Title: General Manager/Chief Executive Officer
Address: 41939 Fox Farm Rd.
City, State Zip: Big Bear Lake, California, 92315
Email: khawksford@mountaintransit.org
FAX:

- f. The headings of all sections of this MOU are inserted solely for the convenience of reference and are not part of and not intended to govern, limit, or aid in the construction or interpretation of any terms or provision thereof.
- g. The provision of this MOU shall bind and insure to the benefit of each of the parties hereto and all successors or assigns of the parties hereto.
- h. If any term, provision, covenant, or condition of this MOU is held to be invalid, void or otherwise unenforceable, to any extent, by any court of competent jurisdiction, the remainder to this MOU shall not be affected thereby, and each term, provision, covenant or condition of this MOU shall be valid and enforceable to the fullest extent permitted by law.
- i. This MOU may be executed and delivered in any number of counterparts, each of which, when executed and delivered shall be deemed an original and all of which together shall constitute the same MOU. Secure electronic signatures will be permitted.
- j. Neither this MOU, nor any of a Party's rights, obligations or duties hereunder may be assigned in whole or in part by either Party without the prior written consent of the other Party. Any such attempt of assignment shall be deemed void and of no force and effect. Consent to one assignment shall not be deemed consent to any subsequent assignment, nor the waiver of any right to consent to such subsequent assignment.
- k. The Parties warrant that, in the performance of this MOU, they shall comply with all applicable federal, state and local laws, statutes and ordinances and lawful orders, rules and regulations promulgated thereunder.
- l. Either Party shall be excused from performing its obligations under this MOU during the time and to the extent that it is prevented from performing by an unforeseeable cause beyond its control, including but not limited to: any incidence of fire, flood, acts of God, commandeering of material, products, plants or facilities by the federal, state or local government, national fuel shortage, or a material act or omission by the other party, when satisfactory evidence of such cause is presented to the other party, and provided further that such nonperformance is unforeseeable, beyond the control and is not due to the fault or negligence of the party not performing.
- m. This MOU shall be construed and interpreted solely in accordance with the laws of the State of California.

IN WITNESS WHEREOF, this MOU constitutes the entire understanding of the Parties hereto, and there are no other requirements, premises, warranties, covenants or undertakings with respect thereto, and have made and executed this MOU as of the day and year first above written.

OMNITRANS

Mountain Area Regional Transit Authority

By: _____

By: _____

Name: P. Scott Graham _____

Name: _____

Title: CEO/General Manager _____

Title: _____

Date: _____

Date: _____

APPROVED AS TO FORM:

APPROVED AS TO FORM:

Name: _____

Name: _____

Title: _____

Title: _____

Exhibit “A”, Rate Schedule

OMNITRANS’ RATE SCHEDULE AND OTHER DIRECT COSTS

Below is a list of OMNITRANS Positions that may likely be assigned to a Mutual Aid request:

Position and/or Service	Fully Burdened Hourly Rate* or Fully-Allocated Cost
Omnitrans Field Supervisor	\$39.65
Omnitrans Road Call Mechanic and Truck (2 hour minimum)	\$35.96

Other Direct Costs anticipated, may include but not be limited to:

Expense Category	Units	Cost
Omnitrans 40’ Ft. Bus and Operator	Hourly Rate*	\$92.65
Contractor Access Van and Operator	Hourly Rate*	\$73.20
Fuel	TBD	Actual Cost
Parts	TBD	Actual Cost

*These rates are based on current OMNITRANS budgeted rates for fully burdened employees. Hourly rates are subject to change over time based on employee salary and benefit increases.

Exhibit “B”

Mutual Aid Contact Information and Procedures

DATE: Tuesday, September 08, 2015
SUBJECT: Transit Mutual Aid Agreements

1. Point of contact (POC):

Each agency’s Dispatcher
Ask Metrolink to make announcements on train if MOUNTAIN TRANSIT impacted by road closures:
“Connecting to MOUNTAIN TRANSIT please continue to Santa Fe Depot or SBTC”

2. Agency Dispatcher Emergency number:

Omnitrans	(909) 884-9580
SANBAG (Metrolink)	
MOUNTAIN TRANSIT	(909) 963-7422
MOUNTAIN TRANSIT	(760) 948-4021 ex 260 or 261
San Bernardino County Office of Emergency Services (OES)	

3. Passenger collection point:

San Bernardino Transit Center (SBTC)	Primary location
Normal hours of operations:	M-F 0600 – 2100; Sat/Sun 0900 – 1700
24/7 security	
Public Lobby	
Public Restrooms	
Nearby Grocery Store & Restaurants	

San Bernardino Metrolink Lobby	Alternate location
Lobby hours of operations:	M-F 0400 - 2330

4. Locations of effected passenger stops (sweep locations):

MOUNTAIN TRANSIT	SBTC, Santa Fe Depot, ARMC, Kaiser Fontana, Fontana TC
MOUNTAIN TRANSIT	SBTC, E & Court, 40 th & Waterman, Santa Fe Depot, 2 nd & G, 4 th & Arrowhead, Greyhound Station, Highland & Boulder

5. Location to temporarily stow buses:

San Bernardino Transit Center (SBTC)	Primary location
Omnitrans - EV	Alternate location

6. Fuel availability:

CNG	Omnitrans (East Valley Yard)
Diesel	County fueling stations

8. Accident/Incident Investigations:

Mountain Transit desires that Omnitrans' Field Supervisors be able to respond to accidents or incidents. Need to ensure that Omnitrans forms & policies cover Mountain Transit needs.

9. Dissemination of Information on Changes to Transit Customers:

Social Media

Apps

Facebook

Twitter

Online Resources

Websites

ie511.org (SANBAG site)

Other Agencies

ITEM # E8

DATE: January 6, 2016

TO: Board Chair Sam Spagnolo and Members of the Omnitrans Board of Directors

THROUGH: P. Scott Graham, CEO/General Manager

FROM: Jennifer M. Sims, Director of Procurement

**SUBJECT: AUTHORIZE RELEASE – IFB-MKP16-83
PERMANENT FENCE SAN BERNARDINO TRANSIT CENTER (SBTC)**

FORM MOTION

Authorize the CEO/General Manager to release Invitation for Bids IFB-MKP16-83 for the provision of permanent fencing for the San Bernardino Transit Center (SBTC).

BACKGROUND

The design of the San Bernardino Transit Center only included fencing along the east side of the property. Fencing of the north side is necessary to enclose the property for increased safety and security. The Base Bid includes fencing on the north side of the property and gates on north and east sides. Option 1 adds gates and fencing at the entrance driveways. Option 2 adds fence enclosures around the trees and light poles in the medians inside the property.

In accordance with the Procurement Policy 2000, Section 2.3.5.1.3 and FTA Circular 4220.1F, Board authorization and use of a formal procurement procedure is required to release Invitation for Bids for construction procurements exceeding \$100,000. The Independent Cost Estimate (ICE) for this project including base bid and all options is \$289,775.

FUNDING SOURCES

Funding for this contract will be determined from the following sources:

FUNDING	GRANT #	YEAR	PROJECT NAME	INTERNAL ORDER	AMOUNT
FTA	TBD	TBD	SBTC Fence	H1430901F	\$231,820
STA	TBD	TBD	SBTC Fence	H1430901B	\$ 57,955

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

Short Range Transit Plan/Strategic Initiative Supported – Strategic Initiative 4 – San Bernardino Transit Center

CONCLUSION

By authorizing the CEO/General Manager to proceed with the release of this solicitation, Omnitrans will be able to enhance the securement of the San Bernardino Transit Center.

PSG:JMS:CVM

ITEM # _____ E9 _____

DATE: January 6, 2016

TO: Board Chair Sam Spagnolo and Members of the Omnitrans Board of Directors

THROUGH: P. Scott Graham, CEO/General Manager

FROM: Jennifer M. Sims, Director of Procurement

**SUBJECT: AUTHORIZE RELEASE – IFB-MNT16-14
NEW FLYER MISCELLANEOUS BUS PARTS**

FORM MOTION

Authorize the CEO/General Manager to release Invitation for Bids IFB-MNT16-14 for the provision of New Flyer Miscellaneous Bus Parts for a one (1) year base period, and four (4) single year options, beginning April 3, 2016 and ending no later than April 30, 2021.

BACKGROUND

Omnitrans owns, operates, and maintains 186 New Flyer buses as part of its revenue fleet . Parts delivered under the contracts resulting from this solicitation will be used in the repair and maintenance of these vehicles.

The current base year contract bench, MNT13-14A-R expires April 2, 2016. Omnitrans elects not to exercise the available option years and to re-solicit for bus parts as Omnitrans and New Flyer were never able to execute a contract and several vendors are not able to provide the parts in the time required. This new solicitation will allow for annual price increases based on the annual Consumer Price Index (CPI) which will encourage more vendors to enter into a multi-year contract.

In accordance with the Procurement Policy 2000, Section 2.3.5.1.3 and FTA Circular 4220.1F, Board authorization and use of a formal procurement procedure is required to release Invitation for Bids for procurements for good/services exceeding \$100,000. The Independent Cost Estimate for this project is \$8,622,000 for a five-year period.

FUNDING SOURCE

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

Department Number	1200
Expenditure Code	504010

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

Short Range Transit Plan/Strategic Initiative Supported – This procurement supports Omnitrans' Short Range Transit Plan goal to expand, maintain and improve existing vehicles, facilities and passenger amenities.

CONCLUSION

By proceeding with this solicitation, Omnitrans' will have the ability to repair and maintain Omnitrans' fleet of buses.

PSG:JMS:CVM

Metro to get \$3B from transit bill

Agencies get 5 years of funding to fix highways, bridges, expand rail, bus service

By Steve Scauzillo

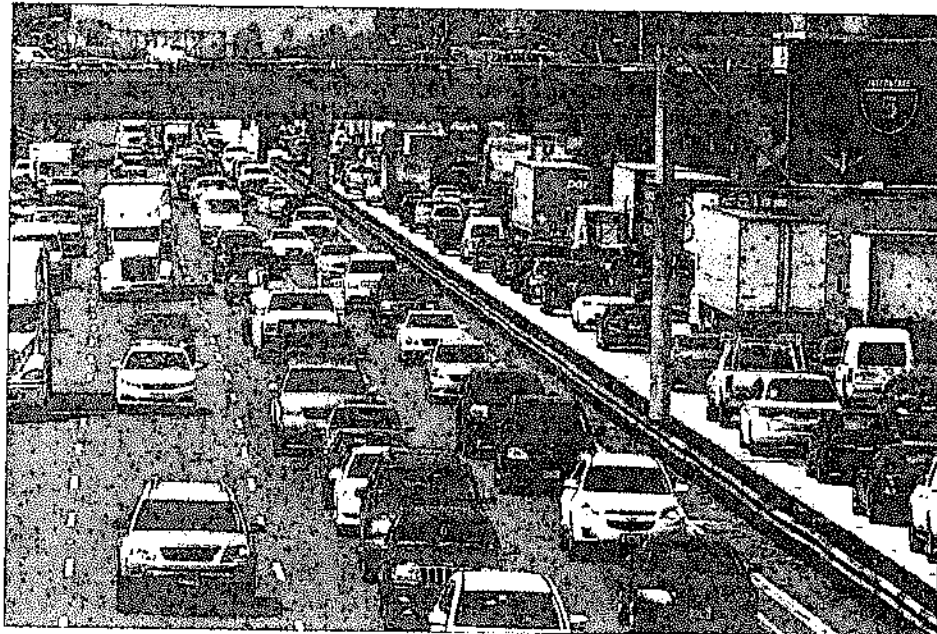
steve.scauzillo@langnews.com
@stevescauz on Twitter

The Los Angeles County Metropolitan Transportation Authority (Metro) could receive \$3 billion in highway funding over the next five years from a new transit bill passed by Congress and signed into law by President Barack Obama last week, according to Metro officials.

Freeway projects that could gain from the funding include: the 5 Freeway widening west of the 605, the 710 south project, improvements to the 60 from Los Angeles to the Inland Empire, and the 2-mile convergence of the 57 and 60 freeways in Diamond Bar near Industry, said Raffi Hamparian, Metro director of federal affairs.

In addition, Metro will receive an allotment for new rail projects from the \$305 billion Fixing America's Surface Transportation Act. Projects that could gain additional federal funding include: the extension of the Purple Line to West Los Angeles and the 1.9-mile regional connector in downtown Los Angeles that will connect Gold Line riders with the Red Line, eliminating a stop at Union Station, he said.

The five-year bill for the first time in the history of transportation funding includes \$10.8 billion for freight, or what planners call goods movement. In Southern California, the ports of Los Angeles and Long Beach, as well as Caltrans and Metro will benefit from federal dollars aimed at moving goods such as computers and TVs from Asia into the ports and then transporting them across the state, the West and the United States.



STAFF FILE PHOTO

Widening of the 5 Freeway west of the 605 is a project that could gain from new funding.

"This part of the bill is important as we cement our economic recovery," said Hasan Ikhrata, executive director of the Southern California Association of Governments, a planning and lobbying agency representing six Southern California counties.

The Alameda Corridor-East Construction Authority, which builds freeway underpasses so cars, trucks and public safety vehicles can pass without stopping for trains, may also benefit, Hamparian said. Metro provides 17 percent of the agency's budget, he said. The agency is building grade separations in the San Gabriel Valley and will be starting a project in Pico Rivera.

The FAST Act increases funding for rail and bus transit by 20 percent, providing \$13 billion over five years, according to Rep. Grace Napolitano, D-El Monte, a member of the House Transportation Committee who helped shape the final version as a

member of the House-Senate conference committee.

Some of the money is not simply distributed to the states, counties and transit agencies but is up for grabs via competitive grants and loans. The Transportation Infrastructure Finance and Innovation Act also was reauthorized. The U.S. Department of Transportation could provide up to \$3 billion annually in TIFIA low-interest loans. Hamparian said the agency will go after new TIFIA loans aggressively to augment funding for costly Metro transit projects. Nearly 80 percent of capital costs are paid for from three different tax measures passed by county voters. An additional sales tax measure is planned for the November 2016 ballot, from which the Foothill Gold Line phase 2b extension may be funded.

"This bill is helping us complete pieces of the funding puzzle that will benefit in real time the residents of Los Angeles County,"

Hamparian said.

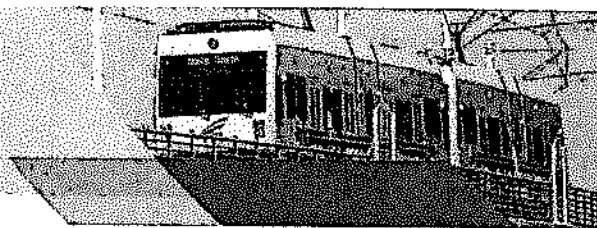
Napolitano said California will receive about \$26 billion for fixing damaged roads, crumbling bridges and building new rail and bus systems. The FAST Act is the first long-term transportation bill passed by Congress in 10 years. It is funded by a dwindling gasoline tax and \$70 billion from the General Fund.

Ikhrata said even with FAST, funds from the 2016 county transportation measure also will be needed. Neither will come close to the \$140 billion Southern California needs for transportation improvements, SCAG estimates.



California Transit
Association

Transit California



Preparedness Put to the Test Omnitrans Answers Call to Move Evacuees from San Bernardino Attack Site

By Stephanie Jordan
Managing Editor
Transit California

The first official word of the attack came in a tweet from the San Bernardino Fire Department's official Twitter account at 11:14 a.m. on 2 December 2015. The Tweet said: "SBFD units responding to reports of 20 victim shooting incident in 1300 block of S. Waterman. SBPD is working to clear the scene."

In the end, 14 people were killed and 22 injured in what is being called an Islamic extremism-inspired terrorist attack, consisting of a mass shooting (and attempted bombing) at the Inland Regional Center in San Bernardino. Syed Rizwan Farook and Tashfeen Malik, a married couple living in the city of Redlands, targeted a San Bernardino County Department of Public Health training event and holiday party of about 80 employees in a rented banquet room. After the attack, the couple fled and later was killed by police in a shootout.

As part of the emergency management of the situation, County of San Bernardino Emergency Operations Center (EOC) called upon Omnitrans to help transport people evacuated from the Inland Regional Center and surrounding businesses after the shooting. Initially people were taken from the incident scene to a local church where they could be interviewed by local law enforcement. Later people were transported to a community center where they reunited with family and friends. Four Omnitrans vehicles including three 40-foot and one 60-foot bus were pressed into service transporting over 460 passengers. Two law enforcement officers accompanied each bus.



In photo above, people evacuated from the Inland Regional Center board buses in the aftermath of the December 2 terrorist attack in San Bernardino. At right, Omnitrans buses line up at a staging area to transport evacuees.



"We played a limited, but important role in assisting our first responders during this tragic event," said Omnitrans CEO P. Scott Graham.

It is a role that the agency had prepared for.

"The goal is to be prepared for anything," says Wendy Williams, the agency's Director of Marketing and Planning. "We've participated in lots of exercises and drills. We have learned from past experience how to respond to emergencies, although most have been in response to natural disasters."

A key lesson learned is to have a clear process in place for when a call comes in during or in the aftermath of an incident.

"We often get multiple calls from well-intended individuals or even organizations that say 'we need to transport people out of here'; however, as much as we are willing to help, we have to tell them that they need to go through our EOC. The need for this is primarily to not add to the possible chaos of the situation," explains Williams.

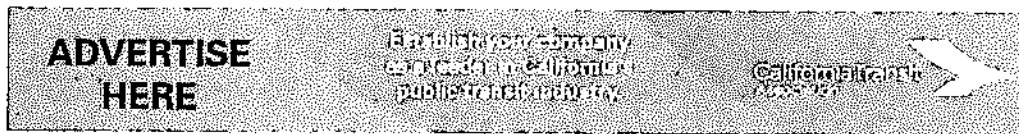
Indeed, to have buses show up to an area that is already strained by a catastrophic event could cause more harm than good. Omnitrans security will only act after a situation has been vetted through the county's EOC.

As part of the county emergency communication network, Omnitrans security staff was notified of the active shooter situation at the Inland Regional Center within minutes of initial 911 calls. Bus service to the immediate area was detoured, however Omnitrans worked to maintain as much regularly scheduled service as possible in other unaffected areas. Coach operators and other employees were notified of the emergency situation and security guards at the San Bernardino Transit Center and Omnitrans headquarters in San Bernardino were placed on heightened alert, but both facilities remained open to the public.

At the time of the incident, it was a yellow school bus service that was called upon to help evacuate, since it was just a mile away from the scene. Omnitrans sent just one bus. But later the additional Omnitrans buses were called in, as the school bus service was needed to maintain its transport of students.

Another key to training and preparing in advance is to have mechanisms in place to track the activity that is needed. Williams notes that something as simple as having a special route code established can be essential, especially for any incident that might be eligible for FEMA reimbursement. With a code, data can more easily be verified, such as recording ridership numbers and other vital statistics.

"It is very important that transit agencies engage with county emergency responders and to identify someone at the agency that maintains close ties and builds an ongoing partnership," believes Williams. "The result is a much more unified coordinated response, whether it's a nursing home that needs evacuating, a natural disaster situation or something as tragic as what took place at the Inland Regional Center. It is never a question of if your agency will be called upon to help the community, it is question of *when*."



ITEM # F1

DATE: January 6, 2016

TO: Board Chair Sam Spagnolo and Members of the Omnitrans Board of Directors

FROM: P. Scott Graham, CEO/General Manager

SUBJECT: CEO/GENERAL MANAGER'S REPORT

Omnitrans provided an orientation and tour of the sbX Corridor to the City of Torrance on December 3, 2015, who is in the initial planning stages of their first bus rapid transit route.

Omnitrans staff greeted Loma Linda University Health System employees at the sbX park-and-ride lot in Loma Linda on Monday, December 21, the first day of their GoSmart program. A long term construction project is severely reducing employee parking at one of their facilities, so the administration contracted with Omnitrans to provide bus rides for employees as one transportation alternative. Over 100 employees hopped on board the first day. Employees just need to swipe their IDs at the fare box to ride. The program applies to all Omnitrans fixed route services.

The proposed amendment to Omnitrans Joint Powers Agreement was reviewed at the Administrative and Finance Committee, December 10, 2015. Legal Counsel was directed to incorporate several of the changes received from JPA member entities and the proposed amendment is scheduled to be presented to the Board of Directors for approval in February.

Visited the San Bernardino Transit Center with Board Vice Chair Ron Dailey on Wednesday, December 23, 2015. Discussion focused on security costs and posture, fencing (January solicitation), Metrolink/Redlands Rail completion date, parking availability, and customer satisfaction.

PSG

ITEM # F2

DATE: January 6, 2016

TO: Board Chair Sam Spagnolo and Members of the Omnitrans Board of Directors

FROM: Carol Greene, Legal Counsel

SUBJECT: ADOPT CEO/GENERAL MANAGER EVALUATION PROCESS

FORM MOTION

Approve Evaluation Form to be used to complete the CEO/General Manager's Evaluation, appoint the Board Chair as Chief Negotiator to negotiate any recommended amendments to the Employment Agreement (Agreement) between Omnitrans and CEO/General Manager P. Scott Graham, and set Wednesday, February 3, 2016, as the date to discuss the evaluation during Closed Session.

BACKGROUND

In discussion at the Executive Committee meeting held November 6, 2015, the Committee agreed to utilize the same process to conduct the CEO/General Manager evaluation that was utilized in 2015.

The attached Evaluation Form, approved by the Board of Directors in February 2015, was revised from that used with prior CEO's and better focuses on a Board's evaluation of an incumbent in the position.

If approved, the Evaluation Form will be mailed and emailed to all Board Members for completion. Responses will be returned to Legal Counsel, who will then compile the responses for discussion during the Closed Session scheduled for the Board of Directors' on February 3, 2016. During Closed Session, the Board will provide direction to the Board Chair of any recommendations for changes to the Agreement. If there are recommended changes to the Agreement, the Board Chair will negotiate any changes with the CEO/General Manager and present the revised Agreement to the Board of Directors for approval at the Board of Directors' Meeting in March. The Board Chair will discuss the results of the evaluation with the CEO/General Manager.

CG:VD

CEO/ GENERAL MANAGER ANNUAL EVALUATION OMNITRANS

FISCAL MANAGEMENT

Oversees creation and management of Omnitrans annual operating and capital budget; maintains a fiscally conservative posture for Omnitrans; assures OMNITRANS exerts proper financial controls and makes efforts to minimize waste; seeks outside funding sources; coordinates ongoing management of grant funds; coordinates management of OMNITRANS funds; keeps Board members advised of budget issues; adheres to budget guidelines.

POOR	NEEDS IMPROVEMENT	COMPETENT	HIGHLY COMPETENT	EXCEPTIONAL	SCORE
1	2	3	4	5	

Comments:

COMMUNICATION

Keeps Board members informed on matters of importance in a manner that is clear, appropriately concise and consistent with the facts available. Seeks input from Board members in developing options and programs; provides a monthly management report for all Board meetings and weekly updates; provides new Board member orientation as appropriate; prepares written documents in a thorough and professional manner; delivers well prepared, concise, and understandable public presentations.

POOR	NEEDS IMPROVEMENT	COMPETENT	HIGHLY COMPETENT	EXCEPTIONAL	SCORE
1	2	3	4	5	

Comments:

CEO/ GENERAL MANAGER ANNUAL EVALUATION OMNITRANS

RESPONSIVENESS

Responds quickly to Board member requests; responds effectively to each jurisdiction requests; follows up on transit issues involving member jurisdictions; makes recommendations for Board consideration of new services and products. Work effectively with local governments and community organizations.

POOR	NEEDS IMPROVEMENT	COMPETENT	HIGHLY COMPETENT	EXCEPTIONAL	SCORE
1	2	3	4	5	

Comments:

PLANNING & ORGANIZATION

Implements the Short Range Transit Plan (S RTP) approved by the Board and monitors the implementation of the S RTP through the key performance indicators and recommends changes as needed. Effectively coordinates administrative affairs of the OMNITRANS office; prioritizes and plans work activities; supervises staff effectively and supports their professional development; prepares meeting agenda and related reports; plans for long range projects; ensures systems are current and able to meet growth of OMNITRANS.

POOR	NEEDS IMPROVEMENT	COMPETENT	HIGHLY COMPETENT	EXCEPTIONAL	SCORE
1	2	3	4	5	

Comments:

CEO/ GENERAL MANAGER ANNUAL EVALUATION OMNITRANS

PROFESSIONAL DEVELOPMENT

Demonstrates knowledge of transit issues, standards and trends; expands knowledge in related and new areas of benefit to Omnitrans; shares new information with Board members; accepts criticism and feedback; makes recommendations on training ideas, conferences, and programs.

POOR	NEEDS IMPROVEMENT	COMPETENT	HIGHLY COMPETENT	EXCEPTIONAL	SCORE
1	2	3	4	5	

Comments:

PERSONAL EFFECTIVENESS

Demonstrate initiative, responsiveness and a positive can-do attitude. Demonstrates personal standards of excellence and establishes self as a positive leader of Omnitrans, both inside and outside of the organization.

POOR	NEEDS IMPROVEMENT	COMPETENT	HIGHLY COMPETENT	EXCEPTIONAL	SCORE
1	2	3	4	5	

Comments:

**CEO/ GENERAL MANAGER
ANNUAL EVALUATION
OMNITRANS**

OVERALL EVALUATION

To develop an overall evaluation rating, consider your rating of the other factors and indicate the rating factor below that most closely reflects your overall appraisal of the incumbent in relation to the job requirements. The overall rating is not meant to be a simple average of the previous individual rating factors. A poor score on any single factor, if serious enough, could have enough weight to lower an overall rating, even if other scores are relatively high. Conversely, such a poor score need not have a serious impact on the total score.

POOR	NEEDS IMPROVEMENT	COMPETENT	HIGHLY COMPETENT	EXCEPTIONAL	SCORE
1	2	3	4	5	

Comments:

ITEM # F3

DATE: January 6, 2016

TO: Board Chair Sam Spagnolo 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 (BENCH) – CONTRACTS MKP16-49A-C
PROMOTIONAL ITEMS**

FORM MOTION

Authorize the CEO/General Manager to award Contracts MKP16-49A to RED Company of Long Beach, CA, Contract MKP16-49B to Authentic Promotions.com of Carmichael, CA, and Contract MKP16-49C to Offbeat Productions of Park City, UT, for the provision of Promotional Items. Contract durations shall be for a three (3) year base period beginning January 6, 2016, and ending January 5, 2019, in the aggregate amount of \$85,602, and the authority to exercise two (2) single year options, extending the contracts to no later than January 5, 2021, in the aggregate amount of \$29,683 for Option Year One, and \$30,277 for Option Year Two, totaling \$145,562, plus a 10% contingency of \$14,556, for a total not-to-exceed amount of \$160,118, should all option years be exercised.

BACKGROUND

As part of Omnitrans' marketing outreach efforts, the Agency offers an array of promotional items such as pens, pencils, backpacks, coffee mugs, etc. to promote Omnitrans' services to customers, community members, stakeholders and industry members at conferences, fairs and public outreach events.

On October 7, 2015, Omnitrans' Board of Directors authorized the release of Invitation for Bids IFB-MKP16-49. Notices were published in two local newspapers of general circulation and posted on Omnitrans' online bidding system. Sixteen bids were received by the November 3, 2015 deadline. Nine bids were found to be responsive.

Option years will be priced according to the Consumer Price Index (CPI). Award is being made to the three (3) lowest, responsive and responsible bidders that bid on each item. When items are not available from the lowest bidder, Omnitrans reserves the right to order from the next lowest bidder, on an as needed basis.

The Independent Cost Estimate was based on the projected annual usage of \$27,971 or a total estimated value of \$139,855 for five (5) years.

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

FUNDING SOURCE

The cost associated with this procurement is budgeted in the Various Operating budgets as follows:

Department	Various
Expenditure Code	509080 and 509260

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

Short Range Transit Plan/Strategic Initiative Supported – N/A

CONCLUSION

By proceeding with this award, Omnitrans will have logo items to promote Omnitrans at conferences, events and venues.

PSG:JMS:KT



CONTRACT AGREEMENT

between

RED Company
6009 Loynes Dr.
Long Beach, CA 90803

(hereinafter "CONTRACTOR")
Telephone: (562) 493-1270
Fax: (775) 743-7095
E-mail: carmela@red-company.com

And

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

CONTRACT DOCUMENTS

CONTRACT NO. MKP16-49A

PROMOTIONAL ITEMS BENCH

Contract Amount: \$5,000.00

Omnitrans Project Manager:

Name: Nicole Ramos
Title: Marketing Manager
Telephone: (909) 379-7155
Fax: (909) 888-0524
Email:

Contract Administrator:

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



TABLE OF CONTENTS

1.	SCOPE OF WORK.....	4
2.	PERIOD OF PERFORMANCE.....	4
3.	CONTRACT OPTIONS	5
4.	COMPENSATION.....	5
5.	INVOICING AND PAYMENT.....	6
6.	AUDIT AND INSPECTION OF RECORDS.....	6
7.	NOTIFICATION	7
8.	OMNITRANS' AND CONTRACTOR'S REPRESENTATIVES.....	7
9.	DISPUTE RESOLUTION.....	8
10.	TERMINATION FOR CONVENIENCE	9
11.	TERMINATION FOR BREACH OF AGREEMENT	9
12.	ASSIGNMENT.....	10
13.	SUBCONTRACTING.....	10
14.	INDEPENDENT CONTRACTOR.....	11
15.	INSURANCE	11
16.	INDEMNITY.....	12
17.	REVISIONS IN SCOPE OF WORK.....	12
18.	RIGHTS IN TECHNICAL DATA	12
19.	OWNERSHIP OF REPORTS AND DOCUMENTS.....	13
20.	OWNERSHIP RIGHTS.....	13

21.	WORK FOR HIRE	14
22.	SUBMITTAL OF CLAIMS BY CONTRACTOR.....	14
23.	EQUAL OPPORTUNITY	14
24.	STANDARD OF PERFORMANCE	14
25.	NOTIFICATION OF EMPLOYMENT OF OMNITRANS BOARD MEMBERS/ALTERNATES AND EMPLOYEES	15
26.	DISQUALIFYING POLITICAL CONTRIBUTIONS	15
27.	COMPLIANCE WITH LAW	15
28.	COMPLIANCE WITH LOBBYING POLICIES.....	16
29.	PUBLIC RECORDS ACT.....	16
30.	WAIVER/INVALIDITY	17
31.	FORCE MAJEURE.....	17
32.	CONFIDENTIALITY	17
33.	CONTRACTOR’S INTERACTION WITH THE MEDIA AND THE PUBLIC	17
34.	GOVERNING LAW	18
35.	MODIFICATIONS TO AGREEMENT	18
36.	LICENSING, PERMITS AND INSPECTION COSTS.....	18
37.	PRECEDENCE	19
38.	ENTIRE AGREEMENT	19

ATTACHMENT A – SCOPE OF WORK

ATTACHMENT B – PRICING

ATTACHMENT C – MINIMUM INSURANCE REQUIREMENTS

This Agreement is made and entered into as of this 6th day of January, 2016 by and between Omnitrans (hereinafter referred to as "OMNITRANS") and RED Company (hereinafter referred to as "CONTRACTOR").

RECITALS

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

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

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

1. SCOPE OF WORK

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

2. PERIOD OF PERFORMANCE

The term of this Agreement shall be from the date of execution of this Agreement and continue in effect through January 5, 2018 unless terminated as specified in Section 10 and 11 of this Agreement. Omnitrans has no obligation to purchase any specified amount of products/services. All applicable indemnification provisions in this Agreement shall remain in effect following the termination of this Agreement.

Omnitrans' election to extend the Agreement beyond the Initial Term shall not diminish its right to terminate the Agreement for Omnitrans' convenience or CONTRACTORS default as provided elsewhere in this Agreement. The "maximum term" of this Agreement shall be the period extended from January 6, 2018 Through January 5, 2020, which period encompasses the Initial Term, Option Year 1 and Option Year 2.

3. CONTRACT OPTIONS

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

4. COMPENSATION

For CONTRACTOR's full and complete performance of its obligations under this Agreement, OMNITRANS shall pay CONTRACTOR on a FIXED PRICE basis at the fully burdened fixed rates shown in Attachment B, and subject to the maximum cumulative payment obligation.

OMNITRANS' maximum cumulative payment obligation under this Agreement shall not exceed Five Thousand Dollars (\$5,000.00), including all amounts payable to CONTRACTOR for all costs, including but not limited to direct labor, other direct costs, subcontracts, indirect costs including, but not limited to, leases, materials, taxes, insurance, and profit.

5. INVOICING AND PAYMENT

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

CONTRACTOR shall submit invoices in duplicate to:

OMNITRANS
1700 West Fifth Street
San Bernardino, CA 92411
Attn: Accounts Payable
Accountspayable@omnitrans.org

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

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

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

6. AUDIT AND INSPECTION OF RECORDS

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

Agreement unless OMNITRANS' written permission is given to CONTRACTOR to dispose of material prior to this time.

7. NOTIFICATION

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

To OMNITRANS:

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

To CONTRACTOR:

RED Company
6009 Loynes Drive
Long Beach, CA 90803
Attn: Carmela Roth

8. OMNITRANS' AND CONTRACTOR'S REPRESENTATIVES

A. OMNITRANS' Project Manager

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

Project Manager: Nicole Ramos, Marketing 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>
Carmela Roth	President
_____	_____
_____	_____

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

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

9. DISPUTE RESOLUTION

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

- A. The parties shall first attempt to resolve the dispute informally in meetings or communications between proposer and OMNITRANS.

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

10. TERMINATION FOR CONVENIENCE

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

11. TERMINATION FOR BREACH OF AGREEMENT

- A. If CONTRACTOR fails to perform any of the provisions of this Agreement or so fails to make progress as to endanger timely performance of this Agreement, OMNITRANS may give CONTRACTOR written notice of such default. If CONTRACTOR does not cure such default or provide a plan to cure such default which is acceptable to OMNITRANS within the time permitted by OMNITRANS, then OMNITRANS may terminate this Agreement due to CONTRACTOR's breach of this Agreement.
- B. If a federal or state proceeding for relief of debtors is undertaken by or against CONTRACTOR, or if CONTRACTOR makes an assignment for the benefit of creditors, then OMNITRANS may immediately terminate this Agreement.
- C. If CONTRACTOR violates Section 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.

12. ASSIGNMENT

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

13. SUBCONTRACTING

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

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

14. INDEPENDENT CONTRACTOR

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

15. INSURANCE

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;
- 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.

16. INDEMNITY

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

17. REVISIONS IN SCOPE OF WORK

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

18. RIGHTS IN TECHNICAL DATA

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

however, publication of this material is subject to the prior written approval of OMNITRANS. The provisions of this paragraph shall survive termination or expiration of this Agreement and/or final payment thereunder.

19. OWNERSHIP OF REPORTS AND DOCUMENTS

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

20. OWNERSHIP RIGHTS

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

Documentation shall be governed by the License Agreement by and between the parties of event date herewith.

21. WORK FOR HIRE

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

22. SUBMITTAL OF CLAIMS BY CONTRACTOR

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

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

23. EQUAL OPPORTUNITY

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

24. STANDARD OF PERFORMANCE

- A. CONTRACTOR shall perform and exercise, and require its subcontractors to perform and exercise due professional care and competence in the performance of the Work in accordance with the requirements of this Agreement. CONTRACTOR shall be responsible for the professional quality, technical accuracy, completeness and coordination of the Work, it being understood that OMNITRANS will be relying upon such professional quality, accuracy, completeness and coordination in utilizing the Work. The foregoing obligations and standards shall constitute the “Standard of Performance” for purposes of this Agreement. The provisions of this

paragraph shall survive termination or expiration of this Agreement and/or final payment thereunder.

- B. All workers shall have sufficient skill and experience to perform the Work assigned to them. OMNITRANS shall have the right, at its sole discretion, to require the immediate removal of CONTRACTOR's personnel at any level assigned to the performance of the Work at no additional fee or cost to OMNITRANS, if OMNITRANS considers such removal in its best interests and requests such removal in writing and such request is not done for illegal reasons. Further, an employee who is removed from performing Work under this Agreement under this Article shall not be re-assigned to perform Work in any other capacity under this Agreement without OMNITRANS' prior written approval.

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

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

26. DISQUALIFYING POLITICAL CONTRIBUTIONS

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

27. COMPLIANCE WITH LAW

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.

28. COMPLIANCE WITH LOBBYING POLICIES

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

29. PUBLIC RECORDS ACT

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

30. WAIVER/INVALIDITY

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

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

31. FORCE MAJEURE

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

32. CONFIDENTIALITY

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

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

- A. OMNITRANS shall review and approve in writing all OMNITRANS related copy proposed to be used by CONTRACTOR for advertising or public relations purposes prior to publication. CONTRACTOR shall not allow OMNITRANS related copy to be published in its advertisements and public relations programs prior to receiving such approval. CONTRACTOR shall ensure that all published information is factual and that it does not in any way imply that OMNITRANS endorses CONTRACTOR's firm, service, and/or product.
- B. CONTRACTOR shall refer all inquiries from the news media to OMNITRANS, and shall comply with the procedures of OMNITRANS' Public Affairs staff regarding statements to the media relating to this Agreement or the Work.

- C. If CONTRACTOR receives a complaint from a citizen or the community, CONTRACTOR shall inform OMNITRANS as soon as possible and inform OMNITRANS of any action taken to alleviate the situation.
- D. The provisions of this Article shall survive the termination or expiration of this Agreement.

34. GOVERNING LAW

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

35. MODIFICATIONS TO AGREEMENT

Unless specified otherwise in the Agreement, this Agreement may only be modified by written mutual consent evidenced by signatures of representatives authorized to enter into and modify the Agreement. In order to be effective, amendments may require prior approval by OMNITRANS' Board of Directors, and in all instances require prior signature of an authorized representative of OMNITRANS.

36. LICENSING, PERMITS AND INSPECTION COSTS

- 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.

37. 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) provisions of IFB-MKP16-49 and (4) CONTRACTOR's proposal dated November 3, 2015.

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

RED COMPANY

P. SCOTT GRAHAM
CEO/General Manager

CARMELA ROTH
President

DATE

Federal Tax I.D. No. 26-1357424

**ITEM #F3
AUTHORIZE AWARD (BENCH)
CONTRACTS MKP16-49A-C
PROMOTIONAL ITEMS**

**ATTACHMENT A – SCOPE OF WORK
&
ATTACHMENT C
INSURANCE REQUIREMENTS**

APPLY TO ALL THREE CONTRACTS

ATTACHMENT A – SCOPE OF WORK
MKP16-49A
PROMOTIONAL ITEMS

1. BACKGROUND

Contractors shall work with Omnitrans to provide promotional material for dissemination within and outside of Omnitrans. Contractors must have a representative assigned to Omnitrans' account to ensure clear and timely communication.

2. OMNITRANS LOGOS

A. Customization with Omnitrans' logo include, but are not limited to: 1 color imprints, 2 color imprints, 3 color imprints, debossed logos, hot stamps, etching, laser engraving and PMS Color identification. Omnitrans must be provided with samples to verify PMS color scheme. The final product PMS colors must match Omnitrans' graphic standards otherwise a full refund must be received by the Agency or a new order placed based on Omnitrans' discretion.

B. PMS Color schemes are:

CMYK:
 55c 15m 100y 0k
 90c 65m 0y 0k

RGB
 131r 187g 65b
 32r 98g 176b

PMS
 369C
 660C

ATTACHMENT A – SCOPE OF WORK

MKP16-49A

PROMOTIONAL ITEMS

- C. Sample artwork of the Omnitrans logo:



- D. Pictures of prospective items for purchase are made as part of this Attachment, Exhibit 1. Pictures are provided as an example of the types of promotional materials that Omnitrans has previously required.

3. REQUIREMENTS

- A. Omnitrans requires the purchase of promotional merchandise for dissemination within and outside of the Agency. Items include, but are not limited to: tote bags, pens, twill caps, pencils, hand fans, rectangular key lights, folding umbrellas, first aid kits, buttons, drawstring bags, lapel pins, pass holders, mobile device holders, foldable flyers, hand sanitizer, sunscreen, coffee mugs, pins, neck wallets, koozies, and magnetic calendars. The above items will be considered “contract” items.
- B. From time to time Omnitrans may require unique variations of items. These will be considered “custom” items. Omnitrans reserves the right to add custom items.

4. PERFORMANCE

- A. Catalogs

Contractors must provide copies of vendor’s full line catalog, as needed. Online catalogs are required. The catalogs must include pictures, complete description and catalog pricing.

ATTACHMENT A – SCOPE OF WORK

MKP16-49A

PROMOTIONAL ITEMS

B. Samples

Contracted vendors must provide product samples before orders will be placed. The vendor must have knowledgeable representatives to provide product consulting when needed. Samples for custom order must be provided at time of discussion for selection of type of item.

C. Quality

Omnitrans requires a range of promotional products from business professional items to item giveaways for large events. Contractors will provide a large range of products, including creative, new releases. Item quality shall be commensurate with price, intended use, and with that available from other suppliers.

D. Ordering Process

1. Omnitrans reserves the right to place orders with other promotional item supply firms if Omnitrans determines it is necessary. For contract items, Omnitrans will select the lowest priced items, meeting the needs of Omnitrans.
2. Omnitrans will contact the vendor to review samples, determine the most suitable item and graphic requirements. Omnitrans will provide the artwork, approve the proof and place the order.
3. Service levels and turnaround times will also be considerations in selecting which contracted vendors to use.

E. Product Lead-Times

Contract items must be received by Omnitrans within twenty (20) business days or less after the order is placed. Any order requiring more than 20 business days to fulfill must get Omnitrans' approval at time of order. For custom items, the vendor must inform Omnitrans of the lead-time during the process of item selection and before the item is ordered.

F. Delivery

1. Ordered items must be delivered to:
Omnitrans, 1700 West 5th Street, San Bernardino, CA 92411.
2. Boxes of items delivered shall not exceed 40 pounds.
3. Boxes of items shall include packing slips.

ATTACHMENT B - PRICING						
MKP16-49A						
PROMOTIONAL ITEMS						
Base Year 1						
Item Num	Description	Unit of Measure	Quantity	Unit Price	Line Total	
1	Ballpoint Pens	EA	5000	\$0.15	\$750.00	
2	#2 Pencils	EA	5000	\$0.13	\$650.00	
3	Mini Hand Fans	EA	2000	\$0.23	\$460.00	
4	Twill Caps	EA	2000	\$2.60	\$5,200.00	
5	Drawstring Sportsbag	EA	1000	\$1.00	\$1,000.00	
6	Rectangular Key Light	EA	2000	\$0.50	\$1,000.00	
7	Hand Sanitizer	EA	1000	\$0.55	\$550.00	
8	Sunscreen	EA	1000	\$1.15	\$1,150.00	
9	Coffee Mugs	EA	1000	\$1.20	\$1,200.00	
10	Tote Bags	EA	1000	\$1.00	\$1,000.00	
11	Pins	EA	1000	\$0.80	\$800.00	
12	Neck Wallet	EA	1000	\$1.25	\$1,250.00	
13	Koozies	EA	1000	\$0.40	\$400.00	
14	Sales Tax @8.25%	LOT	1	\$1,271.33	\$1,271.33	
15	Delivery/ Shipping	LOT	1	\$600.00	\$600.00	
				Subtotal	\$17,281.33	
				Total	\$17,281.33	
*All subsequent year pricing shall be determined in January of each year using the change (increase or decrease) of Consumer Price Index (CPI).						

ATTACHMENT C - INSURANCE REQUIREMENTS

MKP16-49A PROMOTIONAL ITEMS

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 insureds 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

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



CONTRACT AGREEMENT

between

Authentic Promotions.Com
6151 Fair Oaks Blvd., Suite 103
Carmichael, CA 95608

(hereinafter "CONTRACTOR")
Telephone: (800) 497-7765
Fax: (775) 497-7706
E-mail: amy@authenticpromotions.com

And

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

CONTRACT DOCUMENTS

CONTRACT NO. MKP16-49B

PROMOTIONAL ITEMS BENCH

Contract Amount: \$5,000.00

Omnitrans Project Manager:

Name: Nicole Ramos
Title: Marketing Manager
Telephone: (909) 379-7155
Fax: (909) 888-0524
Email:

Contract Administrator:

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



TABLE OF CONTENTS

1.	SCOPE OF WORK.....	4
2.	PERIOD OF PERFORMANCE.....	4
3.	CONTRACT OPTIONS	5
4.	COMPENSATION.....	5
5.	INVOICING AND PAYMENT.....	6
6.	AUDIT AND INSPECTION OF RECORDS.....	6
7.	NOTIFICATION	7
8.	OMNITRANS' AND CONTRACTOR'S REPRESENTATIVES.....	7
9.	DISPUTE RESOLUTION.....	8
10.	TERMINATION FOR CONVENIENCE	9
11.	TERMINATION FOR BREACH OF AGREEMENT	9
12.	ASSIGNMENT.....	10
13.	SUBCONTRACTING.....	10
14.	INDEPENDENT CONTRACTOR.....	11
15.	INSURANCE	11
16.	INDEMNITY.....	12
17.	REVISIONS IN SCOPE OF WORK.....	12
18.	RIGHTS IN TECHNICAL DATA	12
19.	OWNERSHIP OF REPORTS AND DOCUMENTS.....	13
20.	OWNERSHIP RIGHTS.....	13

21.	WORK FOR HIRE	14
22.	SUBMITTAL OF CLAIMS BY CONTRACTOR.....	14
23.	EQUAL OPPORTUNITY	14
24.	STANDARD OF PERFORMANCE	14
25.	NOTIFICATION OF EMPLOYMENT OF OMNITRANS BOARD MEMBERS/ALTERNATES AND EMPLOYEES	15
26.	DISQUALIFYING POLITICAL CONTRIBUTIONS	15
27.	COMPLIANCE WITH LAW	15
28.	COMPLIANCE WITH LOBBYING POLICIES.....	16
29.	PUBLIC RECORDS ACT.....	16
30.	WAIVER/INVALIDITY	17
31.	FORCE MAJEURE.....	17
32.	CONFIDENTIALITY	17
33.	CONTRACTOR’S INTERACTION WITH THE MEDIA AND THE PUBLIC	17
34.	GOVERNING LAW	18
35.	MODIFICATIONS TO AGREEMENT	18
36.	LICENSING, PERMITS AND INSPECTION COSTS.....	18
37.	PRECEDENCE	19
38.	ENTIRE AGREEMENT	19

ATTACHMENT A – SCOPE OF WORK

ATTACHMENT B – PRICING

ATTACHMENT C – MINIMUM INSURANCE REQUIREMENTS

This Agreement is made and entered into as of this 6th day of January, 2016 by and between Omnitrans (hereinafter referred to as "OMNITRANS") and RED Company (hereinafter referred to as "CONTRACTOR").

RECITALS

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

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

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

1. SCOPE OF WORK

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

2. PERIOD OF PERFORMANCE

The term of this Agreement shall be from the date of execution of this Agreement and continue in effect through January 5, 2018 unless terminated as specified in Section 10 and 11 of this Agreement. Omnitrans has no obligation to purchase any specified amount of products/services. All applicable indemnification provisions in this Agreement shall remain in effect following the termination of this Agreement.

Omnitrans' election to extend the Agreement beyond the Initial Term shall not diminish its right to terminate the Agreement for Omnitrans' convenience or CONTRACTORS default as provided elsewhere in this Agreement. The "maximum term" of this Agreement shall be the period extended from January 6, 2018 Through January 5, 2020, which period encompasses the Initial Term, Option Year 1 and Option Year 2.

3. CONTRACT OPTIONS

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

4. COMPENSATION

For CONTRACTOR's full and complete performance of its obligations under this Agreement, OMNITRANS shall pay CONTRACTOR on a FIXED PRICE basis at the fully burdened fixed rates shown in Attachment B, and subject to the maximum cumulative payment obligation.

OMNITRANS' maximum cumulative payment obligation under this Agreement shall not exceed Five Thousand Dollars (\$5,000.00), including all amounts payable to CONTRACTOR for all costs, including but not limited to direct labor, other direct costs, subcontracts, indirect costs including, but not limited to, leases, materials, taxes, insurance, and profit.

5. INVOICING AND PAYMENT

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

CONTRACTOR shall submit invoices in duplicate to:

OMNITRANS
1700 West Fifth Street
San Bernardino, CA 92411
Attn: Accounts Payable
Accountspayable@omnitrans.org

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

- Contract number
- Invoice number
- Description of delivery
- Delivery Date
- Total quantity delivered
- Information as requested by OMNITRANS

- B. OMNITRANS shall remit payment within thirty (30) calendar days of approval of the invoices by OMNITRANS' Project Manager.

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

6. AUDIT AND INSPECTION OF RECORDS

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

Agreement unless OMNITRANS' written permission is given to CONTRACTOR to dispose of material prior to this time.

7. NOTIFICATION

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

To OMNITRANS:

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

To CONTRACTOR:

Authentic Promotions.Com
6151 Fair Oaks Blvd., Suite 103
Carmichael, CA 95608
Attn: Amy Warner

8. OMNITRANS' AND CONTRACTOR'S REPRESENTATIVES

A. OMNITRANS' Project Manager

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

Project Manager: Nicole Ramos, Marketing 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>
Amy Warner	Partner
_____	_____
_____	_____

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

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

9. DISPUTE RESOLUTION

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

- A. The parties shall first attempt to resolve the dispute informally in meetings or communications between proposer and OMNITRANS.

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

10. TERMINATION FOR CONVENIENCE

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

11. TERMINATION FOR BREACH OF AGREEMENT

- A. If CONTRACTOR fails to perform any of the provisions of this Agreement or so fails to make progress as to endanger timely performance of this Agreement, OMNITRANS may give CONTRACTOR written notice of such default. If CONTRACTOR does not cure such default or provide a plan to cure such default which is acceptable to OMNITRANS within the time permitted by OMNITRANS, then OMNITRANS may terminate this Agreement due to CONTRACTOR's breach of this Agreement.
- B. If a federal or state proceeding for relief of debtors is undertaken by or against CONTRACTOR, or if CONTRACTOR makes an assignment for the benefit of creditors, then OMNITRANS may immediately terminate this Agreement.
- C. If CONTRACTOR violates Section 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.

12. ASSIGNMENT

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

13. SUBCONTRACTING

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

Subcontractor's Name and Address

N/A

Work to Be Performed

N/A

14. INDEPENDENT CONTRACTOR

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

15. INSURANCE

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;
- 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.

16. INDEMNITY

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

17. REVISIONS IN SCOPE OF WORK

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

18. RIGHTS IN TECHNICAL DATA

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

however, publication of this material is subject to the prior written approval of OMNITRANS. The provisions of this paragraph shall survive termination or expiration of this Agreement and/or final payment thereunder.

19. OWNERSHIP OF REPORTS AND DOCUMENTS

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

20. OWNERSHIP RIGHTS

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

Documentation shall be governed by the License Agreement by and between the parties of event date herewith.

21. WORK FOR HIRE

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

22. SUBMITTAL OF CLAIMS BY CONTRACTOR

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

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

23. EQUAL OPPORTUNITY

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

24. STANDARD OF PERFORMANCE

- A. CONTRACTOR shall perform and exercise, and require its subcontractors to perform and exercise due professional care and competence in the performance of the Work in accordance with the requirements of this Agreement. CONTRACTOR shall be responsible for the professional quality, technical accuracy, completeness and coordination of the Work, it being understood that OMNITRANS will be relying upon such professional quality, accuracy, completeness and coordination in utilizing the Work. The foregoing obligations and standards shall constitute the “Standard of Performance” for purposes of this Agreement. The provisions of this

paragraph shall survive termination or expiration of this Agreement and/or final payment thereunder.

- B. All workers shall have sufficient skill and experience to perform the Work assigned to them. OMNITRANS shall have the right, at its sole discretion, to require the immediate removal of CONTRACTOR's personnel at any level assigned to the performance of the Work at no additional fee or cost to OMNITRANS, if OMNITRANS considers such removal in its best interests and requests such removal in writing and such request is not done for illegal reasons. Further, an employee who is removed from performing Work under this Agreement under this Article shall not be re-assigned to perform Work in any other capacity under this Agreement without OMNITRANS' prior written approval.

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

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

26. DISQUALIFYING POLITICAL CONTRIBUTIONS

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

27. COMPLIANCE WITH LAW

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.

28. COMPLIANCE WITH LOBBYING POLICIES

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

29. PUBLIC RECORDS ACT

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

30. WAIVER/INVALIDITY

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

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

31. FORCE MAJEURE

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

32. CONFIDENTIALITY

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

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

- A. OMNITRANS shall review and approve in writing all OMNITRANS related copy proposed to be used by CONTRACTOR for advertising or public relations purposes prior to publication. CONTRACTOR shall not allow OMNITRANS related copy to be published in its advertisements and public relations programs prior to receiving such approval. CONTRACTOR shall ensure that all published information is factual and that it does not in any way imply that OMNITRANS endorses CONTRACTOR's firm, service, and/or product.
- B. CONTRACTOR shall refer all inquiries from the news media to OMNITRANS, and shall comply with the procedures of OMNITRANS' Public Affairs staff regarding statements to the media relating to this Agreement or the Work.

- C. If CONTRACTOR receives a complaint from a citizen or the community, CONTRACTOR shall inform OMNITRANS as soon as possible and inform OMNITRANS of any action taken to alleviate the situation.
- D. The provisions of this Article shall survive the termination or expiration of this Agreement.

34. GOVERNING LAW

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

35. MODIFICATIONS TO AGREEMENT

Unless specified otherwise in the Agreement, this Agreement may only be modified by written mutual consent evidenced by signatures of representatives authorized to enter into and modify the Agreement. In order to be effective, amendments may require prior approval by OMNITRANS' Board of Directors, and in all instances require prior signature of an authorized representative of OMNITRANS.

36. LICENSING, PERMITS AND INSPECTION COSTS

- 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.

37. 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) provisions of IFB-MKP16-49 and (4) CONTRACTOR's proposal dated November 2, 2015.

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

AUTHENTIC PROMOTIONS.COM

P. SCOTT GRAHAM
CEO/General Manager

AMY WARNER
Partner

DATE

Federal Tax I.D. No. 74-3080693

ATTACHMENT B - PRICING					
MKP16-49B					
PROMOTIONAL ITEMS					
Base Year 1					
Item Num	Description	Unit of Measure	Quantity	Unit Price	Line Total
1	Ballpoint Pens	EA	5000	\$0.29	\$1,450.00
2	#2 Pencils	EA	5000	\$0.10	\$500.00
3	Mini Hand Fans	EA	2000	\$0.26	\$520.00
4	Twill Caps	EA	2000	\$3.17	\$6,340.00
5	Drawstring Sportsbag	EA	1000	\$0.89	\$890.00
6	Rectangular Key Light	EA	2000	\$0.57	\$1,140.00
7	Hand Sanitizer	EA	1000	\$0.59	\$590.00
8	Sunscreen	EA	1000	\$1.89	\$1,890.00
9	Coffee Mugs	EA	1000	\$1.59	\$1,590.00
10	Tote Bags	EA	1000	\$1.09	\$1,090.00
11	Pins	EA	1000	\$0.79	\$790.00
12	Neck Wallet	EA	1000	\$1.17	\$1,170.00
13	Koozies	EA	1000	\$0.65	\$650.00
14	Sales Tax @8.25%	LOT	1	\$1,535.32	\$1,535.32
15	Delivery/ Shipping	LOT	1	\$0.00	\$0.00
				Subtotal	\$20,145.32
				Total	\$20,145.32
*All subsequent year pricing shall be determined in January of each year using the change (increase or decrease) of Consumer Price Index (CPI).					



CONTRACT AGREEMENT

between

Offbeat Productions, Inc.
1887 Gold Dust Lane STE 201
Park City, UT 84060

(hereinafter "CONTRACTOR")
Telephone: (435) 647-7730
Fax: (818) 998-4157
E-mail: neal@offbeatproductions.com

And

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

CONTRACT DOCUMENTS

CONTRACT NO. MKP16-49C

PROMOTIONAL ITEMS BENCH

Contract Amount: \$11,000.00

Omnitrans Project Manager:

Name: Nicole Ramos
Title: Marketing Manager
Telephone: (909) 379-7155
Fax: (909) 888-0524
Email:

Contract Administrator:

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



TABLE OF CONTENTS

1.	SCOPE OF WORK.....	4
2.	PERIOD OF PERFORMANCE.....	4
3.	CONTRACT OPTIONS	5
4.	COMPENSATION.....	5
5.	INVOICING AND PAYMENT.....	6
6.	AUDIT AND INSPECTION OF RECORDS.....	6
7.	NOTIFICATION	7
8.	OMNITRANS' AND CONTRACTOR'S REPRESENTATIVES.....	7
9.	DISPUTE RESOLUTION.....	8
10.	TERMINATION FOR CONVENIENCE	9
11.	TERMINATION FOR BREACH OF AGREEMENT	9
12.	ASSIGNMENT.....	10
13.	SUBCONTRACTING.....	10
14.	INDEPENDENT CONTRACTOR.....	11
15.	INSURANCE	12
16.	INDEMNITY.....	12
17.	REVISIONS IN SCOPE OF WORK.....	13
18.	RIGHTS IN TECHNICAL DATA	13
19.	OWNERSHIP OF REPORTS AND DOCUMENTS.....	13
20.	OWNERSHIP RIGHTS.....	13

21.	WORK FOR HIRE	14
22.	SUBMITTAL OF CLAIMS BY CONTRACTOR.....	14
23.	EQUAL OPPORTUNITY	15
24.	STANDARD OF PERFORMANCE	15
25.	NOTIFICATION OF EMPLOYMENT OF OMNITRANS BOARD MEMBERS/ALTERNATES AND EMPLOYEES	15
26.	DISQUALIFYING POLITICAL CONTRIBUTIONS	16
27.	COMPLIANCE WITH LAW	16
28.	COMPLIANCE WITH LOBBYING POLICIES.....	16
29.	PUBLIC RECORDS ACT.....	16
30.	WAIVER/INVALIDITY	17
31.	FORCE MAJEURE.....	17
32.	CONFIDENTIALITY	17
33.	CONTRACTOR’S INTERACTION WITH THE MEDIA AND THE PUBLIC	18
34.	GOVERNING LAW	18
35.	MODIFICATIONS TO AGREEMENT	18
36.	LICENSING, PERMITS AND INSPECTION COSTS.....	19
37.	PRECEDENCE	19
38.	ENTIRE AGREEMENT	19

ATTACHMENT A – SCOPE OF WORK

ATTACHMENT B – PRICING

ATTACHMENT C – MINIMUM INSURANCE REQUIREMENTS

This Agreement is made and entered into as of this 6th day of January, 2016 by and between Omnitrans (hereinafter referred to as "OMNITRANS") and RED Company (hereinafter referred to as "CONTRACTOR").

RECITALS

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

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

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

1. SCOPE OF WORK

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

2. PERIOD OF PERFORMANCE

The term of this Agreement shall be from the date of execution of this Agreement and continue in effect through January 5, 2018 unless terminated as specified in Section 10 and 11 of this Agreement. Omnitrans has no obligation to purchase any specified amount of products/services. All applicable indemnification provisions in this Agreement shall remain in effect following the termination of this Agreement.

Omnitrans' election to extend the Agreement beyond the Initial Term shall not diminish its right to terminate the Agreement for Omnitrans' convenience or CONTRACTORS default as provided elsewhere in this Agreement. The "maximum term" of this Agreement shall be the period extended from January 6, 2018 Through January 5, 2020, which period encompasses the Initial Term, Option Year 1 and Option Year 2.

3. CONTRACT OPTIONS

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

4. COMPENSATION

For CONTRACTOR's full and complete performance of its obligations under this Agreement, OMNITRANS shall pay CONTRACTOR on a FIXED PRICE basis at the fully burdened fixed rates shown in Attachment B, and subject to the maximum cumulative payment obligation.

OMNITRANS' maximum cumulative payment obligation under this Agreement shall not exceed Eleven Thousand Dollars (\$11,000.00), including all amounts payable to CONTRACTOR for all costs, including but not limited to direct labor, other direct costs, subcontracts, indirect costs including, but not limited to, leases, materials, taxes, insurance, and profit.

5. INVOICING AND PAYMENT

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

CONTRACTOR shall submit invoices in duplicate to:

OMNITRANS
1700 West Fifth Street
San Bernardino, CA 92411
Attn: Accounts Payable
Accountspayable@omnitrans.org

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

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

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

6. AUDIT AND INSPECTION OF RECORDS

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

Agreement unless OMNITRANS' written permission is given to CONTRACTOR to dispose of material prior to this time.

7. NOTIFICATION

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

To OMNITRANS:

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

To CONTRACTOR:

Offbeat Productions, Inc.
1887 Gold Dust Lane STE 201
Park City, UT 84060
Attn: Shannon Nellis

8. OMNITRANS' AND CONTRACTOR'S REPRESENTATIVES

A. OMNITRANS' Project Manager

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

Project Manager: Nicole Ramos, Marketing 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>
Neal Skuro	Account Manager
Jennifer Dail	Assistant to Neal Skuro
Bob Nellis	COO, Offbeat Productions, Inc.

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

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

9. DISPUTE RESOLUTION

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

- A. The parties shall first attempt to resolve the dispute informally in meetings or communications between proposer and OMNITRANS.

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

10. TERMINATION FOR CONVENIENCE

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

11. TERMINATION FOR BREACH OF AGREEMENT

- A. If CONTRACTOR fails to perform any of the provisions of this Agreement or so fails to make progress as to endanger timely performance of this Agreement, OMNITRANS may give CONTRACTOR written notice of such default. If CONTRACTOR does not cure such default or provide a plan to cure such default which is acceptable to OMNITRANS within the time permitted by OMNITRANS, then OMNITRANS may terminate this Agreement due to CONTRACTOR's breach of this Agreement.
- B. If a federal or state proceeding for relief of debtors is undertaken by or against CONTRACTOR, or if CONTRACTOR makes an assignment for the benefit of creditors, then OMNITRANS may immediately terminate this Agreement.
- C. If CONTRACTOR violates Section 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.

12. ASSIGNMENT

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

13. SUBCONTRACTING

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

Subcontractor's Name and Address	Work to Be Performed
Admints & Zagabor 420 Benigno Blvd., Unit E Bellmawr, NJ 08031	Promo Product Production
Snugz USA 9258 S. Prosperity Road West ordan, UT 84081	Promo Product Production
Evan Manufacturing, Inc. 7422 Chapman Avenue Garden Grove, CA 92841	Promo Product Production
Hit Promotional Products 7150 Bryan Dairy Rd. Largo, FL 33777	Promo Product Production
Gold Bond Worldwide 5485 Hixson Pike Hixson, TN 37343	Promo Product Production
Norwood/Bic 5151 Moundview Drive Red Wing, MN 55066	Promo Product Production
Gempire 6030 Benjamin Rd. Tampa, FL 33634	Promo Product Production

14. INDEPENDENT CONTRACTOR

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

15. INSURANCE

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;
- 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.

16. INDEMNITY

CONTRACTOR shall indemnify, defend and hold harmless OMNITRANS, and its member agencies, and their officers, directors, employees and agents from and against any and all liability, expense (including, but not limited to, defense costs and attorneys' fees), claims, causes of action, and lawsuits for damages of any nature whatsoever, including, but not limited to, bodily injury, death, personal injury or property damage (including property of CONTRACTOR) arising from or connected with any alleged act and/or omission of CONTRACTOR, its officers, directors, employees, agents, Subcontractors or suppliers. This indemnity shall

survive termination or expiration of this Agreement and/or final payment thereunder.

17. REVISIONS IN SCOPE OF WORK

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

18. RIGHTS IN TECHNICAL DATA

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

19. OWNERSHIP OF REPORTS AND DOCUMENTS

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

20. OWNERSHIP RIGHTS

- A. In the event OMNITRANS rightfully obtains copies of Proprietary Data under the terms of the separate License Agreement and Escrow Agreement that govern rights in Documentation, Software and Intellectual Property created and/or developed by Contractor, its Third Party Software

Contractors and its Suppliers as part of the Project, any derivative works and associated documentation created by or on behalf of OMNITRANS by Permitted Programmers (as defined in the License Agreement) shall be the sole and exclusive property of OMNITRANS (collectively, "OMNITRANS Intellectual Property"), and OMNITRANS may use, disclose and exercise dominion and full rights of ownership, in any manner in OMNITRANS Intellectual Property in connection with the use, operation and maintenance of a transportation system administered by OMNITRANS. No use of OMNITRANS Intellectual Property shall be made for any purpose other than in conjunction with a transportation system administered by CONTRACTOR, and OMNITRANS shall not sell, lease, rent, give away or otherwise disclose any OMNITRANS Intellectual Property to any outside third party other than Permitted Programmers. To the extent there may be any question of rights of ownership or use in any OMNITRANS Intellectual Property, Contractor shall require all of its subcontractors and suppliers (including without limitation its Third Party Software Contractors) to assign to OMNITRANS, all worldwide right, title and interest in and to all OMNITRANS Intellectual Property in a manner consistent with the foregoing terms of this paragraph. Contractor shall execute any documents as OMNITRANS may from time to time reasonably request to effectuate the terms of this paragraph.

- B. All documentation and Software which predates this Contract and which otherwise owned by Contractor or its Third Party Software Contractors, and all Documentation and Software which is created by Contractor or its Third Party Software Contractors shall be Licensed Software or Licensed Documentation, as appropriate. All Licensed Software and Licensed Documentation shall be governed by the License Agreement by and between the parties of event date herewith.

21. WORK FOR HIRE

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

22. SUBMITTAL OF CLAIMS BY CONTRACTOR

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

pertinent circumstances of the event or occurrence giving rise to the claim and the indebtedness, obligation, injury, loss or damages allegedly incurred by CONTRACTOR.

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

23. EQUAL OPPORTUNITY

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

24. STANDARD OF PERFORMANCE

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

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

To ensure compliance with OMNITRANS' Ethics Policy, CONTRACTOR shall provide written notice to OMNITRANS disclosing the identity of any individual who CONTRACTOR desires to employ or retain under a contract, and who (1)

presently serves as a Board Member/Alternate or an employee of OMNITRANS, or (2) served as a Board Member/Alternate or an employee of OMNITRANS within the previous 12 months of the date of the proposed employment or retention by CONTRACTOR. CONTRACTOR's written notice shall indicate whether the individual will be an officer, principal or shareholder of the entity and/or will participate in the performance of this Agreement.

26. DISQUALIFYING POLITICAL CONTRIBUTIONS

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

27. COMPLIANCE WITH LAW

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.

28. COMPLIANCE WITH LOBBYING POLICIES

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

29. PUBLIC RECORDS ACT

- A. All records, documents, drawings, plans, specifications and other material relating to conduct of OMNITRANS' business, including materials submitted by CONTRACTOR in its proposal and during the course of performing the Work under this Agreement, shall become the exclusive property of OMNITRANS and may be deemed public records. Said materials may be subject to the provisions of the California Public Records

Act. OMNITRANS' use and disclosure of its records are governed by this Act.

- B. OMNITRANS will not advise as to the nature or content of documents entitled to protection from disclosure under the California Public Records Act, including interpretations of the Act or the definitions of trade secret, confidential or proprietary. OMNITRANS will accept materials clearly and prominently labeled "TRADE SECRET" or "CONFIDENTIAL" or "PROPRIETARY" as determined by CONTRACTOR. OMNITRANS will endeavor to notify CONTRACTOR of any request of the disclosure of such materials. Under no circumstances, however, will OMNITRANS be liable or responsible for the disclosure of any labeled materials whether the disclosure is required by law or a court order or occurs through inadvertence, mistake or negligence on the part of OMNITRANS or its officers, employees and/or contractors.
- C. In the event of litigation concerning the disclosure of any material submitted by CONTRACTOR, OMNITRANS' sole involvement will be as a stake holder, retaining the material until otherwise ordered by a court. CONTRACTOR, at its sole expense and risk, shall be responsible for prosecuting or defending any action concerning the materials, and shall defend, indemnify and hold OMNITRANS harmless from all costs and expenses, including attorneys' fees, in connection with such action.

30. WAIVER/INVALIDITY

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

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

31. FORCE MAJEURE

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

32. CONFIDENTIALITY

CONTRACTOR agrees that for and during the entire term of this Agreement, any information, data, figures, records, findings and the like received or generated by CONTRACTOR in the performance of this Agreement, shall be considered and kept as the private and privileged records of OMNITRANS and will not be divulged to any person, firm, corporation, or other entity except on the direct prior

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

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

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

34. GOVERNING LAW

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

35. MODIFICATIONS TO AGREEMENT

Unless specified otherwise in the Agreement, this Agreement may only be modified by written mutual consent evidenced by signatures of representatives authorized to enter into and modify the Agreement. In order to be effective, amendments may require prior approval by OMNITRANS' Board of Directors, and in all instances require prior signature of an authorized representative of OMNITRANS.

36. LICENSING, PERMITS AND INSPECTION COSTS

- 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.

37. 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) provisions of IFB-MKP16-49 and (4) CONTRACTOR's proposal dated November 2, 2015.

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

OFFBEAT PRODUCTIONS, INC.

P. SCOTT GRAHAM
CEO/General Manager

SHANNON NELLIS
CEO

DATE

Federal Tax I.D. No. 20-2986507

ATTACHMENT B - PRICING						
MKP16-49C						
PROMOTIONAL ITEMS						
Base Year 1						
Item Num	Description	Unit of Measure	Quantity	Unit Price	Line Total	
1	Ballpoint Pens	EA	5000	\$0.18	\$900.00	
2	#2 Pencils	EA	5000	\$0.13	\$650.00	
3	Mini Hand Fans	EA	2000	\$0.52	\$1,040.00	
4	Twill Caps	EA	2000	\$2.47	\$4,940.00	
5	Drawstring Sportsbag	EA	1000	\$1.14	\$1,140.00	
6	Rectangular Key Light	EA	2000	\$0.63	\$1,260.00	
7	Hand Sanitizer	EA	1000	\$0.69	\$690.00	
8	Sunscreen	EA	1000	\$1.91	\$1,910.00	
9	Coffee Mugs	EA	1000	\$1.03	\$1,030.00	
10	Tote Bags	EA	1000	\$0.72	\$720.00	
11	Pins	EA	1000	\$0.89	\$890.00	
12	Neck Wallet	EA	1000	\$1.16	\$1,160.00	
13	Koozies	EA	1000	\$0.46	\$460.00	
14	Sales Tax @8.25%	LOT	1	\$1,385.18	\$1,385.18	
15	Delivery/ Shipping	LOT	1	\$2,515.85	\$2,515.85	
				Subtotal	\$20,691.03	
				Total	\$20,691.03	
*All subsequent year pricing shall be determined in January of each year using the change (increase or decrease) of Consumer Price Index (CPI).						

ITEM # _____ F4

DATE: January 6, 2016

TO: Board Chair Sam Spagnolo 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 (BENCH) – CONTRACTS MNT16-30A-B
JOHN DEERE BUS PARTS**

FORM MOTION

Authorize the CEO/General Manager to award Contracts MNT16-30A to Harbor Diesel and Equipment of Long Beach, CA, and Contract MNT16-30B to A-Z Bus Sales, Inc. of Colton, CA, for the provision of John Deere Bus Parts. Contract durations shall be for a three (3) year base period beginning January 6, 2016, and ending January 5, 2019, in the aggregate amount of \$1,682,485, and the authority to exercise two (2) single year options, extending the contracts to no later than January 5, 2021, in the aggregate amount of \$583,410 for Option Year One, and \$595,078 for Option Year Two, totaling \$2,860,973, plus a 10% contingency of \$286,097, for a not-to-exceed amount of \$3,147,070, should all option years be exercised.

BACKGROUND

Currently, Omnitrans owns, operates and maintains a fleet of John Deere powered buses as part of its revenue fleet. Parts delivered under the contracts resulting from this solicitation will be used in the repair and maintenance of these vehicles. The bench awards will provide a level of protection that will avoid any gaps in inventory coverage should the primary contractor experience availability issues or excessive lead times.

On September 2, 2015, Omnitrans' Board of Directors authorized the release of Invitation for Bids IFB-MNT16-30. Notices were published in two local newspapers of general circulation and posted on Omnitrans' online bidding system. Seven bids were received by the November 3, 2015 deadline. Four (4) bids were found to be responsive.

Option years will be priced according to the Consumer Price Index (CPI). Award is being made to the lowest, responsive and responsible bidder for each part. When inventory is not available from the lowest bidder, Omnitrans reserves the right to order from the next lowest bidder, on an as needed basis.

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

FUNDING SOURCE

The cost associated with this procurement is budgeted in Maintenance's Operating budget as follows:

Department	1200
Expenditure Code	504010

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

Short Range Transit Plan/Strategic Initiative Supported – This procurement supports Omnitrans' Short Range Transit Plan goal to expand, maintain and improve existing vehicles, facilities and passenger amenities.

CONCLUSION

By proceeding with this award, Omnitrans will have the ability to repair and maintain Omnitrans' fleet of buses.

PSG:JMS:KT



CONTRACT AGREEMENT

between

Harbor Diesel and Equipment
537 W. Anaheim Street
Long Beach, CA 90813

CONTRACT DOCUMENTS

CONTRACT NO. MNT16-30A

JOHN DEERE BUS PARTS

(hereinafter "CONTRACTOR")
Telephone: (562) 591-5665
Fax: (562) 591-2941
Email: bids@harbordiesel.com

And

Contract Amount: \$1,177,740

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

Omnitrans Project Manager:

Name: Rick Barone
Title: Materials Manager
Telephone: (909) 379-7204
Fax: (909) 379-7107
Email: rick.barone@omnitrans.org

Contract Administrator:

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



TABLE OF CONTENTS

1.	SCOPE OF WORK.....	4
2.	PERIOD OF PERFORMANCE.....	4
3.	CONTRACT OPTIONS	5
4.	COMPENSATION.....	5
5.	INVOICING AND PAYMENT.....	5
6.	AUDIT AND INSPECTION OF RECORDS.....	6
7.	NOTIFICATION	7
8.	OMNITRANS' AND CONTRACTOR'S REPRESENTATIVES.....	7
9.	DISPUTE RESOLUTION.....	8
10.	TERMINATION FOR CONVENIENCE	9
11.	TERMINATION FOR BREACH OF AGREEMENT	9
12.	ASSIGNMENT.....	10
13.	SUBCONTRACTING.....	10
14.	INDEPENDENT CONTRACTOR.....	11
15.	INSURANCE	11
16.	INDEMNITY.....	12
17.	REVISIONS IN SCOPE OF WORK.....	12
18.	RIGHTS IN TECHNICAL DATA	12
19.	OWNERSHIP OF REPORTS AND DOCUMENTS.....	13
20.	OWNERSHIP RIGHTS.....	13

21.	WORK FOR HIRE	14
22.	SUBMITTAL OF CLAIMS BY CONTRACTOR.....	14
23.	EQUAL OPPORTUNITY	14
24.	STANDARD OF PERFORMANCE	14
25.	NOTIFICATION OF EMPLOYMENT OF OMNITRANS BOARD MEMBERS/ALTERNATES AND EMPLOYEES	15
26.	DISQUALIFYING POLITICAL CONTRIBUTIONS	15
27.	COMPLIANCE WITH LAW	15
28.	COMPLIANCE WITH LOBBYING POLICIES.....	16
29.	PUBLIC RECORDS ACT.....	16
30.	WAIVER/INVALIDITY	17
31.	FORCE MAJEURE.....	17
32.	CONFIDENTIALITY	17
33.	CONTRACTOR’S INTERACTION WITH THE MEDIA AND THE PUBLIC	17
34.	GOVERNING LAW	18
35.	MODIFICATIONS TO AGREEMENT	18
36.	LICENSING, PERMITS AND INSPECTION COSTS.....	18
37.	PRECEDENCE	19
38.	ENTIRE AGREEMENT	19

ATTACHMENT A – PRICING

ATTACHMENT B – REGULATORY REQUIREMENTS

ATTACHMENT C – INSURANCE REQUIREMENTS

This Agreement is made and entered into as of this 6th day of January, 2016 by and between Omnitrans (hereinafter referred to as "OMNITRANS") and Harbor Diesel and Equipment (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 January 5, 2019, unless terminated as specified in Section 10 and 11 of this Agreement. Omnitrans has no obligation to purchase any specified amount of products/services. All applicable indemnification provisions in this Agreement shall remain in effect following the termination of this Agreement.

Omnitrans' election to extend the Agreement beyond the Initial Term shall not diminish its right to terminate the Agreement for Omnitrans' convenience or CONTRACTORS default as provided elsewhere in this Agreement. The "maximum term" of this Agreement shall be the period extended from January 6, 2019 Through January 5, 2021, which period encompasses the Initial Term, Option Year 1 and Option Year 2.

3. CONTRACT OPTIONS

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

4. COMPENSATION

For CONTRACTOR's full and complete performance of its obligations under this Agreement, OMNITRANS shall pay CONTRACTOR on a FIXED PRICE basis at the fully burdened fixed rates shown in Attachment A, and subject to the maximum cumulative payment obligation.

OMNITRANS' maximum cumulative payment obligation under this Agreement shall not exceed One Million, One Hundred Seventy Seven Thousand, Seven Hundred and Forty Dollars (\$1,177,740), including all amounts payable to CONTRACTOR for all costs, including but not limited to direct labor, other direct costs, subcontracts, indirect costs including, but not limited to, leases, materials, taxes, insurance, and profit.

5. INVOICING AND PAYMENT

- A. CONTRACTOR shall invoice OMNITRANS on a monthly basis no later than the 15th of each month. CONTRACTOR shall furnish information as

may be requested by OMNITRANS to substantiate the validity of an invoice.

CONTRACTOR shall submit invoices in duplicate to:

OMNITRANS
1700 West Fifth Street
San Bernardino, CA 92411
Attn: Accounts Payable
Accountspayable@omnitrans.org

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

- Contract number
- Invoice number
- Description of delivery
- Delivery Date
- Total quantity delivered
- Information as requested by OMNITRANS

- B. OMNITRANS shall remit payment within thirty (30) calendar days of approval of the invoices by OMNITRANS' Project Manager.

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

6. AUDIT AND INSPECTION OF RECORDS

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

7. NOTIFICATION

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

To OMNITRANS:

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

To CONTRACTOR:

Harbor Diesel and Equipment
537 W. Anaheim Street
Long Beach, CA 90813
Attn: Pat Vuoso

8. OMNITRANS' AND CONTRACTOR'S REPRESENTATIVES

A. OMNITRANS' Project Manager

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

Project Manager: Rick Barone.

- 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>
Pat Vuoso	Manager - Parts
_____	_____
_____	_____
_____	_____

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

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

9. DISPUTE RESOLUTION

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

- A. The parties shall first attempt to resolve the dispute informally in meetings or communications between proposer and OMNITRANS.
- B. If the dispute remains unresolved fifteen (15) days after it first arises, proposer may request that Omnitrans' CEO/General Manager issue a

recommended decision on the matter in dispute. Omnitrans' CEO/General Manager shall issue the recommended decision in writing and provide a copy to proposer.

- C. If the dispute remains unresolved after review by Omnitrans' CEO/General Manager, either party may seek judicial resolution of the dispute in an appropriate Court of the State of California.
- D. Pending final resolution of a dispute under this section, proposer shall proceed diligently with performance in accordance with the Contract and Omnitrans' CEO/General Manager's recommended decision.

10. TERMINATION FOR CONVENIENCE

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

11. TERMINATION FOR BREACH OF AGREEMENT

- A. If CONTRACTOR fails to perform any of the provisions of this Agreement or so fails to make progress as to endanger timely performance of this Agreement, OMNITRANS may give CONTRACTOR written notice of such default. If CONTRACTOR does not cure such default or provide a plan to cure such default which is acceptable to OMNITRANS within the time permitted by OMNITRANS, then OMNITRANS may terminate this Agreement due to CONTRACTOR's breach of this Agreement.
- B. If a federal or state proceeding for relief of debtors is undertaken by or against CONTRACTOR, or if CONTRACTOR makes an assignment for the benefit of creditors, then OMNITRANS may immediately terminate this Agreement.
- C. If CONTRACTOR violates Section 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.

12. ASSIGNMENT

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

13. SUBCONTRACTING

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

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

14. INDEPENDENT CONTRACTOR

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

15. INSURANCE

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;
- 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.

16. INDEMNITY

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

17. REVISIONS IN SCOPE OF WORK

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

18. RIGHTS IN TECHNICAL DATA

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

however, publication of this material is subject to the prior written approval of OMNITRANS. The provisions of this paragraph shall survive termination or expiration of this Agreement and/or final payment thereunder.

19. OWNERSHIP OF REPORTS AND DOCUMENTS

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

20. OWNERSHIP RIGHTS

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

Documentation shall be governed by the License Agreement by and between the parties of event date herewith.

21. WORK FOR HIRE

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

22. SUBMITTAL OF CLAIMS BY CONTRACTOR

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

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

23. EQUAL OPPORTUNITY

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

24. STANDARD OF PERFORMANCE

- A. CONTRACTOR shall perform and exercise, and require its subcontractors to perform and exercise due professional care and competence in the performance of the Work in accordance with the requirements of this Agreement. CONTRACTOR shall be responsible for the professional quality, technical accuracy, completeness and coordination of the Work, it being understood that OMNITRANS will be relying upon such professional quality, accuracy, completeness and coordination in utilizing the Work. The foregoing obligations and standards shall constitute the “Standard of Performance” for purposes of this Agreement. The provisions of this

paragraph shall survive termination or expiration of this Agreement and/or final payment thereunder.

- B. All workers shall have sufficient skill and experience to perform the Work assigned to them. OMNITRANS shall have the right, at its sole discretion, to require the immediate removal of CONTRACTOR's personnel at any level assigned to the performance of the Work at no additional fee or cost to OMNITRANS, if OMNITRANS considers such removal in its best interests and requests such removal in writing and such request is not done for illegal reasons. Further, an employee who is removed from performing Work under this Agreement under this Article shall not be re-assigned to perform Work in any other capacity under this Agreement without OMNITRANS' prior written approval.

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

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

26. DISQUALIFYING POLITICAL CONTRIBUTIONS

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

27. COMPLIANCE WITH LAW

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.

28. COMPLIANCE WITH LOBBYING POLICIES

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

29. PUBLIC RECORDS ACT

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

30. WAIVER/INVALIDITY

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

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

31. FORCE MAJEURE

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

32. CONFIDENTIALITY

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

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

- A. OMNITRANS shall review and approve in writing all OMNITRANS related copy proposed to be used by CONTRACTOR for advertising or public relations purposes prior to publication. CONTRACTOR shall not allow OMNITRANS related copy to be published in its advertisements and public relations programs prior to receiving such approval. CONTRACTOR shall ensure that all published information is factual and that it does not in any way imply that OMNITRANS endorses CONTRACTOR's firm, service, and/or product.
- B. CONTRACTOR shall refer all inquiries from the news media to OMNITRANS, and shall comply with the procedures of OMNITRANS' Public Affairs staff regarding statements to the media relating to this Agreement or the Work.

- C. If CONTRACTOR receives a complaint from a citizen or the community, CONTRACTOR shall inform OMNITRANS as soon as possible and inform OMNITRANS of any action taken to alleviate the situation.
- D. The provisions of this Article shall survive the termination or expiration of this Agreement.

34. GOVERNING LAW

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

35. MODIFICATIONS TO AGREEMENT

Unless specified otherwise in the Agreement, this Agreement may only be modified by written mutual consent evidenced by signatures of representatives authorized to enter into and modify the Agreement. In order to be effective, amendments may require prior approval by OMNITRANS' Board of Directors, and in all instances require prior signature of an authorized representative of OMNITRANS.

36. LICENSING, PERMITS AND INSPECTION COSTS

- 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.

37. PRECEDENCE

Conflicting provisions hereof, if any, shall prevail in the following descending order of precedence: (1) the provisions of this Agreement, (2) Attachment B, Regulatory Requirements, (3) Attachment C, Pricing, (4) Attachment A, Scope of Work, (5) provisions of IFB-MNT16-30 and (4) CONTRACTOR’s proposal dated October 6, 2015.

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

HARBOR DIESEL AND EQUIPMENT,
INC.

P. SCOTT GRAHAM
CEO/General Manager

PAT VUOSO
Manager - Parts

DATE

Federal Tax I.D. No. 95-2679009

DP_____

ATTACHMENT A - PRICING
MNT16-30A
JOHN DEERE BUS PARTS

Item Num	Item Code	Item Type	Description	ModelNum	Unit of Measure	Quantity	*Base Year 1
1	34405		O-RING ;JD SECONDARY FUEL FILTER	M43518	EA	29	\$ 1.47
2	37077		GASKET ;JOHNDEER 2-HOLE 8.1 EXHAUST	RE62776	EA	539	\$ 1.67
3	37085		GASKET ;JOHNDEER 1-HOLE 8.1 EXHAUST	RE62777	EA	699	\$ 5.60
4	39180		VALVE ;JOHNDEER WASTEGATE	RE62251	EA	189	\$ 400.71
5	39198		VALVE ;JOHNDEER FUEL METERING	RE505273, RE523008	EA	4	\$ 305.00
6	39206		COIL ;JD,FUEL METERING TRIGGER	RE505274	EA	15	\$ 159.03
7	40170		ACCELERATOR ;JOHN DEERE 8.1L	RE503989, RE545830	EA	53	\$ 2,215.39
8	41020		GASKET ;NF,JOHNDEER 8.1 ACTUATOR	R119212	EA	282	\$ 1.78
9	41285		JOHNDEER, CRANKCASE BREATHER	RE524713, CCV55304-08, 18048252	EA	1804	\$ 26.00
10	43117		GASKET ;JOHNDEER INTAKE MANIFOLD	R130573	EA	146	\$ 6.04
11	43125		STUD ;JOHN DEERE EXHAUST	R503821	EA	1023	\$ 14.34
12	43133		SPACER ;JOHNDEER EXHAUST STUD	R503718	EA	753	\$ 5.85
13	43141		NUT ;JOHNDEER EXHAUST STUD	R503722	EA	1261	\$ 0.99
14	43224		SENSOR ;JOHN DEERE HUMIDITY TEMP	RE508476	EA	72	\$ 609.97
15	43323		ECM;JOHNDEER 8.1 ENGINE	RE505627	EA	8	\$ 2,069.79
16	43364		MANIFOLD ;JOHN DEERE EXHAUST	R502681, R529840	EA	11	\$ 640.45
17	43729		TRANSDUCER ;NF,SR842 JOHNDEERE 8.1L	RE62541	EA	10	\$ 40.43
18	44248		INJECTOR ;JOHN DEERE 8.1 FUEL	RE62540	EA	261	\$ 263.51
19	44339		SENDER ;JOHN DEERE OIL PRESSURE	RE167207	EA	34	\$ 61.81
20	45070		COIL ;JOHNDEER SR842/REPOWER IGN.	RE507462	EA	151	\$ 85.87
21	46235		GASKET ;JOHN DEERE TURBO MOUNT	RE505151	EA	143	\$ 6.71
22	46243		GASKET ;JOHN DEERE TURBO OIL LINE	R105346	EA	231	\$ 2.76
23	47076		O-RING ;NF,JOHN DEERE MAP SENSOR	R53955	EA	124	\$ 1.44
24	47084		SENSOR ;NF,JOHN DEERE 8.1 MAP	RE62675	EA	88	\$ 101.46
25	47894		EXTENSION ;JOHN DEERE OIL FILLER	RE510015	EA	4	\$ 412.69
26	47928		O-RING ;JOHN DEERE FILLER TUBE	E66413	EA	220	\$ 1.52
27	48462		JOHNDEER,NF, AIR COMPRESSOR	R123676	EA	109	\$ 3.36
28	48751		SENSOR ;NF SR842 JOHN DEERE BAP	RE508475	EA	7	\$ 83.01
29	49742		SCREW ;NF,JOHN DEERE MAP SENSOR	R71851	EA	1	\$ 1.72
30	49981		CLAMP ;JOHNDEER TURBO/EXHAUST	RE47537	EA	45	\$ 38.13
31	50674		HOSE ;JOHNDEER PROBALYSR	RE505906, RE540534	EA	29	\$ 28.40
32	50807		SENSOR ;JOHN DEERE 8.1 KNOCK	RE504590	EA	2	\$ 58.04
33	51144		GASKET ;JOHN DEERE VALVE COVER	RE54368	EA	58	\$ 27.12
34	51219		BOLT ;JD,HEATSHEILD EXHAUST	T56055	EA	746	\$ 0.67
35	52217		TENSIONER ;JOHN DEERE BELT	RE506352	EA	91	\$ 142.97
36	52274		CAP ;JOHN DEERE INTAKE VALVE	T20129	EA	12	\$ 3.55
37	52423		KEY ;JOHN DEERE DAMPER	R116311,R523306, RE523306	EA	42	\$ 4.61
38	52480		DAMPER ;JOHN DEERE TORSIONAL	RE65453	EA	126	\$ 355.89
39	52746		PLUG ;JOHN DEERE OIL PAN DRAIN	R27474	EA	4	\$ 5.87
40	52753		O-RING ;JOHNDEER OIL PAN DRAIN PLUG	R47151	EA	196	\$ 1.03
41	52795		LINE ;JOHN DEERE TURBO OIL DRAIN	RE509160	EA	1	\$ 44.88
42	53017		O-RING ;JD CRANKCASE FILTER	R72328	EA	43	\$ 0.87
43	53025		GASKET ;JOHNDEER OIL PAN	R521228	EA	68	\$ 36.59
44	53033		SEAL ;JOHNDEER FRONT CRANK	AR49025	EA	53	\$ 18.56
45	53082		PULLEY ;JOHN DEERE CRANKSHAFT	R132928	EA	7	\$ 334.19
46	53280		HOSE ;JOHN DEERE AIR COMP.	R113491	EA	18	\$ 12.89
47	53298		TURBO ;JOHN DEERE 8.1 ENGINE	RE532788	EA	102	\$ 2,640.00
48	53413		O-RING ;JOHNDEER 8.1 PIPE ELBOW	R26163	EA	37	\$ 3.82
49	53538		SPARK PLUG; JOHNDEER 8.1 EXTENDED	RE553709, NGK5115, NGK1FR7F-4F, RE533607, NGK5115, RE553736, R553709	EA	6582	\$ 54.76
50	53645		GASKET ;JOHNDEER P/S	R96934	EA	76	\$ 7.41

*All subsequent year pricing shall be determined in January of each year using the chage (increase or decrease) of Consumer Price Index (CPI).

ATTACHMENT A - PRICING
MNT16-30A
JOHN DEERE BUS PARTS

51	54254	GASKET ;JOHNDEER AIR COMP.	R125670	EA	12	\$ 3.26
52	54460	PULLEY ;J.D REPOWER ALTERNATOR	R518388	EA	35	\$ 113.55
53	54676	SEAL ;JD CRANKSHAFT COVER BOLT	R116022	EA	97	\$ 3.26
54	54841	CANISTER ;JOHNDEER FUEL	RE529124	EA	3	\$ 311.43
55	55434	SLEEVE ;JOHN DEERE 8.1 ENGINE	R120138	EA	167	\$ 2.50
56	55558	SENSOR ;JOHNDEER 8.1 OXYGEN(UEGOS)	RE519691	EA	974	\$ 481.00
57	56325	TENSIONER ;JD,A/C PULLY	RE505265	EA	9	\$ 74.05
58	56465	SENSOR ;JD 135 PSI NATUARAL GAS PR	RE527046	EA	9	\$ 429.34
59	56598	WASHER, LOCK JOHN DEERE FUEL BLOCK	R129828	EA	6	\$ 1.30
60	56630	SENSOR ;JD COOLANT TEMPERATURE	RE151433	EA	5	\$ 26.74
61	56648	O-RING KIT ;JOHNDEER FUEL SYSTEM	RE67748	EA	50	\$ 7.58
62	56978	FITTING ;JOHNDEER FUEL BLOCK	R127198	EA	1	\$ 47.96
63	57182	O-RING ;JOHNDEER FUEL BLOCK AUX D	R68718	EA	51	\$ 0.61
64	58214	THERMOSTAT ;JOHNDEER 8.1 ENG.	AR72852	EA	132	\$ 8.02
65	58222	GASKET ;JD 8.1 ENG.THERMOSTAT	R124607	EA	23	\$ 5.82
66	58289	VALVE ;NF,JOHNDEER,FUEL BLOCK	RE65372	EA	4	\$ 13.75
67	58370	STARTER ;JOHNDEER SR842/REPOWER	22800-7413, 228000-6562, 6350515, RE501060, RE501150, RE69705	EA	18	\$ 731.64
68	58552	CAP SCREW ;J DHEATSHIELD 3/8 X 3/4	19H1936	EA	6	\$ 0.41
69	58594	GASKET JD OIL COOLER ADAPTER	R520547, R53068	EA	140	\$ 1.62
70	58602	O-RING ;JOHNDEER OIL COOLER	R47153	EA	750	\$ 1.32
71	58610	GASKET ;JOHNDEER OIL COOLER	R124030, R520091	EA	142	\$ 1.23
72	58644	GASKET ;JOHNDEER OIL COOLER	R132396	EA	58	\$ 8.50
73	58651	GASKET ;JOHNDEER OIL COOLER	RE524105	EA	57	\$ 6.69
74	58669	COVER ;JOHNDEER ENG,OIL COOLER	R134603	EA	3	\$ 114.48
75	58768	PUMP ;JOHNDEER 8.1 ENG. WATER	RE509598, RE521502	EA	118	\$ 413.00
76	58776	O-RING KIT ;JOHNDEER W/P	RE502154	EA	1	\$ 11.67
77	58792	GASKET ;JOHNDEER W/P INLET	R119383	EA	72	\$ 12.84
78	215928	O-RING,JOHNDEER OIL FILLER TUBE	RE524712	EA	31	\$ 253.00
79	215971	COVER,JOHNDEER W/P HOUSING	R505691	EA	1	\$ 126.74
80	215973	O-RING,JD THERMOSTAT HOUSING	R504810	EA	274	\$ 1.99
81	216055	PISTON KIT,JOHNDEER 8.1	RE516782	EA	297	\$ 350.36
82	216066	ROD,JD 8.1 REBUILT CONNECTING	RRE501513	EA	1	\$ 283.00
83	216070	CONNECTOR,J D MAP SENSOR	57M8119	EA	38	\$ 3.01
84	216072	PIN,JOHNDEER D5A2 CONTACT	R78061	EA	1	\$ 0.45
85	216076	VALVE COVER BOLT J D HFN04 N/F	RE57632	EA	1	\$ 1.47
86	216107	HEAD KIT,JOHNDEER 8.1ENG REBUILT.	8.1 ENG KIT	EA	1	\$ -
87	216128	PLUG,JOHNDEER 8.1 ENG.	R121929	EA	2	\$ 5.42
88	216240	SEAL,JOHNDEERE REAR ENGINE	RE504363, RE520036	EA	62	\$ 38.39
89	216400	SLEEVE,JOHNDEER 8.1 DIPSTICK TUBE	R517434	EA	11	\$ 22.42
90	216406	VALVE,JOHNDEER OIL COOLER	R500055, R500055	EA	97	\$ 3.56
91	216408	SPRING,JOHNDEER OILCOOLER VALVE	R98064	EA	98	\$ 3.19
92	216410	O-RING,JOHNDEER OIL COOLER VALVE	U17409	EA	125	\$ 2.45
93	216412	VALVE,JOHNDEER PRESSURE RELIEF	R124186	EA	46	\$ 20.25
94	216414	SPRING,JOHNDEER COMPRESSION	R500330	EA	48	\$ 3.70
95	216419	SEAL KIT,JOHNDEER AUXILLARY DRIVE	AT159816	EA	48	\$ 16.53
96	216421	O-RING,JOHNDEER AUXILLARY DRIVE	R394R	EA	66	\$ 1.21
97	216423	O-RING,JOHNDEER AUILLARY DRIVE	T106370	EA	51	\$ 0.81
98	216475	SHIELD,JOHNDEER 8.1 HEAT	R502717, R525063	EA	36	\$ 53.97
99	216631	TUBE,JOHNDEER DIPSTICK	RE33859	EA	18	\$ 33.24
100	216633	O-RING,JOHNDEER 8.1 ENG	T80123	EA	51	\$ 2.00
101	216639	O-RING.JOHNDEER 8.1 ENG	R71596	EA	53	\$ 1.85

*All subsequent year pricing shall be determined in January of each year using the chage (increase or decrease) of Consumer Price Index (CPI).

ATTACHMENT A - PRICING
MNT16-30A
JOHN DEERE BUS PARTS

102	216655	GEAR,JOHNDEER AIR COMPRSSOR	R503408	EA	8	\$ 237.11
103	216698	LINE,JOHNDEER TURBO OIL	RE509232	EA	49	\$ 55.10
104	216957	HOSE: JOHNDEER TURBO OIL DRAIN	R520656	EA	34	\$ 9.97
105	217266	GASKET,JD THERMOSTAT HOUSING	R124211	EA	21	\$ 6.71
106	217287	GEAR,JOHNDEER 8.1 ENG. TIMING	R504212, R528098	EA	34	\$ 275.99
107	217306	TRANSDUCER,JOHNDEER FUEL BLOCK	RE62539	EA	17	\$ 613.80
108	217354	BOLT KIT,JOHNDEER 8.1 HEAD	RG24026	EA	78	\$ 154.33
109	217356	BEARING,JOHNDEER 8.1 ROD	R525767, R116081	EA	578	\$ 10.93
110	217358	GASKET SET,JOHNDEER 8.1 HEAD	RE527549	EA	72	\$ 405.88
111	217415	HARNESS,JD 8.1 SR842/REPOWER WIR	RE521076	EA	66	\$ 802.13
112	217429	WASHER/SEAL,JOHNDEER TIMING COVER	RE517059	EA	58	\$ 1.13
113	217443	PIN,JOHNDEER 8.1 WRIST	R57771	EA	120	\$ 20.88
114	217445	RING,JOHNDEER 8.1 PISTON PIN SNAP	E1343FN	EA	470	\$ 1.47
115	217451	PUMP,JOHNDEER 8.1 REMAN OIL	SE500877	EA	39	\$ 363.10
116	217455	BUSHING,JOHNDEER 8.1 CAM	R527877	EA	179	\$ 13.01
117	217457	FOLLOWER,JOHNDEER 8.1(TAPPETS)CAM	R110126	EA	36	\$ 20.75
118	217459	WASHER,JD 8.1 CAMSHAFT THRUST	R504811	EA	88	\$ 27.87
119	217461	BEARING,JOHNDEER 8.1 STD MAIN	RE529319	EA	246	\$ 24.39
120	217463	BEARING,JD 8.1 STD MAIN	RE529320	EA	42	\$ 56.28
121	217465	GASKET SET,JOHNDDER 8.1 AUX DRIVE	R524822, R501023	EA	1	\$ 13.42
122	217496	JOHNDEER 8.1 REMAN CYLINDER HEAD	RE503996RX	EA	27	\$ 4,132.00
123	217503	8.1 JD HEAD GASKET	RE55475	EA	8	\$ 81.53
124	217531	WASTEGATE,JOHNDEER 8.1	RE63920	EA	14	\$ 433.47
125	217694	STUD, JOHNDEERE TURBO	R503820	EA	127	\$ 13.39
126	217824	BOLT,JOHNDEER 8.1 BEARING CAP	R122364, R519287	EA	672	\$ 7.77
127	217827	ROD,JOHNDEER 8.1 PUSH	R85027, R536992	EA	493	\$ 6.42
128	217838	ADAPTOR,JOHNDEER OIL COOLER	RE524007	EA	22	\$ 81.19
129	217840	O-RING,JD OIL COOLER ADPT	R71732	EA	164	\$ 1.45
130	217846	SHAFT,JOHNDEER 8.1 ROCKER ARM	R70826	EA	10	\$ 154.43
131	217848	ARM,JOHNDEER 8.1 RH ROCKER	RE24045	EA	18	\$ 27.39
132	217858	CAMSHAFT,JOHNDEER 8.1	RE57054	EA	39	\$ 573.53
133	217883	RODS,JOHNDEER 8.1 CONNECTING	R519583, RE501513, RE535555	EA	227	\$ 285.15
134	217908	TUBE,JOHNDEER OIL COOLER OIL	R126337, R518376	EA	25	\$ 53.20
135	217910	TUBE,JOHNDEER OIL COOLER OIL	R116718	EA	32	\$ 41.34
136	217917	PLUG,JOHNDEER CAMSHAFT	R82007	EA	45	\$ 5.15
137	218171	ARM,JOHNDEER 8.1 LH ROCKER	RE24046	EA	17	\$ 27.39
138	218173	PLUG,JOHNDEER ROCKER ARM	R54565	EA	9	\$ 1.42
139	218175	WASHER.JOHNDEER ROCKER SHAFT PLUG	R26081	EA	2	\$ 1.31
140	218191	LINE TUBE,JOHNDEERE TURBO OIL	RE507492	EA	17	\$ 37.76
141	218273	CRANK SHAFT POSITION SENSOR JD	RE519144, RE508195	EA	8	\$ 25.15
142	218427	CRANKSHAFT,JOHNDEER 8.1(SEAL RE529775)	RE534314	EA	18	\$ 3,850.00
143	218429	SEAL,JOHNDEER CRANKSHAFT (RE534314)	RE529775, RE542195	EA	16	\$ 8.07
144	218471	COVER,JOHNDEER 8.1 VALVE	RE70023, RE524860	EA	14	\$ 126.74
145	219821	PULLEY, JOHN DEERE CRANKSHAFT 8.1	R505814, R520411	EA	1	\$ 314.16
146	220164	SEAL THERMOSTAT JOHNDEERE	R521548	EA	4	\$ 3.73

*All subsequent year pricing shall be determined in January of each year using the chage (increase or decrease) of Consumer Price Index (CPI).

**ITEM #F4
AUTHORIZE AWARD (BENCH)
CONTRACTS MNT16-30A-B
JOHN DEERE BUS PARTS**

**ATTACHMENT B
REGULATORY REQUIREMENTS
&
ATTACHMENT C
INSURANCE REQUIREMENTS

APPLY TO BOTH CONTRACTS**

Attachment B

REGULATORY REQUIREMENT

Table of Contents

Contents

ADMINISTRATIVE CODE	2
DISCRIMINATION	2
WHISTLEBLOWER REQUIREMENTS	3
PUBLIC RECORDS ACT	3
ACCESS TO RECORDS	4
FEDERAL FUNDING, INCORPORATION OF FEDERAL TRANSIT ADMINISTRATION (FTA) TERMS, AND FEDERAL CHANGES	4
ENERGY CONSERVATION REQUIREMENTS	5
CIVIL RIGHTS REQUIREMENTS	5
NO GOVERNMENT OBLIGATION TO THIRD PARTIES	6
PROGRAM FRAUD AND FALSE OR FRAUDULENT STATEMENTS OR RELATED ACTS.....	7
SUSPENSION AND DEBARMENT.....	8
RECYCLED PRODUCTS	8
CLEAN WATER AND CLEAN AIR REQUIREMENTS	9
COMPLIANCE WITH FEDERAL LOBBYING POLICY	9
BUY AMERICA	10
CARGO PREFERENCE	10
FLY AMERICA	11
CONTRACT WORK HOURS AND SAFETY STANDARDS ACT.....	11
DISADVANTAGED BUSINESS ENTERPRISE (DBE) 49 CFR Part 26.....	13
ADA ACCESS	14
ALCOHOL AND DRUG-FREE WORKPLACE PROGRAM.....	15
TRANSIT EMPLOYEE PROTECTIVE ARRANGEMENTS	17
BONDING REQUIREMENTS	18
DAVIS-BACON AND COPELAND ANTI-KICKBACK ACTS	18
PRIVACY ACT - 5 U.S.C. 552.....	25
TERMINATION 49 U.S.C. Part 18 FTA Circular 4220.1F.....	26
SEISMIC SAFETY REQUIREMENTS 42 U.S.C. 7701 et seq. 49 CFR Part 41	28
BREACHES AND DISPUTE RESOLUTION 49 CFR Part 18 FTA Circular 4220.1F.....	28
VETERANS PREFERENCE	29

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 permit any of the foregoing parties to reproduce without any cost by any means whatsoever or to copy excerpts and transcriptions as reasonably needed.
- E. 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.

RR-19

DISADVANTAGED BUSINESS ENTERPRISE (DBE) 49 CFR Part 26

Disadvantaged Business Enterprises

- A. This Contract is subject to the requirements of Title 49, Code of Federal Regulations, Part 26, *Participation by Disadvantaged Business Enterprises in Department of Transportation Financial Assistance Programs*. The 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>

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.

RR- 26

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

Applicability to Contracts

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

Flow Down

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

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

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.

RR – 27

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

Applicability to Contracts

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

Flow Down

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

Model Clauses/Language

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

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

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 Construction Manager.

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 of damage.

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

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

RR-29

VETERANS PREFERENCE

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 - INSURANCE REQUIREMENTS

IFB-MNT16-30A

JOHN DEERE BUS PARTS

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 insureds 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

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



CONTRACT AGREEMENT

between

A-Z Bus Sales, Inc.
1900 South Riverside Avenue
Colton, CA 92324

CONTRACT DOCUMENTS

CONTRACT NO. MNT16-30B

JOHN DEERE BUS PARTS

(hereinafter "CONTRACTOR")
Telephone: (951) 781-7188
Fax: (951) 684-8031
Email: jpederson@a-zbus.com

And

Contract Amount: \$504,745

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

Omnitrans Project Manager:

Name: Rick Barone
Title: Materials Manager
Telephone: (909) 379-7204
Fax: (909) 379-7107
Email: rick.barone@omnitrans.org

Contract Administrator:

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



TABLE OF CONTENTS

1.	SCOPE OF WORK.....	4
2.	PERIOD OF PERFORMANCE.....	4
3.	CONTRACT OPTIONS	5
4.	COMPENSATION.....	5
5.	INVOICING AND PAYMENT.....	6
6.	AUDIT AND INSPECTION OF RECORDS.....	6
7.	NOTIFICATION	7
8.	OMNITRANS' AND CONTRACTOR'S REPRESENTATIVES.....	7
9.	DISPUTE RESOLUTION.....	8
10.	TERMINATION FOR CONVENIENCE	9
11.	TERMINATION FOR BREACH OF AGREEMENT	9
12.	ASSIGNMENT.....	10
13.	SUBCONTRACTING.....	10
14.	INDEPENDENT CONTRACTOR.....	11
15.	INSURANCE	11
16.	INDEMNITY.....	12
17.	REVISIONS IN SCOPE OF WORK.....	12
18.	RIGHTS IN TECHNICAL DATA	12
19.	OWNERSHIP OF REPORTS AND DOCUMENTS.....	13
20.	OWNERSHIP RIGHTS.....	13

21.	WORK FOR HIRE	14
22.	SUBMITTAL OF CLAIMS BY CONTRACTOR.....	14
23.	EQUAL OPPORTUNITY	14
24.	STANDARD OF PERFORMANCE	14
25.	NOTIFICATION OF EMPLOYMENT OF OMNITRANS BOARD MEMBERS/ALTERNATES AND EMPLOYEES	15
26.	DISQUALIFYING POLITICAL CONTRIBUTIONS	15
27.	COMPLIANCE WITH LAW	15
28.	COMPLIANCE WITH LOBBYING POLICIES.....	16
29.	PUBLIC RECORDS ACT.....	16
30.	WAIVER/INVALIDITY	17
31.	FORCE MAJEURE.....	17
32.	CONFIDENTIALITY	17
33.	CONTRACTOR’S INTERACTION WITH THE MEDIA AND THE PUBLIC	17
34.	GOVERNING LAW	18
35.	MODIFICATIONS TO AGREEMENT	18
36.	LICENSING, PERMITS AND INSPECTION COSTS.....	18
37.	PRECEDENCE	19
38.	ENTIRE AGREEMENT	19

ATTACHMENT A – PRICING

ATTACHMENT B – REGULATORY REQUIREMENTS

ATTACHMENT C – INSURANCE REQUIREMENTS

This Agreement is made and entered into as of this 6th day of January, 2016 by and between Omnitrans (hereinafter referred to as "OMNITRANS") and Harbor Diesel and Equipment (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 January 5, 2019, unless terminated as specified in Section 10 and 11 of this Agreement. Omnitrans has no obligation to purchase any specified amount of products/services. All applicable indemnification provisions in this Agreement shall remain in effect following the termination of this Agreement.

Omnitrans' election to extend the Agreement beyond the Initial Term shall not diminish its right to terminate the Agreement for Omnitrans' convenience or CONTRACTORS default as provided elsewhere in this Agreement. The "maximum term" of this Agreement shall be the period extended from January 6, 2019 Through January 5, 2021, which period encompasses the Initial Term, Option Year 1 and Option Year 2.

3. CONTRACT OPTIONS

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

4. COMPENSATION

For CONTRACTOR's full and complete performance of its obligations under this Agreement, OMNITRANS shall pay CONTRACTOR on a FIXED PRICE basis at the fully burdened fixed rates shown in Attachment A, and subject to the maximum cumulative payment obligation.

OMNITRANS' maximum cumulative payment obligation under this Agreement shall not exceed Five Hundred Four Thousand, Seven Hundred Forty Five Dollars (\$504,745), including all amounts payable to CONTRACTOR for all costs, including but not limited to direct labor, other direct costs, subcontracts, indirect costs including, but not limited to, leases, materials, taxes, insurance, and profit.

5. INVOICING AND PAYMENT

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

CONTRACTOR shall submit invoices in duplicate to:

OMNITRANS
1700 West Fifth Street
San Bernardino, CA 92411
Attn: Accounts Payable
Accountspayable@omnitrans.org

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

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

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

6. AUDIT AND INSPECTION OF RECORDS

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

Agreement unless OMNITRANS' written permission is given to CONTRACTOR to dispose of material prior to this time.

7. NOTIFICATION

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

To OMNITRANS:

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

To CONTRACTOR:

A-Z Bus Sales, Inc.
1900 South Riverside Avenue
Colton, CA 92324
Attn: Jerry Pederson

8. OMNITRANS' AND CONTRACTOR'S REPRESENTATIVES

A. OMNITRANS' Project Manager

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

Project Manager: Rick Barone.

- 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>
Jerry Pederson	Parts Manager
_____	_____
_____	_____
_____	_____

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

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

9. DISPUTE RESOLUTION

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

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

10. TERMINATION FOR CONVENIENCE

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

11. TERMINATION FOR BREACH OF AGREEMENT

- A. If CONTRACTOR fails to perform any of the provisions of this Agreement or so fails to make progress as to endanger timely performance of this Agreement, OMNITRANS may give CONTRACTOR written notice of such default. If CONTRACTOR does not cure such default or provide a plan to cure such default which is acceptable to OMNITRANS within the time permitted by OMNITRANS, then OMNITRANS may terminate this Agreement due to CONTRACTOR's breach of this Agreement.
- B. If a federal or state proceeding for relief of debtors is undertaken by or against CONTRACTOR, or if CONTRACTOR makes an assignment for the benefit of creditors, then OMNITRANS may immediately terminate this Agreement.

- C. If CONTRACTOR violates Section 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.

12. ASSIGNMENT

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

13. SUBCONTRACTING

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

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

14. INDEPENDENT CONTRACTOR

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

15. INSURANCE

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;

- 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.

16. INDEMNITY

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

17. REVISIONS IN SCOPE OF WORK

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

18. RIGHTS IN TECHNICAL DATA

- A. No material or technical data prepared by CONTRACTOR under this Agreement is to be released by CONTRACTOR to any other person or entity except as necessary for the performance of the Work. All press releases or information concerning the Work that might appear in any publication or dissemination, including but not limited to, newspapers, magazines, and electronic media, shall first be authorized in writing by OMNITRANS.
- B. The originals of all letters, documents, reports and other products and data produced under this Agreement shall become the property of OMNITRANS without restriction or limitation on their use and shall be made available upon request to OMNITRANS at any time. Original copies

of such shall be delivered to OMNITRANS upon completion of the Work or termination of the Work. CONTRACTOR shall be permitted to retain copies of such items for the furtherance of its technical proficiency; however, publication of this material is subject to the prior written approval of OMNITRANS. The provisions of this paragraph shall survive termination or expiration of this Agreement and/or final payment thereunder.

19. OWNERSHIP OF REPORTS AND DOCUMENTS

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

20. OWNERSHIP RIGHTS

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

and all Documentation and Software which is created by Contractor or its Third Party Software Contractors shall be Licensed Software or Licensed Documentation, as appropriate. All Licensed Software and Licensed Documentation shall be governed by the License Agreement by and between the parties of event date herewith.

21. WORK FOR HIRE

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

22. SUBMITTAL OF CLAIMS BY CONTRACTOR

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

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

23. EQUAL OPPORTUNITY

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

24. STANDARD OF PERFORMANCE

- A. CONTRACTOR shall perform and exercise, and require its subcontractors to perform and exercise due professional care and competence in the performance of the Work in accordance with the requirements of this Agreement. CONTRACTOR shall be responsible for the professional quality, technical accuracy, completeness and coordination of the Work, it being understood that OMNITRANS will be relying upon such professional

quality, accuracy, completeness and coordination in utilizing the Work. The foregoing obligations and standards shall constitute the "Standard of Performance" for purposes of this Agreement. The provisions of this paragraph shall survive termination or expiration of this Agreement and/or final payment thereunder.

- B. All workers shall have sufficient skill and experience to perform the Work assigned to them. OMNITRANS shall have the right, at its sole discretion, to require the immediate removal of CONTRACTOR's personnel at any level assigned to the performance of the Work at no additional fee or cost to OMNITRANS, if OMNITRANS considers such removal in its best interests and requests such removal in writing and such request is not done for illegal reasons. Further, an employee who is removed from performing Work under this Agreement under this Article shall not be re-assigned to perform Work in any other capacity under this Agreement without OMNITRANS' prior written approval.

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

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

26. DISQUALIFYING POLITICAL CONTRIBUTIONS

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

27. COMPLIANCE WITH LAW

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.

28. COMPLIANCE WITH LOBBYING POLICIES

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

29. PUBLIC RECORDS ACT

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

30. WAIVER/INVALIDITY

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

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

31. FORCE MAJEURE

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

32. CONFIDENTIALITY

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

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

- A. OMNITRANS shall review and approve in writing all OMNITRANS related copy proposed to be used by CONTRACTOR for advertising or public relations purposes prior to publication. CONTRACTOR shall not allow OMNITRANS related copy to be published in its advertisements and public relations programs prior to receiving such approval. CONTRACTOR shall ensure that all published information is factual and that it does not in any way imply that OMNITRANS endorses CONTRACTOR's firm, service, and/or product.
- B. CONTRACTOR shall refer all inquiries from the news media to OMNITRANS, and shall comply with the procedures of OMNITRANS' Public Affairs staff regarding statements to the media relating to this Agreement or the Work.

- C. If CONTRACTOR receives a complaint from a citizen or the community, CONTRACTOR shall inform OMNITRANS as soon as possible and inform OMNITRANS of any action taken to alleviate the situation.
- D. The provisions of this Article shall survive the termination or expiration of this Agreement.

34. GOVERNING LAW

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

35. MODIFICATIONS TO AGREEMENT

Unless specified otherwise in the Agreement, this Agreement may only be modified by written mutual consent evidenced by signatures of representatives authorized to enter into and modify the Agreement. In order to be effective, amendments may require prior approval by OMNITRANS' Board of Directors, and in all instances require prior signature of an authorized representative of OMNITRANS.

36. LICENSING, PERMITS AND INSPECTION COSTS

- 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.

37. PRECEDENCE

Conflicting provisions hereof, if any, shall prevail in the following descending order of precedence: (1) the provisions of this Agreement, (2) Attachment B, Regulatory Requirements, (3) Attachment C, Pricing, (4) Attachment A, Scope of Work, (5) provisions of IFB-MNT16-30 and (4) CONTRACTOR's proposal dated October 9, 2015.

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

A-Z BUS SALES, INC.

P. SCOTT GRAHAM
CEO/General Manager

JERRY PEDERSON
Parts Manager

DATE

Federal Tax I.D. No. 33-0065644

DP_____

ATTACHMENT A - PRICING

MNT16-30B

JOHN DEERE BUS PARTS

Item Type	Description	ModelNum	Unit of Measure	Quantity	* Base Year 1
	O-RING ;JD SECONDARY FUEL FILTER	O-RING ;JD SECONDARY FUEL FILTER	EA	29	\$ 1.54
	GASKET ;JOHNDEER 2-HOLE 8.1 EXHAUST	GASKET ;JOHNDEER 2-HOLE 8.1 EXHAUST	EA	539	\$ 1.74
	GASKET ;JOHNDEER 1-HOLE 8.1 EXHAUST	GASKET ;JOHNDEER 1-HOLE 8.1 EXHAUST	EA	699	\$ 5.85
	VALVE ;JOHNDEER WASTEGATE	VALVE ;JOHNDEER WASTEGATE	EA	189	\$ 404.35
	VALVE ;JOHNDEER FUEL METERING	VALVE ;JOHNDEER FUEL METERING	EA	4	\$ 309.47
	COIL ;JD,FUEL METERING TRIGGER	COIL ;JD,FUEL METERING TRIGGER	EA	15	\$ 160.47
	ACCELERATOR ;JOHN DEERE 8.1L	ACCELERATOR ;JOHN DEERE 8.1L	EA	53	\$ 2,235.52
	WIRE ;JOHNDEER,8.1 SPARK PLUG	WIRE ;JOHNDEER,8.1 SPARK PLUG	EA	6363	\$ 19.52
	GASKET ;NF,JOHNDEER 8.1 ACTUATOR	GASKET ;NF,JOHNDEER 8.1 ACTUATOR	EA	282	\$ 1.86
	JOHNDEER, CRANKCASE BREATHER	JOHNDEER, CRANKCASE BREATHER	EA	1804	\$ 55.92
	GASKET ;JOHNDEER INTAKE MANIFOLD	GASKET ;JOHNDEER INTAKE MANIFOLD	EA	146	\$ 6.31
	STUD ;JOHN DEERE EXHAUST	STUD ;JOHN DEERE EXHAUST	EA	1023	\$ 14.99
	SPACER ;JOHNDEER EXHAUST STUD	SPACER ;JOHNDEER EXHAUST STUD	EA	753	\$ 6.11
	NUT ;JOHNDEER EXHAUST STUD	NUT ;JOHNDEER EXHAUST STUD	EA	1261	\$ 1.03
	SENSOR ;JOHN DEERE HUMIDITY TEMP	SENSOR ;JOHN DEERE HUMIDITY TEMP	EA	72	\$ 615.51
	ECM;JOHNDEER 8.1 ENGINE	ECM;JOHNDEER 8.1 ENGINE	EA	8	\$ 2,308.79
	TRANSDUCER ;NF,SR842 JOHNDEERE 8.1L	TRANSDUCER ;NF,SR842 JOHNDEERE 8.1L	EA	10	\$ 42.26
	INJECTOR ;JOHN DEERE 8.1 FUEL	INJECTOR ;JOHN DEERE 8.1 FUEL	EA	261	\$ 111.41
	SENDER ;JOHN DEERE OIL PRESSURE	SENDER ;JOHN DEERE OIL PRESSURE	EA	34	\$ 64.61
	COIL ;JOHNDEER SR842/REPOWER IGN.	COIL ;JOHNDEER SR842/REPOWER IGN.	EA	151	\$ 89.76
	GASKET ;JOHN DEERE TURBO MOUNT	GASKET ;JOHN DEERE TURBO MOUNT	EA	143	\$ 7.01
	GASKET ;JOHN DEERE TURBO OIL LINE	GASKET ;JOHN DEERE TURBO OIL LINE	EA	231	\$ 2.88
	O-RING ;NF,JOHN DEERE MAP SENSOR	O-RING ;NF,JOHN DEERE MAP SENSOR	EA	124	\$ 1.50
	SENSOR ;NF,JOHN DEERE 8.1 MAP	SENSOR ;NF,JOHN DEERE 8.1 MAP	EA	88	\$ 106.88
	EXTENSION ;JOHN DEERE OIL FILLER	EXTENSION ;JOHN DEERE OIL FILLER	EA	4	\$ 416.43
	O-RING ;JOHN DEERE FILLER TUBE	O-RING ;JOHN DEERE FILLER TUBE	EA	220	\$ 1.58
	JOHNDEER,NF, AIR COMPRESSOR	JOHNDEER,NF, AIR COMPRESSOR	EA	109	\$ 3.50
	SENSOR ;NF SR842 JOHN DEERE BAP	SENSOR ;NF SR842 JOHN DEERE BAP	EA	7	\$ 86.77
	SCREW ;NF,JOHN DEERE MAP SENSOR	SCREW ;NF,JOHN DEERE MAP SENSOR	EA	1	\$ 1.79
	CLAMP ;JOHNDEER TURBO/EXHAUST	CLAMP ;JOHNDEER TURBO/EXHAUST	EA	45	\$ 39.85
	HOSE ;JOHNDEER PROBLYSR	HOSE ;JOHNDEER PROBLYSR	EA	29	\$ 29.69
	SENSOR ;JOHN DEERE 8.1 KNOCK	SENSOR ;JOHN DEERE 8.1 KNOCK	EA	2	\$ 60.67
	GASKET ;JOHN DEERE VALVE COVER	GASKET ;JOHN DEERE VALVE COVER	EA	58	\$ 28.34
	BOLT ;JD,HEATSHEILD EXHAUST	BOLT ;JD,HEATSHEILD EXHAUST	EA	746	\$ 0.70
	TENSIONER ;JOHN DEERE BELT	TENSIONER ;JOHN DEERE BELT	EA	91	\$ 144.26
	CAP ;JOHN DEERE INTAKE VALVE	CAP ;JOHN DEERE INTAKE VALVE	EA	12	\$ 3.71
	KEY ;JOHN DEERE DAMPER	KEY ;JOHN DEERE DAMPER	EA	42	\$ 4.81
	DAMPER ;JOHN DEERE TORSIONAL	DAMPER ;JOHN DEERE TORSIONAL	EA	126	\$ 359.12
	PLUG ;JOHN DEERE OIL PAN DRAIN	PLUG ;JOHN DEERE OIL PAN DRAIN	EA	4	\$ 6.14
	O-RING ;JOHNDEER OIL PAN DRAIN PLUG	O-RING ;JOHNDEER OIL PAN DRAIN PLUG	EA	196	\$ 1.08
	LINE ;JOHN DEERE TURBO OIL DRAIN	LINE ;JOHN DEERE TURBO OIL DRAIN	EA	1	\$ 46.92
	O-RING ;JD CRANKCASE FILTER	O-RING ;JD CRANKCASE FILTER	EA	43	\$ 0.90
	GASKET ;JOHNDEER OIL PAN	GASKET ;JOHNDEER OIL PAN	EA	68	\$ 38.66

*Base Year 1 - All subsequent year pricing shall be determined in January of each year using the change (increase or decrease) of Consumer Price Index (CPI).

ATTACHMENT A - PRICING

MNT16-30B

JOHN DEERE BUS PARTS

SEAL ;JOHNDEER FRONT CRANK	SEAL ;JOHNDEER FRONT CRANK	EA	53	\$	19.40
PULLEY ;JOHN DEERE CRANKSHAFT	PULLEY ;JOHN DEERE CRANKSHAFT	EA	7	\$	337.22
HOSE ;JOHN DEERE AIR COMP.	HOSE ;JOHN DEERE AIR COMP.	EA	18	\$	13.47
TURBO ;JOHN DEERE 8.1 ENGINE	TURBO ;JOHN DEERE 8.1 ENGINE	EA	102	\$	2,776.67
O-RING ;JOHNDEER 8.1 PIPE ELBOW	O-RING ;JOHNDEER 8.1 PIPE ELBOW	EA	37	\$	3.99
SPARK PLUG; JOHNDEER 8.1 EXTENDED	SPARK PLUG; JOHNDEER 8.1 EXTENDED	EA	6582	\$	58.30
GASKET ;JOHNDEER P/S	GASKET ;JOHNDEER P/S	EA	76	\$	7.48
GASKET ;JOHNDEER AIR COMP.	GASKET ;JOHNDEER AIR COMP.	EA	12	\$	3.40
PULLEY ;J.D REPOWER ALTERNATOR	PULLEY ;J.D REPOWER ALTERNATOR	EA	35	\$	114.58
SEAL ;JD CRANKSHAFT COVER BOLT	SEAL ;JD CRANKSHAFT COVER BOLT	EA	97	\$	3.40
CANISTER ;JOHNDEER FUEL	CANISTER ;JOHNDEER FUEL	EA	3	\$	314.26
SLEEVE ;JOHN DEERE 8.1 ENGINE	SLEEVE ;JOHN DEERE 8.1 ENGINE	EA	167	\$	2.61
SENSOR ;JOHNDEER 8.1 OXYGEN(UEGOS)	SENSOR ;JOHNDEER 8.1 OXYGEN(UEGOS)	EA	974	\$	490.12
TENSIONER ;JD,A/C PULLY	TENSIONER ;JD,A/C PULLY	EA	9	\$	77.41
SENSOR ;JD 135 PSI NATUARAL GAS PR	SENSOR ;JD 135 PSI NATUARAL GAS PR	EA	9	\$	433.24
WASHER, LOCK JOHN DEERE FUEL BLOCK	WASHER, LOCK JOHN DEERE FUEL BLOCK	EA	6	\$	1.35
SENSOR ;JD COOLANT TEMPERATURE	SENSOR ;JD COOLANT TEMPERATURE	EA	5	\$	27.95
O-RING KIT ;JOHNDEER FUEL SYSTEM	O-RING KIT ;JOHNDEER FUEL SYSTEM	EA	50	\$	8.02
REGULATOR ;JD REPOWER(135 PSI)PRESS	REGULATOR ;JD REPOWER(135 PSI)PRESS	EA	15	\$	649.35
FITTING ;JOHNDEER FUEL BLOCK	FITTING ;JOHNDEER FUEL BLOCK	EA	1	\$	50.14
O-RING ;JOHNDEER FUEL BLOCK AUX D	O-RING ;JOHNDEER FUEL BLOCK AUX D	EA	51	\$	0.63
THERMOSTAT ;JOHNDEER 8.1 ENG.	THERMOSTAT ;JOHNDEER 8.1 ENG.	EA	132	\$	8.38
GASKET ;JD 8.1 ENG.THERMOSTAT	GASKET ;JD 8.1 ENG.THERMOSTAT	EA	23	\$	6.08
VALVE ;NF,JOHNDEER,FUEL BLOCK	VALVE ;NF,JOHNDEER,FUEL BLOCK	EA	4	\$	14.37
STARTER ;JOHNDEER SR842/REPOWER	STARTER ;JOHNDEER SR842/REPOWER	EA	18	\$	748.28
CAP SCREW ;J DHEATSHIELD 3/8 X 3/4	CAP SCREW ;J DHEATSHIELD 3/8 X 3/4	EA	6	\$	0.42
GASKET JD OIL COOLER ADAPTER	GASKET JD OIL COOLER ADAPTER	EA	140	\$	1.69
O-RING ;JOHNDEER OIL COOLER	O-RING ;JOHNDEER OIL COOLER	EA	750	\$	1.38
GASKET ;JOHNDEER OIL COOLER	GASKET ;JOHNDEER OIL COOLER	EA	142	\$	1.28
GASKET ;JOHNDEER OIL COOLER	GASKET ;JOHNDEER OIL COOLER	EA	58	\$	8.88
GASKET ;JOHNDEER OIL COOLER	GASKET ;JOHNDEER OIL COOLER	EA	57	\$	6.99
COVER ;JOHNDEER ENG,OIL COOLER	COVER ;JOHNDEER ENG,OIL COOLER	EA	3	\$	115.51
PUMP ;JOHNDEER 8.1 ENG. WATER	PUMP ;JOHNDEER 8.1 ENG. WATER	EA	118	\$	474.17
O-RING KIT ;JOHNDEER W/P	O-RING KIT ;JOHNDEER W/P	EA	1	\$	12.20
GASKET ;JOHNDEER W/P INLET	GASKET ;JOHNDEER W/P INLET	EA	72	\$	13.11
O-RING,JOHNDEER OIL FILLER TUBE	O-RING,JOHNDEER OIL FILLER TUBE	EA	31	\$	255.30
COVER,JOHNDEER W/P HOUSING	COVER,JOHNDEER W/P HOUSING	EA	1	\$	127.89
O-RING,JD THERMOSTAT HOUSING	O-RING,JD THERMOSTAT HOUSING	EA	274	\$	2.08
PISTON KIT,JOHNDEER 8.1	PISTON KIT,JOHNDEER 8.1	EA	297	\$	353.54
CONNECTOR,J D MAP SENSOR	CONNECTOR,J D MAP SENSOR	EA	38	\$	3.15
PIN,JOHNDEER D5A2 CONTACT	PIN,JOHNDEER D5A2 CONTACT	EA	1	\$	0.47
VALVE COVER BOLT J D HFN04 N/F	VALVE COVER BOLT J D HFN04 N/F	EA	1	\$	1.54
PLUG,JOHNDEER 8.1 ENG.	PLUG,JOHNDEER 8.1 ENG.	EA	2	\$	5.66
SEAL,JOHNDEERE REAR ENGINE	SEAL,JOHNDEERE REAR ENGINE	EA	62	\$	40.13
SLEEVE,JOHNDEER 8.1 DIPSTICK TUBE	SLEEVE,JOHNDEER 8.1 DIPSTICK TUBE	EA	11	\$	23.43

*Base Year 1 - All subsequent year pricing shall be determined in January of each year using the chage (increase or decrease) of Consumer Price Index (CPI).

ATTACHMENT A - PRICING

MNT16-30B

JOHN DEERE BUS PARTS

VALVE,JOHNDEER OIL COOLER	VALVE,JOHNDEER OIL COOLER	EA	97	\$	3.72
SPRING,JOHNDEER OILCOOLER VALVE	SPRING,JOHNDEER OILCOOLER VALVE	EA	98	\$	3.33
O-RING,JOHNDEER OIL COOLER VALVE	O-RING,JOHNDEER OIL COOLER VALVE	EA	125	\$	2.56
VALVE,JOHNDEER PRESSURE RELIEF	VALVE,JOHNDEER PRESSURE RELIEF	EA	46	\$	21.17
SPRING,JOHNDEER COMPRESSION	SPRING,JOHNDEER COMPRESSION	EA	48	\$	3.86
SEAL KIT,JOHNDEER AUXILLARY DRIVE	SEAL KIT,JOHNDEER AUXILLARY DRIVE	EA	48	\$	17.28
O-RING,JOHNDEER AUXILLARY DRIVE	O-RING,JOHNDEER AUXILLARY DRIVE	EA	66	\$	1.26
O-RING,JOHNDEER AUILLARY DRIVE	O-RING,JOHNDEER AUILLARY DRIVE	EA	51	\$	0.85
SHIELD,JOHNDEER 8.1 HEAT	SHIELD,JOHNDEER 8.1 HEAT	EA	36	\$	56.41
TUBE,JOHNDEER DIPSTICK	TUBE,JOHNDEER DIPSTICK	EA	18	\$	34.75
O-RING,JOHNDEER 8.1 ENG	O-RING,JOHNDEER 8.1 ENG	EA	51	\$	2.09
O-RING,JOHNDEER 8.1 ENG	O-RING,JOHNDEER 8.1 ENG	EA	53	\$	1.93
GEAR,JOHNDEER AIR COMPRSSOR	GEAR,JOHNDEER AIR COMPRSSOR	EA	8	\$	239.26
LINE,JOHNDEER TURBO OIL	LINE,JOHNDEER TURBO OIL	EA	49	\$	57.60
HOSE: JOHNDEER TURBO OIL DRAIN	HOSE: JOHNDEER TURBO OIL DRAIN	EA	34	\$	10.41
GASKET,JD THERMOSTAT HOUSING	GASKET,JD THERMOSTAT HOUSING	EA	21	\$	7.01
GEAR,JOHNDEER 8.1 ENG. TIMING	GEAR,JOHNDEER 8.1 ENG. TIMING	EA	34	\$	278.49
TRANSDUCER,JOHNDEER FUEL BLOCK	TRANSDUCER,JOHNDEER FUEL BLOCK	EA	17	\$	397.38
BOLT KIT,JOHNDEER 8.1 HEAD	BOLT KIT,JOHNDEER 8.1 HEAD	EA	78	\$	155.73
BEARING,JOHNDEER 8.1 ROD	BEARING,JOHNDEER 8.1 ROD	EA	578	\$	11.43
GASKET SET,JOHNDEER 8.1 HEAD	GASKET SET,JOHNDEER 8.1 HEAD	EA	72	\$	409.56
HARNESS,JD 8.1 SR842/REPOWER WIR	HARNESS,JD 8.1 SR842/REPOWER WIR	EA	66	\$	809.42
WASHER/SEAL,JOHNDEER TIMING COVER	WASHER/SEAL,JOHNDEER TIMING COVER	EA	58	\$	1.18
PIN,JOHNDEER 8.1 WRIST	PIN,JOHNDEER 8.1 WRIST	EA	120	\$	21.82
RING,JOHNDEER 8.1 PISTON PIN SNAP	RING,JOHNDEER 8.1 PISTON PIN SNAP	EA	470	\$	15.41
PUMP,JOHNDEER 8.1 REMAN OIL	PUMP,JOHNDEER 8.1 REMAN OIL	EA	39	\$	448.97
BUSHING,JOHNDEER 8.1 CAM	BUSHING,JOHNDEER 8.1 CAM	EA	179	\$	13.60
FOLLOWER,JOHNDEER 8.1(TAPPETS)CAM	FOLLOWER,JOHNDEER 8.1(TAPPETS)CAM	EA	36	\$	21.68
WASHER,JD 8.1 CAMSHAFT THRUST	WASHER,JD 8.1 CAMSHAFT THRUST	EA	88	\$	29.14
BEARING,JOHNDEER 8.1 STD MAIN	BEARING,JOHNDEER 8.1 STD MAIN	EA	246	\$	25.46
BEARING,JD 8.1 STD MAIN	BEARING,JD 8.1 STD MAIN	EA	42	\$	58.83
GASKET SET,JOHNDDER 8.1 AUX DRIVE	GASKET SET,JOHNDDER 8.1 AUX DRIVE	EA	1	\$	14.03
JOHNDEER 8.1 REMAN CYLINDER HEAD	JOHNDEER 8.1 REMAN CYLINDER HEAD	EA	27	\$	5,087.00
8.1 JD HEAD GASKET	8.1 JD HEAD GASKET	EA	8	\$	85.23
WASTEGATE,JOHNDEER 8.1	WASTEGATE,JOHNDEER 8.1	EA	14	\$	437.40
STUD, JOHNDEERE TURBO	STUD, JOHNDEERE TURBO	EA	127	\$	13.99
BOLT,JOHNDEER 8.1 BEARING CAP	BOLT,JOHNDEER 8.1 BEARING CAP	EA	672	\$	8.11
ROD,JOHNDEER 8.1 PUSH	ROD,JOHNDEER 8.1 PUSH	EA	493	\$	6.71
ADAPTOR,JOHNDEER OIL COOLER	ADAPTOR,JOHNDEER OIL COOLER	EA	22	\$	84.88
O-RING,JD OIL COOLER ADPT	O-RING,JD OIL COOLER ADPT	EA	164	\$	1.51
SHAFT,JOHNDEER 8.1 ROCKER ARM	SHAFT,JOHNDEER 8.1 ROCKER ARM	EA	10	\$	155.83
CAMSHAFT,JOHNDEER 8.1	CAMSHAFT,JOHNDEER 8.1	EA	39	\$	779.65
RODS,JOHNDEER 8.1 CONNECTING	RODS,JOHNDEER 8.1 CONNECTING	EA	227	\$	331.77
TUBE,JOHNDEER OIL COOLER OIL	TUBE,JOHNDEER OIL COOLER OIL	EA	25	\$	55.61
TUBE,JOHNDEER OIL COOLER OIL	TUBE,JOHNDEER OIL COOLER OIL	EA	32	\$	43.21

*Base Year 1 - All subsequent year pricing shall be determined in January of each year using the chage (increase or decrease) of Consumer Price Index (CPI).

ATTACHMENT A - PRICING

MNT16-30B

JOHN DEERE BUS PARTS

	PLUG,JOHNDEER CAMSHAFT	PLUG,JOHNDEER CAMSHAFT	EA	45	\$	5.38
	ARM,JOHNDEER 8.1 LH ROCKER	ARM,JOHNDEER 8.1 LH ROCKER	EA	17	\$	28.63
	PLUG,JOHNDEER ROCKER ARM	PLUG,JOHNDEER ROCKER ARM	EA	9	\$	1.48
	WASHER.JOHNDEER ROCKER SHAFT PLUG	WASHER.JOHNDEER ROCKER SHAFT PLUG	EA	2	\$	1.33
	LINE TUBE,JOHNDEERE TURBO OIL	LINE TUBE,JOHNDEERE TURBO OIL	EA	17	\$	39.47
	CRANK SHAFT POSITION SENSOR JD	CRANK SHAFT POSITION SENSOR JD	EA	8	\$	26.28
	CRANKSHAFT,JOHNDEER 8.1(SEAL RE529775)	CRANKSHAFT,JOHNDEER 8.1(SEAL RE529775)	EA	18	\$	4,673.67
	SEAL,JOHNDEER CRANKSHAFT (RE534314)	SEAL,JOHNDEER CRANKSHAFT (RE534314)	EA	16	\$	91.47
	COVER,JOHNDEER 8.1 VALVE	COVER,JOHNDEER 8.1 VALVE	EA	14	\$	127.89
	PULLEY, JOHN DEERE CRANKSHAFT 8.1	PULLEY, JOHN DEERE CRANKSHAFT 8.1	EA	1	\$	317.01
	SEAL THERMOSTAT JOHNDEERE	SEAL THERMOSTAT JOHNDEERE	EA	4	\$	3.86

*Base Year 1 - All subsequent year pricing shall be determined in January of each year using the change (increase or decrease) of Consumer Price Index (CPI).

ITEM # _____ F5 _____

DATE: January 6, 2016

TO: Board Chair Sam Spagnolo 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 2016

FORM MOTION

Adopt Omnitrans' current Investment Policy Statement to carry forward for period covering January 1, 2016 through December 31, 2016.

This item was not presented to the Administrative and Finance Committee as there were no substantive changes made to the 2015 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 2015 was adopted by the Omnitrans Board of Directors on January 14, 2015. There is no change to the Investment Policy Statement for 2016, other than the period covered.

During calendar year 2016, 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, 2016 – DECEMBER 31, 2016

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 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 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
- 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 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 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 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 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 Finance Director.

###

ITEM # _____ F6

DATE: January 6, 2016

TO: Board Chair Sam Spagnolo and Members of the Omnitrans Board of Directors

THROUGH: P. Scott Graham, CEO/General Manager

FROM: Samuel Gibbs, Director of Internal Audit Services

SUBJECT: AUTHORIZE DISPOSAL OF SURPLUS CAPITAL ASSETS

FORM MOTION

Authorize the CEO/General Manager to accept requests from Joint Powers Agreement (JPA) member entities first, then 501(c)(3) organizations for surplus capital assets listed on Attachment A. Also authorize the CEO/General Manager to release to auction the remaining surplus assets listed on Attachment A through the current contracted agent, Bar None Auctions, Rancho Cordova, California.

BACKGROUND

On November 5, 2014, the Board of Directors approved the offering fully depreciated capital assets to JPA member entities or other governmental entities first, then to 501(c)(3) organizations in “*As Is Condition*” prior to sale at public auction. Attached is a list of vehicles recommended for disposal. The CEO/General Manager will release to auction all remaining surplus assets listed on Attachment A through the current contracted agent, Bar None Auctions, of the City of Riverside. Consideration will be given to each JPA member entity on a first-come first served basis. All requests need to be made within 30 days of the January 6, 2016 Board Meeting. Requests can be made to the CEO/General Manager by telephone or e-mail.

Federal Transit Administration (FTA) Circular 5010.1D provides the following guidance on disposition of capital asset with fair market value of less than \$5,000 value:

“After the service life of project property is reached, rolling stock and equipment with a unit market value of \$5,000 or less, or supplies with a total aggregate market value of \$5,000 or less, may be retained, sold, or otherwise disposed of with no obligation to reimburse FTA. Records of this action must be retained.”

The goal of FTA’s policy is to ensure that capital assets procured using federal funds remain in service for a substantial portion of its service life, thus ensuring the federal taxpayers obtain an adequate return on their investment.

Omnitrans' capital asset disposal records show the following average proceeds from vehicles sold at auction:

Heavy-Duty Large Bus	\$4,119
Medium-Duty and Purpose- Built Bus	\$2,038
Light-Duty Small Bus, Cutaways, and Modified Vans	\$1,497

CONCLUSION

Providing an opportunity to JPA members, other governmental entities, and nonprofit organizations to purchase vehicles or other capital assets at an affordable cost will add value to the service the organizations can provide to its members of the community. As approved in November 2014, the CEO/General Manager will determine final purchase cost.

With the approval to release the remaining items to auction, valuable storage space will be freed up, Omnitrans will recoup some monetary value for the surplus equipment, and will no longer have to maintain liability coverage on the surplus assets, thereby adding an additional benefit to disposing of the equipment.

PSG:SG

Property For Auction

Vehicle Number	VIN	Mileage	Condition	Description (Year, Make, Model)
313	1GNDM19W3YB117064	101,324	Poor	1999 Chevrolet Astrovan
9004	1FDXE45S56HB37619	304,200	Poor	2006 Eldorado Aerotech 23'
9033	1FDXE45S46DB18762	315,880	Poor	2006 Starcraft Allstar 23'
9041	1FDXE45S06DB18774	348,783	Poor	2006 Starcraft Allstar 23'
9201	1GBDV13W68D142807	220,908	Poor	2008 Chevrolet Uplander
9202	1GBDV13W38D142425	218,418	Poor	2008 Chevrolet Uplander
9203	1GBDV13W28D144201	171,693	Wrecked	2008 Chevrolet Uplander
9204	1GBDV13W28D142335	238,541	Good	2008 Chevrolet Uplander
9205	1GBDV13WX8D142924	216,583	Good	2008 Chevrolet Uplander
9206	1GBDV13W48D142255	225,039	Poor	2008 Chevrolet Uplander
9207	1GBDV13W48D144135	214,766	Good	2008 Chevrolet Uplander
9209	1GBDV13W38D144644	177,333	Poor	2008 Chevrolet Uplander
9210	1GBDV13WX8D143930	198,213	Poor	2008 Chevrolet Uplander

9	Printers			
47	Servers			
42	Monitors			
30	Computers			
5	Misc computer equipment (keyboards, mice, cables, etc...)			
11	Switches			
2	APC UPS			
1	Juniper Firewall			
1	Expired CNG tanks (Crate)			

Property For Donation

Vehicle Number	VIN	Mileage	Condition	Description (Year, Make, Model)	Date Approved
0018	5FYC2LP16YU020653	672,850	Very Poor	2000 New Flyer C40LF 40'	12/17/12
0019	5FYC2LP18YU020654	655,776	Very Poor	2000 New Flyer C40LF 40'	12/17/12
503	5DF232GB53JA34538	539,625	Very Poor	2003 Thomas SLF232G 32'	08/06/14
505	5DF232GB33JA34540	548,539	Very Poor	2003 Thomas SLF232G 32'	08/06/14
507	5DF232GB73JA34542	553,436	Very Poor	2003 Thomas SLF232G 32'	08/06/14
508	5DF232GB93JA34543	574,064	Very Poor	2003 Thomas SLF232G 32'	08/06/14

ITEM # G1

DATE: January 6, 2016

TO: Board Chair Sam Spagnolo and Members of the Omnitrans Board of Directors

THROUGH: P. Scott Graham, CEO/General Manager

FROM: Maurice A. Mansion, Treasury Manager

**SUBJECT: CALL FOR PUBLIC HEARING - FEDERAL TRANSIT
ADMINISTRATION SECTION 5307 AND SECTION 5339 FUNDS**

FORM MOTION

Call for a public hearing concerning the Federal Transit Administration (FTA) §5307 and §5339 Funding for Fiscal Year 2016, to be held at 8:00 a.m., Wednesday, February 3, 2016, at the Omnitrans Metro Facility, 1700 West Fifth Street, San Bernardino, CA 92411.

SUMMARY

The date and time for the federally required public hearing to receive comments on projects involving Federal assistance will be set for February 3, 2016, at 8:00 a.m. at the Omnitrans Metro Facility.

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.

BACKGROUND

To qualify for Federal assistance through the 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 any comments be incorporated into the grant application and that the notice include language which indicates that in the absence of substantive comments, Federal assistance will be sought.

The projects shown in the Public Hearing Notice are included in the Fiscal Year 2016 budget and were approved at previous Board of Directors meeting.

FINANCIAL IMPACT

All projects described are fiscally constrained and are contained in past-approved Omnitrans' budgets.

PSG:mm

NOTICE OF PUBLIC HEARING

Fiscal Year 2016 Capital Projects
Using §5307 and §5339

CAPITAL PROJECTS – FY 2016

Project Description	Total Cost	Federal Share
		FTA 5307
Management Information Systems	\$ 2,400,000	\$ 1,920,000
Replacement of Revenue Vehicles - ACCESS	\$ 1,200,000	\$ 880,000
Replacement/Lease of Service Vehicles	\$ 630,000	\$ 504,000
1% Transit Enhancements	\$ 250,000	\$ 200,000
Security	\$ 192,440	\$ 153,952
Capitalization of Tires	\$ 499,015	\$ 399,212
Capitalization of Security	\$ 192,440	\$ 153,952
Capitalization of Leases	\$ 138,000	\$ 104,395
Capitalization of ACCESS Service Costs	\$ 3,200,000	\$ 1,600,000
Capitalization of Preventive Maintenance	\$ 10,800,000	\$ 8,640,000
Other	\$ 945,897	\$ 945,897
Total	\$ 20,447,792	\$ 16,941,200
		FTA CMAQ
Replacement of Revenue Vehicles	\$ 9,820,000	\$ 5,183,975
Total	\$ 9,820,000	\$ 5,183,975
		FTA 5339
Replacement of Heavy Duty Coaches	\$ 1,848,880	\$ 1,848,880
Total	\$ 1,848,880	\$ 1,848,880
TOTAL FEDERAL SHARE		\$ 23,974,055