



**BOARD OF DIRECTORS MEETING**  
**WEDNESDAY, NOVEMBER 5, 2014 – 8:00 A.M.**  
**OMNITRANS METRO FACILITY**  
**1700 WEST 5<sup>TH</sup> 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 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](mailto:BoardSecretary@omnitrans.org).

**A. CALL TO ORDER**

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

**B. ANNOUNCEMENTS/PRESENTATIONS**

1. Next Board Meeting: Wednesday, December 3, 2014, at 8:00 a.m.  
Omnitrans Metro Facility Board Room
2. Presentation: Employee of the Quarter

**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.

**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 #E23, Action on Consent Calendar.

- |  |    |
|--|----|
| 1. Approve Board Minutes – October 1, 2014   | 7  |
| 2. Receive and File Administrative and Finance Committee Minutes – July 10, 2014   | 15 |
| 3. Receive and File Agency Management Report (AMR) – July – September 2014   | 20 |
| 4. Receive and File Construction Progress Report #31, July through September 22, 2014, sbX E Street Corridor BRT Project | 29 |



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**E. CONSENT CALENDAR CONTINUED**

5. Receive and File sbX E Street Corridor BRT Project Quarterly Report - September 2014	42
6. Receive and File Affirmative Action Status Report as of October 16, 2014	44
7. Receive and File Director of Finance's Forward Fuel Purchases Update – August 2014	45
8. Receive and File Director of Finance's Report on Forward Fuel Purchases – September 2014	47
9. Receive and File Key Performance Indicators – Fiscal Year 2015, 1st Quarter Report	49
10. Approve Disposal of Omnitrans' Capital Assets to JPA (Joint Powers Agreement) Member Entities, Other Governmental Entities and 501(c) (3) Organizations	54
11. Adopt Revisions to Omnitrans' Procurement Policy 1000, General Procurement Policy, 1010 Purpose, 1020 Responsibilities, and Procurement Procedure 4000-1 Formal Procurement Procedures	56
12. Adopt Resolution No. 276-14, Amending Omnitrans' Conflict of Interest Code	99
13. Authorize Disposal of Surplus Equipment to Auction	128
14. Authorize Award, Contract IPMO14-256, Design Services: Public Address System (Bus Stations & Park and Rides)	131
15. Authorize Award, Purchase Order, Shelter Advertising Panel Glass	183
16. Authorize Award, Purchase Order, VMWare License Renewal	185
17. Authorize Sole Source Purchase, Software Maintenance Services for Financial and Operational Reporting to San Bernardino Associated Governments	187
18. De-obligate and Re-Obligate Federal Transit Administration and State Transit Assistance Funds and Authorize Award, Purchase Order, Refrigerant Recovery Machines	191
19. Authorize Release, Invitation for Bids IFB-ITS15-64, Microsoft Software Assurance	193
20. Authorize Release, Request for Qualifications RFQu-MNT15-04, Architectural and Engineering (A&E) Services	195
21. Authorize Release, Request for Proposals RFP-ITS15-59, IT Management Software	197
22. Press Articles and Letters of Interest to the Board	199
23. 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	211
2. Authorize Award, Sole Source Contract MKT15-08, On-Board Audio Advertising	214
3. Authorize Award, Annual Renewal of Basic Software License and Maintenance Services for Trapeze Fleet Operations System	239

**G. PUBLIC HEARING**

There is no scheduled Public Hearing.



**BOARD OF DIRECTORS MEETING  
WEDNESDAY, NOVEMBER 5, 2014 – 8:00 A.M.  
OMNITRANS METRO FACILITY  
1700 WEST 5<sup>TH</sup> STREET  
SAN BERNARDINO, CA 92411**

**H. BOARD BUSINESS**

**Closed Session**

1. Conference with Labor Negotiator, P. Scott Graham, concerning labor negotiations with Amalgamated Transit Union Local No. 1704 regarding the Coach Operator Unit, pursuant to Government Code Section 54957.6

**I. REMARKS AND ANNOUNCEMENTS**

**J. ADJOURNMENT**

ITEM #     D1    
**DATE:** November 5, 2014

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

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

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

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

Staff hereby provides a listing of principals and subcontractors associated with action items on the agenda for the Board of Director's Meeting scheduled November 5, 2014.

<b>Item</b>	<b>Contract</b>	<b>Principals &amp; Agents</b>	<b>Subcontractors</b>
E13	Authorize Disposal of Surplus Equipment to Auction		
E14	Authorize Award Contract IPMO14-256 Design Services: Public Address System (Bus Stations & Park and Rides)	<i>Veneklasen Associates, Inc. Santa Monica, CA Jim Good, Managing Principal Jack Shimizu, CTS Project Director Meandro Dominguez, CTSSenior Engineer Pablo Amezquita, CTS Project Manager &amp; Senior Engineer Steve Martin, P.E. Senior Associate</i>	<i>None</i>
E15	Authorize Award, Purchase Order Contract MKP15-63 Shelter Advertising Panel Glass	<i>Discount Glass and Mirror, Inc. San Diego, CA Anthony Bortz President</i>	<i>None</i>
E16	Authorize Award, Purchase Order VMWare License Renewal	<i>En Pointe, Gov. Gardena, CA Ali Din President</i>	<i>None</i>



<b>Item</b>	<b>Contract</b>	<b>Principals &amp; Agents</b>	<b>Subcontractors</b>
E17	Authorize Sole Source Purchase Software Maintenance Services for Financial and Operational Reporting to SANBAG	<i>TransTrack Systems, Inc. Long Beach, CA Mary Sue O'Melia President</i>	<i>None</i>
E18	Authorize Award, Purchase Order Refrigerant Recovery Machines	<i>Stars Auto Parts Redlands, CA Roger Bobby Finance Manager</i>	<i>None</i>
F2	Authorize Award Sole Source Contract MKT15-08 On-Board Audio Advertising	<i>Commuter Advertising Dayton, OH Adina Salah Chief Operating Officer</i>	<i>None</i>
F3	Authorize Award Annual Renewal of Basic Software License and Maintenance Services for Trapeze Fleet Operations System	<i>Trapeze Cedar Rapids, IA Heidi Wiebold Manager, Contracts</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 OCTOBER 1, 2014**

**A. CALL TO ORDER**

Chair Alan Wapner called the regular meeting of the Omnitrans Board of Directors to order at 8:02 a.m., Wednesday, October 1, 2014, at the Omnitrans Facility located at 1700 West 5th Street, San Bernardino, California.

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

**BOARD MEMBERS PRESENT**

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

**BOARD MEMBERS NOT PRESENT**

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

**OMNITRANS' ADMINISTRATIVE STAFF PRESENT**

P. Scott Graham, CEO/General Manager  
Diane Caldera, Director of Operations  
Jack Dooley, Director of Maintenance  
Marge Ewing, Director of Human Resources/Safety & Security  
Sam Gibbs, Director of Internal Audit  
Andres Ramirez, Program Manager  
Jennifer Sims, Director of Procurement  
Don Walker, Director of Finance  
Wendy Williams, Director of Marketing/Planning  
Maurice Mansion, Treasury Manager  
Jeremiah Bryant, Service Planning Manager  
Eugenia Pinheiro, Contracts Manager  
Debra Nicastro, Senior. Contracts Administrator  
Joanne Cook, Contracts Administrator  
Ray Maldonado, Employee Relations Manager  
Ross Hrinko, Safety & Regulatory Compliance Specialist

**LEGAL COUNSEL**

Carol Greene

**B. ANNOUNCEMENTS/PRESENTATIONS**

Next Board Meeting: Wednesday, November 5, 2014, 8:00 a.m.  
Omnitrans Metro Facility Board Room

**C. COMMUNICATIONS FROM THE PUBLIC**

William S. Jenkins asked why has it taken so long to come to the table with the ATU for a decent contract and said the Board has the power to come to an equitable agreement. Chairman Wapner responded that both sides have been meeting in good faith.

Board Member Musser arrived at 8:05 a.m.

Paul Belinski said he was riding Route 82 last Thursday afternoon to go to the Fontana Metrolink, and asked why larger buses are not used for the route as the small buses are overcrowded. He also asked why the sbX bus drivers get \$2 more an hour than the regular drivers.

Board Member J. Gonzales arrived at 8:10 a.m.

Operator Jeff Caldwell, President/Business Agent for ATU Local #1704 stated that the drivers are here today for a common goal—to receive a fair and equitable agreement from Omnitrans.

Gabe Taylor introduced himself as the new Systems Change Advocate for Rolling Start.

#### **D. POSSIBLE CONFLICT OF INTEREST ISSUES**

There were no Conflict of Interest Issues identified.

#### **E. CONSENT CALENDAR**

1. Approve Board Minutes – September 2, 2014
2. Receive and File Executive Committee Minutes – August 8, 2014
3. Receive and File Operations and Safety Committee Minutes – July 1, 2014
4. Authorize Amendment No. 2, Contract IPMO 14-116, As-Needed Scheduling Services
5. Authorize Award, Contract MNT14-108, Methane Detection System Services
6. Authorize Award, Contract MNT14-218, Functional Assessment and Comparison of Omnitrans' Maintenance Department
7. Authorize Award – Purchase Order, sbX E Street Delineators/Channelizers
8. Authorize Release, Invitation for Bids IFB-ITS15-66, Computer Equipment and De-obligate and Re-obligate Federal Transit Administration and Prop 1B Funds to Computer Equipment
9. Press Articles and Letters of Interest to the Board

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

#### **F. DISCUSSION ITEMS**

- 1) CEO/General Manager's Report

CEO/General Manager Scott Graham reviewed the CEO/General Manager's Report, and made note of the attached Key Performance Indicators for sbX, which shows steadily increasing ridership since the first fare paying week of service.

- 2) Adopt Veterans Fares & Uniformed Public Safety Fares

M/S (Stanckiewicz/Davis) that adopted a new half-fare discount for Veterans and a new free fare for Uniformed Public Safety Officers and Active Duty Military effective January 5, 2015, as a modification to the fare policy previously adopted in the OmniConnects FY2015-2020 Short-Range Transit Plan in May 2014. Motion was unanimous by Members present.

- 3) Adopt Resolution No. 275-14, Declaring Omnitrans Property Surplus and Authorize the Sale by Public Auction.

M/S (Yates/J. Gonzales) that adopted Resolution No. 275-14 declaring Omnitrans Property Surplus and authorize the sale by public auction. Motion was unanimous by Members present.

- 4) Authorize Award, Contract SAS14-241, LNG Operations Risk Assessment, Contract FIN14-269, Compressed Natural Gas (CNG) Fueling Infrastructure Feasibility Study, and Take No Further Action on RFP-AMD14-268, Remote Fueling Study

M/S (Roberts/Graham) that authorized the CEO/General Manager to award Contract SAS14-241 to Kazarians & Associates of Glendale, CA, in the amount of \$49,590, plus a 10% contingency of \$4,959; for a total not-to-exceed amount of \$54,549, for the provision of an LNG Operations Risk Assessment on Existing Omnitrans Fueling Facilities; and

Authorized the CEO/General Manager to award Contract FIN14-269 to Clean Energy of Seal Beach, CA, in the amount of \$30,200, plus a 10% contingency of \$3,020, for a total not-to-exceed amount of \$33,220; for the provision of a Compressed Natural Gas (CNG) Fueling Infrastructure Feasibility Study to evaluate switching from LNG to pipeline natural gas and removing existing LNG tanks, and

Authorized that no further action be taken on RFP-ADM14-268, Remote Fueling Study, as no responses to the solicitation were received.

Motion was unanimous by Members present. Board Vice Chair Spagnolo thanked the community again for their participation in this process.

- 5) Authorize Award, Contract MNT15-05, Axle Housings and Radius Rod Brackets

M/S (Yates/Eaton) that authorized the CEO/General Manager to award Contract MNT15-05 to New Flyer Industries Canada ULC of Winnipeg, Canada, for the provision of three axle housings and radius rod brackets (units) and the option to purchase up to an additional fourteen (14) units ending no later than October 14, 2019, in the amount of \$33,413.88 for the initial three units, and \$171,524.64 for the fourteen additional units purchased thereafter, for a total amount of \$204,938.52, including sales tax and delivery. Motion was unanimous by Members present.

- 6) Authorize Award, Contract MNT15-57, Thirteen Americans with Disabilities Act Certified Paratransit Vehicles

M/S (J. Gonzales/Yates) that authorized the CEO/General Manager to award a contract MNT15-57 to Creative Bus Sales (CBS) of Chino, CA, for the provision of thirteen (13) Americans with Disabilities Act (ADA) certified paratransit vehicles in an amount not to exceed of \$1,133,244. Motion was unanimous by Members present.

- 7) Authorize Award, Contract OPS15-55, Transit Operations Services During Work Stoppage

M/S (Stanckiewicz/J. Gonzales) that authorized the CEO/General Manager to award Contract OPS15-55 to National Tour Integrated Resources (NT), of Rancho Santa Margarita, CA, for the provision of as-needed Transit Operations Services during a Work

Stoppage in an amount not to exceed \$1,500,000, beginning October 6, 2014 through October 5, 2019. Motion was unanimous by Members present.

- 8) Authorize Award, Contract ITS15-50, SAP Enterprise Resource Planning (ERP) System Upgrade and De-obligate Federal Transit Administration, State Transit Assistance and Prop 1B Funds and Re-obligate Funds to SAP ERP System Upgrade

M/S (Yates/Musser) that authorized the CEO/General Manager to de-obligate \$129,188 of Federal Transit Administration (FTA) funds, \$22,000 of State Transit Assistance (STA) funds and \$11,779 of Prop 1B funds as shown in the Funding Source section, and re-obligate these funds to the SAP ERP System Upgrade project; and

Authorized the CEO/General Manager to award Contract ITS15-50 to TMR Management Group, Inc., of Harrisburg, PA, for the provision of SAP Enterprise Resource Planning System Upgrade Project for a six month term, beginning October 7, 2014 and ending April 16, 2015, in the amount of \$354,670, plus a 10% contingency of \$35,467, plus 3.27% for Cost Allocation Program (CAP) in the amount of \$12,758, for a total not-to-exceed amount of \$402,895.

Motion was unanimous by Members present.

- 9) Approve Teleconferencing Policy for Board Committees

M/S (Yates/Rutherford) that approved teleconferencing as an option for Board Committee Members to attend Board Committee Meetings. Motion was unanimous by Members present.

## **G. PUBLIC HEARING**

1. Public Hearing, California Government Code 3505.7, Impasse and Fact-Finding Report regarding Negotiations between Omnitrans and Amalgamated Transit Union Local #1704.

Legal Counsel Greene explained that negotiations between Omnitrans and the Amalgamated Transit Union Local #1704 had reached impasse. A change in the law this year required that Omnitrans and the Union participate in fact-finding prior to imposition of the Last, Best and Final Offer. Fact-finding was held in July and the Fact-finding Report was received and made public. Imposition of the Last, Best and Final Offer cannot be sooner than 10 days after the report is made public.

The following individuals addressed the Board during the Public Hearing:

Operator David Castillo, representing other drivers, asked that Omnitrans be fair. He stated he doesn't know all the particulars, but said the drivers have been called monkeys—that monkeys could do their jobs. He believes the drivers have been patient and stated that the drivers are not in the know.

Operator JoAnn Barnes, a driver for Omnitrans over 15 years, said it had been more than seven years since they've had a raise. Feels drivers have been punished because a minority of drivers are bad apples. Drivers have been treated as under-class (sic) citizens.

Herbert Scott, a driver for about three years, and a utility service worker for eight years prior, stated the drivers are asking for justice and need a raise, retroactive for three years.

Operator Curtis Wilkerson stated everything is about fairness. The majority of workers come to work every day. Insurance costs go up yearly, as does the cost of living. Drivers are asking that wages be brought up to par; and are not asking to get rich. The 500 buses are sub-standard and cause injuries, which means workers can't come to work. Requested the Board not to hold the majority of workers responsible for the actions of the minority.

Operator Lynn Culpepper-Cannon has been with Omnitrans about 15 years. She's here because this whole thing is about fairness. Four years ago she was making more money than she is now because she is paying more for insurance and cost of living. She's not trying to get rich; she's here because she likes what she does and wants to be here. She has raised her three youngest children from what she makes at Omnitrans, and those children make more money than she does.

Operator Ray Davis said that the drivers had received both sides of the contract offer, so they are aware of what is being offered. The last time he was in this chamber, it was for being a million-miler. He recently sustained a concussion from a male passenger. He referred to a Bible passage from Colossians; asking for justice and equality.

Stephanie Bose, wife of Operator Robin Bose, stated that medical coverage is inadequate and Omnitrans needs to lower the insurance costs, or raise wages, because living is too difficult under current conditions. The drivers deserve a raise.

Elizabeth Estrada, daughter of Robin Bose, spoke on behalf of the drivers, stating it is unfair that sbX drivers receive \$2 more an hour to drive nearly empty buses. The assaults, abuse and harassment the coach operators endure on a daily basis is massively unfair in the face of the wages and benefits they receive.

Operator Darlene Cooper concurred with prior speakers, stating that she needs a raise and drivers need help with medical coverage.

Operator Jerry Nunez, employed as a driver for 15 years, is an elected officer of the Amalgamated Transit Union Local #1704, stated he had participated in negotiations for four MOUs (Memorandum of Understanding). He challenged the Board to look at the cost of a full time operator vs. a part-time operator, stating that the money saved in wages and benefits could be used to give the drivers a wage increase.

Operator Diane Nunez, employed with Omnitrans over 16 years, has seen morale sink lower than ever. Without drivers, Omnitrans is nothing because drivers are the foundation.



Marvin Powers spoke on behalf of the drivers and stated that drivers do good work, have stressful jobs, and encouraged the Board to give the drivers the 8% raise they are seeking.

Operator Annadilla Pasillas, employed with Ommnitrans for 15 years said that health benefits are more than \$640 per pay period and asked for a fair contract.

Sanford Bluitt, whose wife works for Omnitrans, stated that, at as a disabled person, he finds it difficult to pay the medical co-pays for himself and his children and the drivers are dying for a raise.

Vicki Owens, employed with Omnitrans 24 years, said drivers have not had a cost of living raise during her tenure. She said she is injured from head to toe from what she has endured on the job. She is a million-miler and loves working for Omnitrans and wants fair treatment. She also commented that she heard that employees with seniority are being pushed out.

Russell Taylor, employed with Omnitrans 12 years, has seen growth in the Agency and he wants to be part of the growth, and not a thorn in Omnitrans' side.

Kenya Creer Bluitt, Operator for Omnitrans, asked what the politicians are going to do for the drivers if they want the drivers' votes. She can't afford to take her 4-year old to the doctor. Why does Omnitrans want to pay scabs to drive rather than give the money to the drivers She wants her raise, she's waited for it, and she's earned it.

Benito Zavalza, coach operator for two years, said the job is not hard, but it does wear a person down, as he works 6-7 days per week just to be able to support his family. He asked the Board to consider the coach operators, the job they do, and the fact that they are people, too.

#### **H. BOARD BUSINESS**

The Board adjourned to Closed Session at 9:14 a.m. and reconvened to Open Session at 9:53 a.m.

Board Chair Wapner announced there was no reportable action taken in Closed Session.

#### **I. REMARKS AND ANNOUNCEMENTS**

There were no announcements.

#### **J. ADJOURNMENT**

The Board adjourned at 9:53 a.m. The next regular meeting is scheduled Wednesday, November 5, 2014, at 8:00 a.m., with location posted on the Omnitrans website and at Omnitrans' San Bernardino Metro Facility.

Prepared by:

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Christine Vega, Administrative Secretary

ITEM # E2

**ADMINISTRATIVE & FINANCE COMMITTEE  
MINUTES OF JULY 10, 2014**

**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, July 10, 2014.

1. Pledge of Allegiance
2. Roll Call – Self-introductions were made.

**Committee Members Present**

Mayor Ed Graham, City of Chino Hills – Committee Chair  
Mayor Paul Eaton, City of Montclair  
Council Member Frank Gonzales, City of Colton  
Mayor Ray Musser, City of Upland  
Council Member Dick Riddell, City of Yucaipa  
Mayor Pro Tem John Roberts, City of Fontana  
Mayor Walt Stanckiewicz, City of Grand Terrace  
Mayor Pro Tem Alan Wapner, City of Ontario

**Committee Members Not Present**

Mayor Carey Davis, City 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  
Sam Gibbs, Director of Internal Audit Services  
Jennifer Sims, Director of Procurement  
Don Walker, Director of Finance  
Wendy Williams, Director of Marketing/Planning  
Maurice Mansion, Treasury Manager  
Andres Ramirez, sbX Construction Manager  
Dennice Raygoza, Senior Contract Administrator  
Mark Crosby, Loss Prevention Supervisor

**B. ANNOUNCEMENTS/PRESENTATIONS**

The next Committee Meeting is scheduled Thursday, August 14, 2014, 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.

**E. DISCUSSION ITEMS**

1. Approve Administrative & Finance Committee Minutes – June 12, 2014

M/S (Roberts/Eaton) that approved the Committee Minutes of June 12, 2014. Member Riddell abstained. Motion was unanimous by remaining Members present.

Board Chair Wapner arrived at 8:02 a.m.

2. Recommend to Board of Directors, Receive and File Construction Progress Report No. 30 through June 30, 2014 – sbX E Street Corridor BRT Project

sbX Construction Manager Andres Ramirez presented the construction update for the sbX E Street Corridor and the Vehicle Maintenance Facility through June 2014. Estimated cost at completion is \$188.6 and lost time injuries of over 446,500 man hours remain steady at zero.

The sbX Corridor is in the closeout phase with commissioning and testing of systems completed and punch list and closeout documentation nearing completion. Synchronization of the signals along the corridor continues. Finalization of the solicitation for the 10<sup>th</sup> Street through Highland Re-Pavement is in progress, as is the request for qualifications to design the Public Address System at the sbX stations.

The Vehicle Maintenance Facility (VMF) is 50% complete and projected for completion in January 2015.

Stainless steel ductwork has been installed in Building A (Maintenance Building) and the tie-in of compressors is complete. Concrete slab placement for the maintenance pits has been finalized for Building B (Bus Wash) and concrete pads for the buffer tanks have been placed on site. Next steps for the VMF include continued work in the battery room and maintenance bays, wall concrete placement for maintenance pits at the Bus Wash and relocation of the buffer tanks.

In response to questions posed by Committee Members regarding accidents along the corridor, CEO/General Manager Scott Graham said that there have been seven accidents, none at the fault of Omnitrans. That being said, to minimize risk and increase safety along the corridor, Omnitrans will be installing lane delineators along the sbX designated portions of the corridor to prevent vehicles from crossing the double yellow lines. Omnitrans will begin with installation of the 100 delineators on hand at the section of the corridor (south end of Inland Center Mall and Orange Show) that has experienced the most accidents.

As this is a safety matter, the Board Chair approved the release and award of a contract to purchase and install the delineators along the full length of dedicated lanes along the corridor, which will be presented to the Board of Directors for ratification in August.

In conversation with Board Chair Wapner as to why the delineators were not included in the original design, CEO/General Manager Graham had stated that, while only a guess, at one time the project was over budget and prior administration must have made the decision to remove the delineators from the design. Board Chair Wapner said that while this should have been a decision of the Board, there is money available in the project to incorporate the delineators back into the project.

As an extra effort to ensure safety, the Committee suggested that Omnitrans request local police to increase traffic enforcement by citing vehicles entering the dedicated sbX lanes.

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

3. Recommend to Board of Directors, Receive and File Omnitrans' Fiscal Year Ended June 30, 2014, Engagement Letter

Director of Finance Donald Walker presented the audit engagement letter received by Omnitrans' independent auditors, Vavrinek, Trine, Day & Co. (VTD) for fiscal year ended June 30, 2014. VTD, contracted by SANBAG, is required to conduct an annual audit to ensure accuracy and consistency of Omnitrans' financial statements. Upon completion of the audit, VTD will issue an opinion as to whether Omnitrans' financial statements are fairly presented in all material respects and that they are in conformance with GAAP (Generally Accepted Accounting Principles).

The Preliminary Audit was completed in May. VTD is scheduled to return in September to complete the audit. If any members of the Committee or the Board of Directors have knowledge of material matters that may affect the financial statements, they are requested to contact VTD directly.

M/S (Musser/Roberts) to recommend to the Board of Directors, to receive and file Vavrinek, Trine, Day & Co., LLP (VTD) audit responsibility and engagement letters for fiscal year ended June 30, 2014. Motion was unanimous by Members present.

4. Recommend to Board of Directors, Authorize Change Order No. 6 to Contract IPMO11-1, Vehicle Maintenance Facility (VMF) and Construction Project Vehicle Maintenance Facility Modification Architectural and Engineering Services

As a result of the initial contract for design services being extended beyond the initial 11 month time frame, Director of Procurement Jennifer Sims presented the request to authorize Change Order No. 6 to the contract with STV, Incorporated, that would increase the contract for design services by an additional \$581,727, plus a 10% contingency and 3.27% CAP (Cost Allocation Plan). She explained that while the current administration is monitoring this contract very closely to minimize change orders, many of the change orders were already in process prior to this administration. To that end, to better contain costs, significant changes to staffing levels of the Construction Management Services contract (Jacobs), which provides oversight to the STV contract, have been implemented, such as replacing the Resident Engineer (RE) with a much more aggressive RE who will better enforce Omnitrans' position.

M/S (Eaton/Musser) to recommend to the Board of Directors, to authorize the CEO/General Manager to execute Change Order No. 6 to extend Contract IPMO11-1, Vehicle Maintenance Facility Modification Architectural and Engineering Services for the East Valley Maintenance Facility, with STV, Incorporated, Rancho Cucamonga, CA, to July 31, 2015, and increase the contract by an additional \$581,727, plus a 10% contingency of \$58,173, and 3.27% Cost Allocation Plan of \$20,925, for a new total project amount not to exceed amount of \$2,078,957.00, including contingency and CAP. Motion was unanimous by Members present.

5. Recommend to Board of Directors, Authorize Change Order No. 11, PLN09-21, Construction Management Services – sbX Vehicle Maintenance Facility (VMF) and Construction Project

Director of Procurement Sims presented this item, explaining the need for continued Construction Management Services through conclusion of the sbX Corridor and the Vehicle Maintenance Facility. Although this contract was originally awarded in 2009 for the oversight of the sbX Corridor, the oversight of the Vehicle Maintenance Facility was added later. As mentioned in the previous item, staffing for Jacobs has been changed to more aggressively manage both the construction contractor, and the design team, to contain costs.

M/S (Stanckiewicz/Eaton) to recommend to the Board of Directors, approval to execute Change Order No. 11 to extend Contract PLN09-21 for Construction Management Services with Jacobs Project Management Co. (Jacobs) of Ontario, California, to July 31, 2015, and increase the contract by an additional \$1,324,259.40, plus a 10% contingency of \$132,425.94, and 3.27% Cost Allocation Plan of \$433,032.82, for a new total project amount not to exceed amount of \$13,742,366.16, including contingency and CAP. Motion was unanimous by Members present.

6. Recommend to Board of Directors, Authorize Release, Invitation for Bids IFB-IPMO15-10 for “E” Street, 10<sup>th</sup> Street to Highland Pavement Rehabilitation Project

Director of Procurement Jennifer Sims explained that rehabilitation of the pavement on E Street from 10<sup>th</sup> Street to Highland will complete the sbX Corridor. Initially, the project scope had included a 1-1/2” grind and overlay of this section of E Street, with a projected cost of \$800,000. Core samples and existing subsurface conditions revealed that the grind and overlay would not be adequate and the Federal Transit Administration (FTA) would not approve the \$800,000 cost as it would only be a temporary fix and a waste of money. For FTA to approve moving forward with the repair of this section of E Street, Omnitrans must solicit bids to determine the cost of the repair as FTA needs assurance that there is enough money remaining in the project budget to cover the cost. The City has provided the design and engineering staff and will provide permits for project. Once the bids are received, FTA approval will be sought to move forward with construction. Once the FTA approves including this project into the sbX Corridor, the recommendation for construction award will be presented to the Board of Directors for approval.

Upon discussion of the Committee, background information contained in the Committee Memo regarding the City of San Bernardino will be corrected and an accurate history provided when the item is presented to the Board of Directors.

M/S (Roberts/Musser) to recommend to the Board of Directors, to authorize the CEO/General Manager to release Invitation for Bids IFB-IPMO15-10 for “E” Street, 10<sup>th</sup> Street to Highland Avenue Pavement Rehabilitation Project. Motion was unanimous by Members present.

#### **F. REMARKS AND ANNOUNCEMENTS**

There were no remarks or announcements.

Member F. Gonzales arrived at 8:26 a.m.

#### **G. ADJOURNMENT**

The Administrative & Finance Committee meeting adjourned at 8:26 a.m. The next Administrative & Finance Committee Meeting is scheduled Thursday, August 14, 2014, at 8:00 a.m., with location posted on the Omnitrans website and at Omnitrans’ San Bernardino Metro Facility.

Prepared by:

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Vicki Dennett, Assistant to CEO/General Manager

ITEM # E3**AGENCY MANAGEMENT REPORT****FIRST QUARTER 2015**  
**FISCAL YEAR 2015****Agency Results****Operating Revenue**

First Quarter total Operating Revenue of \$18,244,774 is \$621,524 under budget. The negative First Quarter variance is primarily driven by passenger fares coming in lower than planned. The Fiscal Year 2015 budget included a fare increase. The fare increase did not take effect until September 2014. The budget is allocated over 12 months which increases the first quarter budget but without an associated fare increase. The first quarter difference is expected to be recovered in the remaining 9 months of the fiscal year.

**Operating Expense**

First Quarter Operating Expense of \$17,679,284 is \$1,187,014 under budget. The current quarter's variance is driven by several areas being under budget and the start of the new fiscal year.

**Ridership**

During the First Quarter, Omnitrans carried a total 3,834,715 passengers. This consisted of 3,709,333 on Fixed Route service and 122,988 on Demand Response routes. This reflects a total system decrease of 2.35% when compared to the same period last year.

**Revenue Hours/Revenue Miles**

During the First Quarter, Omnitrans provided a total of 207,203 revenue hours reflecting an increase of 4.27% versus the same period last year. Omnitrans logged a total of 2,851,065 revenue miles during the quarter, reflecting an increase of 4.6% when compared to same period last year.



### **Farebox Recovery Ratio**

First Quarter farebox revenue for Fixed Route/Omnalink is \$3,468,065 versus \$3,296,291 for the same period last year. This is an increase of 5.21%. The farebox recovery ratio for the quarter is 23.79%.

First Quarter farebox revenue for Access is \$447,829 versus \$406,541 for the same period last year. This is an increase of 10.16%. Farebox recovery ratio for the quarter is 15.0%.

### **Financials**

Total Salaries and Benefits of \$10,313,499 are \$750,836 under budget for the First Quarter. The current quarter's variance is driven by headcount being lower than planned.

Total Services are \$556,976 or \$210,901 under budget in First Quarter. The current quarter's positive variance is principally driven by professional services being less than planned.

Materials and Supplies are \$2,381,077 or \$67,237 under budget in First Quarter. The current quarter's variance is principally driven by gasoline being less than planned.

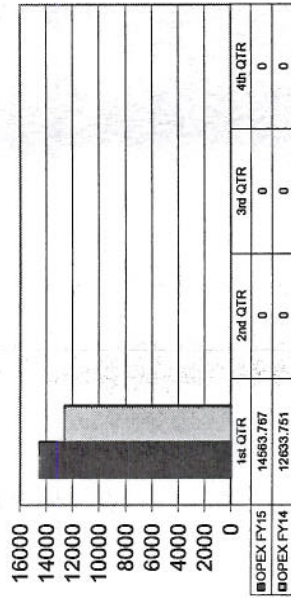
Purchased Transportation is \$2,096,746 or \$184,190 under budget in the First Quarter. The current quarter's variance is driven by hitting favorable pricing metrics in the contract with the vendor.

Other Expenses are \$2,247,189 or \$56,548 over budget in First Quarter. The current quarter variance is primarily driven by casualty and liability accruals being slightly higher than planned.

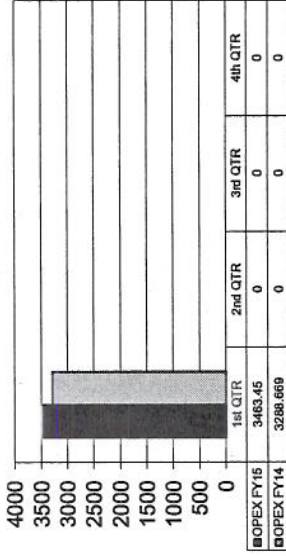
**PERFORMANCE STATISTICS  
FISCAL YEAR 2015  
First Quarter 2015**

	<u>Current Quarter</u>		<u>YR/YR inc/(dec) CURRENT</u>	<u>Year-To-Date</u>		<u>YR/YR inc/(dec) YTD</u>
	<u>First Quarter 2015</u>	<u>First Quarter 2014</u>		<u>First Quarter 2015</u>	<u>First Quarter 2014</u>	
<b>Total Passenger Revenue &amp; Subsidy</b>						
Fixed Route	\$3,463,450	\$3,288,669	5.3%	\$3,463,450	\$3,288,669	5.3%
Demand Response	\$452,445	\$414,163	9.2%	\$452,445	\$414,163	9.2%
<b>Total Passengers</b>						
Fixed Route	3,709,333	3,801,586	-2.4%	3,709,333	3,801,586	-2.4%
Demand Response	125,382	125,316	0.1%	125,382	125,316	0.1%
<b>Farebox Recovery Ratio</b>						
Fixed Route/OmniLink	23.79%	25.89%		23.79%	25.89%	
Access	15.00%	15.29%		15.00%	15.29%	
<b>Total Passengers per Revenue Hour</b>						
Fixed Route	23.0	24.5	-6.3%	23.0	24.5	-6.3%
Demand Response	2.7	2.9	-4.6%	2.7	2.9	-4.6%
<b>Revenue per Passenger</b>						
Fixed Route	0.93	0.87	7.9%	0.93	0.87	7.9%
Demand Response	3.61	3.30	9.2%	3.61	3.30	9.2%
<b>Cost per Passenger</b>						
Fixed Route	3.93	3.32	18.1%	3.93	3.32	18.1%
Demand Response	23.94	22.00	8.8%	23.94	22.00	8.8%
<b>Cost per Revenue Hour</b>						
Fixed Route	90.27	81.51	10.8%	90.27	81.51	10.8%
Demand Response	65.45	63.06	3.8%	65.45	63.06	3.8%
	<u>Actual</u>	<u>Target</u>				
<b>On Time Performance</b>						
Fixed Route	85.76%	90%				
Demand Response	86.09%	90%				
<b>Headcount</b>	632	666				
(includes PT Operators, excludes IPMO)						

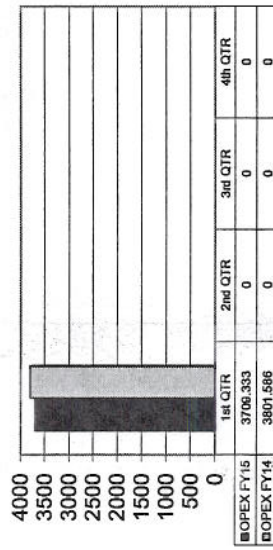
### Fixed Route Operating Expense Thousands



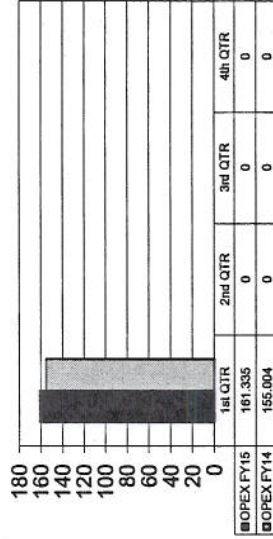
### Fixed Route Passenger Revenue Thousands



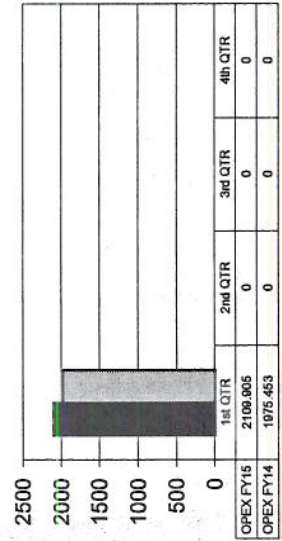
### Fixed Route Ridership Thousands



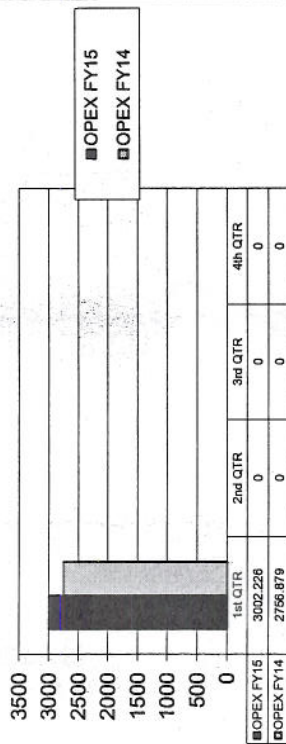
### Fixed Route Revenue Hours Thousands



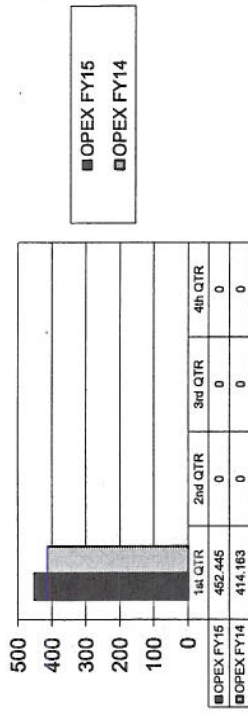
### Fixed Route Revenue Miles Thousands



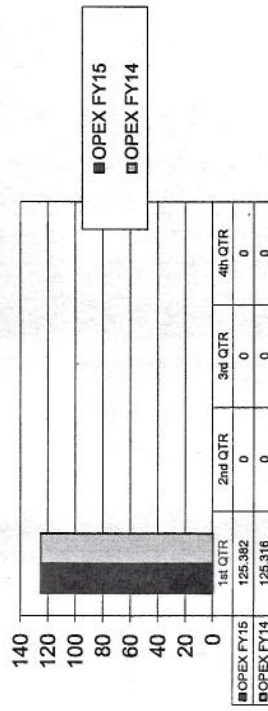
### Demand Response Operating Expense Thousands



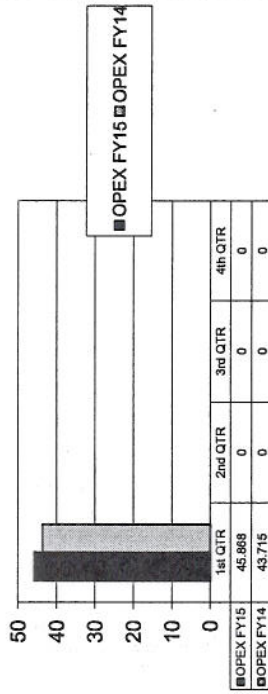
### Demand Response Passenger Revenue Thousands



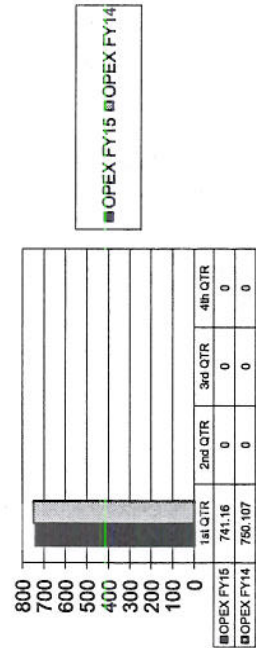
### Demand Response Ridership Thousands



### Demand Response Revenue Hours Thousands



### Demand Response Revenue Miles Thousands





# Statement of Operations Fiscal Year: 2015

CURRENT QUARTER: First Quarter (July, August, September)

YEAR-TO-DATE: September 2014

	Actual	Budget	Fav/(Unf)	% of Budget	Operating Revenues	Actual	Budget	Fav/(Unf)	% of Budget
Passenger Fares	3,827,766	4,300,000	(472,233)	89%	Passenger Fares	3,827,766	4,300,000	(472,233)	89%
Measure I Subsidy - Fares	88,128	82,432	5,696	107%	Measure I Subsidy - Fares	88,128	82,432	5,696	107%
Measure I Subsidy - Operating	1,242,567	1,242,568	(1)	100%	Measure I Subsidy - Operating	1,242,567	1,242,568	(1)	100%
Auxiliary Transportation Revenue	73,050	118,750	(45,700)	62%	Auxiliary Transportation Revenue	73,050	118,750	(45,700)	62%
Non-Transportation Revenue	(1,256)	21,250	(22,506)	-6%	Non-Transportation Revenue	(1,256)	21,250	(22,506)	-6%
LTF Operating	9,360,051	9,360,053	(2)	100%	LTF Operating	9,360,051	9,360,053	(2)	100%
STAF Operating	433,881	433,881	(0)	100%	STAF Operating	433,881	433,881	(0)	100%
JARC - Operating Assistance	0	0	0	0%	JARC - Operating Assistance	0	0	0	0%
Capital Funds for Operations	3,220,586	3,307,364	(86,777)	97%	Capital Funds for Operations	3,220,586	3,307,364	(86,777)	97%
<b>Total Revenues</b>	<b>18,244,774</b>	<b>18,866,298</b>	<b>(621,524)</b>	<b>97%</b>	<b>Total Revenues</b>	<b>18,244,774</b>	<b>18,866,298</b>	<b>(621,524)</b>	<b>97%</b>
<b>Operating Expenses</b>									
Labor	6,698,680	6,745,436	46,756	99%	Labor	6,698,680	6,745,436	46,756	99%
Fringe Benefits	3,614,818	4,318,898	704,080	84%	Fringe Benefits	3,614,818	4,318,898	704,080	84%
Services	566,976	777,877	210,901	73%	Services	566,976	777,877	210,901	73%
Materials and Supplies	2,381,077	2,448,313	67,237	97%	Materials and Supplies	2,381,077	2,448,313	67,237	97%
Occupancy	691,238	938,993	247,755	74%	Occupancy	691,238	938,993	247,755	74%
Casualty and Liability	1,482,403	1,115,728	(366,675)	133%	Casualty and Liability	1,482,403	1,115,728	(366,675)	133%
Taxes and Fees	0	12,321	12,321	0%	Taxes and Fees	0	12,321	12,321	0%
Purchased Transportation	2,096,746	2,280,937	184,190	92%	Purchased Transportation	2,096,746	2,280,937	184,190	92%
Printing and Advertising	61,495	255,169	193,673	24%	Printing and Advertising	61,495	255,169	193,673	24%
Miscellaneous Expense	(27,442)	(131,569)	(104,127)	21%	Miscellaneous Expense	(27,442)	(131,569)	(104,127)	21%
Lease and Rental	73,797	104,196	30,398	71%	Lease and Rental	73,797	104,196	30,398	71%
Capital Purchase Expense	39,494	0	(39,494)		Capital Purchase Expense	39,494	0	(39,494)	
<b>Total Operating Expense</b>	<b>17,679,284</b>	<b>18,866,298</b>	<b>1,187,014</b>	<b>94%</b>	<b>Total Operating Expense</b>	<b>17,679,284</b>	<b>18,866,298</b>	<b>1,187,014</b>	<b>94%</b>
<b>Net Gain (Net Loss)</b>	<b>565,489</b>	<b>(0)</b>	<b>565,490</b>		<b>Net Gain (Net Loss)</b>	<b>565,489</b>	<b>(0)</b>	<b>565,490</b>	
Sal & Ben	10,313,499	11,064,334	750,836	93%	Sal & Ben	10,313,499	11,064,334	750,836	93%
Other	2,247,189	2,190,642	(56,548)	103%	Other	2,247,189	2,190,642	(56,548)	103%

**DATE:** November 5, 2014

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

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

**FROM:** Mae Sung, Accounting Manager

**SUBJECT: INVESTMENT STATUS**

**FORM MOTION**

Receive and file this report on the status of the Agency's investments.

**BACKGROUND**

California Government Code requires the monthly reporting of investments of public agency funds to its governing body.

**SUMMARY**

All of the Agency's investments are invested with the Local Agency Investment Fund (LAIF) and Union Bank. Please refer to the attachment for the investment activity of the Agency for the period of July - September 2014. Sufficient funds are available to meet the obligations of the Agency for the next thirty-one days.

PSG:MS

OMNITRANS  
Treasurer's Report  
Quarter ending September 2014

Institution - Investment Type	Description	Starting Balance	Deposits	Disbursements	Interest Yield	Ending Balance
<b>Cash and Investments Under the Direction of the Treasurer</b>						
Local Agency Investment Fund	Interest	\$ 23,559,917.50	\$ 13,944.18		0.23%	
				\$ (4,400,000.00)	0.22%	
			\$ 9,700,000.00	\$ (2,500,000.00)	0.24%	
				\$ (4,300,000.00)	0.25%	
			\$ 33,273,861.68	\$ (11,200,000.00)		
Net LAIF Funds				\$ 22,073,861.68		\$ 22,073,861.68
Fair Marketing Value	Fair Value Factor				1.000181284	\$ 22,077,863.32
Union Bank Money Market GMRA	Interest	\$ 1,323,479.34	\$ 32.60		0.01%	
				\$ (77,208.31)		
			\$ 1,323,511.94	\$ (77,208.31)		
				\$ 1,246,303.63		
						\$ 1,246,303.63
Union Bank Money Market Caltrans Capital Project Funds	Interest	\$ 12,198,020.51	\$ 16,247.19		0.03%	
				\$ (7,940,431.28)		
			\$ 12,214,267.70	\$ (7,940,431.28)		
				\$ 4,273,836.42		
						\$ 4,273,836.42
Union Bank CDs		\$ 16,846,062.01	\$ 2,000,000.00	\$ (49,623.17)		
			\$ 18,846,062.01	\$ (49,623.17)		
						\$ 18,796,438.84
Citybank Morgan Stanley Futures Account	Gain/Loss for month	\$ -	\$100,000.00			
				\$ (678.33)		
				\$ (678.33)		
			\$ 100,000.00	\$ (678.33)		\$ 99,321.67
		\$ 593,687.65	Passenger \$ 3,503,603.08			
			Grants' Revenue \$ 28,315,874.17			
			Miscellaneous Revenue \$ 147,544.20			
			Transfers From (To) LAIF \$ 11,200,000.00	\$ (9,700,000.00)		
			Transfers From (To) Money Market \$ 6,017,639.59			
			Transfers From (To)Morgan Stanley Futu \$ -			
			Accounts Payable \$	\$ (30,266,842.31)		
			Payroll and Payroll Taxes \$	\$ (7,677,052.72)		
			Employee Benefits \$	\$ (1,279,447.34)		
			Bank Service Charge \$	\$ (14,417.58)		
Net Union Bank Operating Funds			\$ 49,778,348.69	\$ (48,937,759.95)		
				\$ 840,588.74		
						\$ 840,588.74
		\$ 3,700.00				
Petty Cash				\$ 3,700.00		\$ 3,700.00

Cash and Investments Under the Direction of Fiscal Agents

Union Bank	\$ 75,000.00		
Workmens' Comp. Adjuster			
Pacific Claims Management			\$ 75,000.00
Total Cash & Investments			\$ 47,413,052.62

I hereby certify that the investment portfolio of OMNITRANS complies with its investment policy and the California Government Code Sections pertaining to the investment of local agency funds and Union Bank of California. Pending any future actions by the Omnitrans Board or any unforeseen catastrophe, OMNITRANS has an adequate cash flow to meet its expenditure requirements for the next six months.

Prepared by: \_\_\_\_\_  
Mae Sung, Accounting Manager

Approved by: \_\_\_\_\_  
P. Scott Graham, CEO/General Manager, Treasurer

@ Source of Market Value: California State Pooled Money Investment Board Report.  
(1) Union: "Summary of Market Value" posted on monthly fiscal agent statements.  
(2) LAIF: "Pooled Money Investment Account Market Valuation".  
# Master Control Account is the controlling account for all the zero balance accounts with Union including: Accounts Payable Account (General Account) and Payroll Account.  
Interest earned by the Master Control account is used as a partial offset to the monthly bank service charges.

**DATE:** November 5, 2014

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

**FROM:** P. Scott Graham, CEO/General Manager

**SUBJECT: PAYROLLS AND WARRANTS FOR JULY - SEPTEMBER 2014**

Approve the Agency's gross payroll for Management/Confidential Employees as follows:

Payroll Period	Amount	Register #
07/01/14-07/31/14	\$592,397.26	14-15
08/01/14-08/31/14	\$577,958.27	16-17
09/01/14-09/30/14	\$891,845.17	18-20

Approve the Agency's gross payroll for Represented Employees as follows:

Payroll Period	Amount	Register #
07/01/14-07/31/14	\$1,774,697.29	14-15
08/01/14-08/31/14	\$1,794,654.14	16-17
09/01/14-09/30/14	\$2,695,891.98	18-20

Approve the Register of Demands, dated as follows, and authorize the issuance of warrants:

Register Date	Amount	Register #
07/01/14-07/31/14	\$ 5,139,628.80	695-700
08/01/14-08/31/14	\$14,402,611.45	701-705
09/01/14-09/30/14	\$10,624,602.06	706-711

I, P. Scott Graham, CEO/General Manager of Omnitrans, declare that the above Register of Demands has been audited as required by Section 37202 and 37208 of the Government Code, and said documents are accurate and correct.

PSG:MS



ITEM # E4

**DATE:** November 5, 2014

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

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

**FROM:** Andres Ramirez, Program Manager

**SUBJECT:** **CONSTRUCTION PROGRESS REPORT NO. 31 THROUGH  
SEPTEMBER 22, 2014 - sbX E STREET CORRIDOR BRT PROJECT**

**FORM MOTION**

Receive and file Construction Progress Report No. 31 for the sbX E Street Corridor BRT Project through September 22, 2014.

*This item was reviewed by the Administrative and Finance Committee at its October 9, 2014, meeting, and recommended to the Board of Directors for receipt and file.*

**BACKGROUND**

This is Construction Progress Report No. 31 for the sbX E Street Corridor Project.

**CONCLUSION**

Receive and file Construction Progress Report No.31 for the sbX E Street Corridor BRT Project through September 22, 2014.

PSG:AR

Attachment



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

### **Construction Progress Report No. 31**

**As of July, August, September 22, 2014**

**Submitted By:**

**JACOBS**

Contractor:	SBX Corridor - Griffith/Comet VMF – USS Cal Builders
Contractor Contract No.:	IPMO11-5
Project Manager:	Roger Hatton, P.E.
Omnitrans Program Manager:	Andres Ramirez



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  - B. Summary Status Update – sbX Corridor
  - C. Upcoming Work – sbX Corridor
  - D. Project Description - Vehicle Maintenance Facility (VMF)
  - E. Summary Status Update – Vehicle Maintenance Facility (VMF)
  - F. Upcoming Work – Vehicle Maintenance Facility (VMF)
  - G. Concerns - Vehicle Maintenance Facility (VMF)
- II. Project Schedule
- III. RFIs, Submittals, and Non-Conformance Reports
- IV. Safety
- V. Project Budget and Cost
- VI. Change Orders and Claims
  - A. VMF Change Orders
  - B. sbX Corridor Change Orders
- VII. Project Photographs
  - A. Vehicle Maintenance Facility (VMF) Photos

## **I. PROJECT STATUS SUMMARY**

### **A. Project Description – sbX Corridor**

The sbX E Street Corridor BRT Project is a 15.7-mile-long transit improvement project that will connect the northern portion of the City of San Bernardino with the City of Loma Linda. Over the past four years, the sbX E Street Corridor Bus Rapid Transit (BRT) Project has evolved as the highest priority corridor identified in the System-Wide Transit Corridor Plan for the San Bernardino Valley.

The Refined LPA includes:

- 15.7 mile corridor
- 5.4 miles of exclusive center-running BRT lanes
- 10.3 miles of mixed flow BRT operation
- 16 BRT station locations, 6 center stations and 10 curbside stations
- 23 station boarding structures
- 4 park-and-ride facilities with a total of 610 parking spaces
- Transit signal priority (TSP) applications at select key intersections

### **B. Summary Status Update – sbX Corridor**

- Completed negotiation and processing of final change order.
- Received request for Final Acceptance from the contractor.
- Reviewing completion documents for acceptance.
- Conducting final inspections for assurance that all Punch List items have been corrected.
- Working with the City for acceptance and transfer.

### **C. Upcoming Work – sbX Corridor**

- Final acceptance and closeout of corridor contract.
- Installation of channelizers/delineators at dedicated bus lane.
- Selection of firm for Design Services for the PA system on the corridor.
- Bid of re-pavement for 10<sup>th</sup> to Highland.
- Preparation of documents for construction associated with the settlement with World Oil

### **D. Project Description – Vehicle Maintenance Facility (VMF)**

The Omnitrans' Vehicle Maintenance Facility is a 4.4-acre facility maintaining and servicing the Omnitrans' bus fleet, comprised of over 160 buses. Modifications to Omnitrans' facility include the demolition of a bus washing station, removal of abandoned underground fuel tanks and new construction of a bus washing system, a new Genset building, a three-lane CNG fueling station, and re-configuring the bus parking area. Modifications to the maintenance building are made in order to accommodate Omnitrans' 60-foot articulated bus fleet.

**E. Summary Status Update – Vehicle Maintenance Facility (VMF)****Maintenance Building A:**

- The two (2) Quincy air compressors in the Building A are complete, except for minor Punch List, warranty, & O & M.
- Trash Compactor completed and waiting for first Service Agreement site visit.
- High pressure Air drops hose and reel installation complete.
- Concrete apron in front of Bus Bays poured for access.
- Maintenance equipment, including bus lifts, completed and testing started.
- Panels at Battery Room installed.
- Floor patching completed.

**Bus Wash Building B:**

- Concrete stem walls for CMU poured.
- Remove forms from the Sewer Ejector and Reclamation Pit and backfill the area.
- Running Electrical Conduit and utilities under the floor slab area.

**Fuel Island Building C:**

- Buffer Tank relocation complete as planned.
- Demolition of the housekeeping pad completed.
- Over excavation and compaction of the Building Foundation area.
- Auger and pour first section of foundation footings.
- Start erecting Structural steel building frame.

**Sitework:**

- Booster pump completed, except for minor Punch List, warranty, & O & M.
- Concrete settlement and trip hazard in Omnitrans Director's Row completed.

**F. Upcoming Work - Vehicle Maintenance Facility (VMF)****Maintenance Building A:**

- Dyno Room – Install EF-18 fan.
- Paint Room – Install EF-40 fan.
- Relocate HVAC ductwork in Bay 8.
- Punch List repairs, testing, and training.
- Acceptance and occupancy of Maintenance Building A.

**Bus Wash Building B:**

- Complete under slab utility installation.
- Pour building slabs.
- Commence CMU wall installation.

**Fuel Island Building C:**

- Auger remaining foundation footings.
- Continue installation of structural steel.

## **G. Concerns – Vehicle Maintenance facility (VMF)**

The main concern regarding the VMF continues to be the schedule. The status is discussed in further detail in the following section.

## **II. PROJECT SCHEDULE**

The overall project schedule continues to slip due to the work at the Vehicle Maintenance Facility. The corridor work is complete and revenue service achieved as planned. All changes and time extensions for the corridor negotiated and closed out. Following is the schedule status update as it pertains to the VMF:

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

The Contractor's latest monthly schedule update for May/June/July/August 2014 (UP10), with a data date of August 16th, was submitted on September 17th, 2014. The schedule update shows the Project further behind schedule with Substantial and Final Completion dates of April 22<sup>th</sup>, 2015 and June 21<sup>st</sup>, 2015, respectively.

The CM team is currently reviewing the update. However, it has been made clear to the contractor that this time extension will not be acceptable and that revision will need to be made to bring the project in sooner. As a result, a scheduling pull planning session was held during the partnering session on September 18, 2014 to help identify targeted areas where the schedule needs to be compressed. Additional sessions are planned to collectively adjust the schedule.

Claims for Time Impact Evaluations (TIE) have been submitted and reviewed. Below is the status:

- Claim No. 1 – TIE No. 1 – Impacts to Completion of Temporary Fuel Island (Building D) – COR 37 - Submitted on October 28, 2013; Agency response issued January 29, 2014 granted an extension of 108-calendar days: 55-CD deemed concurrent, excusable & non-compensable; and 53-CD deemed excusable & compensable, resulting in revised Substantial and Final Completion dates of March 27, 2014 and May 26, 2014, respectively.
- Claim No. 2 – TIE No. 2 – Backfill of UST's – COR 117, the Agency granted an extension of 50 calendar days: 11-CD deemed concurrent, excusable, and non-compensable; and 39-CD excusable and compensable, resulting in revised Substantial and Final Completion dates of May 16<sup>th</sup>, 2014 and July 15<sup>th</sup>, 2014, respectively.
- Claim No. 3 – TIE No. 3 – Contaminated Soil At Bldg. B – COR 110, the Agency granted an extension of 43-CD deemed excusable and compensable, resulting in revised Substantial and Final Completion dates of June 28<sup>th</sup>, 2014 and August 27<sup>th</sup>, 2014, respectively.
- Claim No. 4 – TIE No. 4 – Additional clarification and claim from TIE 1 unilateral: COR 37A – the Agency granted an extension of 36-calendar days: 6-CD deemed concurrent, excusable, and non-compensable; and 30-CD excusable and compensable, resulting in revised Substantial and Final Completion dates of August 3<sup>rd</sup>, 2014 and October 2<sup>nd</sup>, 2014, respectively.

### III. REQUESTS FOR INFORMATION (RFIs), SUBMITTALS, AND NON-CONFORMANCE REPORTS (NCRs)

#### Vehicle Maintenance Facility (VMF)

To date, the CM team has met the required timelines and no delay has come about as a result of submittal and RFI responses.

Total RFIs – 210  
Total Open – 0

Total Submittals – 283  
Total Open – 2

Total NCRs – 16  
Total Open – 1

### IV. SAFETY

The project team considers safety to be the utmost priority. As such, the entire project team works towards a “no-lost time” goal on a daily basis.

VMF - As of August 30th, 2014 there are 28,733 “no-lost time” hours.

### V. PROJECT BUDGET AND COST

#### TOTAL PROGRAM BUDGET BUDGET AS OF AUGUST 31, 2014

Approved Budget	\$191,706,000
Cost to Date	\$163,564,507
Estimate to Complete	\$ 24,340,752
Estimate at Completion	\$187,905,259

#### SBX CORRIDOR PROJECT COSTS - AS OF AUGUST 31, 2014

	CURRENT AUTHORIZED	CURRENT INVOICES PAID	REMAINING CONTRACT BALANCE
JACOBS	\$11,852,647	\$11,243,854	\$608,793
PARSONS	\$18,097,876	\$16,920,294	\$1,177,582
GRIFFITH/COMET	\$87,760,263	\$79,169,606	\$8,590,657
TOTAL	\$117,710,786	\$107,333,754	\$10,377,032

#### VMF CORRIDOR PROJECT COSTS - AS OF AUGUST 31, 2014

	CURRENT AUTHORIZED	CURRENT INVOICES PAID	REMAINING CONTRACT BALANCE
STV Inc.	\$1,418,132	\$1,266,342	\$151,790
USS Cal Builders	\$14,498,152	\$6,532,399	\$7,965,753
Total	\$15,916,284	\$7,798,741	\$8,117,543

**SBX CORRIDOR CONTRACT TIME**

<b>Activity</b>	<b>Days</b>	<b>Date</b>
Notice to Proceed		11/21/11
Calendar Days per Original Contract	730	
Original Completion Date		12/21/13
Calendar Days Completed as of September 22, 2014	1004	
CCO Time Extension to Date	100	3/31/2014
Required Completion Days/Date as of September 22, 2014	-174	
Forecasted Final Completion Date as of Sept. 22, 2014		09/30/14
Percent Time Elapsed	121%	

**VMF CONTRACT TIME**

<b>Activity</b>	<b>Days</b>	<b>Date</b>
Notice to Proceed		12/10/12
Calendar Days per Original Contract	425	
Original Completion Date		02/08/14
Calendar Days Completed as of September 22, 2014	439	
CCO Time Extension to Date	237	10/2/2014
Required Completion Days/Date as of September 22, 2014	223	
*Forecasted Final Completion Date as of Sept. 22, 2014		6/21/15
Percent Time Elapsed	66%	

**\*FORECASTED COMPLETION DATE BASED ON SUBMITTED AUGUST 15, 2014 SCHEDULE UPDATE. DATE WILL BE ADJUSTED AT COMPLETION OF SCHEDULE COMPRESSION EFFORTS.**



**VI. CHANGE ORDERS****SBX CORRIDOR CONTRACT CHANGE ORDERS - As of August 31, 2014**

<b>Change Order Status</b>	<b>Amount Approved</b>
<b>Total</b>	\$14,593,092

**VMF CONTRACT CHANGE ORDERS - As of August 31, 2014**

<b>Change Order Status</b>	<b>Amount</b>
Approved Change Orders	\$2,022,749
Pending Change Orders	\$671,978
Potential Change Orders	\$1,789,855
<b>Total</b>	<b>\$4,484,582</b>

**Note:** Currently, pricing for Potential Change Orders are estimated based on Rough Order of Magnitude pending designer plans or final submittal of pricing by the Contractor.

## VI. Project Photographs

### VMF PROGRESS PHOTOS



**Maintenance Building A:**  
New Bus Lift Inspection in Bay  
6B  
Looking Northwest



**Building B:**  
Building B Foundation – Bus  
Wash and Vacuum Facility  
  
Looking West



**Building C:**  
Over excavation of New Building  
C – Fueling Facility  
Looking West



**Condense Natural Gas:**  
CNG Equipment and storage vessel  
relocation  
Looking West



**Building E:**  
Underground electrical conduits for  
Building E – Backup Generator  
Building  
Looking North

**IPMO/sbX Project Cost Report**  
**Period Ended 8/31/14**

Description	Approved Current Budget	Committed		Expenditures		Remaining Budget	Estimate to Complete	Estimate at Completion	Budget Forecast Variance
			%	\$	%				
BRT Construction	\$ 84,637,000	\$ 79,717,096	94.2%	\$ 79,286,007	93.7%	5,350,993	\$ 10,294,605	\$ 89,580,613	\$ 4,943,613
Vehicle Maintenance Facility (VMF) Construction	\$ 8,131,000	\$ 12,694,798	156.1%	\$ 6,532,399	80.3%	1,598,601	\$ 8,624,232	\$ 15,156,631	\$ 7,025,631
Vehicles - Design & Manufacturing	\$ 16,628,000	\$ 16,127,715	97.0%	\$ 14,949,266	89.9%	1,678,734	\$ 1,306,449	\$ 16,255,715	\$ (372,285)
ROW Acquisition Services	\$ 10,357,000	\$ 10,971,135	105.9%	\$ 11,176,691	107.9%	(819,691)	\$ 713,279	\$ 11,889,970	\$ 1,532,970
3rd Party Utilities Design & Relocation	\$ 1,003,000	\$ 1,106,117	110.3%	\$ 1,044,201	104.1%	(41,201)	\$ 61,916	\$ 1,106,117	\$ 103,117
BRT Design	\$ 17,849,400	\$ 18,097,876	101.4%	\$ 16,920,294	94.8%	929,106	\$ 488,203	\$ 17,408,497	\$ (440,903)
VMF Design	\$ 1,007,600	\$ 2,019,659	200.4%	\$ 1,280,742	127.1%	(273,142)	\$ 1,416,917	\$ 2,697,659	\$ 1,690,059
Other Professional, Technical & Management Services	\$ 34,020,000	\$ 39,004,058	114.7%	\$ 32,374,907	95.2%	1,645,093	\$ 6,579,151	\$ 38,954,058	\$ 4,934,058
Allocated Contingency (Construction Contract)	\$ -	\$ -	0.0%			-	\$ -		\$ -
<b>SUB-TOTAL</b>	\$ 173,633,000	\$ 179,738,453	103.5%	\$ 163,564,507		10,068,493	\$ 29,484,752	\$ 193,049,259	\$ 19,416,259
Unallocated Contingency	\$ 18,073,000	\$ -	0.0%	\$ -		18,073,000	\$ -	\$ -	\$ (18,073,000)
<b>TOTAL</b>	<b>\$ 191,706,000</b>	<b>\$ 179,738,453</b>	<b>93.8%</b>	<b>\$ 163,564,507</b>	<b>85.3%</b>	<b>28,141,493</b>	<b>\$ 29,484,752</b>	<b>\$ 193,049,259</b>	<b>\$ 1,343,259</b>

**IPMO/sbX Project  
Through 8/31/14**

Standard Cost Category (SCC)	Description	Approved Current Budget	Expenditures \$	%	Remaining Budget	Estimate to Complete	Estimate at Completion	Budget Forecast Variance
<b>10</b>	<b>GUIDEWAY &amp; TRACK ELEMENTS</b>	<b>\$ 19,725,000</b>	<b>18,260,329</b>	<b>92.6%</b>	<b>\$ 1,464,671</b>	<b>\$ 1,604,436</b>	<b>\$ 19,864,765</b>	<b>\$ 139,765</b>
	Guideway: At-grade semi-exclusive (allows cross-traffic)	\$ 18,353,000	16,340,769	89.0%	\$ 2,012,231	\$ 1,260,523	\$ 17,601,292	\$ (751,708)
10.02								
10.03	Guideway: At-grade in mixed traffic	\$ 1,372,000	1,919,560	139.9%	\$ (547,560)	\$ 343,913	\$ 2,263,473	\$ 891,473
<b>20</b>	<b>STATIONS, STOPS, TERMINALS, INTERMODAL</b>	<b>\$ 14,917,000</b>	<b>14,141,273</b>	<b>94.8%</b>	<b>\$ 775,727</b>	<b>\$ 234,864</b>	<b>\$ 14,376,137</b>	<b>\$ (540,863)</b>
	At-grade station, stop, shelter, mall, terminal, platform	\$ 14,917,000	14,141,273	94.8%	\$ 775,727	\$ 234,864	\$ 14,376,137	\$ (540,863)
20.01								
<b>30</b>	<b>SUPPORT FACILITIES: YARDS, SHOPS, ADMIN. BLDGS</b>	<b>\$ 8,131,000</b>	<b>\$ 6,532,399</b>	<b>80.3%</b>	<b>\$ 1,598,601</b>	<b>\$ 9,077,453</b>	<b>\$ 15,609,852</b>	<b>\$ 7,478,852</b>
	Light Maintenance Facility	\$ 4,265,000	4,860,489	114.0%	\$ (595,489)	\$ 7,159,097	\$ 12,019,586	\$ 7,754,586
30.02								
30.05	Yard and Yard Track	\$ 3,866,000	1,671,909	43.2%	\$ 2,194,091	\$ 1,918,357	\$ 3,590,266	\$ (275,734)
<b>40</b>	<b>SITEWORK &amp; SPECIAL CONDITIONS</b>	<b>\$ 34,271,000</b>	<b>27,323,821</b>	<b>79.7%</b>	<b>\$ 6,947,179</b>	<b>\$ 4,113,538</b>	<b>\$ 31,437,359</b>	<b>\$ (2,833,641)</b>
	Demolition, Clearing, Earthwork	\$ 4,741,000	440,613	9.3%	\$ 4,300,387	\$ (350,604)	\$ 90,010	\$ (4,650,990)
40.01								
40.02	Site Utilities, Utility Relocation	\$ 4,993,000	9,846,094	197.2%	\$ (4,853,094)	\$ 1,737,060	\$ 11,583,154	\$ 6,590,154
	Site structures including retaining walls, sound walls	\$ 90,000	447,545	497.3%	\$ (357,545)	\$ 196,321	\$ 643,866	\$ 553,866
40.05								
40.06	Pedestrian / bike access and accommodation, landscaping	\$ 6,925,000	3,907,116	56.4%	\$ 3,017,884	\$ 1,391,297	\$ 5,298,413	\$ (1,626,587)
	Automobile, bus, van accessways including roads, parking lots	\$ 3,601,000	4,157,392	115.5%	\$ (556,392)	\$ 108,316	\$ 4,265,707	\$ 664,707
40.07								
40.08	Temporary Facilities and other indirect costs during construction	\$ 13,921,000	8,525,061	61.2%	\$ 5,395,939	\$ 1,031,148	\$ 9,556,209	\$ (4,364,791)
<b>50</b>	<b>SYSTEMS</b>	<b>\$ 16,727,000</b>	<b>20,604,785</b>	<b>123.2%</b>	<b>\$ (3,877,785)</b>	<b>\$ (118,422)</b>	<b>\$ 20,486,364</b>	<b>\$ 3,759,364</b>
	Train control and signals			0.0%	#N/A			
50.01								
50.02	Traffic signals and crossing protection	\$ 10,810,000	6,617,482	61.2%	\$ 4,192,518	\$ (159,386)	\$ 6,458,097	\$ (4,351,903)
50.05	Communications	\$ 4,210,000	8,401,803	199.6%	\$ (4,191,803)	\$ 26,464	\$ 8,428,267	\$ 4,218,267
50.06	Fare collection system and equipment	\$ 1,707,000	5,585,500	327.2%	\$ (3,878,500)	\$ 14,500	\$ 5,600,000	\$ 3,893,000
	<b>Construction Subtotal (10-50)</b>	<b>\$ 93,771,000</b>	<b>86,862,607</b>	<b>92.6%</b>	<b>\$ 6,908,393</b>	<b>\$ 16,866,102</b>	<b>\$ 103,728,709</b>	<b>\$ 9,957,709</b>
<b>60</b>	<b>ROW, LAND, EXISTING IMPROVEMENTS</b>	<b>\$ 6,532,000</b>	<b>6,115,375</b>	<b>93.6%</b>	<b>\$ 416,625</b>	<b>\$ 835,460</b>	<b>\$ 6,950,835</b>	<b>\$ 418,835</b>
	Purchase or lease of real estate	\$ 6,327,000	5,950,445	94.0%	\$ 376,555	\$ 795,390	\$ 6,745,835	\$ 418,835
60.01								
60.02	Relocation of existing households and businesses	\$ 205,000	164,930	80.5%	\$ 40,070	\$ 40,070	\$ 205,000	\$ -
<b>70</b>	<b>VEHICLES</b>	<b>\$ 16,628,000</b>	<b>14,949,266</b>	<b>89.9%</b>	<b>\$ 1,678,734</b>	<b>\$ 1,216,449</b>	<b>\$ 16,165,715</b>	<b>\$ (462,285)</b>
	Bus	\$ 15,448,000	14,902,339	96.5%	\$ 545,661	\$ 356,328	\$ 15,258,667	\$ (189,333)
70.04								
70.06	Non-revenue vehicles	\$ 250,000	-	0.0%	\$ 250,000	\$ -	\$ -	\$ (250,000)
70.07	Spare parts	\$ 930,000	46,927	5.0%	\$ 883,073	\$ 860,121	\$ 907,048	\$ (22,952)
<b>80</b>	<b>PROFESSIONAL SERVICES</b>	<b>\$ 56,702,000</b>	<b>55,531,720</b>	<b>97.9%</b>	<b>\$ 1,170,280</b>	<b>\$ 6,804,619</b>	<b>\$ 62,336,339</b>	<b>\$ 5,634,339</b>
	Preliminary Engineering	\$ 12,921,000	12,876,525	99.7%	\$ 44,475	\$ 17,502	\$ 12,894,027	\$ (26,973)
80.01								
80.02	Final Design	\$ 7,261,000	7,120,600	98.1%	\$ 140,400	\$ 1,141,522	\$ 8,262,122	\$ 1,001,122
	Project Management for Design and Construction	\$ 15,997,000	12,252,145	76.6%	\$ 3,744,855	\$ 2,199,160	\$ 14,451,305	\$ (1,545,695)
80.03								
80.04	Construction Administration & Management	\$ 6,632,000	11,243,854	169.5%	\$ (4,611,854)	\$ 2,208,793	\$ 13,452,647	\$ 6,820,647
	Professional Liability and other Non-Construction Insurance	\$ 1,112,000	-	0.0%	\$ 1,112,000	\$ -	\$ -	\$ (1,112,000)
80.05								
80.06	Legal; Permits; Review Fees by other agencies, cities, etc.	\$ 10,596,000	12,038,596	113.6%	\$ (1,442,596)	\$ 512,642	\$ 12,551,238	\$ 1,955,238
80.07	Surveys, Testing, Investigation, Inspection	\$ 1,463,000	-	0.0%	\$ 1,463,000	\$ 25,000	\$ 25,000	\$ (1,438,000)
80.08	Start up	\$ 720,000	-	0.0%	\$ 720,000	\$ 700,000	\$ 700,000	\$ (20,000)
	<b>Subtotal (10-80)</b>	<b>\$ 173,633,000</b>	<b>163,458,968</b>	<b>94.1%</b>	<b>\$ 10,174,032</b>	<b>\$ 25,722,629</b>	<b>\$ 189,181,598</b>	<b>\$ 15,548,598</b>
<b>90</b>	<b>UNALLOCATED CONTINGENCY</b>	<b>\$ 18,073,000</b>	<b>-</b>	<b>0.0%</b>	<b>\$ 18,073,000</b>	<b>\$ 2,524,402</b>	<b>\$ 2,524,402</b>	<b>\$ (15,548,598)</b>
	<b>Subtotal (10-90)</b>	<b>\$ 191,706,000</b>	<b>163,458,968</b>	<b>85.3%</b>	<b>\$ 28,247,032</b>	<b>\$ 28,247,032</b>	<b>\$ 191,706,000</b>	<b>\$ -</b>
<b>100</b>	<b>FINANCE CHARGES</b>	<b>\$ -</b>	<b>-</b>	<b>0.0%</b>	<b>\$ -</b>	<b>\$ -</b>	<b>\$ -</b>	<b>\$ -</b>
	<b>TOTAL PROJECT COST (10-100)</b>	<b>\$ 191,706,000</b>	<b>163,458,968</b>	<b>85.3%</b>	<b>\$ 28,247,032</b>	<b>\$ 28,247,032</b>	<b>\$ 191,706,000</b>	<b>\$ -</b>

ITEM # E5

**DATE:** November 5, 2014

**TO:** Board Chair Alan Wapner & Members of the Omnitrans Board of Directors

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

**FROM:** Andres Ramirez, Program Manager

**SUBJECT:** sbX E STREET CORRIDOR BRT PROJECT QUARTERLY REPORT –  
SEPTEMBER 2014

**FORM MOTION**

Receive and file sbX Quarterly Report for the sbX E Street Corridor BRT Project through September 2014.

**BACKGROUND**

At the October 2012 Board of Directors' meeting, the Omnitrans Board of Directors requested staff submit an update of the sbX Corridor BRT Project for review on a quarterly basis.

This is the Quarterly Report through September 2014 for the sbX E Street Corridor Project.

**CONCLUSION**

Receive and file sbX Quarterly Report for the sbX E Street Corridor BRT Project through September 2014.

PSG:AR

Attachment

## **sbX Project Quarterly Update – November 2014**

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**For Period: July 2014 to September 2014**

### **Safety:**

As of September 30, 2014, the construction team has performed over 452,500 labor-hours of work without any Lost Time Injuries.

### **Budget:**

The project is fully funded. Based on the current projections, the project is expected to be completed within the approved budget. All change orders are being managed through the project contingency line item included in the approved budget.

Approved Budget:	\$191,706,000
Cost-To-Date (9/30/14):	\$163,564,507
Estimate-At-Completion:	\$187,905,259

### **Schedule:**

60-Foot Articulated Buses: In Operation  
Revenue Operations Start: April 28, 2014 – Achieved.  
Vehicle Maintenance Facility: June 2015

### **Corridor Construction:**

Contractor has submitted their request for Final Acceptance. This is being reviewed.

### **Vehicle Maintenance Facility (VMF) Construction:**

Turn-over efforts associated with the Maintenance Building A have started with a projection for turn-over of October 6, 2014. Under-slab utilities for the Bus Wash Building B are complete. Foundations poured and structural steel erection commenced at Fuel Island Building C.

### **60-Foot Articulated Buses:**

All of the fourteen (14) 60-foot articulated buses have been received, tested, and are in operation.

### **FTA Quarterly Review Meeting:**

A Quarterly Meeting conducted on August 26, 2014 with one new action item noted. The next quarterly meeting scheduled is on December 4, 2014.



**OMNITRANS**  
**AFFIRMATIVE ACTION STATUS REPORT**  
**WITH PERSONNEL APPOINTMENTS BY DEPARTMENT**  
**As of October 16, 2014**

Submitted for the  
 Board Meeting of:  
 November 5, 2014

DEPARTMENT	Total Positions*	MALE ETHNIC COMPOSITION						FEMALE ETHNIC COMPOSITION						Existing Vacancies	INTERVIEWED								APPOINTED							
		C	B	H	AS	AI	2+	C	B	H	AS	AI	2+		C	B	H	AS	AI	NH/PI	2+	C	B	H	AS	AI	NH/PI	2+		
OPERATIONS	467	63	96	98	5	0	6	37	86	44	0	1	10	21	0	3	1	0	0	0	0	0	0	0	0	0	0	0		
MAINTENANCE	107	31	11	50	5	1	1	3	0	0	1	0	0	4	8	19	23	0	0	0	4	0	3	2	0	0	0	0		
EXECUTIVE OFFICE	4	1	1	0	0	0	0	2	0	0	0	0	0	0	2	1	1	0	0	0	0	1	0	0	0	0	0			
INFORMATION TECH. SERVICES	8	2	0	0	4	0	1	0	0	0	0	0	0	1	0	1	1	1	0	0	1	0	0	1	1	0	0			
SAFETY/ SECURITY	5	3	0	0	0	0	0	0	0	0	0	0	0	2	0	0	0	0	0	0	0	0	0	0	0	0	0			
MARKETING/ PLANNING	28	4	0	5	1	0	0	5	0	11	0	0	1	1	0	0	0	0	0	0	0	0	0	0	0	0	0			
HUMAN RESOURCES	** 11	0	1	1	0	0	0	5	1	3	0	0	0	0	1	4	2	0	0	0	0	0	2	0	0	0	0			
PROCUREMENT	22	3	1	7	0	0	0	7	1	2	0	0	0	1	0	0	0	0	0	0	0	0	0	0	0	0	0			
FINANCE	12	0	2	0	2	0	0	2	0	3	2	0	0	1	0	0	0	0	0	0	0	0	0	0	0	0	0			
IPMO	4	0	0	1	0	0	0	1	0	0	0	0	0	2	2	0	1	0	0	1	0	0	1	0	0	0	0			
AGENCY TOTAL	668	107	112	162	17	1	8	62	88	63	3	1	11	33	13	28	29	1	0	6	1	5	5	1	0	0	0			

\*Reflects numbers from the FY15 budget

\* Includes part time

\*\* Includes 2 temp Workforce Development grant-funded positions

C = Caucasian  
 B = Black  
 H = Hispanic  
 AS = Asian  
 AI = American Indian  
 2+ = Two or More Races  
 NH/PI = Native Hawaiian or Pacific Islander

**PERCENTAGES**

C	B	H	A	AI	2+	TOTAL
26.61%	31.50%	35.43%	3.15%	0.31%	2.99%	100%

ITEM # E6

*Meredith Tshilonda*  
 Meredith Tshilonda  
 (HR Analyst)

COMPLETED BY:





ITEM # E7

**DATE:** November 5, 2014

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

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

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

**SUBJECT: OMNITRANS' FORWARD FUEL PURCHASES UPDATE - AUGUST 2014**

**FORM MOTION**

Receive and file the Director of Finance's update on Omnitrans' forward fuel purchase program for August 2014.

*This item was reviewed by the Administrative & Finance Committee at its October 9, 2014 meeting, and recommended to the Board of Directors for receipt and file.*

**BACKGROUND**

Omnitrans implemented a Forward Fuel Purchase Program in May 2009 to increase the predictability of Compressed Natural Gas (CNG) costs and reduce operational uncertainty in the event of dramatic fuel price increases in the open market.

The previous program was established in February 2012, and fixed the price of approximately 150,000 gallons (45%) of Omnitrans' monthly CNG usage through the end of June 2014. The Board of Directors approved an increase in the hedge quantity from 150,000 gallons to 175,000 gallons per month, as recommended by the Administrative and Finance Committee on June 12, 2014.

On July 31, 2014 Omnitrans implemented a new program fixing the price of 181,500 gallons per month of CNG on the New York Mercantile exchange through Morgan Stanley. The new program is for twelve (12) months covering the period September 2014 through August 2015.

The cost per gallon of CNG during the new program is \$0.91, which is below the \$0.92 recommended and approved by the Board of Directors on May 7, 2014. The new program consists of six (6) Henry Hub swap contracts per month. As reported by the CEO/General Manager at the July 2, 2014 Board Meeting, the contracts can only be purchased in increments of 30,250 gallons, thus the reason for the 181,500 gallons ( $30,250 \times 6$ ).

The monthly hedge is 6,500 gallons (*181,500 – 175,000*) over the Board approved amount, however the monthly hedge is still only 47% of the estimated monthly CNG usage. If Omnitrans had purchased five (5) swap contracts, the monthly hedge would be 23,750 gallons (*175,000 – 151,250*) below the Board approved amount, and the monthly hedge would be 39% of the estimated monthly CNG usage.

Going forward, the Director of Finance will report monthly to the Administrative and Finance Committee and quarterly to the Board of Directors on the results of the new forward fuel purchase program.

PSG:DW

ITEM # E8

**DATE:** November 5, 2014

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

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

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

**SUBJECT: OMNITRANS' DIRECTOR OF FINANCE QUARTERLY REPORT –  
FORWARD FUEL PURCHASES THROUGH SEPTEMBER 2014**

**FORM MOTION**

Receive and file the Director of Finance's quarterly report on Omnitrans' forward fuel purchase program for September 2014. This new program was implemented on July 31, 2014, continuing our efforts to increase the predictability of costs and reduce operational uncertainty in the event of dramatic fuel price increases in the open market.

*This item was reviewed by the Administrative and Finance Committee at its October 9, 2014 meeting, and recommended to the Board of Directors for receipt and file.*

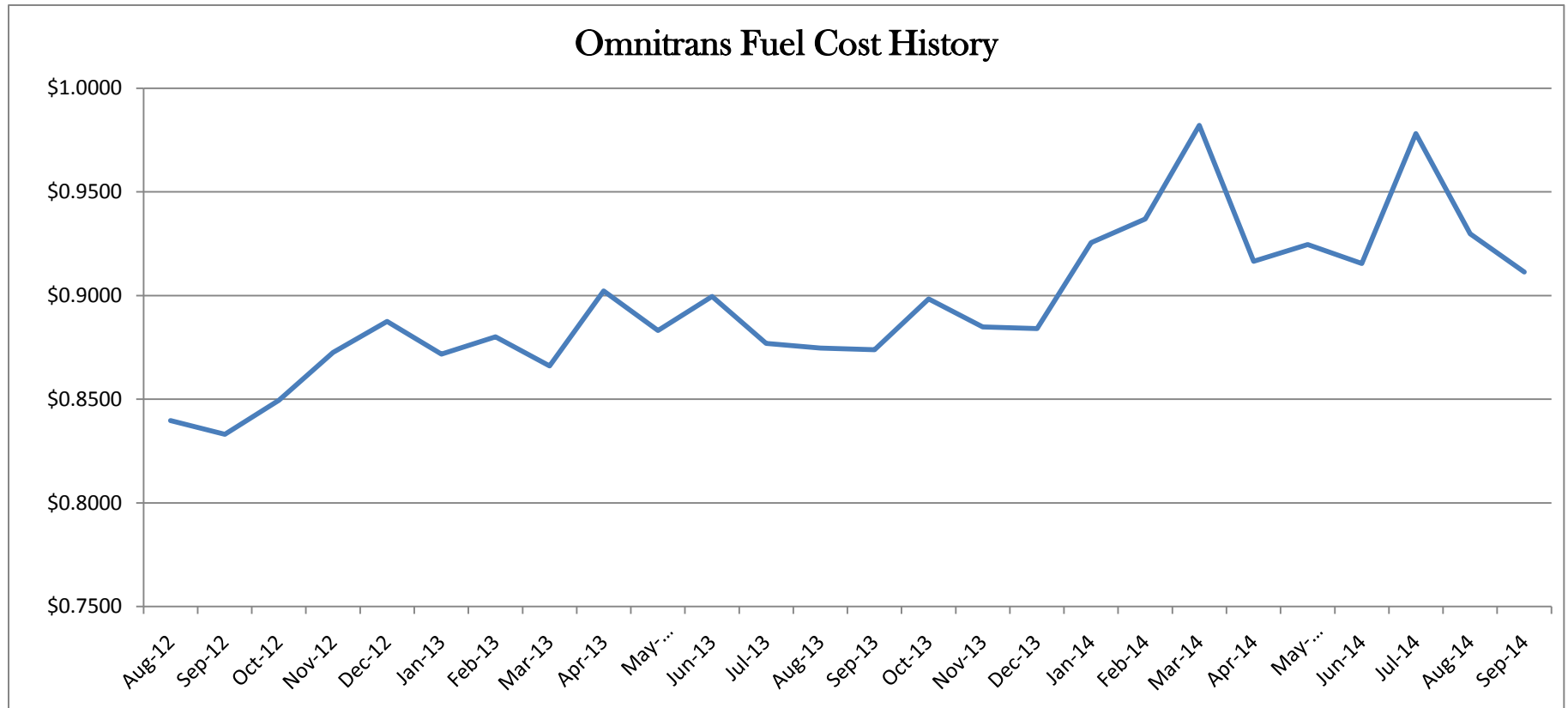
**BACKGROUND**

This report is submitted in order to comply with the requirements of the Omnitrans Forward Fuel Purchase Policy and Procedure. The Board of Directors authorized staff to continue with the hedge program when the price is at or below \$0.92 per gallon. The current hedge fixes the price of approximately 47% of the Agency's natural gas through August 2015.

The September 2014 contract closed \$0.003 above the hedge price. Omnitrans will record a profit on its futures position for the month of September and that gain will offset a portion of the fuel costs that will be reflected in the Agency's Expense Summary for August 2014.

The net price that will be used for Omnitrans' September 2014 fuel purchase is \$0.9113 per gallon. This includes CNG at the So Cal Index price, the gain on the hedge position, liquefaction, delivery, and sales tax. (Note: We do not hedge the index differential. The gain on the hedge is based on the Henry Hub index. Clean Energy prices our deliveries off the SoCal index. In September, the SoCal Index settled slightly below Henry Hub.) This price is after recognition of the monthly gain on the hedge position in the amount of \$555. Omnitrans will recognize a gain in the CNG account of approximately \$3,350 in the month of September 2014.

PSG:DW



ITEM # E9

**DATE:** November 5, 2014

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

**FROM:** P. Scott Graham, CEO/General Manager

**SUBJECT: KEY PERFORMANCE INDICATORS – FY 2015 1ST QUARTER REPORT**

**FORM MOTION**

Receive and file the Key Performance Indicators (KPIs) 1st Quarter Report for Fiscal Year 2015.

**BACKGROUND**

The Key Performance Indicators were first presented in early 2012, along with a commitment to present the report to the Board on a quarterly basis. The attached report provides the results for the first quarter of Fiscal Year 2015 (July 2014 – September 2014).

The Key Performance Indicators were developed by Omnitrans Senior Leadership Team and identify seven key areas that are managed by the Agency on a monthly basis. Each key indicator includes a goal, the strategy to achieve each goal, and the year-to-date results.

A few highlights for the 1st fiscal quarter of 2015 include:

**Cost Effectiveness (KPI #1)**

Cost per Hour for Fixed Route, Access, and sbX – 1st Quarter results in the cost per hour for fixed route, Access, and sbX were positive with each below the goals of \$90, \$70.59, and \$140 respectively at \$88.6, \$65.45, and \$121.11.

**Service Performance (KPI #2)**

Ridership – Growth – Ridership for the quarter finished down at -2.4%. Average daily ridership on sbX for the quarter was 2,090 and for the sbX corridor was 4,570, both are below goal. As shown in the CEO/GM report, both are seeing significant growth as sbX average daily ridership has more than doubled since the first week of fare paying service. Productivity for Passengers per Hour Access is 2.68 for the quarter, just below the goal of 3. However, the Passengers per Hour Fixed Route is 23.5 for the quarter, exceeding the goal of 23.

Complaints – Per 100,000 Boardings/Compliments – Fixed Route – Complaints for the quarter is 13 complaints (per month) compared to the goal of 10 and compliments came in at 0.5 compared to the goal of 1.

Complaints Per 100,000 Boardings/Compliments – Demand Response – At the end of the quarter, complaints for the Demand Response Service came in at 19.67 compared to the goal of 15, and compliments at 0 for the quarter vs. the goal of 0.5. The largest complaint category was on-time performance, accounting for 42% of all Demand Response complaints.

Complaints Per 100,000 Boardings/Compliments – sbX – At the end of the quarter, complaints for sbX came in at 19.1 compared to the goal of 10, and compliments were at 0.87 for the quarter vs. the goal of 1.

### **Reliability (KPI #3) – Maintenance**

Mechanical/Mean Distance Between Failures (MDBF) – Quarter total results show the mean distance between failures at 5,634, which is under the goal of 6,500.

On-time Performance Fixed Route and Demand Performance – Fixed Route on time Performance for the quarter was 85.76% and Demand Performance was 86% for the quarter compared to goals of 90% and 92-95% respectively.

Headway Reliability for sbX—Headway reliability, the measure of on-time performance for sbX, was 63% of trips were spaced within  $\pm 3$  minutes of the scheduled headway vs. a goal of 90%.

Preventable Accidents: Preventable accidents per 100,000 miles for the quarter are 0.8 compared to the goal of 1.

### **Budget (KPI #4)**

Operating Revenue – At the end of the quarter, operating revenue received and recorded was 96.71%, above the goal of 90%. Operating Expenses – Operating expenses recorded for the quarter were 93.71%, above the goal of 90% with a total of 93.71%.

### **Safety & Security (KPI #5)**

Injuries – Employee – The quarter ended with 20 employee injuries for the quarter below the goal of 21 for the quarter (84 for the year).

### **Labor (KPI #6)**

Employee Absenteeism – Represented – The total for the quarter finished favorable at 20,096 hours, below the goal of 25,300 hours.

Turnover – The quarter ended with a 1.5% turnover rate compared to the goal of <10% for the year.

### **sbX E Street Corridor Project (KPI #7)**

The estimated cost at completion is projected to be approximately \$187.9 million, which is below the approved budget of \$191.7 million.

PSG:JH

Omnitrans Performance Indicators

Fiscal Year 2015					
Key Performance Indicators	FY15 Goal	Strategy	1st Quarter Results	YTD	Responsible
<b>1. Cost Effectiveness</b>					
Cost per hour - Fixed Route (non-sbX)	\$90.00	Efficient use of resources; All Directors to work with departments to ensure cost reductions/budget compliance with top performance	\$88.61	\$88.61	Diane Caldera
Cost per hour - Access	\$70.59	Efficient use of resources; Operations to work with Contractor to ensure budget compliance with top performance	\$65.45	\$65.45	Frank Quass
Cost per hour - sbX	\$140.00	Efficient use of resources; All Directors to work with departments to ensure cost reductions/budget compliance with top performance	\$121.11	\$121.11	Jeremiah Bryant
Fare recovery ratio	>22%for Weekday - Fixed Route	Adhere to the operating budget- Build ridership on continuing service- post service adjustments	22.29%	22.29%	Donald Walker
<b>2. Service Performance</b>					
Ridership - Growth	2.90%	Implement service enhancements and marketing initiatives to attract new and retain existing riders	-2.40%	-2.40%	Marketing-Planning
Average Daily Ridership (sbX)	5,607	Attract new and retain existing riders on sbX corridors through promotion and education regarding the new service offering	2,090	2,090	Jeremiah Bryant
Average Daily Ridership (Corridor: sbX + Rt 2)	7,049	Attract new and retain existing riders on sbX corridors through promotion and education regarding the new service offering	4,570	4,570	Jeremiah Bryant
Productivity - Passengers Per Hour - Fixed Route	>22 for Weekday	Focus service on most productive service offerings; eliminate unproductive service offerings Consistently assess routes, schedules, headways, etc.	23.4	23.4	Marketing-Planning
Productivity - Passengers Per Hour - Access	3	Monitor service delivery to find efficiencies, implement and expand on the trip repeater program	2.68	2.68	Diane Caldera
Complaints - Per 100,000 boardings Compliments- Fixed Route	10 complaints; (per month) 1 compliment; (per month)	Monitor customer feedback to target improvement efforts Continuous customer service training for Operators; Timely follow up and correction on complaints	.13 / .05	.13 / .05	Wendy Williams Diane Caldera
Complaints - Per 100,000 boardings Compliments- Demand Response	15 complaints: (per month) .5 compliment: (per month)	Monitor customer feedback to target contractor improvement efforts; Timely follow up and correction on complaints	19.67 / 0	19.67 / 0	Wendy Williams Diane Caldera
Complaints - Per 100,000 boardings Compliments- sbX	10 complaints: (per month) 1 compliment: (per month)	Monitor customer feedback to target contractor improvement efforts; Timely follow up and correction on	19.1 / 0.87	19.1 / 0.87	Wendy Williams Diane Caldera

Fiscal Year 2015					
Key Performance Indicators	FY15 Goal	Strategy	1st Quarter Results	YTD	Responsible
<b>3. Reliability</b>					
Mechanical/MDBF	6500 (monthly average)	Buses are well maintained, on schedule, fueled and cleaned; Operator training	5,634	5,634	Jack Dooley
Loss of Service - Operations	<500 hours per month (measured as monthly average)	Ensure full utilization of manpower options available in MOU to avoid loss of service. Implement improvement programs; Ensure operational procedures are implemented when excess of absences are experienced. Increase part-time recruitment.	255	255	Diane Caldera
Loss of Service - Maintenance	<35 hours per month (measured as monthly average)	Continue using sources that support the preventive maintenance program, monitor conditions and adjust accordingly. Continue training programs that enhance skills of technicians in order to meet vehicle demands.	158.51	158.51	Jack Dooley
Equipment Availability	100%	Equipment is well maintained with parts available for repair; Operate the fleet with no more than 20% spares	100.00%	100.00%	Jack Dooley
On-time Performance- Fixed Route	>85%	Constant assessment of routes and schedules; Operator training follow up; consistent application of MOU; Standard is zero minutes early departure and up to five minutes early on arrivals	85.76%	85.76%	Diane Caldera
On-time Performance- Demand Response	92% - 95% - per contract (SRTP has 88%)	Training Contractor Dispatchers to assess routes and schedules and be proactive; utilize software tools available for scheduling trips; Standard is zero minutes early and up to 30 minutes on pickup	86.00%	86.00%	Diane Caldera
Headway Adherence-sbX	90% of trips spaced ±3 minutes of scheduled headway	Constant assessment of route performance; Operator training follow up; Technology refinement on the corridor	63%	63%	Jeremiah Bryant
Preventable accidents	< 1 per 100,000 miles	Operator training and retraining as necessary; increased use of video surveillance, well maintained equipment and personal accountability	0.8	0.8	Diane Caldera
<b>4. Budget</b>					
Operating Revenue	>95%	Ensure all Operating Revenues are recorded and received timely	96.71%	96.71%	Donald Walker
Operating Expenses	>90%	Ensure all Operating Expenses are appropriate and accurately recorded	93.71%	93.71%	Donald Walker
<b>5. Safety &amp; Security</b>					
Injuries - Employee (Fiscal Year)	Reduction of 3-5% OSHA Recordable (84-86 Annually)	Human Resources/Safety Coordination Monthly Meetings, Injury Prevention Module in ATCR, Ergonomic assessments, Operations Quarterly Safety Outreach Campaign	20	20	Marjorie Ewing
Losses/Claims - Passengers (FY)	80 per year	Passenger education through bus books/on board signage; Operator training and follow up training as needed; ATAP Committee; Safety suggestions	22	22	Diane Caldera



Fiscal Year 2015					
Key Performance Indicators	FY15 Goal	Strategy	1st Quarter Results	YTD	Responsible
<b>6. Labor</b>					
Turnover	<10% exclusive of planned reductions	Continue with the Employer of Choice challenge and increase programs related to satisfaction and retention.	1.50%	1.50%	Marjorie Ewing
Operations Absenteeism - Represented	<101,200 hours per year	Reduce charged absences by 10% compared to previous year. Develop management strategies to decrease FMLA usage and industrial injury claims.	20,096	20,096	Diane Caldera
Training - Development (Annual)	5,000 hours per year	Identify training opportunities for all levels of management; from technical skills sets to strategic thinking. Create an environment that brings new ideas and solutions to everyday problems. Toastmasters, tuition reimbursement	1,917	1,917	Marjorie Ewing
ATU Represented (Annual)	4,400 hours	ATCR, safety, customer relations, equipment familiarization, relief dispatch, relief supervisor, leadership, coach operator instructor, Toastmasters, tuition reimbursement	1,402	1,402	Diane Caldera
<b>7. sbX E Street Corridor Project</b>					
IPMO sbX Corridor	14-Sep	Final Closeout of sbX Corridor Project	14-Nov		Andres Ramirez
Vehicle Maintenance Facility	15-Apr	Completion of VMF construction project	15-May		Andres Ramirez
Delineator Installation	14-Oct	Installation of Delineators in Dedicated Bus Lanes	14-Nov		Andres Ramirez
10th to Highland	15-Aug	Pavement modifications along the sbX corridor between 10th and Highland	15-Aug		Andres Ramirez
PA System	15-Oct	Design and installation of PA system at sbX stations	15-Oct		Andres Ramirez
Miscellaneous Settlement Work	15-Oct	Modifications along sbX corridor to address World Oil Settlement Work, Gage Canal covers, Route 2 alighting issues	15-Oct		Andres Ramirez
Cost - Complete Project within Approved Budget	\$191.7M	Follow plans and specifications, value engineering, negotiations, and monitor costs on monthly basis	\$187.9 M		Andres Ramirez

ITEM # E10

**DATE:** November 5, 2014

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

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

**FROM:** Samuel Gibbs, Director of Internal Audit Services

**SUBJECT: DISPOSAL OF OMNITRANS' CAPITAL ASSETS**

**FORM MOTION**

Recommend the Board of Directors approve offering fully depreciated capital assets to JPA (Joint Powers Agreement) member entities or other governmental entities first, then to 501(c)(3) organizations in "As Is Condition" prior to sale at public auction.

*This item was reviewed by the Administrative & Finance Committee at its October 9, 2014 meeting, and recommended to the Board of Directors for approval.*

**BACKGROUND**

As there is a growing interest in used capital assets by nonprofit organizations, particularly paratransit vehicles, Omnitrans would like to provide member cities, other governmental entities, or nonprofit organizations in the community with limited capital funds an opportunity to purchase a used vehicle at an affordable cost.

The most common type of tax-exempt nonprofit organization falls under category 501(c)(3), whereby a nonprofit organization is exempt from federal income tax if its activities have the following purposes: charitable, religious, educational, scientific, literary, testing for public safety, fostering amateur sports competition, or preventing cruelty to children or animals.

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."*

Omnitrans' current disposition of vehicles is in accordance with FTA's service-life policy for transit buses and vans, which establishes the minimum number of years (or miles) that transit vehicles purchased with federal funds must be in service before they can be retired without financial penalty.

The goal of FTA's policy is to ensure that vehicles 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. The CEO/General Manager will determine final purchase cost.

PSG:SG

ITEM # E11

**DATE:** November 5, 2014

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

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

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

**SUBJECT: ADOPT REVISIONS TO OMNITRANS' PROCUREMENT POLICIES  
1000 GENERAL PROCUREMENT POLICY, 1010 PURPOSE, 1020  
RESPONSIBILITIES, AND PROCUREMENT PROCEDURE 4000-1  
FORMAL PROCUREMENT PROCEDURES**

### **FORM MOTION**

Adopt revisions to Omnitrans' Procurement Policy 1000, General Procurement Policy, 1010 (Purpose), 1020 (Responsibilities), and Omnitrans' Procurement Procedure 4000-1, Formal Procurement Procedures, to become effective November 5, 2014.


*This item was reviewed by the Administrative and Finance Committee at its October 9, 2014 meeting, and recommended to the Board of Directors for adoption.*

### **BACKGROUND**

On October 2, 2013, the Board of Directors approved revisions to Procurement Policy 4000, Sealed Bids and 4000-1, Formal Procurement Procedures as recommended and detailed in the Federal Transit Administration's (FTA) Procurement System Review Final Report (PSR). The FTA accepted the revisions made to Policy 4000, but indicated that Procedure 4000-1 lacked real guidance with regards to Intergovernmental Agreements and Piggybacking. The proposed revisions to Procedure 4000-1, formally incorporates Omnitrans' Piggybacking Worksheet into the procedure and adds language from the FTA's Best Practices Procurement Manual.

This item also corrects inconsistencies in the Procurement Policies presented to and approved by the Board of Directors on October 2, 2009, with regard to the approval process for revisions made to Procurement Procedures. For consistency across the agency, staff recommends that revisions to Procurement Policies be presented to the Administrative and Finance Committee for approval and revisions to the Procurement Procedures be presented to the CEO/General Manager for approval.

PSG:JMS

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GENERAL PROCUREMENT POLICY	Approved by Omnitrans Board of Directors Date Approved: January 9, 2002 <del>Revised Board Approval: June 7, 2006</del> Revised Board Approval: <del>October 7, 2009</del> November 5, 2014

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## 1. PURPOSE AND SCOPE

The purpose of this section is to set forth general procurement policy and standards that will govern the conduct of Omnitrans acquisition activities and of personnel engaged in these activities.

## 2. PROCUREMENT BACKGROUND

Omnitrans' Statement of Guiding Principles (see #3) establishes the framework for Omnitrans' Procurement Policy Manual (Manual), and is approved by the Omnitrans Board of Directors. Procedures implementing the Procurement Policy Manual will be approved by ~~the Omnitrans' Administration and Finance Committee and issued by~~ CEO/General Manager.

## 3. STATEMENT OF GUIDING PRINCIPLES FOR OMNITRANS' ACQUISITION SYSTEM

The vision for the Omnitrans acquisition system is to deliver, on a timely basis, the best value product or service for the Agency in an open and competitive environment, while maintaining the public's trust and fulfilling public policy objectives. Participants in the acquisition (procurement) process must work together as a team and are empowered to make decisions within their areas of responsibility.

3.1. The Omnitrans acquisition system will:

3.1.1. Be guided by the Omnitrans Strategic Plan.

3.1.2. Satisfy the "client" in terms of cost, quality, and timeliness of the delivered product or service by:

3.1.2.1. Maximizing the use of commercial products and services,

3.1.2.2. Using contractors with a track record of successful past performance or who demonstrate a current superior ability to perform, and

3.1.2.3. Promoting competition


3.1.3. Minimize administrative operating costs through effective teamwork,

3.1.4. Conduct business with integrity, fairness, and openness, and

3.1.5. Fulfill public policy objectives.

## 4. ROLE OF THE ACQUISITION TEAM

4.1 The Acquisition Team consists of all participants in Omnitrans acquisition including representatives of the technical, supply, support services and procurement communities

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GENERAL PROCUREMENT POLICY	<p>Approved by Omnitrans Board of Directors  Date Approved: January 9, 2002  <del>Revised Board Approval: June 7, 2006</del>  Revised Board Approval: <del>October 7, 2009</del> November 5, 2014</p>
<p>and their clients, as well as, contractors who provide products and services.</p> <p>4.2 Each member of the Acquisition Team will exercise personal initiative and sound business judgment in providing the best value product or service to meet the client's needs. In exercising initiative, Omnitrans members of the Acquisition Team may assume that a strategy, practice, policy or procedure is a permissible exercise of authority if it is in the best interest of the Omnitrans and is not prohibited by law, applicable regulations, or Board adopted policy.</p> <p><b>5. PROCUREMENT STANDARDS</b></p> <p>5.1 Omnitrans will maintain a contract administration system that ensures that contractors perform in accordance with the terms, conditions, and specifications of their contracts or purchase orders.</p> <p>5.2 Members of the Omnitrans Board of Directors will adhere to the standards of conduct adopted by the Board. Omnitrans employees will adhere to the standards of conduct approved by the CEO under a delegation of authority from the Board.</p> <p>5.3 Omnitrans procedures will provide for a review of proposed procurements to avoid purchase of unnecessary or duplicative items. Consideration should be given to consolidating or breaking out procurements to obtain a more economical purchase. Where appropriate, an analysis will be made of lease versus purchase alternatives and any other appropriate analysis to determine the most economical approach.</p> <p>5.4 Open and Complete Competition:</p> <p>5.4.1 FTA Circular 4220.1F recommends and 49 USC Section 5325(a) requires that all procurement transactions be conducted in a manner that provides full and open competition as determined by the FTA and consistent with the above stated procurement standards and the statement of guiding principles. Some of the situations considered to be restrictive of competition include, but are not limited to:</p> <p>5.4.1.1 Placing unreasonable requirements on firms in order for them to qualify to do business;</p> <p>5.4.1.2 Noncompetitive pricing practices between firms or between affiliated companies;</p> <p>5.4.1.3 Noncompetitive awards to professionals and other consultants that are on Omnitrans retainer contracts;</p>	

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## GENERAL PROCUREMENT POLICY

Approved by Omnitrans Board of Directors

Date Approved: January 9, 2002

~~Revised Board Approval: June 7, 2006~~

Revised Board Approval: ~~October 7, 2009~~ November 5, 2014

- 5.4.1.4 Organizational conflicts of interest (Policy1050);
- 5.4.1.5 Specifying only a "brand name" product instead of allowing "an equal" product to be offered and describing the performance or other salient characteristics of the brand name product; and
- 5.4.1.6 Any arbitrary action in the procurement process; and
- 5.4.1.7 Development of specification requirements and evaluation criteria, which unnecessarily favor an incumbent contractor.
- 5.4.2 Procurement transactions will be conducted in a manner that prohibits the use of statutorily or administratively imposed in-State or local geographical preferences in the evaluation of bids or proposals, except in those cases where applicable Federal statutes expressly mandate or encourage geographic preference. This does not preempt State licensing laws. When employing the qualifications based method for contracting for architectural and engineering services, geographic location may be a selection criteria provided its application leaves an appropriate number of qualified firms, given the nature and size of the project, to compete for the contract.
- 5.4.3 Omnitrans will have written selection procedures for competitive negotiated procurement transactions that ensure fair, unbiased evaluation of competing proposals by an independent evaluation panel appointed by the Director of Procurement or their designee. These procedures will also ensure that all solicitations clearly state the evaluation factors including cost or price, cost or price-related factors, and non-cost or non-price related factors, and any significant subfactors that will be considered in making the source selection and their relative importance.
- 5.4.4 Technical requirements shall incorporate a clear and accurate description for the material, product, or service to be procured. Such description shall not, in competitive procurements, contain features that unduly restrict competition.
- 5.4.5 Omnitrans will ensure that all lists of bidders, manufacturers, or products determined to be qualified in advance of the receipt of

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## GENERAL PROCUREMENT POLICY

Approved by Omnitrans Board of Directors

Date Approved: January 9, 2002

~~Revised Board Approval: June 7, 2006~~

Revised Board Approval: ~~October 7, 2009~~ November 5, 2014

bids or proposals are current and sufficient to ensure full and open competition. When possible, sufficient time will be allowed to arrange for qualification before receipt of bids or proposals. However, when using grant funds, Omnitrans must allow vendors an opportunity to qualify their products during the solicitation period (FTA Circular 4220.1F, Section VI.1.c).

## 6 RESPONSIBILITIES

- 5.1 The Director of Procurement has primary responsibility for ensuring that the procurement process is in accordance with legal requirements, as interpreted by County Counsel, and Omnitrans policy. The Director of Procurement or designee will be responsible, in accordance with good administrative practice and sound business judgment, for the settlement of all contractual and administrative issues arising out of procurements. These issues include, but are not limited to, source evaluations, protests, disputes, and claims.
- 5.1. The Director of Procurement is responsible for establishing procurement policies and issuing instructions for the implementation of Omnitrans policies;
- 5.2. The Director of Procurement, is responsible for establishing material management policies and issuing instructions concerning the storage, distribution, and disposal of goods;
- 5.3. All departments are instructed to follow Procurement Policies/Instructions as well as Policies/Instruction issued by the Director of Procurement regarding the storage, distribution, and issuance of material; and
- 5.4. The CEO/General Manager or designee shall execute contracts, purchase orders, modifications, and supplemental agreements in accordance with established thresholds.

## 7. STATUTORY AND REGULATORY REQUIREMENTS

The following Federal and state laws and regulations and the Master Agreement are applicable to Omnitrans contracts.

Federal Statute, Regulations, Policies, and Agreements	Subject
49 U.S.C. Chapter 53	Mass Transportation
49 CFR Part 18	Administrative Requirements for Grants & Cooperative Agreements
49 CFR Part 26	Participation by Minority Business Enterprises; Disadvantage Business Enterprise Program
FTA Circular 4220.1F	Third Party Contracting Guidance

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## Procurement Policy Manual

### GENERAL PROCUREMENT POLICY

Approved by Omnitrans Board of Directors

Date Approved: January 9, 2002

~~Revised Board Approval: June 7, 2006~~

Revised Board Approval: ~~October 7, 2009~~ November 5, 2014

FTA Circular 5010.1D	Grant Management Guidelines
FTA Circular 9030.1C, Chapter 3	Eligible Grant Activities
FTA Master Agreement, 10/1/05	Terms & Conditions of Grantee Administration of Projects Supported & Funded by The FTA

State Codes	Section(s)	Subject
Civil Code	3248	Payment Bonds
Civil Code	3320	Payments to Prime Design Professionals
Code of Civil Procedure	995.311	Bond Issuer Requirements
Government Code	4525 et seq.	Architect & Engineering Services
Government Code	6250 - 6270	Public Records Disclosure
Government Code	5956 et seq.	Infrastructure Projects
Labor Code	1777.1	Debarment by California Labor Commissioner
Public Contract Code	1103	Responsibility on Public Works Contracts
Public Contract Code	1104	Plans and Specifications
Public Contract Code	3301 - 3400	Contractor's License; Brand Specification
Public Contract Code	4100 - 4114	Subcontracting
Public Contract Code	5100 - 5107	Relief of Bidders
Public Contract Code	6100 - 6610	Awarding of Contracts
Public Contract Code	7100 - 7200	Contract Clauses
Public Contract Code	9201 - 9203	Claims and Disputes
Public Contract Code	10335 et seq.	Service Contracts
Public Contract Code	20101	Prequalification
Public Contract Code	20103.8	Alternative Bids
Public Contract Code	20104	Resolution of Construction Claims
Public Contract Code	20104.50	Progress Payments on Public Works
Public Contract Code	20209 - 20209.5	Purchase & Sale Contracts; Design/Build Contracts
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Procurement Policy Manual

## GENERAL PROCUREMENT POLICY

Approved by Omnitrans Board of Directors

Date Approved: January 9, 2002

~~Revised Board Approval: June 7, 2006~~

Revised Board Approval: ~~October 7, 2009~~ November 5, 2014

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  - 8.1.1 Omnitrans Policies and Instructions.
  - 8.1.2 Board of Directors' Awards, Actions, and Resolutions.
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- 8.2 Federal laws and regulations affecting the procurement practices of Omnitrans include, but are not limited to, the following:
  - 8.2.1 Intermodal Surface Transportation Efficiency Act of 1991, as amended
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## Procurement Policy Manual

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i. This manual is divided into sections of related policies. Those sections are described in "Using This Manual" below. Sections are separated by title pages, and policies within a section will begin with the same number. (For example, all policies in the General Policies section begin with "1.")

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	Policy 1000 <span style="float: right;">Page 8 of 8</span>
Procurement Policy Manual	
GENERAL PROCUREMENT POLICY	<p>Approved by Omnitrans Board of Directors  Date Approved: January 9, 2002  <del>Revised Board Approval: June 7, 2006</del>  Revised Board Approval: <del>October 7, 2009</del> November 5, 2014</p>
<p>informal procurements, micro-procurements, mini-procurements, and small procurements.</p> <ul style="list-style-type: none"> <li>iii. Procurement Card Policies– (3000 series) this section describes the proper use of procurement cards.</li> <li>iv. Formal Procurement Policies – (4000 series) this section describes the formal procurement process, from bidding to contract award.</li> <li>v. Solicitation Protest Policies – (5000 series) this section describes how to handle a protest to a formal procurement contract award.</li> <li>vi. Contract Administration Policies – (6000 series) this section describes the administration of a contract, from opening to termination.</li> <li>vii. Fixed Asset Management Policies – (7000 series) this section describes the management of fixed assets, from auditing to liquidation of surplus assets.</li> </ul>	

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## Procurement Policy Manual

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### GENERAL PROCUREMENT POLICY

Approved by Omnitrans Board of Directors

Date Approved: January 9, 2002

Revised Board Approval: November 5, 2014

## 1. PURPOSE AND SCOPE

The purpose of this section is to set forth general procurement policy and standards that will govern the conduct of Omnitrans acquisition activities and of personnel engaged in these activities.

## 2. PROCUREMENT BACKGROUND

Omnitrans' Statement of Guiding Principles (see #3) establishes the framework for Omnitrans' Procurement Policy Manual (Manual), and is approved by the Omnitrans Board of Directors. Procedures implementing the Procurement Policy Manual will be approved by Omnitrans' CEO/General Manager.

## 3. STATEMENT OF GUIDING PRINCIPLES FOR OMNITRANS' ACQUISITION SYSTEM

The vision for the Omnitrans acquisition system is to deliver, on a timely basis, the best value product or service for the Agency in an open and competitive environment, while maintaining the public's trust and fulfilling public policy objectives. Participants in the acquisition (procurement) process must work together as a team and are empowered to make decisions within their areas of responsibility.

3.1. The Omnitrans acquisition system will:

3.1.1. Be guided by the Omnitrans Strategic Plan.

3.1.2. Satisfy the "client" in terms of cost, quality, and timeliness of the delivered product or service by:

3.1.2.1. Maximizing the use of commercial products and services,

3.1.2.2. Using contractors with a track record of successful past performance or who demonstrate a current superior ability to perform, and

3.1.2.3. Promoting competition

3.1.3. Minimize administrative operating costs through effective teamwork,

3.1.4. Conduct business with integrity, fairness, and openness, and

3.1.5. Fulfill public policy objectives.

## 4. ROLE OF THE ACQUISITION TEAM

4.1 The Acquisition Team consists of all participants in Omnitrans acquisition including representatives of the technical, supply, support services and procurement communities and their clients, as well as, contractors who provide products and services.

4.2 Each member of the Acquisition Team will exercise personal initiative and sound business judgment in providing the best value product or service to meet the client's



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### GENERAL PROCUREMENT POLICY

Approved by Omnitrans Board of Directors

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needs. In exercising initiative, Omnitrans members of the Acquisition Team may assume that a strategy, practice, policy or procedure is a permissible exercise of authority if it is in the best interest of the Omnitrans and is not prohibited by law, applicable regulations, or Board adopted policy.

### 5. PROCUREMENT STANDARDS

- 5.1 Omnitrans will maintain a contract administration system that ensures that contractors perform in accordance with the terms, conditions, and specifications of their contracts or purchase orders.
- 5.2 Members of the Omnitrans Board of Directors will adhere to the standards of conduct adopted by the Board. Omnitrans employees will adhere to the standards of conduct approved by the CEO under a delegation of authority from the Board.
- 5.3 Omnitrans procedures will provide for a review of proposed procurements to avoid purchase of unnecessary or duplicative items. Consideration should be given to consolidating or breaking out procurements to obtain a more economical purchase. Where appropriate, an analysis will be made of lease versus purchase alternatives and any other appropriate analysis to determine the most economical approach.
- 5.4 Open and Complete Competition:
  - 5.4.1 FTA Circular 4220.1F recommends and 49 USC Section 5325(a) requires that all procurement transactions be conducted in a manner that provides full and open competition as determined by the FTA and consistent with the above stated procurement standards and the statement of guiding principles. Some of the situations considered to be restrictive of competition include, but are not limited to:
    - 5.4.1.1 Placing unreasonable requirements on firms in order for them to qualify to do business;
    - 5.4.1.2 Noncompetitive pricing practices between firms or between affiliated companies;
    - 5.4.1.3 Noncompetitive awards to professionals and other consultants that are on Omnitrans retainer contracts;
    - 5.4.1.4 Organizational conflicts of interest (Policy1050);
    - 5.4.1.5 Specifying only a "brand name" product instead of allowing "an equal" product to be offered and describing the performance or other salient characteristics of the brand name product; and



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### GENERAL PROCUREMENT POLICY

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5.4.1.6 Any arbitrary action in the procurement process; and

5.4.1.7 Development of specification requirements and evaluation criteria, which unnecessarily favor an incumbent contractor.

5.4.2 Procurement transactions will be conducted in a manner that prohibits the use of statutorily or administratively imposed in-State or local geographical preferences in the evaluation of bids or proposals, except in those cases where applicable Federal statutes expressly mandate or encourage geographic preference. This does not preempt State licensing laws. When employing the qualifications based method for contracting for architectural and engineering services, geographic location may be a selection criteria provided its application leaves an appropriate number of qualified firms, given the nature and size of the project, to compete for the contract.

5.4.3 Omnitrans will have written selection procedures for competitive negotiated procurement transactions that ensure fair, unbiased evaluation of competing proposals by an independent evaluation panel appointed by the Director of Procurement or their designee. These procedures will also ensure that all solicitations clearly state the evaluation factors including cost or price, cost or price-related factors, and non-cost or non-price related factors, and any significant subfactors that will be considered in making the source selection and their relative importance.

5.4.4 Technical requirements shall incorporate a clear and accurate description for the material, product, or service to be procured. Such description shall not, in competitive procurements, contain features that unduly restrict competition.

5.4.5 Omnitrans will ensure that all lists of bidders, manufacturers, or products determined to be qualified in advance of the receipt of bids or proposals are current and sufficient to ensure full and open competition. When possible, sufficient time will be allowed to arrange for qualification before receipt of bids or proposals. However, when using grant funds, Omnitrans must allow vendors an opportunity to qualify their products during the solicitation period (FTA Circular 4220.1F, Section VI.1.c).

## 6 RESPONSIBILITIES

5.1 The Director of Procurement has primary responsibility for ensuring that the procurement



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GENERAL PROCUREMENT POLICY

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Date Approved: January 9, 2002

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process is in accordance with legal requirements, as interpreted by County Counsel, and Omnitrans policy. The Director of Procurement or designee will be responsible, in accordance with good administrative practice and sound business judgment, for the settlement of all contractual and administrative issues arising out of procurements. These issues include, but are not limited to, source evaluations, protests, disputes, and claims.

- 5.1. The Director of Procurement is responsible for establishing procurement policies and issuing instructions for the implementation of Omnitrans policies;
- 5.2. The Director of Procurement, is responsible for establishing material management policies and issuing instructions concerning the storage, distribution, and disposal of goods;
- 5.3. All departments are instructed to follow Procurement Policies/Instructions as well as Policies/Instruction issued by the Director of Procurement regarding the storage, distribution, and issuance of material; and
- 5.4. The CEO/General Manager or designee shall execute contracts, purchase orders, modifications, and supplemental agreements in accordance with established thresholds.

**7. STATUTORY AND REGULATORY REQUIREMENTS**

The following Federal and state laws and regulations and the Master Agreement are applicable to Omnitrans contracts.

<b>Federal Statute, Regulations, Policies, and Agreements</b>	<b>Subject</b>
49 U.S.C. Chapter 53	Mass Transportation
49 CFR Part 18	Administrative Requirements for Grants & Cooperative Agreements
49 CFR Part 26	Participation by Minority Business Enterprises; Disadvantage Business Enterprise Program
FTA Circular 4220.1F	Third Party Contracting Guidance
FTA Circular 5010.1D	Grant Management Guidelines
FTA Circular 9030.1C, Chapter 3	Eligible Grant Activities
FTA Master Agreement, 10/1/05	Terms & Conditions of Grantee Administration of Projects Supported & Funded by The FTA

<b>State Codes</b>	<b>Section(s)</b>	<b>Subject</b>
Civil Code	3248	Payment Bonds
Civil Code	3320	Payments to Prime Design Professionals
Code of Civil Procedure	995.311	Bond Issuer Requirements
Government Code	4525 et seq.	Architect & Engineering Services





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Government Code	6250 - 6270	Public Records Disclosure
Government Code	5956 et seq.	Infrastructure Projects
Labor Code	1777.1	Debarment by California Labor Commissioner
Public Contract Code	1103	Responsibility on Public Works Contracts
Public Contract Code	1104	Plans and Specifications
Public Contract Code	3301 - 3400	Contractor's License; Brand Specification
Public Contract Code	4100 - 4114	Subcontracting
Public Contract Code	5100 - 5107	Relief of Bidders
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Policy 1000

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Policy 1000

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## Procurement Policy Manual

### GENERAL POLICIES

#### Purpose

Approved by Omnitrans Board of Directors

Date Approved: January 9, 2002

~~Revised Board Approval: June 7, 2006~~

Revised Board Approval: ~~October 7, 2009~~ November 5, 2014

## 1. OVERVIEW

- 1.1. Omnitrans is entrusted with the management, expenditure and investment of public funds. As such, it has the responsibility to uphold public trust and exercise its fiduciary duties in a manner that is diligent, efficient and cost-effective beyond question.
- 1.2. This manual serves to complement applicable higher authority (e.g., federal, state, county, and local government) procurement regulations and serves to provide staff with a primary frame of reference for all matters pertaining to Omnitrans' procurement and contracting activities. To the extent possible, this Policy Manual establishes Omnitrans' procurement processes which cover the procurement of, accounting for, and disposal of materials, equipment, buses, and other vehicles. On items not covered herein or in the Omnitrans Procurement Procedures Manual, staff will consult with the Director of Procurement for guidance. It also provides policy guidance on the procurement and contract administration of professional and other services.
- 1.3. This policy manual further provides general guidelines in the conduct of procurements that require compliance with Federal and State contracting standards. Such procurements are those that are funded by federal or state funds. Federal standards are contained in the Master Agreement; Public Law 109-59, the Safe, Accountable Flexible, Efficient, Transportation Equity Act-A Legacy for Users (SAFETEA-LU); and the Federal Transit Administration's (FTA) Circular 4220.1F (or latest revision) entitled "Third Party Contracting Guidance". This circular provides contracting guidance for recipients of Federal assistance awarded by the FTA. In addition, where appropriate, many procedures and practices have been adopted from the FTA's Best Practices Procurement Manual. Omnitrans recognizes that the principles of contracting with Federal Funds received from the FTA require that certain specific Federal guidelines must be met not only by Omnitrans but also by contractors and subcontractors of Omnitrans. This manual will educate and enable staff to comply fully with those, as well as, other state and local requirements. In addition, this manual will aid procurement staff in making business judgments based upon the application of sound procurement policies and procedures.
- 1.4. These policies may be amended, from time to time as may be required, by changes in enabling laws or by amendments to regulations as issued by the U.S. Department of Transportation, the Federal Transit Administration or other regulatory bodies to reflect new industry standards or to supplement existing directives. Changes, revisions or applicable guidance necessary for proper procurement administration (other than reformatting and clarifications) will be prepared by Omnitrans' Director of



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Procurement Policy Manual

GENERAL POLICIES

Purpose

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Procurement and submitted to the CEO/General Manager in the form of an Administrative and Finance Committee Board Memo for approval ~~by the Board of Directors~~.

## 2. OBJECTIVES OF OMNITRANS' PROCUREMENT PROCESS

2.1 The objectives of the Omnitrans Procurement Process are to:

- 2.1.1 Maximize the value received for Omnitrans' expenditure of public funds.
- 2.1.2 Protect assets and/or services purchased with public funds and ensure their application is exclusively in Omnitrans' interests.
- 2.1.3 Provide all qualified vendors equal opportunities for business engagements with Omnitrans.
- 2.1.4 Provide a timely, efficient and cost-effective flow of resources necessary to support Omnitrans' provision of service.
- 2.1.5 Protect the integrity and reputations of Omnitrans, its officers, and its employees.



## Procurement Policy Manual

Policy 1010

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### GENERAL POLICIES

#### Purpose

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## GENERAL POLICIES

### Purpose

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Date Approved: January 9, 2002

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GENERAL POLICIES Responsibilities	Approved by Omnitrans Board of Directors Date Approved: January 9, 2002 <del>Revised Board Approval: June 7, 2006</del> Revised Board Approval: <del>October 7, 2009</del> November 5, 2014
<p><b>1. GENERAL</b></p> <p>1.1. This policy provides details on the authority and responsibility of the Omnitrans' Board of Directors and agency staff in the procurement process. General responsibilities in the overall procurement process are as follows:</p> <p>1.1.1. When departments need a product or service, the Department Director will make a decision to purchase the product or service. The Department Director or his/her designee will prepare and approve a Requisition for the item.</p> <p>1.1.2. Under the direction of the Procurement Director, the Procurement Department will be responsible for ensuring full and open competition on all types of contracts between vendors and the equitable treatment of all vendors.</p> <p>1.1.3. The Director of Procurement will also periodically review the basic procurement process to make certain that Omnitrans meets Federal and State regulatory requirements for procurements of goods and services.</p> <p><b>2. INDIVIDUAL RESPONSIBILITIES</b></p> <p><b>2.1. Board of Directors</b></p> <p>2.1.1. Approves Omnitrans' operating and capital budgets based on recommendations from the CEO/General Manager.</p> <p>2.1.2. Authorizes the release of formal procurements.</p> <p>2.1.3. Approves or rejects all purchases or contracts over \$ 25,000.00, based on the CEO/General Manager's recommendation.</p> <p>2.1.4. Authorizes disposal of surplus materials, supplies, equipment and property with remaining value in excess of \$25,000.00.</p> <p>2.1.5. Approves agency purchasing policies <del>and procedures</del> and any revisions.</p> <p><b>2.2. CEO/General Manager</b></p> <p>2.2.1. Authorizes Requisitions up to \$ 25,000.00.</p> <p>2.2.2. May sign any contract on behalf of Omnitrans upon Board approval and as authorized by the Board.</p> <p>2.2.3. Approves disposal of surplus materials, supplies and equipment under \$25,000.00.</p> <p>2.2.4. Assures agency compliance with purchasing policies.</p> <p><u>2.2.5. Receives Disadvantaged Business Enterprise (DBE) goals from the Director of Procurement and submits them to the Board of Directors for approval.</u></p> <p><u>2.2.6. Approves agency purchasing procedures and any revisions.</u></p>	

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<p><del>2.2.5.</del></p> <p><b>2.3. Department Director</b></p> <p>2.3.1. Identifies need for goods and services supporting the department's mission.</p> <p>2.3.2. Authorizes Requisitions up to \$15,000.00, assuring that funding for any purchase is available.</p> <p>2.3.3. Provides technical specifications and Statement of Work analysis when applicable.</p> <p>2.3.4. Serves as, or assigns, the Project Manager for formal procurements.</p> <p>2.3.5. Reviews planned purchases, including inventory and non-inventory, contract expirations requiring rebid/exercise option, local and grant-funded capital and project total purchasing requirements during annual budget planning.</p> <p>2.3.6. Evaluates quality of goods or services and gives appropriate feedback.</p> <p><b>2.4. Director of Procurement</b></p> <p>2.4.1. Oversees the Agency's Contracts, Procurement and inventory management programs.</p> <p>2.4.2. Enforces and monitors compliance with procurement policies and procedures as mandated by federal, state, and Agency laws and regulations.</p> <p>2.4.3. Serves as the primary custodian of all contract documents on behalf of Omnitrans.</p> <p>2.4.4. Administers the formal procurement process and oversees procurement planning.</p> <p>2.4.5. Oversees Omnitrans' DBE program; including notifying DBE's of contracting opportunities, recommending DBE contract awards to the CEO/General Manager, keeping DBE participation records, and submitting goals to federal officials. Coordinates with department directors during annual budget cycle to determine DBE goals for the fiscal year. Recommends agency-wide DBE goals to the CEO/General Manager. Submits DBE goals to Board for approval and forwards documentation to FTA. In conjunction with DBE coordinator, provides input for project specific DBE goals. Monitors compliance with agency DBE program. Ensures a level playing field for all aspects of Omnitrans procurement and contracting.</p> <p>2.4.6. Coordinates with department directors during annual budget cycle to determine DBE goals for the fiscal year. Recommends agency-wide DBE goals to the CEO/General Manager.</p>	

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## Procurement Policy Manual

### GENERAL POLICIES

#### Responsibilities

Approved by Omnitrans Board of Directors

Date Approved: January 9, 2002

~~Revised Board Approval: June 7, 2006~~

Revised Board Approval: ~~October 7, 2009~~ November 5, 2014

#### 2.5. Department Manager

- 2.5.1. Authorizes Requisitions up to \$5,000.00 as approved by the Department Director and the CEO/General Manager.

#### 2.6. Other Departmental Personnel

- 2.6.1. Authorize Requisitions within limits established by the Department Director and approved by the CEO/General Manager.

#### 2.7. Contracts Manager

- 2.7.1. Heads the Contracts function of the Department of Procurement.
- 2.7.2. Conducts construction, small, and formal procurements as defined in Policy 2000, "General Procurement – Overview."
- 2.7.3. Assures that Omnitrans adheres to Federal Transit Administration regulations, guidelines, and circulars, and other applicable state or local regulations.
- 2.7.4. Administers Omnitrans' DBE program, including notifying DBEs of contracting opportunities, recommending DBE contract awards to the CEO/General Manager, keeping DBE participation records, and prepare and submit reporting to federal officials. Ensure compliance with Omnitrans' DBE program on bid/proposal packages, vendor proposal submissions, and evaluation and award recommendations. Establish project specific goals in conjunction with the Director of Procurement.


#### 2.8. Senior ~~Buyer~~ Contract Administrator

- 2.8.1. Leads the Agency's Small Procurement functions.
- 2.8.2. Processes requisitions and purchase orders for procurements not exceeding \$100,000.
- 2.8.3. Handles all procurements not handled by the Contracts Section.
- 2.8.4. Serves as point of contact for all matters involving timely and effective purchase of goods and services.

#### 2.9. Materials ~~Supervisor~~ Manager

- 2.9.1 Supervises the safe and efficient operation and maintenance of the East and West Valley parts storerooms.
- 2.9.2 Oversees the stock inventory management functions of the Procurement Department on behalf of the Director of Procurement.
- 2.9.3 Provides stockroom statistical and management information reports to the Director

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<p>of Procurement.</p> <p><b>2.10. Finance Department</b></p> <p>2.10.1. Pays invoices after receiving appropriate documentation.</p> <p>2.10.2. Maintains Petty Cash funds.</p> <p>2.10.3. Maintains all vendor invoices.</p> <p><b>2.11. Shipping/Receiving/Parts Clerk</b></p> <p>2.11.1. Receives goods in accordance with Omnitrans procedures.</p> <p><del>2.11.2.</del> Keeps shipment receiving records.</p> <p><del>2.11.2.</del></p>	

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**GENERAL POLICIES**

**Responsibilities**

Approved by Omnitrans Board of Directors

Date Approved: January 9, 2002

Revised Board Approval: November 5, 2014

**1. GENERAL**

1.1. This policy provides details on the authority and responsibility of the Omnitrans' Board of Directors and agency staff in the procurement process. General responsibilities in the overall procurement process are as follows:

- 1.1.1. When departments need a product or service, the Department Director will make a decision to purchase the product or service. The Department Director or his/her designee will prepare and approve a Requisition for the item.
- 1.1.2. Under the direction of the Procurement Director, the Procurement Department will be responsible for ensuring full and open competition on all types of contracts between vendors and the equitable treatment of all vendors.
- 1.1.3. The Director of Procurement will also periodically review the basic procurement process to make certain that Omnitrans meets Federal and State regulatory requirements for procurements of goods and services.

**2. INDIVIDUAL RESPONSIBILITIES**

**2.1. Board of Directors**

- 2.1.1. Approves Omnitrans' operating and capital budgets based on recommendations from the CEO/General Manager.
- 2.1.2. Authorizes the release of formal procurements.
- 2.1.3. Approves or rejects all purchases or contracts over \$ 25,000.00, based on the CEO/General Manager's recommendation.
- 2.1.4. Authorizes disposal of surplus materials, supplies, equipment and property with remaining value in excess of \$25,000.00.
- 2.1.5. Approves agency purchasing policies and any revisions.

**2.2. CEO/General Manager**

- 2.2.1. Authorizes Requisitions up to \$ 25,000.00.
- 2.2.2. May sign any contract on behalf of Omnitrans upon Board approval and as authorized by the Board.
- 2.2.3. Approves disposal of surplus materials, supplies and equipment under \$25,000.00.
- 2.2.4. Assures agency compliance with purchasing policies.
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**2.3. Department Director**



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- 2.3.1. Identifies need for goods and services supporting the department's mission.
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- 2.3.4. Serves as, or assigns, the Project Manager for formal procurements.
- 2.3.5. Reviews planned purchases, including inventory and non-inventory, contract expirations requiring rebid/exercise option, local and grant-funded capital and project total purchasing requirements during annual budget planning.
- 2.3.6. Evaluates quality of goods or services and gives appropriate feedback.

**2.4. Director of Procurement**

- 2.4.1. Oversees the Agency's Contracts, Procurement and inventory management programs.
- 2.4.2. Enforces and monitors compliance with procurement policies and procedures as mandated by federal, state, and Agency laws and regulations.
- 2.4.3. Serves as the primary custodian of all contract documents on behalf of Omnitrans.
- 2.4.4. Administers the formal procurement process and oversees procurement planning.
- 2.4.5. Oversees Omnitrans' DBE program; including notifying DBE's of contracting opportunities, recommending DBE contract awards to the CEO/General Manager, keeping DBE participation records, and submitting goals to federal officials. Coordinates with department directors during annual budget cycle to determine DBE goals for the fiscal year. Recommends agency-wide DBE goals to the CEO/General Manager. Submits DBE goals to Board for approval and forwards documentation to FTA. In conjunction with DBE coordinator, provides input for project specific DBE goals. Monitors compliance with agency DBE program. Ensures a level playing field for all aspects of Omnitrans procurement and contracting.
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**GENERAL POLICIES**

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2.10.1. Pays invoices after receiving appropriate documentation.


2.10.2. Maintains Petty Cash funds.

2.10.3. Maintains all vendor invoices.

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2.11.1. Receives goods in accordance with Omnitrans procedures.

2.11.2. Keeps shipment receiving records.

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<p><b>FORMAL PROCUREMENT PROCEDURES</b></p> <p>Overview</p>	<p>Approved by Omnitrans Board of Directors Date Approved: January 9, 2002 <u>Revised: November 5, 2014</u></p>

## 1. OVERVIEW

- 1.1. Procurements requiring a formal procurement process are defined as the following:
- 1.1.1. Requirements for goods or services to be purchased exceeding \$100,000.00 per acquisition, or per contract period including option years. These requirements include:
    - 1.1.1.1. Rental/lease payments;
    - 1.1.1.2. Maintenance service contracts including option years; and,
    - 1.1.1.3. Construction projects.
  - 1.1.2. **NOTE:** Purchases in excess of \$25,000.00, but not greater than \$100,000.00 per award shall not require formal authorization for release from Omnitrans' Board of Directors. All purchases in excess of \$100,000.00, however, shall require the use of formal procurement processes, including authorization for release of solicitation from Omnitrans' Board of Directors.

## 2. EXCEPTIONS

- 2.1. There are situations in which procurements that would otherwise meet the requirements for the formal procurement process are exempt. See Policy 2010, Emergency & Non-Competitive/Sole Source Procurement, for more information on exceptions to the formal procurement process.

## 3. DEFINITION OF COMMON TERMS

- 3.1. Competitive Procurements exceeding \$100,000.00
- 3.1.1. Competitive Procurements for purchases with an aggregate value exceeding \$100,000.00, including exercise of all option years, require a formal procurement process. All formal procurements require full and open competition. Formal procurement methods (sealed bid/competitive proposals) must be utilized and most procurements of this nature are subject to federal/state requirements. Board approval is required prior to the start of the procurement process and also to award a contract. Technical specifications/scope of work and/or any other specific requirements shall be prepared by the requesting department and submitted to the Procurement Department. The Procurement Department will prepare and publicly release an Invitation for Bid (IFB) or a Request for Proposal (RFP), as appropriate. (See Procedure 4060-1 and 4070-1 for further discussion). IFBs/RFPs are publicly advertised in newspapers of general circulation in addition to being emailed directly to the sources registered in Omnitrans' vendor database. Competitive procurements are also posted online via Omnitrans' online bidding system.
  - 3.1.2. The threshold requirements, as outlined above, apply to the aggregate purchase amount of the required goods or services. It is not Omnitrans' policy



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to separate related costs for the express purpose of avoiding the competitive bid process.

3.2. Non-Competitive (Sole Source) Procurement

3.2.1. Under certain conditions, non-competitive or “sole source” procurements may be authorized for the acquisition of goods and/or services. In all cases, all sole source procurements will be supported by a properly prepared Sole Source Justification (See Policy 2010 and 2060-1 and 4050-1).

3.3. Piggybacking (where the contract resulted from an open and competitive advertisement, evaluation, and award). Piggybacking is an assignment of existing contract rights to purchase supplies, equipment or services. Omnitrans, where possible, will seek to take advantage of existing contracts awarded by other governmental entities for goods and services. Joint procurements are considered superior to the practice of “piggybacking” since “piggybacking” does not combine buying power at the pricing stage and may limit a grantee’s choices to those products excess to another grantee’s needs.

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3.3.1. Procurement staff must determine that the contract price remains fair and reasonable, that the contract meets Federal requirements and is fully compliant with FTA Circular 4220.1F.

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3.2.1.3.3.2. The Piggybacking Worksheet in Appendix “I” is to be completed and evaluated prior to making a decision to piggyback. The Piggybacking Worksheet shall become part of the procurement file to substantiate compliance.

3.3.3.4. Intergovernmental Procurement Agreements

3.4.1. FTA recognizes joint purchases to be the only type of intergovernmental agreement suitable for use by its grantees and subgrantees.

3.3.1.3.4.2. FTA believes it is extremely important that grantees ensure they contract only for their reasonably anticipated needs and do not add quantities or options to contracts solely to allow them to assign these quantities or options at a later date.

3.3.2.3.4.3. All FTA and Federal Requirements apply. When obtaining property or services in this manner, Omnitrans must ensure all Federal requirements, required clauses, and certifications (including Buy America) are properly followed and included, whether in the master intergovernmental contract or in Omnitrans’ purchase document.

3.3.3.3.4.4. When buying from these schedules, Omnitrans should obtain Buy America certification before entering into the purchase order.

3.4.3.5. Options

3.4.1.3.5.1. Option items may be included in contracts entered into by





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Omnitrans. An option is a unilateral right in a contract by which, for a specified time, Omnitrans may elect to purchase additional equipment, supplies, or services called for in the contract, or may elect to extend the term of the contract. If Omnitrans chooses to use options, the requirements below apply:

3.4.1.1.3.5.1.1. Evaluation of options

3.4.1.1.1.3.5.1.1.1. To all extent possible, Project Managers or owning departments will test how the exercise of contract options contribute to the fulfillment of Omnitrans' strategic plan. Further instructions are found in Procedure 6021 (see Attachment B).

3.4.1.1.2.3.5.1.1.2. Option quantities or periods in a vendor's offer will be evaluated as part of the entire offer. When options are not reviewed as part of the original evaluation process, the exercise of such options will be considered a sole source procurement.

3.4.1.2.3.5.1.2. Exercise of Options

3.4.1.2.1.3.5.1.2.1. Options are to be included in the terms and conditions of the initial contract award document.

3.4.1.2.2.3.5.1.2.2. Omnitrans must ensure that the exercise of an option is in accordance with the terms and conditions of the option provisions stated in the initial contract awarded.

3.4.1.2.3.3.5.1.2.3. Options will not be exercised without the determination that the option price is better than current market offerings or without the determination that exercising the option is the most advantageous for the Agency at the time of its exercise.

3.4.1.2.4.3.5.1.2.4. As of May 2002, the FTA has rescinded its five-year contract term limitation for some FTA-funded contracts, including "revenue contracts". Good procurement practice requires that Omnitrans enter into contract terms no longer than is minimally necessary to accomplish the purpose of the contract. Therefore, it remains the general practice of Omnitrans to contract for terms not exceeding a five (5) year period, inclusive of options.

3.5.3.6. Federal General Service Administration (GSA) Schedules



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~~3.5.1.3.6.1.~~ Under certain circumstances, Omnitrans may be permitted to make purchases through Federal GSA supply schedules in accordance with GSA published procedures as outlined in the Best Practices Procurement Manual. The Procurement Department will determine if the proposed procurement can utilize existing GSA schedules.

~~3.5.2.3.6.2.~~ Procurement will obtain the required offers from at least three sources, analyze the prices for reasonableness, and seek a lower than published price when necessary.

~~3.6.3.7.~~ Procurement Department Files

~~3.6.1.3.7.1.~~ The Procurement Department maintains a procurement History file which provides an audit trail from the initiation of a purchasing requirement through contract closeout. Where appropriate, the files will include documentation such as, the requisitions, independent cost estimate, list of sources solicited, specifications/scope of work, original solicitation, amendments, proposals, bid evaluation results, determination that price is fair and reasonable, contract or purchase order, change orders, Board agendas, copies of public notices, insurance documents, evidence of performance/payment or other bond documents, notice of award, notice to proceed and all other related correspondence.

~~3.7.3.8.~~ Geographic Restrictions

~~3.7.1.3.8.1.~~ Omnitrans will not use geographic preferences in the award of contracts except in the case of procurement of architectural and engineering (A&E) services, where knowledge of local conditions and building codes is a relevant factor in the quality of the A&E services.

~~3.8.3.9.~~ Progress Payment

~~3.8.1.3.9.1.~~ In some circumstances, Omnitrans may enter into contracts that require the use of progress payments. Progress payments shall only be made to the contractor for costs incurred in the performance of the contract. In addition, the Agency must obtain title to the property (materials, work in progress, finished goods) for which the progress payments are made. The Agency does not participate in funding payments (advance payments) to a contractor prior to the incurrence of costs by the contractor.

~~3.9.3.10.~~ Solicitation Mailing List

~~3.9.1.3.10.1.~~ In addition to the general requirement for full and open competition (publicly advertised solicitations), the Agency maintains a bidders list of eligible and qualified vendors who have expressed an interest in receiving solicitations. The bidders list contains the names, addresses and point of contact for entities that will receive the solicitation. Firms responding to the publicly advertised notice for a specific solicitation are added to the



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mailing list.

3.10.3.11. Pre-Bid and Pre-Proposal Conferences

3.10.1.3.11.1. Pre-bid and pre-proposal conferences are generally used in complex acquisitions as a means of briefing prospective bidders and explaining complicated specifications and requirements. The conference is chaired by the responsible Procurement Department staff member and is an open forum where potential respondents may address ambiguities in the solicitation documents. Notice of the conference is included in the solicitation at the time of issuance.

3.11.3.12. Cost and Price Analysis

3.11.1.3.12.1. Some form of cost or price analysis shall be made and documented for every procurement action, including contract modifications, except as indicated in the procedure. The method and degree of analysis is dependent on the facts surrounding the particular procurement. At a minimum, Omnitrans shall develop independent cost estimates for each procurement before receiving bids or proposals. The intent of performing a cost or price analysis is to ensure Omnitrans receives a fair and equitable price consistent with the required quality, delivery, and overall terms of the transaction.

3.12.3.13. Pre-Award and Post Delivery Requirements for Rolling Stock

3.12.1.3.13.1. When purchasing revenue service rolling stock with FTA funds, a pre-award audit must be completed prior to entering into a formal contract for the purchase of the rolling stock in compliance with 49 CFR § 663.21. The pre-award audit shall include:

- A Buy America certification
- A purchaser's requirements certification; and
- Where appropriate, a manufacture's Federal Motor Vehicle Safety certification information.

3.12.2.3.13.2. A post delivery audit must be completed before title to the rolling stock is transferred and shall include:

- A post delivery Buy America certification;
- A post-delivery purchasers certification;
- Where appropriate a manufacturer's Federal Motor Vehicle Safety Standard self certification information.
- Review actual component to ensure that the vehicle meets 60 percent Buy America domestic content requirement;
- Check that the final assembly location is in the United States and the



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manufacturer's final assembly activities meet the requirements outlined in regulations; and

- Have an on-site inspector for rail car procurements and bus procurements of greater than 10 vehicles.

3.13 Bonding and Sureties

3.13.1 Bonds are required for all construction contracts valued at over \$25,000.00 (see FTA Circular 4220.1F, Section IV.2.i(1) for FTA requirements, and the California Contracts Code Section for State requirements). Bond or surety requirements will not be waived without the permission of the Board of Directors. The following minimum criteria apply:

- A bid guarantee equivalent to 5% of a proposers' bid price, consisting of a firm commitment such as a bid bond, certified check or other negotiable instrument submitted with a bid to ensure the bidder will honor its bid upon acceptance by Omnitrans.
- Payment bond equal to 100% of the contract price to ensure contractor completes its obligations under a contract.
  - a) Performance bonds equal to 100% of the contract price to ensure a contractor will pay all who provide labor and materials for the completion of a contract.

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Appendix I

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#### PIGGYBACKING WORKSHEET

**Definition:** *Piggybacking is the post-award use of a contractual document/process that allows someone who was not contemplated in the original procurement to purchase the same supplies/equipment through that original document/process. ("FTA Dear Colleague" letter, October 1, 1998).*

In order to assist in the performance of your review, to determine if a situation exists where you may be able to participate in the piggybacking (assignment) of an existing agreement, the following considerations are provided. **Please ensure that the contract file includes documentation substantiating your determination.**

WORKSHEET	YES	NO
1. Have you obtained a copy of the contract and the solicitation document, including the specifications and any Buy America Pre-award or Post-Delivery audits?		
2. Does the solicitation and contract contain an express "assignability" clause that provides for the assignment of all or part of the specified deliverables?		
3. Did the Contractor submit the "certifications" required by Federal regulations? See BPPM Section 4.3.3.2.		
4. Does the contract contain the clauses required by Federal regulations? <a href="#">See BPPM Appendix A1.</a>		
5. Were the piggybacking quantities included in the original solicitation; i.e. were they in the original bid and were they evaluated as part of the contract award decision?		
6. If this is an indefinite quantity contract, did the original solicitation and resultant contract contain both a minimum and maximum quantity, and did these represent the reasonably foreseeable needs of the parties to the contract?		
7. If this piggybacking action represents the exercise of an option		

in the contract, is the option provision still valid or has it expired?		
8. Does your State law allow for the procedures used by the original contracting agency; e.g., negotiations vs. sealed bids?		
9. Was a cost or price analysis performed by the original contracting agency documenting the reasonableness of the price? Obtain a copy for your files.		
10. <u>If the contract is for rolling stock or replacement parts, does the contract term comply with the five-year term limit established by FTA? See FTA Circular 4220.1F, Chapter IV, 2 (14)(i).</u>		
11. Was there a proper evaluation of the bids or proposals? Included a copy of the analysis in your files.		
12. If you will require changes to the vehicles (deliverables), are they “within the scope” of the contract or are they “cardinal changes”? See BPPM Section 9.2.1		

Note: This worksheet is based upon the policies and guidance expressed in (a) the FTA Administrator’s “Dear Colleague” letter of October 1, 1998, (b) the *Best Practices Procurement Manual*, Section 6.3.3 – *Joint Procurements of Rolling Stock and “Piggybacking,”* and (c) FTA Circular 4220.1EF.



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### FORMAL PROCUREMENT PROCEDURES

#### Overview

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Date Approved: January 9, 2002

Revised: November 5, 2014

## 1. OVERVIEW

1.1. Procurements requiring a formal procurement process are defined as the following:

1.1.1. Requirements for goods or services to be purchased exceeding \$100,000.00 per acquisition, or per contract period including option years. These requirements include:

1.1.1.1. Rental/lease payments;

1.1.1.2. Maintenance service contracts including option years; and,

1.1.1.3. Construction projects.

1.1.2. **NOTE:** Purchases in excess of \$25,000.00, but not greater than \$100,000.00 per award shall not require formal authorization for release from Omnitrans' Board of Directors. All purchases in excess of \$100,000.00, however, shall require the use of formal procurement processes, including authorization for release of solicitation from Omnitrans' Board of Directors.

## 2. EXCEPTIONS

2.1. There are situations in which procurements that would otherwise meet the requirements for the formal procurement process are exempt. See Policy 2010, Emergency & Non-Competitive/Sole Source Procurement, for more information on exceptions to the formal procurement process.

## 3. DEFINITION OF COMMON TERMS

3.1. Competitive Procurements exceeding \$100,000.00

3.1.1. Competitive Procurements for purchases with an aggregate value exceeding \$100,000.00, including exercise of all option years, require a formal procurement process. All formal procurements require full and open competition. Formal procurement methods (sealed bid/competitive proposals) must be utilized and most procurements of this nature are subject to federal/state requirements. Board approval is required prior to the start of the procurement process and also to award a contract. Technical specifications/scope of work and/or any other specific requirements shall be prepared by the requesting department and submitted to the Procurement Department. The Procurement Department will prepare and publicly release an Invitation for Bid (IFB) or a Request for Proposal (RFP), as appropriate. (See Procedure 4060-1 and 4070-1 for further discussion). IFBs/RFPs are publicly advertised in newspapers of general circulation in addition to being emailed directly to the sources registered in Omnitrans' vendor database. Competitive procurements are also posted online via Omnitrans' online bidding system.

3.1.2. The threshold requirements, as outlined above, apply to the aggregate purchase amount of the required goods or services. It is not Omnitrans' policy



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to separate related costs for the express purpose of avoiding the competitive bid process.

#### 3.2. Non-Competitive (Sole Source) Procurement

3.2.1. Under certain conditions, non-competitive or “sole source” procurements may be authorized for the acquisition of goods and/or services. In all cases, all sole source procurements will be supported by a properly prepared Sole Source Justification (See Policy 2010 and 2060-1 and 4050-1).

3.3. Piggybacking (where the contract resulted from an open and competitive advertisement, evaluation, and award). Piggybacking is an assignment of existing contract rights to purchase supplies, equipment or services. Omnitrans, where possible, will seek to take advantage of existing contracts awarded by other governmental entities for goods and services. Joint procurements are considered superior to the practice of “piggybacking” since “piggybacking” does not combine buying power at the pricing stage and may limit a grantee’s choices to those products excess to another grantee’s needs.

3.3.1. Procurement staff must determine that the contract price remains fair and reasonable, that the contract meets Federal requirements and is fully compliant with FTA Circular 4220.1F.

3.3.2. The Piggybacking Worksheet in Appendix “I” is to be completed and evaluated prior to making a decision to piggyback. The Piggybacking Worksheet shall become part of the procurement file to substantiate compliance.

#### 3.4. Intergovernmental Procurement Agreements

3.4.1. FTA recognizes joint purchases to be the only type of intergovernmental agreement suitable for use by its grantees and subgrantees.

3.4.2. FTA believes it is extremely important that grantees ensure they contract only for their reasonably anticipated needs and do not add quantities or options to contracts solely to allow them to assign these quantities or options at a later date.

3.4.3. All FTA and Federal Requirements apply. When obtaining property or services in this manner, Omnitrans must ensure all Federal requirements, required clauses, and certifications (including Buy America) are properly followed and included, whether in the master intergovernmental contract or in Omnitrans’ purchase document.

3.4.4. When buying from these schedules, Omnitrans should obtain Buy America certification before entering into the purchase order.

#### 3.5. Options

3.5.1. Option items may be included in contracts entered into by Omnitrans. An



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option is a unilateral right in a contract by which, for a specified time, Omnitrans may elect to purchase additional equipment, supplies, or services called for in the contract, or may elect to extend the term of the contract. If Omnitrans chooses to use options, the requirements below apply:

#### 3.5.1.1. Evaluation of options

3.5.1.1.1. To all extent possible, Project Managers or owning departments will test how the exercise of contract options contribute to the fulfillment of Omnitrans' strategic plan. Further instructions are found in Procedure 6021 (see Attachment B).

3.5.1.1.2. Option quantities or periods in a vendor's offer will be evaluated as part of the entire offer. When options are not reviewed as part of the original evaluation process, the exercise of such options will be considered a sole source procurement.

#### 3.5.1.2. Exercise of Options

3.5.1.2.1. Options are to be included in the terms and conditions of the initial contract award document.

3.5.1.2.2. Omnitrans must ensure that the exercise of an option is in accordance with the terms and conditions of the option provisions stated in the initial contract awarded.

3.5.1.2.3. Options will not be exercised without the determination that the option price is better than current market offerings or without the determination that exercising the option is the most advantageous for the Agency at the time of its exercise.

3.5.1.2.4. As of May 2002, the FTA has rescinded its five-year contract term limitation for some FTA-funded contracts, including "revenue contracts". Good procurement practice requires that Omnitrans enter into contract terms no longer than is minimally necessary to accomplish the purpose of the contract. Therefore, it remains the general practice of Omnitrans to contract for terms not exceeding a five (5) year period, inclusive of options.

### 3.6. Federal General Service Administration (GSA) Schedules

3.6.1. Under certain circumstances, Omnitrans may be permitted to make purchases through Federal GSA supply schedules in accordance with GSA published procedures as outlined in the Best Practices Procurement Manual. The



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Procurement Department will determine if the proposed procurement can utilize existing GSA schedules.

- 3.6.2. Procurement will obtain the required offers from at least three sources, analyze the prices for reasonableness, and seek a lower than published price when necessary.

**3.7. Procurement Department Files**

- 3.7.1. The Procurement Department maintains a procurement History file which provides an audit trail from the initiation of a purchasing requirement through contract closeout. Where appropriate, the files will include documentation such as, the requisitions, independent cost estimate, list of sources solicited, specifications/scope of work, original solicitation, amendments, proposals, bid evaluation results, determination that price is fair and reasonable, contract or purchase order, change orders, Board agendas, copies of public notices, insurance documents, evidence of performance/payment or other bond documents, notice of award, notice to proceed and all other related correspondence.

**3.8. Geographic Restrictions**

- 3.8.1. Omnitrans will not use geographic preferences in the award of contracts except in the case of procurement of architectural and engineering (A&E) services, where knowledge of local conditions and building codes is a relevant factor in the quality of the A&E services.

**3.9. Progress Payment**

- 3.9.1. In some circumstances, Omnitrans may enter into contracts that require the use of progress payments. Progress payments shall only be made to the contractor for costs incurred in the performance of the contract. In addition, the Agency must obtain title to the property (materials, work in progress, finished goods) for which the progress payments are made. The Agency does not participate in funding payments (advance payments) to a contractor prior to the incurrence of costs by the contractor.

**3.10. Solicitation Mailing List**

- 3.10.1. In addition to the general requirement for full and open competition (publicly advertised solicitations), the Agency maintains a bidders list of eligible and qualified vendors who have expressed an interest in receiving solicitations. The bidders list contains the names, addresses and point of contact for entities that will receive the solicitation. Firms responding to the publicly advertised notice for a specific solicitation are added to the mailing list.

**3.11. Pre-Bid and Pre-Proposal Conferences**

- 3.11.1. Pre-bid and pre-proposal conferences are generally used in complex

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acquisitions as a means of briefing prospective bidders and explaining complicated specifications and requirements. The conference is chaired by the responsible Procurement Department staff member and is an open forum where potential respondents may address ambiguities in the solicitation documents. Notice of the conference is included in the solicitation at the time of issuance.

**3.12. Cost and Price Analysis**

3.12.1. Some form of cost or price analysis shall be made and documented for every procurement action, including contract modifications, except as indicated in the procedure. The method and degree of analysis is dependent on the facts surrounding the particular procurement. At a minimum, Omnitrans shall develop independent cost estimates for each procurement before receiving bids or proposals. The intent of performing a cost or price analysis is to ensure Omnitrans receives a fair and equitable price consistent with the required quality, delivery, and overall terms of the transaction.

**3.13. Pre-Award and Post Delivery Requirements for Rolling Stock**

3.13.1. When purchasing revenue service rolling stock with FTA funds, a pre-award audit must be completed prior to entering into a formal contract for the purchase of the rolling stock in compliance with 49 CFR § 663.21. The pre-award audit shall include:

- A Buy America certification
- A purchaser's requirements certification; and
- Where appropriate, a manufacturer's Federal Motor Vehicle Safety certification information.

3.13.2. A post delivery audit must be completed before title to the rolling stock is transferred and shall include:

- A post delivery Buy America certification;
- A post-delivery purchasers certification;
- Where appropriate a manufacturer's Federal Motor Vehicle Safety Standard self certification information.
- Review actual component to ensure that the vehicle meets 60 percent Buy America domestic content requirement;
- Check that the final assembly location is in the United States and the manufacturer's final assembly activities meet the requirements outlined in regulations; and
- Have an on-site inspector for rail car procurements and bus procurements



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of greater than 10 vehicles.

3.13 Bonding and Sureties

3.13.1 Bonds are required for all construction contracts valued at over \$25,000.00 (see FTA Circular 4220.1F, Section IV.2.i(1) for FTA requirements, and the California Contracts Code Section for State requirements). Bond or surety requirements will not be waived without the permission of the Board of Directors. The following minimum criteria apply:

- A bid guarantee equivalent to 5% of a proposers' bid price, consisting of a firm commitment such as a bid bond, certified check or other negotiable instrument submitted with a bid to ensure the bidder will honor its bid upon acceptance by Omnitrans.
- Payment bond equal to 100% of the contract price to ensure contractor completes its obligations under a contract.
  - a) Performance bonds equal to 100% of the contract price to ensure a contractor will pay all who provide labor and materials for the completion of a contract.



### PIGGYBACKING WORKSHEET

**Definition:** *Piggybacking is the post-award use of a contractual document/process that allows someone who was not contemplated in the original procurement to purchase the same supplies/equipment through that original document/process. ("FTA Dear Colleague" letter, October 1, 1998).*

In order to assist in the performance of your review, to determine if a situation exists where you may be able to participate in the piggybacking (assignment) of an existing agreement, the following considerations are provided. **Please ensure that the contract file includes documentation substantiating your determination.**

WORKSHEET	YES	NO
1. Have you obtained a copy of the contract and the solicitation document, including the specifications and any Buy America Pre-award or Post-Delivery audits?		
2. Does the solicitation and contract contain an express "assignability" clause that provides for the assignment of all or part of the specified deliverables?		
3. Did the Contractor submit the "certifications" required by Federal regulations? See BPPM Section 4.3.3.2.		
4. Does the contract contain the clauses required by Federal regulations? See BPPM Appendix A1.		
5. Were the piggybacking quantities included in the original solicitation; i.e. were they in the original bid and were they evaluated as part of the contract award decision?		
6. If this is an indefinite quantity contract, did the original solicitation and resultant contract contain both a minimum and maximum quantity, and did these represent the reasonably foreseeable needs of the parties to the contract?		
7. If this piggybacking action represents the exercise of an option in the contract, is the option provision still valid or has it expired?		
8. Does your State law allow for the procedures used by the original contracting agency; e.g., negotiations vs. sealed bids?		
9. Was a cost or price analysis performed by the original		

contracting agency documenting the reasonableness of the price? Obtain a copy for your files.		
10. If the contract is for rolling stock or replacement parts, does the contract term comply with the five-year term limit established by FTA? See FTA Circular 4220.1F, Chapter IV, 2 (14)(i).		
11. Was there a proper evaluation of the bids or proposals? Included a copy of the analysis in your files.		
12. If you will require changes to the vehicles (deliverables), are they “within the scope” of the contract or are they “cardinal changes”? See BPPM Section 9.2.1		

Note: This worksheet is based upon the policies and guidance expressed in (a) the FTA Administrator’s “Dear Colleague” letter of October 1, 1998, (b) the *Best Practices Procurement Manual*, Section 6.3.3 – *Joint Procurements of Rolling Stock and “Piggybacking,”* and (c) FTA Circular 4220.1F.

**RESOLUTION NO. 276-14****RESOLUTION OF THE OMNITRANS BOARD OF DIRECTORS, SAN BERNARDINO COUNTY, CALIFORNIA, ADOPTING AN AMENDED CONFLICT OF INTEREST CODE PURSUANT TO THE POLITICAL REFORM ACT OF 1974**

**WHEREAS**, the Legislature of the State of California enacted the Political Reform Act of 1974, Government Code Section 81000 et seq. (the “Act”), which contains provisions relating to conflicts of interest which potentially affect all officers, employees and consultants of Omnitrans and requires all public agencies to adopt and promulgate a conflict of interest code; and

**WHEREAS**, the Board of Directors adopted a Conflict of Interest Code (the “Code”) in compliance with the Act which was last amended December 10, 2012; and

**WHEREAS**, subsequent changed circumstances within Omnitrans have made it advisable and necessary pursuant to Sections 87306 and 87307 of the Act to amend and update Omnitrans’ Code; and

**WHEREAS**, the potential penalties for violation of the provisions of the Act are substantial and may include criminal and civil liability, as well as equitable relief which could result in Omnitrans being restrained or prevented from acting in cases where the provisions of the Act may have been violated; and

**WHEREAS**, notice of the time and place of a public meeting on, and of consideration by the Board of Directors of, the proposed amended Code was publicly posted for review at the offices of Omnitrans; and

**WHEREAS**, a public meeting was held upon the proposed amended Code at a regular meeting of the Board of Directors on November 5, 2014, at which all present were given an opportunity to be heard on the proposed amended Code.

**NOW, THEREFORE, BE IT RESOLVED THAT** the Omnitrans Board of Directors does hereby adopt the proposed amended Omnitrans Conflict of Interest Code, a copy of which is attached hereto and shall be on file with the Assistant to the CEO/General Manager and available to the public for inspection and copying during regular business hours;

**BE IT FURTHER RESOLVED** that the said amended Code shall be submitted to the Board of Supervisors of the County of San Bernardino for approval and said Code shall become effective 30 days after the Board of Supervisors approves the proposed amended Code as submitted.

**APPROVED AND ADOPTED** this 5th day of November, 2014.

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Alan Wapner, Chair  
Omnitrans Board of Directors

Approved as to form:

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Carol Greene  
Legal Counsel for Omnitrans



**CERTIFICATION**

I, P. Scott Graham, Secretary, Omnitrans Board of Directors, do hereby certify that the foregoing resolution was adopted by the Omnitrans Board of Directors at a regular meeting thereof held on the 5th day of November, 2014, by the following vote, to wit:

**AYES:**

**NOES:**

**ABSENT:**

**ABSTAINED:**

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

**OMNITRANS**  
**CONFLICT OF INTEREST CODE**  
**AMENDED NOVEMBER 5, 2014**

The Political Reform Act, Government Code Sections 81000, et seq., requires state and local government agencies to adopt and promulgate Conflict of Interest Codes. The Fair Political Practices Commission has adopted a regulation, 2 Cal. Code of Regs. Section 18730, which contains terms of a standard Conflict of Interest Code, which can be incorporated by reference, and which may be amended by the Fair Political Practices Commission to conform to amendments in the Political Reform Act after public notice and hearings. Therefore, the terms of 2 Cal. Code of Regs Section 18730 and any amendments to it duly adopted by the Fair Political Practices Commission are hereby incorporated by reference. This regulation (attached) and the attached Appendix designating officials and employees and establishing disclosure categories, shall constitute the Conflict of Interest Code of Omnitrans.

All officials and Designated Employees required to submit a statement of economic interests shall file their statements with the Assistant to the CEO/General Manager as Omnitrans' Filing Officer. The Filing Officer shall make and retain a copy of all statements filed by officials who manage public investments and forward the originals of such statements to the Clerk of the Board of Supervisors. The Filing Officer shall retain the statements of all other designated employees and make all retained statements available for public inspection and reproduction during regular business hours.

# **APPENDIX**

## **CONFLICT OF INTEREST CODE**

### **OF OMNITRANS**

(Amended November 5, 2014)

#### **EXHIBIT “A”**

#### **OFFICIALS WHO MANAGE PUBLIC INVESTMENTS**

Officials who manage public investments as defined by 2 Cal. Code of Regs. § 18701(b), are NOT subject to Omnitrans' Code but are subject to the disclosure requirements of the Act. (Government Code Section 87200 et seq.). [Regs. § 18730(b)(3)]

It has been determined that the positions listed below are officials who manage public investments<sup>1</sup>. These positions are listed here for informational purposes only.

Board of Directors and their Alternates

CEO/General Manager

Investment Consultant

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<sup>1</sup> Individuals holding one of the above-listed positions may contact the FPPC for assistance or written advice regarding their filing obligations if they believe that their position has been categorized incorrectly. The FPPC makes the final determination whether a position is covered by § 87200.

# DESIGNATED POSITIONS

## GOVERNED BY THE CONFLICT OF INTEREST CODE

<u>DESIGNATED EMPLOYEES'</u> <u>TITLE OR FUNCTION</u>	<u>DISCLOSURE CATEGORIES</u> <u>ASSIGNED</u>
Accounting Manager	1, 2
Accounting Services Supervisor	5
Administrative Officer	1
Application Developer	5
Application Manager	5
Application Specialist	5
Assistant Transportation Manager	5
Construction Manager	2, 3, 5
Construction Safety Manager	3,5
Contract Review Analyst	4
Contracts Manager	4
Contracts Specialist (ALL)	4
Design Manager	5
Development Planning Manager	1, 2
Director of Finance	1, 2
Director of Human Resources/Safety & Regulatory Compliance	5
Director of Information Technology	5
Director of Internal Audit Services	4
Director of Maintenance	5
Director of Marketing/Planning	1, 2
Director of Operations	1
Director of Procurement	1
Dispatch Supervisor	5
Employee Relations Manager	5

**DESIGNATED EMPLOYEES'**  
**TITLE OR FUNCTION**

**DISCLOSURE CATEGORIES**  
**ASSIGNED**

Engineering Services Manager	1,2
Environmental & Engineering Services Manager	1, 2
Facility Manager	3, 5
Facility Supervisor	5
General Counsel	1, 2
Grants Manager	4
Human Resources Analyst	5
Human Resources Manager	5
Legal & Regulatory Compliance Manager	1, 2
Loss Prevention & Security Supervisor	5
Maintenance Manager	5
Marketing Manager	5
Marketing Specialist	5
Materials Manager	4
Network Administrator	5
Operations Analyst	5
Operations Services Supervisor	5
Planner (All)	1, 2
Program Manager	1, 2
Project Control Manager	2, 3, 5
Public Relations Manager	1, 2
Quality Assurance Manager	3, 5
Right-of-Way & Utilities Manager	1, 2
Safety and Regulatory Compliance Manager	5
Safety & Regulatory Compliance Specialist	5

**DESIGNATED EMPLOYEES'**  
**TITLE OR FUNCTION**

**DISCLOSURE CATEGORIES**  
**ASSIGNED**

Senior Financial Analyst	1, 2
Service Planning Manager	2, 5
Stops & Stations Supervisor	5
Systems Coordinator	5
Systems Engineer	5
Systems Manager	5
Systems Specialist	5
Technical Services Manager	5
Transportation Manager	1
Treasury Manager	1
Warranty Coordinator	4

Consultants\*

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\* Consultants shall be included in the list of designated employees and shall disclose pursuant to the broadest disclosure category in the Code subject to the following limitation:

The CEO/General Manager may determine, in writing, that a particular consultant, although a "designated position," is hired to perform a range of duties that are limited in scope and, thus, is not required to fully comply with the disclosure requirements in this Section. Such written determination shall include a description of the consultant's duties and, based upon that description, a statement of the extent of disclosure requirements. The CEO/General Manager's determination is a public record and shall be retained for public inspection in the same manner and location as this Conflict of Interest Code.

## **APPENDIX “B”**

### **DISCLOSURE CATEGORIES**

The disclosure categories listed below identify the types of investments, business entities, sources of income, including gifts, loans and travel payments, or real property which the Designated Employee must disclose for each disclosure category to which he or she is assigned.

Category 1: All investments and business positions and sources of income, including gifts, loans and travel payments that are located in, do business in, or own real property within the jurisdiction of Omnitrans.

Category 2: All interests in real property which is located in whole or in part within, or not more than two (2) miles outside, the jurisdiction of Omnitrans.

Category 3: All investments and business positions and sources of income, including gifts, loans and travel payments that are engaged in land development, construction or the acquisition or sale of real property within the jurisdiction of Omnitrans.

Category 4: All investments and business positions and sources of income, including gifts, loans and travel payments that provide services, supplies, materials, machinery, vehicles or equipment of a type utilized by Omnitrans.

Category 5: All investments and business positions and sources of income, including gifts, loans and travel payments that provide services, supplies, materials, machinery, vehicles or equipment of a type purchased or leased by the Designated Employee's department, unit or division.

(Regulations of the Fair Political Practices Commission, Title 2, Division 6, California Code of Regulations)

**§ 18730. Provisions of Conflict of Interest Codes.**

(a) Incorporation by reference of the terms of this regulation along with the designation of employees and the formulation of disclosure categories in the Appendix referred to below constitute the adoption and promulgation of a conflict of interest code within the meaning of Section 87300 or the amendment of a conflict of interest code within the meaning of Section 87306 if the terms of this regulation are substituted for terms of a conflict of interest code already in effect. A code so amended or adopted and promulgated requires the reporting of reportable items in a manner substantially equivalent to the requirements of article 2 of chapter 7 of the Political Reform Act, Sections 81000, et seq . The requirements of a conflict of interest code are in addition to other requirements of the Political Reform Act, such as the general prohibition against conflicts of interest contained in Section 87100, and to other state or local laws pertaining to conflicts of interest.

(b) The terms of a conflict of interest code amended or adopted and promulgated pursuant to this regulation are as follows:

(1) Section 1. Definitions.

The definitions contained in the Political Reform Act of 1974, regulations of the Fair Political Practices Commission (Regulations 18110, et seq.), and any amendments to the Act or regulations, are incorporated by reference into this conflict of interest code.

(2) Section 2. Designated Employees.



The persons holding positions listed in the Appendix are designated employees. It has been determined that these persons make or participate in the making of decisions which may foreseeably have a material effect on economic interests.

(3) Section 3. Disclosure Categories.

This code does not establish any disclosure obligation for those designated employees who are also specified in Section 87200 if they are designated in this code in that same capacity or if the geographical jurisdiction of this agency is the same as or is wholly included within the jurisdiction in which those persons must report their economic interests pursuant to article 2 of chapter 7 of the Political Reform Act, Sections 87200, et seq .

In addition, this code does not establish any disclosure obligation for any designated employees who are designated in a conflict of interest code for another agency, if all of the following apply:

(A) The geographical jurisdiction of this agency is the same as or is wholly included within the jurisdiction of the other agency;

(B) The disclosure assigned in the code of the other agency is the same as that required under article 2 of chapter 7 of the Political Reform Act, Section 87200; and

(C) The filing officer is the same for both agencies.<sup>1</sup>

Such persons are covered by this code for disqualification purposes only. With respect to all other designated employees, the disclosure categories set forth in the Appendix specify which kinds of economic interests are reportable. Such a designated employee shall disclose in his or her statement of economic interests those economic interests he or she has which are of the kind described in the disclosure categories to

which he or she is assigned in the Appendix. It has been determined that the economic interests set forth in a designated employee's disclosure categories are the kinds of economic interests which he or she foreseeably can affect materially through the conduct of his or her office.

(4) Section 4. Statements of Economic Interests: Place of Filing.

The code reviewing body shall instruct all designated employees within its code to file statements of economic interests with the agency or with the code reviewing body, as provided by the code reviewing body in the agency's conflict of interest code.<sup>2</sup>

(5) Section 5. Statements of Economic Interests: Time of Filing.

(A) Initial Statements. All designated employees employed by the agency on the effective date of this code, as originally adopted, promulgated and approved by the code reviewing body, shall file statements within 30 days after the effective date of this code. Thereafter, each person already in a position when it is designated by an amendment to this code shall file an initial statement within 30 days after the effective date of the amendment.

(B) Assuming Office Statements. All persons assuming designated positions after the effective date of this code shall file statements within 30 days after assuming the designated positions, or if subject to State Senate confirmation, 30 days after being nominated or appointed.

(C) Annual Statements. All designated employees shall file statements no later than April 1. If a person reports for military service as defined in the Servicemember's Civil Relief Act, the deadline for the annual statement of economic interests is 30 days following his or her return to office, provided the person, or someone authorized to

represent the person's interests, notifies the filing officer in writing prior to the applicable filing deadline that he or she is subject to that federal statute and is unable to meet the applicable deadline, and provides the filing officer verification of his or her military status.

(D) Leaving Office Statements. All persons who leave designated positions shall file statements within 30 days after leaving office.

(5.5) Section 5.5. Statements for Persons Who Resign Prior to Assuming Office.

Any person who resigns within 12 months of initial appointment, or within 30 days of the date of notice provided by the filing officer to file an assuming office statement, is not deemed to have assumed office or left office, provided he or she did not make or participate in the making of, or use his or her position to influence any decision and did not receive or become entitled to receive any form of payment as a result of his or her appointment. Such persons shall not file either an assuming or leaving office statement.

(A) Any person who resigns a position within 30 days of the date of a notice from the filing officer shall do both of the following:

(1) File a written resignation with the appointing power; and

(2) File a written statement with the filing officer declaring under penalty of perjury that during the period between appointment and resignation he or she did not make, participate in the making, or use the position to influence any decision of the agency or receive, or become entitled to receive, any form of payment by virtue of being appointed to the position.

(6) Section 6. Contents of and Period Covered by Statements of Economic Interests.

(A) Contents of Initial Statements.

Initial statements shall disclose any reportable investments, interests in real property and business positions held on the effective date of the code and income received during the 12 months prior to the effective date of the code.

(B) Contents of Assuming Office Statements.

Assuming office statements shall disclose any reportable investments, interests in real property and business positions held on the date of assuming office or, if subject to State Senate confirmation or appointment, on the date of nomination, and income received during the 12 months prior to the date of assuming office or the date of being appointed or nominated, respectively.

(C) Contents of Annual Statements. Annual statements shall disclose any reportable investments, interests in real property, income and business positions held or received during the previous calendar year provided, however, that the period covered by an employee's first annual statement shall begin on the effective date of the code or the date of assuming office whichever is later, or for a board or commission member subject to Section 87302.6, the day after the closing date of the most recent statement filed by the member pursuant to Regulation 18754.

(D) Contents of Leaving Office Statements.

Leaving office statements shall disclose reportable investments, interests in real property, income and business positions held or received during the period between the closing date of the last statement filed and the date of leaving office.

(7) Section 7. Manner of Reporting.

Statements of economic interests shall be made on forms prescribed by the Fair Political Practices Commission and supplied by the agency, and shall contain the following information:

(A) Investment and Real Property Disclosure.

When an investment or an interest in real property<sup>3</sup> is required to be reported,<sup>4</sup> the statement shall contain the following:

1. A statement of the nature of the investment or interest;
2. The name of the business entity in which each investment is held, and a general description of the business activity in which the business entity is engaged;
3. The address or other precise location of the real property;
4. A statement whether the fair market value of the investment or interest in real property equals or exceeds \$2,000, exceeds \$10,000, exceeds \$100,000, or exceeds \$1,000,000.

(B) Personal Income Disclosure. When personal income is required to be reported,<sup>5</sup> the statement shall contain:

1. The name and address of each source of income aggregating \$500 or more in value, or \$50 or more in value if the income was a gift, and a general description of the business activity, if any, of each source;
2. A statement whether the aggregate value of income from each source, or in the case of a loan, the highest amount owed to each source, was \$1,000 or less, greater than \$1,000, greater than \$10,000, or greater than \$100,000;
3. A description of the consideration, if any, for which the income was received;

4. In the case of a gift, the name, address and business activity of the donor and any intermediary through which the gift was made; a description of the gift; the amount or value of the gift; and the date on which the gift was received;

5. In the case of a loan, the annual interest rate and the security, if any, given for the loan and the term of the loan.

(C) Business Entity Income Disclosure. When income of a business entity, including income of a sole proprietorship, is required to be reported,<sup>6</sup> the statement shall contain:

1. The name, address, and a general description of the business activity of the business entity;

2. The name of every person from whom the business entity received payments if the filer's pro rata share of gross receipts from such person was equal to or greater than \$10,000.

(D) Business Position Disclosure. When business positions are required to be reported, a designated employee shall list the name and address of each business entity in which he or she is a director, officer, partner, trustee, employee, or in which he or she holds any position of management, a description of the business activity in which the business entity is engaged, and the designated employee's position with the business entity.

(E) Acquisition or Disposal During Reporting Period. In the case of an annual or leaving office statement, if an investment or an interest in real property was partially or wholly acquired or disposed of during the period covered by the statement, the statement shall contain the date of acquisition or disposal.

(8) Section 8. Prohibition on Receipt of Honoraria.

(A) No member of a state board or commission, and no designated employee of a state or local government agency, shall accept any honorarium from any source, if the member or employee would be required to report the receipt of income or gifts from that source on his or her statement of economic interests. This section shall not apply to any part-time member of the governing board of any public institution of higher education, unless the member is also an elected official.

Subdivisions (a), (b), and (c) of Section 89501 shall apply to the prohibitions in this section.

This section shall not limit or prohibit payments, advances, or reimbursements for travel and related lodging and subsistence authorized by Section 89506.

(8.1) Section 8.1. Prohibition on Receipt of Gifts in Excess of \$440.

(A) No member of a state board or commission, and no designated employee of a state or local government agency, shall accept gifts with a total value of more than \$440 in a calendar year from any single source, if the member or employee would be required to report the receipt of income or gifts from that source on his or her statement of economic interests. This section shall not apply to any part-time member of the governing board of any public institution of higher education, unless the member is also an elected official.

Subdivisions (e), (f), and (g) of Section 89503 shall apply to the prohibitions in this section.

(8.2) Section 8.2. Loans to Public Officials.

(A) No elected officer of a state or local government agency shall, from the date of his or her election to office through the date that he or she vacates office, receive a personal loan from any officer, employee, member, or consultant of the state or local government agency in which the elected officer holds office or over which the elected officer's agency has direction and control.

(B) No public official who is exempt from the state civil service system pursuant to subdivisions (c), (d), (e), (f), and (g) of Section 4 of Article VII of the Constitution shall, while he or she holds office, receive a personal loan from any officer, employee, member, or consultant of the state or local government agency in which the public official holds office or over which the public official's agency has direction and control. This subdivision shall not apply to loans made to a public official whose duties are solely secretarial, clerical, or manual.

(C) No elected officer of a state or local government agency shall, from the date of his or her election to office through the date that he or she vacates office, receive a personal loan from any person who has a contract with the state or local government agency to which that elected officer has been elected or over which that elected officer's agency has direction and control. This subdivision shall not apply to loans made by banks or other financial institutions or to any indebtedness created as part of a retail installment or credit card transaction, if the loan is made or the indebtedness created in the lender's regular course of business on terms available to members of the public without regard to the elected officer's official status.

(D) No public official who is exempt from the state civil service system pursuant to subdivisions (c), (d), (e), (f), and (g) of Section 4 of Article VII of the Constitution shall,



while he or she holds office, receive a personal loan from any person who has a contract with the state or local government agency to which that elected officer has been elected or over which that elected officer's agency has direction and control. This subdivision shall not apply to loans made by banks or other financial institutions or to any indebtedness created as part of a retail installment or credit card transaction, if the loan is made or the indebtedness created in the lender's regular course of business on terms available to members of the public without regard to the elected officer's official status. This subdivision shall not apply to loans made to a public official whose duties are solely secretarial, clerical, or manual.

(E) This section shall not apply to the following:

1. Loans made to the campaign committee of an elected officer or candidate for elective office.

2. Loans made by a public official's spouse, child, parent, grandparent, grandchild, brother, sister, parent-in-law, brother-in-law, sister-in-law, nephew, niece, aunt, uncle, or first cousin, or the spouse of any such persons, provided that the person making the loan is not acting as an agent or intermediary for any person not otherwise exempted under this section.

3. Loans from a person which, in the aggregate, do not exceed five hundred dollars (\$500) at any given time.

4. Loans made, or offered in writing, before January 1, 1998.

(8.3) Section 8.3. Loan Terms.

(A) Except as set forth in subdivision (B), no elected officer of a state or local government agency shall, from the date of his or her election to office through the date

he or she vacates office, receive a personal loan of \$500 or more, except when the loan is in writing and clearly states the terms of the loan, including the parties to the loan agreement, date of the loan, amount of the loan, term of the loan, date or dates when payments shall be due on the loan and the amount of the payments, and the rate of interest paid on the loan.

(B) This section shall not apply to the following types of loans:

1. Loans made to the campaign committee of the elected officer.
2. Loans made to the elected officer by his or her spouse, child, parent, grandparent, grandchild, brother, sister, parent-in-law, brother-in-law, sister-in-law, nephew, niece, aunt, uncle, or first cousin, or the spouse of any such person, provided that the person making the loan is not acting as an agent or intermediary for any person not otherwise exempted under this section.
3. Loans made, or offered in writing, before January 1, 1998.

(C) Nothing in this section shall exempt any person from any other provision of Title 9 of the Government Code.

(8.4) Section 8.4. Personal Loans.

(A) Except as set forth in subdivision (B), a personal loan received by any designated employee shall become a gift to the designated employee for the purposes of this section in the following circumstances:

1. If the loan has a defined date or dates for repayment, when the statute of limitations for filing an action for default has expired.
2. If the loan has no defined date or dates for repayment, when one year has elapsed from the later of the following:

- a. The date the loan was made.
- b. The date the last payment of \$100 or more was made on the loan.
- c. The date upon which the debtor has made payments on the loan aggregating to less than \$250 during the previous 12 months.

(B) This section shall not apply to the following types of loans:

- 1. A loan made to the campaign committee of an elected officer or a candidate for elective office.
- 2. A loan that would otherwise not be a gift as defined in this title.
- 3. A loan that would otherwise be a gift as set forth under subdivision (A), but on which the creditor has taken reasonable action to collect the balance due.
- 4. A loan that would otherwise be a gift as set forth under subdivision (A), but on which the creditor, based on reasonable business considerations, has not undertaken collection action. Except in a criminal action, a creditor who claims that a loan is not a gift on the basis of this paragraph has the burden of proving that the decision for not taking collection action was based on reasonable business considerations.
- 5. A loan made to a debtor who has filed for bankruptcy and the loan is ultimately discharged in bankruptcy.

(C) Nothing in this section shall exempt any person from any other provisions of Title 9 of the Government Code.

(9) Section 9. Disqualification.

No designated employee shall make, participate in making, or in any way attempt to use his or her official position to influence the making of any governmental decision which he or she knows or has reason to know will have a reasonably foreseeable

material financial effect, distinguishable from its effect on the public generally, on the official or a member of his or her immediate family or on:

(A) Any business entity in which the designated employee has a direct or indirect investment worth \$2,000 or more;

(B) Any real property in which the designated employee has a direct or indirect interest worth \$2,000 or more;

(C) Any source of income, other than gifts and other than loans by a commercial lending institution in the regular course of business on terms available to the public without regard to official status, aggregating \$500 or more in value provided to, received by or promised to the designated employee within 12 months prior to the time when the decision is made;

(D) Any business entity in which the designated employee is a director, officer, partner, trustee, employee, or holds any position of management; or

(E) Any donor of, or any intermediary or agent for a donor of, a gift or gifts aggregating \$440 or more provided to, received by, or promised to the designated employee within 12 months prior to the time when the decision is made.

(9.3) Section 9.3. Legally Required Participation.

No designated employee shall be prevented from making or participating in the making of any decision to the extent his or her participation is legally required for the decision to be made. The fact that the vote of a designated employee who is on a voting body is needed to break a tie does not make his or her participation legally required for purposes of this section.

(9.5) Section 9.5. Disqualification of State Officers and Employees.

In addition to the general disqualification provisions of section 9, no state administrative official shall make, participate in making, or use his or her official position to influence any governmental decision directly relating to any contract where the state administrative official knows or has reason to know that any party to the contract is a person with whom the state administrative official, or any member of his or her immediate family has, within 12 months prior to the time when the official action is to be taken:

(A) Engaged in a business transaction or transactions on terms not available to members of the public, regarding any investment or interest in real property; or

(B) Engaged in a business transaction or transactions on terms not available to members of the public regarding the rendering of goods or services totaling in value \$1,000 or more.

(10) Section 10. Disclosure of Disqualifying Interest.

When a designated employee determines that he or she should not make a governmental decision because he or she has a disqualifying interest in it, the determination not to act may be accompanied by disclosure of the disqualifying interest.

(11) Section 11. Assistance of the Commission and Counsel.

Any designated employee who is unsure of his or her duties under this code may request assistance from the Fair Political Practices Commission pursuant to Section 83114 and Regulations 18329 and 18329.5 or from the attorney for his or her agency, provided that nothing in this section requires the attorney for the agency to issue any formal or informal opinion.

(12) Section 12. Violations.

This code has the force and effect of law. Designated employees violating any provision of this code are subject to the administrative, criminal and civil sanctions provided in the Political Reform Act, Sections 81000-91014. In addition, a decision in relation to which a violation of the disqualification provisions of this code or of Section 87100 or 87450 has occurred may be set aside as void pursuant to Section 91003.

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1 Designated employees who are required to file statements of economic interests under any other agency's conflict of interest code, or under article 2 for a different jurisdiction, may expand their statement of economic interests to cover reportable interests in both jurisdictions, and file copies of this expanded statement with both entities in lieu of filing separate and distinct statements, provided that each copy of such expanded statement filed in place of an original is signed and verified by the designated employee as if it were an original. See Section 81004.

2 See Section 81010 and Regulation 18115 for the duties of filing officers and persons in agencies who make and retain copies of statements and forward the originals to the filing officer.

3 For the purpose of disclosure only (not disqualification), an interest in real property does not include the principal residence of the filer.

4 Investments and interests in real property which have a fair market value of less than \$2,000 are not investments and interests in real property within the meaning of the Political Reform Act. However, investments or interests in real property of an individual include those held by the individual's spouse and dependent children as well as a pro rata share of any investment or interest in real property of any business entity or trust in

which the individual, spouse and dependent children own, in the aggregate, a direct, indirect or beneficial interest of 10 percent or greater.

5 A designated employee's income includes his or her community property interest in the income of his or her spouse but does not include salary or reimbursement for expenses received from a state, local or federal government agency.

6 Income of a business entity is reportable if the direct, indirect or beneficial interest of the filer and the filer's spouse in the business entity aggregates a 10 percent or greater interest. In addition, the disclosure of persons who are clients or customers of a business entity is required only if the clients or customers are within one of the disclosure categories of the filer.

Note: Authority cited: Section 83112, Government Code. Reference: Sections 87103(e), 87300-87302, 89501, 89502 and 89503, Government Code.

#### HISTORY

1. New section filed 4-2-80 as an emergency; effective upon filing (Register 80, No. 14). Certificate of Compliance included.
2. Editorial correction (Register 80, No. 29).
3. Amendment of subsection (b) filed 1-9-81; effective thirtieth day thereafter (Register 81, No. 2).
4. Amendment of subsection (b)(7)(B)1. filed 1-26-83; effective thirtieth day thereafter (Register 83, No. 5).
5. Amendment of subsection (b)(7)(A) filed 11-10-83; effective thirtieth day thereafter (Register 83, No. 46).
6. Amendment filed 4-13-87; operative 5-13-87 (Register 87, No. 16).

7. Amendment of subsection (b) filed 10-21-88; operative 11-20-88 (Register 88, No. 46).
8. Amendment of subsections (b)(8)(A) and (b)(8)(B) and numerous editorial changes filed 8-28-90; operative 9-27-90 (Reg. 90, No. 42).
9. Amendment of subsections (b)(3), (b)(8) and renumbering of following subsections and amendment of Note filed 8-7-92; operative 9-7-92 (Register 92, No. 32).
10. Amendment of subsection (b)(5.5) and new subsections (b)(5.5)(A)-(A)(2) filed 2-4-93; operative 2-4-93 (Register 93, No. 6).
11. Change without regulatory effect adopting Conflict of Interest Code for California Mental Health Planning Council filed 11-22-93 pursuant to title 1, section 100, California Code of Regulations (Register 93, No. 48). Approved by Fair Political Practices Commission 9-21-93.
12. Change without regulatory effect redesignating Conflict of Interest Code for California Mental Health Planning Council as chapter 62, section 55100 filed 1-4-94 pursuant to title 1, section 100, California Code of Regulations (Register 94, No. 1).
13. Editorial correction adding History 11 and 12 and deleting duplicate section number (Register 94, No. 17).
14. Amendment of subsection (b)(8), designation of subsection (b)(8)(A), new subsection (b)(8)(B), and amendment of subsections (b)(8.1)-(b)(8.1)(B), (b)(9)(E) and Note filed 3-14-95; operative 3-14-95 pursuant to Government Code section 11343.4(d) (Register 95, No. 11).
15. Editorial correction inserting inadvertently omitted language in footnote 4 (Register 96, No. 13).



16. Amendment of subsections (b)(8)(A)-(B) and (b)(8.1)(A), repealer of subsection (b)(8.1)(B), and amendment of subsection (b)(12) filed 10-23-96; operative 10-23-96 pursuant to Government Code section 11343.4(d) (Register 96, No. 43).
17. Amendment of subsections (b)(8.1) and (9)(E) filed 4-9-97; operative 4-9-97 pursuant to Government Code section 11343.4(d) (Register 97, No. 15).
18. Amendment of subsections (b)(7)(B)5., new subsections (b)(8.2)-(b)(8.4)(C) and amendment of Note filed 8-24-98; operative 8-24-98 pursuant to Government Code section 11343.4(d) (Register 98, No. 35).
19. Editorial correction of subsection (a) (Register 98, No. 47).
20. Amendment of subsections (b)(8.1), (b)(8.1)(A) and (b)(9)(E) filed 5-11-99; operative 5-11-99 pursuant to Government Code section 11343.4(d) (Register 99, No. 20).
21. Amendment of subsections (b)(8.1)-(b)(8.1)(A) and (b)(9)(E) filed 12-6-2000; operative 1-1-2001 pursuant to the 1974 version of Government Code section 11380.2 and Title 2, California Code of Regulations, section 18312(d) and (e) (Register 2000, No. 49).
22. Amendment of subsections (b)(3) and (b)(10) filed 1-10-2001; operative 2-1-2001. Submitted to OAL for filing pursuant to *Fair Political Practices Commission v. Office of Administrative Law*, 3 Civil C010924, California Court of Appeal, Third Appellate District, nonpublished decision, April 27, 1992 (FPPC regulations only subject to 1974 Administrative Procedure Act rulemaking requirements) (Register 2001, No. 2).
23. Amendment of subsections (b)(7)(A)4., (b)(7)(B)1.-2., (b)(8.2)(E)3., (b)(9)(A)-(C) and footnote 4. filed 2-13-2001. Submitted to OAL for filing pursuant to *Fair Political Practices Commission v. Office of Administrative Law*, 3 Civil C010924, California Court

of Appeal, Third Appellate District, nonpublished decision, April 27, 1992 (FPPC regulations only subject to 1974 Administrative Procedure Act rulemaking requirements) (Register 2001, No. 7).

24. Amendment of subsections (b)(8.1)-(b)(8.1)(A) filed 1-16-2003; operative 1-1-2003. Submitted to OAL for filing pursuant to *Fair Political Practices Commission v. Office of Administrative Law*, 3 Civil C010924, California Court of Appeal, Third Appellate District, nonpublished decision, April 27, 1992 (FPPC regulations only subject to 1974 Administrative Procedure Act rulemaking requirements) (Register 2003, No. 3).

25. Editorial correction of History 24 (Register 2003, No. 12).

26. Editorial correction removing extraneous phrase in subsection (b)(9.5)(B) (Register 2004, No. 33).

27. Amendment of subsections (b)(2)-(3), (b)(3)(C), (b)(6)(C), (b)(8.1)-(b)(8.1)(A), (b)(9)(E) and (b)(11)-(12) filed 1-4-2005; operative 1-1-2005 pursuant to Government Code section 11343.4 (Register 2005, No. 1).

28. Amendment of subsection (b)(7)(A)4. filed 10-11-2005; operative 11-10-2005 (Register 2005, No. 41).

29. Amendment of subsections (a), (b)(1), (b)(3), (b)(8.1), (b)(8.1)(A) and (b)(9)(E) filed 12-18-2006; operative 1-1-2007. Submitted to OAL pursuant to *Fair Political Practices Commission v. Office of Administrative Law*, 3 Civil C010924, California Court of Appeal, Third Appellate District, nonpublished decision, April 27, 1992 (FPPC regulations only subject to 1974 Administrative Procedure Act rulemaking requirements) (Register 2006, No. 51).

30. Amendment of subsections (b)(8.1)-(b)(8.1)(A) and (b)(9)(E) filed 10-31-2008; operative 11-30-2008. Submitted to OAL for filing pursuant to *Fair Political Practices Commission v. Office of Administrative Law*, 3 Civil C010924, California Court of Appeal, Third Appellate District, nonpublished decision, April 27, 1992 (FPPC regulations only subject to 1974 Administrative Procedure Act rulemaking requirements and not subject to procedural or substantive review by OAL) (Register 2008, No. 44).

31. Amendment of section heading and section filed 11-15-2010; operative 12-15-2010. Submitted to OAL for filing pursuant to *Fair Political Practices Commission v. Office of Administrative Law*, 3 Civil C010924, California Court of Appeal, Third Appellate District, nonpublished decision, April 27, 1992 (FPPC regulations only subject to 1974 Administrative Procedure Act rulemaking requirements and not subject to procedural or substantive review by OAL) (Register 2010, No. 47).

32. Amendment of section heading and subsections (a)-(b)(1), (b)(3)-(4), (b)(5)(C), (b)(8.1)-(b)(8.1)(A) and (b)(9)(E) and amendment of footnote 1 filed 1-8-2013; operative 2-7-2013. Submitted to OAL for filing pursuant to *Fair Political Practices Commission v. Office of Administrative Law*, 3 Civil C010924, California Court of Appeal, Third Appellate District, nonpublished decision, April 27, 1992 (FPPC regulations only subject to 1974 Administrative Procedure Act rulemaking requirements and not subject to procedural or substantive review by OAL) (Register 2013, No. 2).

ITEM # E13

**DATE:** November 5, 2014

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

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

**FROM:** Jack Dooley, Director of Maintenance

**SUBJECT: AUTHORIZE DISPOSAL OF SURPLUS EQUIPMENT**

### **FORM MOTION**

Authorize the CEO/General Manager to release to auction the surplus vehicles listed on Attachment A through the current contracted agent, Bar None Auctions, of the City of Riverside.

### **BACKGROUND**

Omnitrans has 15 revenue vehicles that have reached the end of their useful life (12 years and/or 500,000 miles)

Omnitrans has 8 paratransit vehicles that have reached the end of their useful life (7 years and/or 200,000 miles) and one that was 'totaled' in a traffic collision.

Omnitrans has components/parts that have reached the end of their useful life or are surplus to current needs.

Omnitrans and FTA policy require competitive sales of surplus equipment. The normal method is sale by public auction. The vehicles ready for auction are listed on Attachment A.

Omnitrans' Procurement Policy Manual approved by the Board on June 7, 2006, states in Policy 7000:

## **5. ASSET DISPOSITION**

5.1 An asset which has either reached the end of its useful life, or for which early replacement will result in vastly improved safety, reliability, efficiency, and/or productivity, may be retired from service and disposed of according to FTA regulations in Circular 5010.1C for Capital Assets and Omnitrans policies for Controllable Assets.

5.2 Assets valued at \$5,000.00 or less may be retired or disposed of with the approval of the

CEO/General Manager, and report back to the Board of Directors.

5.3 Assets valued at more than \$5,000.00 may only be retired or disposed of on the instructions of the Board of Directors.

5.4 FTA funded assets are governed by FTA rules and regulations in Circular 5010.1C.

5.5 Complete records shall be maintained on the disposition of all excess and retired assets by the Finance Department.

5.6 Assets may be disposed of either through sale, trade, transfer, relocation, scrap, or when irreparable damage results in an insurance loss.

All vehicles/parts/equipment recommended for disposal meet these standards.

### **CONCLUSION**

With the approval to release these 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 vehicles, thereby adding an additional benefit to disposing of the equipment.

Vehicle Number	VIN	Description (Year, Make, Model)	Location
9006	1FDXE45S36HB37621	2006 Ford ENC AEROTECH	J Street Lot
9012	1FDXE45S76HB37640	2006 Ford ENC AEROTECH	J Street Lot
9014	1FDXE45S06HB37642	2006 Ford ENC AEROTECH	J Street Lot
9025	1FDXE45S76DA53860	2006 Ford ENC Starcraft	J Street Lot
9026	1FDXE45S96DB18739	2006 Ford ENC Starcraft	J Street Lot
9028	1FDXE45S26DB18744	2006 Ford ENC Starcraft	J Street Lot
9030	1FDXE45S36DB18753	2006 Ford ENC Starcraft	J Street Lot
9039	1FDXE45S56DB18771	2006 Ford ENC Starcraft	J Street Lot
0101	5FYC2LP15YU021678	2001 New Flyer C40LF	East Valley
0102	5FYC2LP1XYU021675	2001 New Flyer C40LF	East Valley
0103	5FYC2LP18YU021688	2001 New Flyer C40LF	East Valley
0104	5FYC2LP15YU021700	2001 New Flyer C40LF	East Valley
0105	5FYC2LP18YU021674	2001 New Flyer C40LF	East Valley
0106	5FYC2LP11YU021676	2001 New Flyer C40LF	East Valley
0107	5FYC2LP13YU021677	2001 New Flyer C40LF	East Valley
0108	5FYC2LP17YU021679	2001 New Flyer C40LF	East Valley
0109	5FYC2LP13YU021680	2001 New Flyer C40LF	East Valley
0110	5FYC2LP15YU021681	2001 New Flyer C40LF	East Valley
0111	5FYC2LP17YU021682	2001 New Flyer C40LF	East Valley
0112	5FYC2LP19YU021683	2001 New Flyer C40LF	East Valley
0113	5FYC2LP10YU021684	2001 New Flyer C40LF	East Valley
0114	5FYC2LP12YU021685	2001 New Flyer C40LF	East Valley
0115	5FYC2LP14YU021686	2001 New Flyer C40LF	East Valley
0116	5FYC2LP16YU021687	2001 New Flyer C40LF	East Valley
0117	5FYC2LP1XYU021689	2001 New Flyer C40LF	East Valley
0118	5FYC2LP16YU021690	2001 New Flyer C40LF	East Valley
0119	5FYC2LP18YU021691	2001 New Flyer C40LF	East Valley
0120	5FYC2LP1XYU021692	2001 New Flyer C40LF	East Valley
0121	5FYC2LP11YU021693	2001 New Flyer C40LF	East Valley
0122	5FYC2LP13YU021694	2001 New Flyer C40LF	East Valley
0123	5FYC2LP15YU021695	2001 New Flyer C40LF	East Valley
0124	5FYC2LP17YU021696	2001 New Flyer C40LF	East Valley
0125	5FYC2LP19YU021697	2001 New Flyer C40LF	East Valley
0126	5FYC2LP10YU021698	2001 New Flyer C40LF	East Valley
0127	5FYC2LP12YU021699	2001 New Flyer C40LF	East Valley
N/A	5DF232GB13JA37386	2003 Thomas SLF232G	WV (spare parts)
N/A	5DF232GB33JA37390	2003 Thomas SLF232G	WV (spare parts)

ITEM # E14

**DATE:** November 5, 2014

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

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

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

**SUBJECT: AUTHORIZE AWARD – CONTRACT IPMO14-256, DESIGN SERVICES:  
PUBLIC ADDRESS SYSTEM (BUS STATIONS & PARK AND RIDES)**

**FORM MOTION**

Authorize the CEO/General Manager to award Contract IPMO14-256 to Veneklasen Associates, Inc., of Santa Monica, CA, to design a Public Address System for twenty-three (23) Bus Stations and four (4) Park and Rides along the sbX E Street Corridor, in the amount of \$86,500.00, plus a 10% contingency of \$8,650.00, and a Cost Allocation Plan of 3.27% in the amount of \$3,111.40, for a total not-to-exceed amount of \$98,261.40.

**BACKGROUND**

This is a Public Address System for the sbX E Street Corridor Bus Rapid Transit route. The Public Address System will integrate with Omnitrans' existing NextBus database to announce bus arrival times, pre-recorded messages, ad hoc messages, and allow security personnel to interact via voice announcements (while viewing live video surveillance) to stop or prevent graffiti / illicit activity occurring at the Bus Stations and or Park and Rides.

On July 31, 2014, staff released Request for Qualifications RFQu IPMO14-256, posted on Omnitrans' online bidding system, and distributed to eighty-five (85) registered firms. The Independent Cost Estimate was \$85,700.

The design services are estimated to be completed within a one year period ending no later than November 30, 2015.

Two (2) hard copy qualification packages were received on September 4, 2014. Both firms met the minimum qualifications required as specified in the RFQu and found to be responsive. In accordance with Procurement Procedure 4070-1 (Request for Proposals), the firms were evaluated based on their professional qualifications and technical competence for performance of the required services as detailed in evaluation criteria listed in the RFQu. As required by the Brooks Act, pricing was not considered.

The following firms ranked from highest to lowest:

Criteria	Total Points Possible	Veneklasen Associates, Inc.	TTG (Tmad, Taylor, & Gaines)
Specialized experience and technical competence in type of work required. Past performance on contracts with government agencies and private industry	45.00	40.00	39.00
Professional qualifications necessary for satisfactory performance of required services.	25.0	21.00	19.00
Capacity to accomplish the work	20	18.66	18.66
Location in the general geographical area, knowledge of the locality of the project.	10	7.66	9.66
<b>Total</b>	<b>100</b>	<b>87.33</b>	<b>86.33</b>

Of the 100 points possible, Veneklasen Associates Inc., was awarded 87.33 points and thereby determined to be most qualified. Staff received a proposal from Veneklasen Associates, Inc., and entered into negotiations on October 3, 2014.

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

### **FUNDING SOURCE**

SOURCE	GRANT #	YEAR	PROJECT NAME	INTERNAL ORDER	AMOUNT
FTA	CA-03-0816	2011	sbX PA System	X11SM0042F	<b>\$98,261.40</b>

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

### **CONCLUSION**

Authorizing this contract will allow for the design of a Public Address System for twenty-three (23) Bus Stations and four (4) Park and Rides along the sbX E Street Corridor.

PSG:JMS:DN





## CONTRACT AGREEMENT

between

Veneklasen Associates, Inc.  
1711 Sixteenth Street  
Santa Monica, CA 90404

### CONTRACT DOCUMENTS

CONTRACT IPMO14-256

**Design Services:  
Public Address System  
(Bus Stations/Park & Rides)**

(hereinafter "CONSULTANT")  
Telephone: (310) 450-1733  
Fax: (310) 396-3424

And

Contract Amount: \$86,500.00

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

### Omnitrans Project Manager:

Name: Andres Ramirez

Title: Omnitrans sbX

Construction Manager

Telephone: (909) 379-5643

Fax: (909) 379-5249

Email: [Andres.Ramirez@omnitrans.org](mailto:Andres.Ramirez@omnitrans.org)

### Contract Administrator:

Name: Debra Nicastro

Title: Sr. Contract Administrator

Telephone: (909) 379-5234

Fax: (909) 379-5249

Email: [Debra.Nicastro@omnitrans.org](mailto:Debra.Nicastro@omnitrans.org)



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ATTACHMENT A - SCOPE OF WORK

ATTACHMENT B - REGULATORY REQUIREMENTS

This Agreement is made and entered into as of this \_\_\_\_\_ by and between Omnitrans (hereinafter referred to as "OMNITRANS") and VENEKLASSEN ASSOCIATES, INC. (hereinafter referred to as "CONSULTANT").

## **RECITALS**

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

WHEREAS, CONSULTANT 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. CONSULTANT 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. CONSULTANT shall provide all Deliverables as listed in the Scope of Work.
- C. 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 consultant or entity. CONSULTANT will cooperate fully with OMNITRANS' staff or other consultant 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 the execution of this Agreement and continue through \_\_\_\_\_, unless terminated as specified in Paragraphs 8 and 9. 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 CONSULTANT'S default as provided elsewhere in this Agreement. The maximum term of this Agreement shall be the period extended from

\_\_\_\_\_ through \_\_\_\_\_, which period encompasses the Initial term.

### **3. COMPENSATION**

For CONSULTANT's full and complete performance of its obligations under this Agreement, OMNITRANS shall pay CONSULTANT on a FIRM FIXED LUMP SUM basis at the fully burdened fixed rates stated herein in accordance with the provisions of this Section, and subject to the maximum cumulative payment obligation.

Firm Fixed Lump Sum Price \$86,500.00

OMNITRANS' maximum cumulative payment obligation under this Agreement shall not exceed EIGHTY-SIX THOUSAND FIVE HUNDRED DOLLARS AND ZERO CENTS, including all amounts payable to CONSULTANT for all costs, including but not limited to direct labor, other direct costs, subcontracts, indirect costs including, but not limited to, leases, materials, taxes, insurance, and profit.

### **4. INVOICING AND PAYMENT**

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

B. CONSULTANT shall submit invoices in duplicate to:

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

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

- Contract number
- Purchase Order number
- Invoice number
- Description of delivery
- Delivery Date
- Total quantity delivered
- Unit Price, extended price and applicable taxes
- Information as requested by OMNITRANS

- C. OMNITRANS shall remit payment within thirty (30) calendar days of approval of the invoices by OMNITRANS' Project Manager.
- D. In the event OMNITRANS should overpay CONSULTANT, 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, CONSULTANT shall immediately reimburse OMNITRANS the entire overpayment or, at its sole discretion, OMNITRANS may deduct such overpayment amount from monies due to CONSULTANT under this Agreement or any other Agreement between OMNITRANS and CONSULTANT.

## **5. AUDIT AND INSPECTION OF RECORDS**

CONSULTANT 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 CONSULTANT for a period of three (3) years after completion of this Agreement unless OMNITRANS' written permission is given to CONSULTANT to dispose of material prior to this time.

## **6. NOTIFICATION**

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

To OMNITRANS:

Omnitrans  
1700 West Fifth Street  
San Bernardino, CA 92411  
Attn: Debra Nicastro, Sr. Contract  
Administrator

To CONSULTANT:

Veneklasen Associates, Inc.  
1711 Sixteenth Street  
Santa Monica, CA 90404  
Attn: Jack Shimizu, CTS Director of AV  
Systems

## **7. OMNITRANS' AND CONSULTANT'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: Andres Ramirez, Construction 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 CONSULTANT which have not been performed to OMNITRANS' satisfaction.
  3. Subject to the review and acceptance by OMNITRANS, negotiate with CONSULTANT 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. Consultant's Key Personnel**

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

NAME	ROLE
Jim Good	Managing Principal
Jack Shimizu, CTS	Project Director
Meandro Dominguez, CTS	Senior Engineer
Pablo Amezcuita, CTS	Project Manager & Senior Engineer
Steve Martin, P.E.	Senior Associate

Any propose/substitution or replacement by Consultant of Consultant'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 CONSULTANT based on OMNITRANS' confidence and reliance on the expertise of CONSULTANT's key personnel described above. CONSULTANT shall not reassign key personnel or assign other personnel to key personnel roles until CONSULTANT obtains prior written approval from OMNITRANS.

**8. TERMINATION FOR CONVENIENCE**

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



## **9. TERMINATION FOR BREACH OF AGREEMENT**

- A. If CONSULTANT fails to perform any of the provisions of this Agreement or fails to make progress as to endanger timely performance of this Agreement, OMNITRANS may give CONSULTANT written notice of such default. If CONSULTANT 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 CONSULTANT's breach of this Agreement.
- B. If a federal or state proceeding for relief of debtors is undertaken by or against CONSULTANT, or if CONSULTANT makes an assignment for the benefit of creditors, then OMNITRANS may immediately terminate this Agreement.
- C. If CONSULTANT 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 CONSULTANT 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 CONSULTANT was not in default under the provisions of this Section, or that the default was excusable under the terms of this Agreement, the rights and obligations of the parties shall be the same as if the notice of termination had been issued pursuant to Section 8, Termination for Convenience.
- G. The rights and remedies of OMNITRANS provided in this Article shall not be exclusive and are in addition to any other rights and remedies provided by law or under this Agreement.

## **10. ASSIGNMENT**

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

## 11. SUBCONTRACTING

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

**Subconsultant's, License, Name and Address**

**Work to Be Performed**

None

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## 12. INDEPENDENT CONSULTANT

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

## 13. INSURANCE

Throughout the duration of this Agreement, CONSULTANT shall maintain the following minimum insurance coverage, which shall be full-coverage insurance not subject to self-insurance provisions. CONSULTANT 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. **Errors and Omissions Liability:** \$1,000,000; combined single limit bodily and property damage liability per occurrence and \$3,000,000 aggregate or,
- D. **Professional Liability:** \$1,000,000; per occurrence and aggregate.
- E. **Workers' Compensation:** statutory limits or, 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.*
- F. **Employers Liability** Applicable to the work being performed, with a limit no less than \$1,000,000 per claim or occurrence and \$2,000,000 aggregate; *Endorsement naming Omnitrans as additional insured.*

Additional Insured: Omnitrans, its officers, officials, employees, agents, and volunteers.

#### 14. INDEMNITY

CONSULTANT 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 CONSULTANT) arising from or connected with any alleged act and/or omission of CONSULTANT, its officers, directors, employees, agents, Subconsultants or suppliers. This indemnity shall survive termination or expiration of this Agreement and/or final payment thereunder.

#### 15. REVISIONS IN SCOPE OF WORK

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

Price Adjustments:

- A. Any change in the contract that causes an increase or decrease in cost to Omnitrans, or the time required for the performance of the contract, must be approved as prescribed herein.
- B. An equitable adjustment in the compensation and schedule will be made upon an approved Change Order.

- C. Consultant shall be liable for all costs resulting from, or for satisfactorily correcting, any and all unauthorized specification changes not properly ordered by written modification to the contract.
- D. Except as otherwise expressly provided in the Contract, when costs are a factor in any determination of a contract price adjustment, such costs shall be in accordance with the applicable cost principles of Subpart 31.2 of the Federal Acquisition Regulations (*FAR*) in effect at the onset of the Contract.

## **16. RIGHTS IN TECHNICAL DATA**

- A. No material or technical data prepared by CONSULTANT under this Agreement is to be released by CONSULTANT 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. CONSULTANT shall be permitted to retain copies of such items for the furtherance of its technical proficiency; however, publication of this material is subject to the prior written approval of OMNITRANS. The provisions of this paragraph shall survive termination or expiration of this Agreement and/or final payment thereunder.

## **17. OWNERSHIP OF REPORTS AND DOCUMENTS**

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

## **18. OWNERSHIP RIGHTS**

- A. In the event OMNITRANS rightfully obtains copies of Proprietary Data under the terms of the separate License Agreement and Escrow Agreement that govern rights in Documentation, Software and Intellectual Property created and/or developed by Consultant, its Third Party Software Consultants 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 CONSULTANT, 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, Consultant shall require all of its subconsultants and suppliers (including without limitation its Third Party Software Consultants) 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. Consultant 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 Consultant or its Third Party Software Consultants, and all Documentation and Software which is created by Consultant or its Third Party Software Consultants shall be Licensed Software or Licensed Documentation, as appropriate. All Licensed Software and Licensed Documentation shall be governed by the License Agreement by and between the parties of event date herewith.

## **19. WORK FOR HIRE**

Any work created or produced as a part of this Agreement that may be defined under Section 101, Title 17, USC will be considered "work for hire" as it pertains to ownership rights. CONSULTANT, by his/her endorsement hereon agrees that all rights to any work(s) created or produced are waived, and that ownership rests with OMNITRANS. CONSULTANT 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, consultants or subconsultants.

## **20. SUBMITTAL OF CLAIMS BY CONSULTANT**

CONSULTANT 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 CONSULTANT.

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

## **21. EQUAL OPPORTUNITY**

CONSULTANT 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. CONSULTANT shall take action to ensure that applicants and employees are treated without regard to the above.

## **22. STANDARD OF PERFORMANCE**

- A. CONSULTANT shall perform and exercise, and require its subconsultants to perform and exercise due professional care and competence in the performance of the Work in accordance with the requirements of this Agreement. CONSULTANT 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 CONSULTANT's personnel at any level assigned to the performance of the Work at no additional fee or cost to OMNITRANS, if OMNITRANS considers such removal in its best interests and requests such removal in writing and such request is not done for illegal reasons. Further, an employee who is removed from performing Work under this Agreement under this Article shall not be re-assigned to perform Work in any other capacity under this Agreement without OMNITRANS' prior written approval.

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

To ensure compliance with OMNITRANS' Ethics Policy, CONSULTANT shall provide written notice to OMNITRANS disclosing the identity of any individual who CONSULTANT 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 CONSULTANT. CONSULTANT's written notice shall indicate whether the individual will be an officer, principal or shareholder of the entity and/or will participate in the performance of this Agreement.

## **24. DISQUALIFYING POLITICAL CONTRIBUTIONS**

In the event of a proposed amendment to this Agreement, CONSULTANT shall provide prior to the execution of such amendment, a written statement disclosing any contribution(s) of \$250 or more made by CONSULTANT or its subconsultant(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 CONSULTANT or subconsultant(s).

## **25. COMPLIANCE WITH LAW**

CONSULTANT 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. CONSULTANT shall also comply with all Federal, state and local laws and ordinances.

## **26. COMPLIANCE WITH LOBBYING POLICIES**

- A. CONSULTANT 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 CONSULTANT (Lobbyist Employer) or its Lobbying Firm or Lobbyist fails to comply, in whole or in part, with OMNITRANS' Ethics Policy, such failure shall be considered a material breach of this Agreement and OMNITRANS shall have the right to immediately terminate or suspend this Agreement.

## **27. PUBLIC RECORDS ACT**

- A. All records, documents, drawings, plans, specifications and other material relating to conduct of OMNITRANS' business, including materials submitted by CONSULTANT 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 CONSULTANT. OMNITRANS will

endeavor to notify CONSULTANT 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 consultants.

- C. In the event of litigation concerning the disclosure of any material submitted by CONSULTANT, OMNITRANS' sole involvement will be as a stake holder, retaining the material until otherwise ordered by a court. CONSULTANT, at its sole expense and risk, shall be responsible for prosecuting or defending any action concerning the materials, and shall defend, indemnify and hold OMNITRANS harmless from all costs and expenses, including attorneys' fees, in connection with such action.

## **28. WAIVER/INVALIDITY**

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

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

## **29. FORCE MAJEURE**

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

## **30. CONFIDENTIALITY**

CONSULTANT agrees that for and during the entire term of this Agreement, any information, data, figures, records, findings and the like received or generated by CONSULTANT 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, CONSULTANT agrees that it will continue to treat as private and privileged any information, data, figures, records, findings and the like, and will not release any such information to any person, firm, corporation or other entity, either by statement, deposition, or as a witness, except upon direct prior written authority of OMNITRANS.



### **31. CONSULTANT'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 CONSULTANT for advertising or public relations purposes prior to publication. CONSULTANT shall not allow OMNITRANS related copy to be published in its advertisements and public relations programs prior to receiving such approval. CONSULTANT shall ensure that all published information is factual and that it does not in any way imply that OMNITRANS endorses CONSULTANT's firm, service, and/or product.
- B. CONSULTANT 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 CONSULTANT receives a complaint from a citizen or the community, CONSULTANT shall inform OMNITRANS as soon as possible and inform OMNITRANS of any action taken to alleviate the situation.
- D. The provisions of this Article shall survive the termination or expiration of this Agreement.

### **32. GOVERNING LAW**

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

### **33. MODIFICATIONS TO AGREEMENT**

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

### **34. PRECEDENCE**

Conflicting provisions hereof, if any, shall prevail in the following descending order of precedence: (1) the provisions of this Agreement, including Section II, Special Conditions and Section III, Scope of Work, (2) provisions of RFQu No. IPMO14-256 and (3) CONSULTANT's negotiated proposal dated October 10, 2014.

### 35. ENTIRE AGREEMENT

This Agreement, and any attachments or documents incorporated herein by inclusion or by reference, constitutes the complete and entire agreement between OMNITRANS and CONSULTANT 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

VENEKLASEN ASSOCIATES, INC.

\_\_\_\_\_  
P. Scott Graham  
CEO/General Manager

\_\_\_\_\_  
Jim Good  
Managing Principal

\_\_\_\_\_  
Date

\_\_\_\_\_  
Date

Federal Tax I.D. No. \_95-3543680

DP\_\_\_\_

## **ATTACHMENT A – SCOPE OF WORK**

### **I. PROJECT OBJECTIVES:**

Omnitrans is requesting qualifications from qualified firms to design a Public Address System (System) for twenty-three (23) stations and four (4) park and rides along the sbX E Street Corridor (Attachment G – sbX Route).

### **II. BACKGROUND:**

The sbX E Street Corridor is a Bus Rapid Transit (BRT) route which runs over 15.7 miles through the cities of San Bernardino and Loma Linda.

The BRT route consists of three (3) large custom stations, fourteen (14) side running stations, six (6) center running stations, and four (4) park and rides. Station construction consists of concrete slabs with precast concrete pavers, steel canopies, and polycarbonate roof panels. Canopies support raceways for electrical systems.

Electrical pull-boxes are located under concrete pavers and will need to be accessed and pavers re-installed for installation as no exposed conduit or wiring will be allowed. Design documents for the sbX stations have been deemed Sensitive Security Information will be available for upon reward.

### **III. SYSTEM REQUIREMENTS:**

1. System needs to be centrally managed from Omnitrans' Central Control Station located at Omnitrans' East Valley Facility, 1700 West Fifth Street, San Bernardino, CA 92411. The System must communicate and control the 23 stations and be scalable to accommodate up to one (1) additional site.
2. System shall include a workstation for the System's Central Control Station. The proposed workstation shall be designed to allow the user to direct System announcements. Design options will include a manual option and a fully integrated solution with the existing Salient Surveillance System.
3. System should be capable of making announcements to single or multiple locations, locations or zones simultaneously.
  - a. System should accommodate up to four locations per zone.

- b. Ad-hoc announcements should be able to be made from both the Central workstation or from any of the other locations. A microphone or plugin handset should be secured to prevent unauthorized use.
- 4. System should integrate with Omnitrans' existing NextBus database to announce bus arrival times, pre-recorded, and ad hoc messages.
- 5. Announcements should be heard clearly throughout the entire bus platform and park and ride. Volume level should exceed the prevailing ambient sound by at least fifteen decibels and exceed any maximum sound level with a minimum duration of sixty seconds by at least five decibels.
  - a. Ambient noise sensing equipment shall automatically adjust speaker volume to appropriate levels to address for varying noise levels at the stations and park and rides.
  - b. Design shall include all required amplifiers, speakers, ambient noise microphones, and equipment for a completely functional System.
- 6. Design shall address the securement and protection of System against vandalism and weather conditions.
- 7. Omnitrans utilizes a variety of systems to produce bus arrival, prediction, and bus locating data. The System should be designed to produce the automated messages from the data residing in these systems: Trapeze and NextBus, and Omnitrans proprietary systems.
- 8. All equipment/material shall comply with 49 U.S.C. 5323 and 49 CFR Part 661 Buy America requirements.

#### **IV. DELIVERABLES:**

The successful firm will be responsible for the following:

- 1. Prepare a master schedule of all aspects of project demonstrating milestones for each deliverable and location.
- 2. Prepare a site analysis report demonstrate a complete understanding of the existing conditions for each location and resulting requirements for design and construction. Analysis shall include acoustic surveys from the stations and park and rides to determine optimal speaker quantities, locations, and sound levels.
- 3. Participate in an integration meeting with representatives of Trapeze, Nextbus, Salient Systems, and Omnitrans to ensure proper interconnection and programming of systems.

4. Prepare conceptual design of the System including stations, park and ride, and Central Control station. Conceptual design shall demonstrate locations of equipment and specific equipment proposed to be used on the project. All equipment shall conform to the Federal Transportation Administration (FTA) Buy America requirements. In compliance with FTA's Circular 4220.1F, design may not reference brand names but must include salient characteristics for all manufactured goods and equipment.
5. Prepare final design based on comments and modifications made during conceptual design.
6. Develop bid documents for System construction.
7. Provide design support during construction.
8. Provide oversight of factory and field testing and commissioning.
9. Prepare final electronic as-built documents.

**\* END OF ATTACHMENT A\***

# **Attachment B**

## **REGULATORY REQUIREMENT**

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## **REGULATORY REQUIREMENTS**

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

### **RR-01**

#### **ADMINISTRATIVE CODE \***

##### **A. Applicability**

This Article applies to all contracts.

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

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

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

##### **C. Campaign Contributions**

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

**RR-02**  
**DISCRIMINATION \***

**A. Applicability**

This Article applies to all contracts.

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

**RR-03**  
**WHISTLEBLOWER REQUIREMENTS \***

**A. Applicability**

This Article applies to all contracts.

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

**RR-04**  
**PUBLIC RECORDS ACT \***

**A. Applicability**

This Article applies to all contracts.

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



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

## **RR-05**

### **ACCESS TO RECORDS \***

#### **A. Applicability**

This Article applies to all federally funded contracts.

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

## **RR-06**

### **FEDERAL FUNDING, INCORPORATION OF FEDERAL TRANSIT ADMINISTRATION (FTA) TERMS, AND FEDERAL CHANGES\***

#### **A. Applicability**

This Article applies to all federally funded contracts.

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

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

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

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

#### **RR-07**

#### **ENERGY CONSERVATION REQUIREMENTS**

- A. **Applicability**

This Article applies to all federally funded contracts.

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

#### **RR-08**

#### **CIVIL RIGHTS REQUIREMENTS \***

- A. **Applicability**

This Article applies to all federally funded contracts.

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

origin, sex, age, or disability. In addition, Contractor shall comply with applicable Federal implementing regulations and other implementing requirements FTA may issue.

C. Equal Employment Opportunity

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

**RR-09****NO GOVERNMENT OBLIGATION TO THIRD PARTIES \*****A. Applicability**

This Article applies to all federally funded contracts.

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

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

**RR-10****PROGRAM FRAUD AND FALSE OR FRAUDULENT STATEMENTS OR RELATED ACTS \*****A. Applicability**

This Article applies to all federally funded contracts.

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

- D. Contractor shall include this Article in each subcontract financed in whole or in part with Federal assistance provided by FTA. Contractor shall not modify the Article, except to identify the Subcontractor who will be subject to the provisions.

## **RR-11**

### **SUSPENSION AND DEBARMENT\***

#### **A. Applicability**

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

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

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

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

## **RR-12**

### **RECYCLED PRODUCTS**

#### **A. Applicability**

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

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

## **RR-13**

### **CLEAN WATER AND CLEAN AIR REQUIREMENTS\***

#### **A. Applicability**

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

#### **B. CLEAN WATER REQUIREMENTS**

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

#### **C. CLEAN AIR**

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

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

## **RR-14**

### **COMPLIANCE WITH FEDERAL LOBBYING POLICY \***

#### **A. Applicability**

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

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

non-Federal funds with respect to that Federal contract, grant or award covered by 31 U.S.C. 1352. Such disclosures shall be forwarded from tier to tier up to Omnitrans.

## **RR-15**

### **BUY AMERICA \***

#### **A. Applicability**

The following Article applies to federally funded rolling stock purchase and construction contracts over \$100,000 and to contracts over \$100,000 for materials & supplies for steel, iron, or manufactured products.

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

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

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

## **RR-16**

### **CARGO PREFERENCE\***

#### **A. Applicability**

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

#### **B. USE OF UNITED STATES FLAG VESSELS**

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

commodities pursuant to this Contract to the extent such vessels are available at fair and reasonable rates for United States-Flag commercial vessels.

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

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

## **RR-17 FLY AMERICA**

### **A. Applicability**

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

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

## **RR-18 CONTRACT WORK HOURS AND SAFETY STANDARDS ACT \***

### **A. Applicability**

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



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

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

## **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>

## **RR-22**

### **TRANSIT EMPLOYEE PROTECTIVE ARRANGEMENTS \***

#### **A. Applicability**

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

#### **B. General Transit Employee Protective Requirements**

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

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

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

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

If FTA has determined that this Contract involves transit operations financed in whole or in part with Federal assistance authorized by 49 U.S.C. § 5311, Contractor shall comply

with the terms and conditions of the Special Warranty for the Nonurbanized Area Program agreed to by the U.S. Secretaries of Transportation and Labor, dated May 31, 1979, and the procedures implemented by U.S. DOL or any revision thereto.

**E. Indemnity**

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

**RR-23**

**BONDING REQUIREMENTS**

Applicability to Contracts

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

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

**RR-24**

**DAVIS-BACON AND COPELAND ANTI-KICKBACK ACTS**

Background and Application

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

repair, including painting and decorating.” 29 CFR 5.5(a). The requirements of both Acts are incorporated into a single clause (*see* 29 CFR 3.11) enumerated at 29 CFR 5.5(a) and reproduced below.

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

### **Clause Language**

#### **Davis-Bacon and Copeland Anti-Kickback Acts**

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

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

(ii)(A) The contracting officer shall require that any class of laborers or mechanics, including helpers, which is not listed in the wage determination and which is to be employed under the contract shall be classified in conformance with the wage determination. The contracting officer shall approve an additional classification and wage rate and fringe benefits therefore only when the following criteria have been met:



(1) Except with respect to helpers as defined as 29 CFR 5.2(n)(4), the work to be performed by the classification requested is not performed by a classification in the wage determination; and  
(2) The classification is utilized in the area by the construction industry; and

(3) The proposed wage rate, including any bona fide fringe benefits, bears a reasonable relationship to the wage rates contained in the wage determination; and

(4) With respect to helpers as defined in 29 CFR 5.2(n)(4), such a classification prevails in the area in which the work is performed.

(B) If the contractor and the laborers and mechanics to be employed in the classification (if known), or their representatives, and the contracting officer agree on the classification and wage rate (including the amount designated for fringe benefits where appropriate), a report of the action taken shall be sent by the contracting officer to the Administrator of the Wage and Hour Division, Employment Standards Administration, U.S. Department of Labor, Washington, DC 20210. The Administrator, or an authorized representative, will approve, modify, or disapprove every additional classification action within 30 days of receipt and so advise the contracting officer or will notify the contracting officer within the 30-day period that additional time is necessary.

(C) In the event the contractor, the laborers or mechanics to be employed in the classification or their representatives, and the contracting officer do not agree on the proposed classification and wage rate (including the amount designated for fringe benefits, where appropriate), the contracting officer shall refer the questions, including the views of all interested parties and the recommendation of the contracting officer, to the Administrator for determination. The Administrator, or an authorized representative, will issue a determination within 30 days of receipt and so advise the contracting officer or will notify the contracting officer within the 30-day period that additional time is necessary.

(D) The wage rate (including fringe benefits where appropriate) determined pursuant to paragraphs (a)(1)(ii) (B) or (C) of this section, shall be paid to all workers performing work in the classification under this contract from the first day on which work is performed in the classification.

(iii) Whenever the minimum wage rate prescribed in the contract for a class of laborers or mechanics includes a fringe benefit which is not expressed as an hourly rate, the contractor shall either pay the benefit as stated in the wage determination or shall pay another bona fide fringe benefit or an hourly cash equivalent thereof.

(iv) If the contractor does not make payments to a trustee or other third person, the contractor may consider as part of the wages of any laborer or mechanic the amount of any costs reasonably anticipated in providing bona fide fringe benefits under a plan or program, Provided, That the Secretary of Labor has found, upon the written request of the contractor, that the applicable standards of the Davis-Bacon Act have been met. The Secretary of Labor may require the contractor to set aside in a separate account assets for the meeting of obligations under the plan or program.

(v)(A) The contracting officer shall require that any class of laborers or mechanics which is not listed in the wage determination and which is to be employed under the contract shall be classified in conformance with the wage determination. The contracting officer shall approve an additional classification and wage rate and fringe benefits only when the following criteria have been met:

(1) The work to be performed by the classification requested is not performed by a classification in the wage determination; and

(2) The classification is utilized in the area by the construction industry; and

(3) The proposed wage rate, including any bona fide fringe benefits, bears a reasonable relationship to the wage rates contained in the wage determination.

(B) If the contractor and the laborers and mechanics to be employed in the classification (if known), or their representatives, and the contracting officer agree on the classification and wage rate (including the amount designated for fringe benefits where appropriate), a report of the action taken shall be sent by the contracting officer to the Administrator of the Wage and Hour Division, Employment Standards Administration, Washington, DC 20210. The Administrator, or an authorized representative, will approve, modify, or disapprove every additional classification action within 30 days of receipt and so advise the contracting officer or will notify the contracting officer within the 30-day period that additional time is necessary.

(C) In the event the contractor, the laborers or mechanics to be employed in the classification or their representatives, and the contracting officer do not agree on the proposed classification and wage rate (including the amount designated for fringe benefits, where appropriate), the contracting officer shall refer the questions, including the views of all interested parties and the recommendation of the contracting officer, to the Administrator for determination. The Administrator, or an authorized representative, will issue a determination within 30 days of receipt and so advise the contracting officer or will notify the contracting officer within the 30-day period that additional time is necessary.

(D) The wage rate (including fringe benefits where appropriate) determined pursuant to paragraphs (a) (1) (v) (B) or (C) of this section, shall be paid to all workers performing work in the Classification under this contract from the first day on which work is performed in the classification.

(2) **Withholding** - Omnitrans shall upon its own action or upon written request of an authorized representative of the Department of Labor withhold or cause to be withheld from the contractor under this contract or any other Federal contract with the same prime contractor, or any other federally-assisted contract subject to Davis-Bacon prevailing wage requirements, which is held by the same prime contractor, so much of the accrued payments or advances as may be considered necessary to pay laborers and mechanics, including apprentices, trainees, and helpers, employed by the contractor or any subcontractor the full amount of wages required by the contract. In the event of failure to pay any laborer or mechanic, including any apprentice,

trainee, or helper, employed or working on the site of the work (or under the United States Housing Act of 1937 or under the Housing Act of 1949 in the construction or development of the project), all or part of the wages required by the contract, Omnitrans may, after written notice to the contractor, sponsor, applicant, or owner, take such action as may be necessary to cause the suspension of any further payment, advance, or guarantee of funds until such violations have ceased.

(3) **Payrolls and basic records** - (i) Payrolls and basic records relating thereto shall be maintained by the contractor during the course of the work and preserved for a period of three years thereafter for all laborers and mechanics working at the site of the work (or under the United States Housing Act of 1937, or under the Housing Act of 1949, in the construction or development of the project). Such records shall contain the name, address, and social security number of each such worker, his or her correct classification, hourly rates of wages paid (including rates of contributions or costs anticipated for bona fide fringe benefits or cash equivalents thereof of the types described in section 1(b) (2) (B) of the Davis-Bacon Act), daily and weekly number of hours worked, deductions made and actual wages paid. Whenever the Secretary of Labor has found under 29 CFR 5.5(a)(1)(iv) that the wages of any laborer or mechanic include the amount of any costs reasonably anticipated in providing benefits under a plan or program described in section 1(b)(2)(B) of the Davis-Bacon Act, the contractor shall maintain records which show that the commitment to provide such benefits is enforceable, that the plan or program is financially responsible, and that the plan or program has been communicated in writing to the laborers or mechanics affected, and records which show the costs anticipated or the actual cost incurred in providing such benefits. Contractors employing apprentices or trainees under approved programs shall maintain written evidence of the registration of apprenticeship programs and certification of trainee programs, the registration of the apprentices and trainees, and the ratios and wage rates prescribed in the applicable programs.

(ii)(A) The contractor shall submit weekly for each week in which any contract work is performed a copy of all payrolls to the Omnitrans for transmission to the Federal Transit Administration. The payrolls submitted shall set out accurately and completely all of the information required to be maintained under section 5.5(a) (3) (i) of Regulations, 29 CFR part 5. This information may be submitted in any form desired. Optional Form WH-347 is available for this purpose and may be purchased from the Superintendent of Documents (Federal Stock Number 029-005-00014-1), U.S. Government Printing Office, Washington, DC 20402. The prime contractor is responsible for the submission of copies of payrolls by all subcontractors.

(B) Each payroll submitted shall be accompanied by a "Statement of Compliance," signed by the contractor or subcontractor or his or her agent who pays or supervises the payment of the persons employed under the contract and shall certify the following:

(1) That the payroll for the payroll period contains the information required to be maintained under section 5.5(a)(3)(i) of Regulations, 29 CFR part 5 and that such information is correct and complete;

(2) That each laborer or mechanic (including each helper, apprentice, and trainee) employed on the contract during the payroll period has been paid the full weekly wages earned, without

rebate, either directly or indirectly, and that no deductions have been made either directly or indirectly from the full wages earned, other than permissible deductions as set forth in Regulations, 29 CFR part 3;

(3) That each laborer or mechanic has been paid not less than the applicable wage rates and fringe benefits or cash equivalents for the classification of work performed, as specified in the applicable wage determination incorporated into the contract.

(C) The weekly submission of a properly executed certification set forth on the reverse side of Optional Form WH-347 shall satisfy the requirement for submission of the "Statement of Compliance" required by paragraph (a)(3)(ii)(B) of this section.

(D) The falsification of any of the above certifications may subject the contractor or subcontractor to civil or criminal prosecution under section 1001 of title 18 and section 231 of title 31 of the United States Code.

(iii) The contractor or subcontractor shall make the records required under paragraph (a)(3)(i) of this section available for inspection, copying, or transcription by authorized representatives of the Federal Transit Administration or the Department of Labor, and shall permit such representatives to interview employees during working hours on the job. If the contractor or subcontractor fails to submit the required records or to make them available, the Federal agency may, after written notice to the contractor, sponsor, applicant, or owner, take such action as may be necessary to cause the suspension of any further payment, advance, or guarantee of funds. Furthermore, failure to submit the required records upon request or to make such records available may be grounds for debarment action pursuant to 29 CFR 5.12.

(4) **Apprentices and trainees** - (i) Apprentices - Apprentices will be permitted to work at less than the predetermined rate for the work they performed when they are employed pursuant to and individually registered in a bona fide apprenticeship program registered with the U.S. Department of Labor, Employment and Training Administration, Bureau of Apprenticeship and Training, or with a State Apprenticeship Agency recognized by the Bureau, or if a person is employed in his or her first 90 days of probationary employment as an apprentice in such an apprenticeship program, who is not individually registered in the program, but who has been certified by the Bureau of Apprenticeship and Training or a State Apprenticeship Agency (where appropriate) to be eligible for probationary employment as an apprentice. The allowable ratio of apprentices to journeymen on the job site in any craft classification shall not be greater than the ratio permitted to the contractor as to the entire work force under the registered program. Any worker listed on a payroll at an apprentice wage rate, who is not registered or otherwise employed as stated above, shall be paid not less than the applicable wage rate on the wage determination for the classification of work actually performed. In addition, any apprentice performing work on the job site in excess of the ratio permitted under the registered program shall be paid not less than the applicable wage rate on the wage determination for the work actually performed. Where a contractor is performing construction on a project in a locality other than that in which its program is registered, the ratios and wage rates (expressed in percentages of the journeyman's hourly rate) specified in the contractor's or subcontractors registered program shall be observed. Every apprentice must be paid at not less than the rate

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

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

(iii) Equal employment opportunity - The utilization of apprentices, trainees and journeymen under this part shall be in conformity with the equal employment opportunity requirements of Executive Order 11246, as amended and 29 CFR part 30.

(5) **Compliance with Copeland Act requirements** - The contractor shall comply with the requirements of 29 CFR part 3, which are incorporated by reference in this contract.

(6) **Subcontracts** - The contractor or subcontractor shall insert in any subcontracts the clauses contained in 29 CFR 5.5(a)(1) through (10) and such other clauses as the Federal Transit Administration may by appropriate instructions require, and also a clause requiring the

subcontractors to include these clauses in any lower tier subcontracts. The prime contractor shall be responsible for the compliance by any subcontractor or lower tier subcontractor with all the contract clauses in 29 CFR 5.5.

(7) **Contract termination: debarment** - A breach of the contract clauses in 29 CFR 5.5 may be grounds for termination of the contract, and for debarment as a contractor and a subcontractor as provided in 29 CFR 5.12.

(8) **Compliance with Davis-Bacon and Related Act requirements** - All rulings and interpretations of the Davis-Bacon and Related Acts contained in 29 CFR parts 1, 3, and 5 are herein incorporated by reference in this contract.

(9) **Disputes concerning labor standards** - Disputes arising out of the labor standards provisions of this contract shall not be subject to the general disputes clause of this contract. Such disputes shall be resolved in accordance with the procedures of the Department of Labor set forth in 29 CFR parts 5, 6, and 7. Disputes within the meaning of this clause include disputes between the contractor (or any of its subcontractors) and the contracting agency, the U.S. Department of Labor, or the employees or their representatives.

(10) **Certification of eligibility** - (i) By entering into this contract, the contractor certifies that neither it (nor he or she) nor any person or firm who has an interest in the contractor's firm is a person or firm ineligible to be awarded Government contracts by virtue of section 3(a) of the Davis-Bacon Act or 29 CFR 5.12(a)(1).

(ii) No part of this contract shall be subcontracted to any person or firm ineligible for award of a Government contract by virtue of section 3(a) of the Davis-Bacon Act or 29 CFR 5.12(a)(1).

(iii) The penalty for making false statements is prescribed in the U.S. Criminal Code, 18 U.S.C. 1001.

## **RR-25**

### **PRIVACY ACT - 5 U.S.C. 552**

#### **Applicability to Contracts**

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

#### **Flow Down**

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

#### **Model Clause/Language**

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

**Contracts Involving Federal Privacy Act Requirements** - The following requirements apply to the Contractor and its employees that administer any system of records on behalf of the Federal Government under any contract:

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

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

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

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

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

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

## **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**

ITEM # E15

**DATE:** November 5, 2014

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

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

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

**SUBJECT: AUTHORIZE AWARD – PURCHASE ORDER  
SHELTER ADVERTISING PANEL GLASS**

**FORM MOTION**

Authorize the CEO/General Manager to award a Purchase Order to Discount Glass & Mirror, Inc. of San Diego, CA, for the provision of Shelter Advertising Panel Glass for a three-year period beginning November 19, 2014 and ending no later than November 18, 2017, in the amount of \$34,554, plus a 10% contingency of \$3,455, for a total not-to-exceed amount of \$38,009, including sales tax.

**BACKGROUND**

Omnitrans maintains 366 bus shelters throughout the service area. Of those shelters, approximately 350 contain advertisement panels covered by a sheet of tempered glass. The advertisements generate revenue to offset the maintenance costs of the shelters, including the replacement of glass panels damaged by vandalism. On average, Omnitrans replaces 200 glass panels annually.

On September 22 2014, Omnitrans' staff released Request for Quotes RFQ-MKP15-63, which was posted on Omnitrans' online bidding system. Seven bids were received by the October 7, 2014 deadline. All bids were deemed responsive.

Listed below are the bid prices:

COMPANY NAME	TOTAL BID AMOUNT*
Discount Glass & Mirror, Inc.	\$34,554
Marios Glass and Mirrors, Inc.	\$34,641
Micromed Diamond Seal Systems LLC	\$35,701
Highland Glass & Mirror	\$38,562

\*Sales tax and delivery included

Award is recommended to the lowest, responsive, responsible bidder. Price is deemed fair and reasonable based on competition. The Independent Cost Estimate of \$35,722.50 was based on previous purchases for Shelter Advertising Panel Glass. The award represents a cost savings of \$1,168.50.

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

### **FUNDING SOURCES**

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

Department	1400
Expenditure Code	505230

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

### **CONCLUSION**

Approval of this purchase order will allow Omnitrans to replace damaged glass panels as needed.

PSG:JMS:KT

ITEM # E16

**DATE:** November 5, 2014

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

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

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

**SUBJECT: AUTHORIZE AWARD – PURCHASE ORDER  
VMWARE LICENSE RENEWAL**

**FORM MOTION**

Authorize the CEO/General Manager to award a purchase order to En Pointe Gov., of Gardena, CA, to renew the production support and subscription services for VMWare software. The period of coverage is from March 21, 2013 through October 2, 2015, in an amount not-to-exceed \$61,980.97.

**BACKGROUND**

VMWare virtualization software licenses were originally purchased in March 2011 from En Pointe Gov., Inc. En Pointe is under contract to provide information technology outsourcing services. VMware is virtualization software used to reduce energy consumption, allow for dynamic resource assignments across server farms, shorten disaster recovery times, simplify hardware management, and broaden network system equipment standardization.

The original licenses expired on March 20, 2013. To renew the existing licenses a reinstatement fee of \$10,000 is required.

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

**FUNDING SOURCE**

The cost associated with these services is budgeted in the Information Technology Department's Operating budget as follows:

Department	1320
Expenditure Code	505170

\_\_\_\_\_ Verification of Funding Source and Availability of Funds

(Verified and initialed by Finance)

**CONCLUSION**

Approval of this purchase order will allow Omnitrans to continue to utilize virtualization software.

PSG:JMS:KT

ITEM # E17

**DATE:** November 5, 2014

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

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

**FROM:** Jacob Harms, Director of Information Technology

**SUBJECT:** **AUTHORIZE SOLE SOURCE PURCHASE, SOFTWARE MAINTENANCE SERVICES FOR FINANCIAL & OPERATIONAL REPORTING TO SANBAG**

**FORM MOTION**

Authorize the CEO/General Manager to award a sole source purchase to TransTrack Systems, Inc., Phoenix, AZ, for annual software maintenance services, beginning July 1, 2014, and ending June 30, 2015, for the TransTrack software utilized by the Agency for financial & operational reporting to SANBAG (San Bernardino Associated Governments) in the amount of \$36,771.00.

**BACKGROUND**

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

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

**FUNDING SOURCE**

Funding for this contract is budgeted in Information Technology's operating budget for Fiscal Year 2015.

Department           1320  
Expenditure Code   505170

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

## **CONCLUSION**

This application is necessary for uploading Omnitrans data (financial, operating, planning, maintenance, marketing, etc.) for reporting to SANBAG. SANBAG requires this application for their reporting metrics.

PSG:JH





265 Belmont Avenue  
Long Beach, California 90803  
Telephone Number (562) 987-4755  
Fax Number (562) 987-4756  
Web Address: [www.transtrack.net](http://www.transtrack.net)

June 23, 2014

Mr. Scott Graham  
Chief Executive Officer  
Omnitrans  
1700 W. 5<sup>th</sup> Street  
San Bernardino, California 92501

**Subject: FY 2015 Renewal of End User License Maintenance & Support Agreement – Amendment #010**

Dear Mr. Graham:

Omnitrans has the opportunity to renew the End User License ("License") Agreement with TransTrack Systems®, Inc. with the payment for fiscal year 2015 Maintenance and Support.

In accordance with Article IV Section 6 of the current End User License, upon notice prior to the expiration of the current term of the License accompanied with payment for a renewal, Omnitrans will be able to continue to use the proprietary software, TransTrack Manager®.

Exhibit F of the License provides the range of fees which may be charged by TransTrack for a renewal of the Maintenance and Support portion of the License.

The renewal fee is \$36,771 for the level of specified in the License Agreement. Any additional services requested, other than those set forth in the description of Maintenance and Support, will be subject to an additional fee.

Once this letter is fully executed by both TransTrack Systems®, Inc. and an authorized representative of Omnitrans, and TransTrack has received the \$36,771 payment, it will serve to renew the End User License for the 2015 fiscal year term, subject to all other terms and conditions of the End User License remaining the same.

This letter shall also amend Exhibit F by adding the following sentence:

“Annual Maintenance and Support Fee (July 1, 2014 to June 30, 2015): \$36,771.”

All other terms and conditions of the License shall remain in full force and effect.

**AGREED AND ACCEPTED**

**TransTrack Systems<sup>®</sup>, Inc.**

*Mary Sue O'Melia*

\_\_\_\_\_  
Mary Sue O'Melia  
President

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

**AGREED AND ACCEPTED**

**Omnitrans**

\_\_\_\_\_  
Scott Graham  
CEO/General Manager

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



ITEM # E18

**DATE:** November 5, 2014

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

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

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

**SUBJECT: DE-OBLIGATE AND RE-OBLIGATE FEDERAL TRANSIT  
ADMINISTRATION AND STATE TRANSIT ASSISTANCE FUNDS AND  
AUTHORIZE AWARD – PURCHASE ORDER, REFRIGERANT  
RECOVERY MACHINES**

### **FORM MOTION**

Authorize the CEO/General Manager to de-obligate \$29,923 of Federal Transit Administration (FTA) funds and \$7,404 of State Transit Assistance (STA) funds as shown in the Funding Source section, and re-obligate these funds to the Refrigerant Recovery Machine project.

Authorize the CEO/General Manager to award a purchase order to Star Auto Parts of Redlands, CA, for the provision of six (6) Refrigerant Recovery Machines in the amount of \$36,144.68, plus 3.27% for Cost Allocation Program (CAP) in the amount of \$1,181.93, for a total project amount of \$37,327.

### **BACKGROUND**

On August 14, 2014, staff released Request for Quotes RFQ-MNT15-35 for the provision of Refrigerant Recovery Machines. Omnitrans' Maintenance Department uses Refrigerant Recovery Machines at the East Valley, West Valley and "I" Street properties to make repairs to the air conditioning systems on its fleet of vehicles. Over the last few years, the refrigerant in the newer vehicles has changed to a different type of refrigerant. The older type refrigerants and machines cannot be used on the newer vehicles. The existing machines are past their useful life and need to be replaced.

Two bids were received electronically by the September 16, 2014, deadline, and both were deemed responsive.

Listed below are the bid prices:

<b>Company</b>	<b>Total*</b>
Star Auto Parts, Redlands, CA	\$36,144.68
Globe Electric Co., Inc., Houston, TX	\$36,940.56

\*Sales tax and delivery included.

Award is recommended to a local company who represents the lowest responsive and responsible bidder. Price is deemed fair and reasonable as the bid is within ten percent of the Independent Cost Estimate of \$34,475.35.

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

### **FUNDING SOURCES**

Funding for this solicitation is as follows:

<b>FUNDING</b>	<b>GRANT</b>	<b>YEAR</b>	<b>PROJECT NAME</b>	<b>INTERNAL ORDER</b>	<b>AMOUNT</b>
De-obligate					
FTA	CA-90Y850	2011	LCNG Station Upgrade	D1140305F	\$29,923
STA	11-03-OMN-B	2011	LCNG Station Upgrade	D1140305S	\$7,404
Re-obligate					
FTA	CA-90Y850	2011	Refrigerant Recovery Machines	D1140308F	\$29,923
STA	11-03-OMN-B	2011	Refrigerant Recovery Machines	D1140308F	\$7,404
<b>Total</b>					<b>\$37,327</b>

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

### **CONCLUSION**

Approval of this purchase order will allow Omnitrans to make the necessary repairs to the air conditioning units on its fleet of vehicles.

PSG:JMS:KT

ITEM # E19

**DATE:** November 5, 2014

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

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

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

**SUBJECT: AUTHORIZE RELEASE – IFB-ITS15-64  
MICROSOFT SOFTWARE ASSURANCE**

**FORM MOTION**

Authorize the CEO/General Manager to release Invitation for Bids IFB-ITS15-64 for the provision of Microsoft Software Assurance for a three-year base period and two (2) single option years beginning January 2015 and ending no later than January 2020.

**BACKGROUND**

Omnitrans is seeking to renew its Enterprise Agreement (EA) licensing with Microsoft for three base years and two single option years. The EA includes comprehensive maintenance, upgrade rights, deployment planning, product support, training, etc., as well as rights to Microsoft products needed by both users and administrators.

Omnitrans is converting existing device licenses (tied to the number of devices on which Microsoft products are installed) to user licenses (tied to the number of users). This will eliminate the need to purchase additional licenses for users assigned multiple device needs (tablet, desktop, laptop, smartphone, etc.).

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 \$430,150.

### **FUNDING SOURCE**

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

Department	1320
Expenditure Code	505170

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

### **CONCLUSION**

By proceeding with this solicitation, Omnitrans will continue to have effective management of its license and software maintenance agreements.

PSG:JMS:CVM

ITEM # E20

**DATE:** November 5, 2014

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

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

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

**SUBJECT: AUTHORIZE RELEASE – RFQu-MNT15-04, ARCHITECTURAL AND ENGINEERING (A&E) SERVICES**

### **FORM MOTION**

Authorize the CEO/General Manager to release Request for Qualifications RFQu-MNT15-04 for the provision of Architectural and Engineering (A&E) Services for a three-year base period and two (2) single option years, beginning March 2015 and ending no later than March 2020.

### **BACKGROUND**

Omnitrans is seeking the services of a “full service” architectural and engineering (A&E) firm to assist with a variety of capital improvement projects (CIP) scheduled throughout the next five years. The availability of A&E services allows the agency better efficiencies in bringing capital projects from conception to completion without conducting separate A&E solicitations for each project. Major projects requiring A&E services, such as the upcoming West Valley Connector Corridor, are not a part of this solicitation.

As required by the Brooks Act and in accordance with Procurement Policy 2000, Section 2.3.4.4 and FTA Circular 4220.1F, a qualifications-based solicitation is required for A&E Services. The Independent Cost Estimate (ICE) for this project is \$2,007,580.

### **FUNDING SOURCES**

Funding for this solicitation is included in each project’s approved budget as defined in Omnitrans’ Capital Plan.

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

**CONCLUSION**

By proceeding with this solicitation, Omnitrans will have access to on-call A&E services for its construction projects scheduled for the next five years.

PSG:JMS:CVM



ITEM # E21

**DATE:** November 5, 2014

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

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

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

**SUBJECT: AUTHORIZE RELEASE – RFP-ITS15-59  
IT MANAGEMENT SOFTWARE**

**FORM MOTION**

Authorize the CEO/General Manager to release Request for Proposal RFP-ITS15-59 for the provision of IT Management Software for a one year base period and the authority to exercise two separate option years.

**BACKGROUND**

Omnitrans is discontinuing their network host management service contract with Allied Digital and has brought technical support back in-house with the addition of three team members to the IT Department as approved in the Fiscal Year 2015 budget adopted by the Board of Directors in May 2014.

The software will interface with Omnitrans' existing infrastructure to monitor, manage and maintain physical and virtual network activities. It will also enable staff to manage projects, business process, schedules, user privileges, sequence work flows, manage network and storage devices, and generate help-desk tickets from a single console.

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 Request for Proposals for procurements for good/services exceeding \$100,000. The Independent Cost Estimate for this project is \$110,486.

### **FUNDING SOURCE**

The cost associated with this procurement is budgeted in the Information Technology budget as follows:

<b>FUNDING</b>	<b>GRANT</b>	<b>YEAR</b>	<b>PROJECT NAME</b>	<b>INTERNAL ORDER</b>	<b>AMOUNT</b>
FTA	CA-90-2009	2013	IT Management Srv		\$88,388
Prop 1B		2013	IT Management Srv		\$22,098
<b>Total</b>					<b>\$110,486</b>

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

### **CONCLUSION**

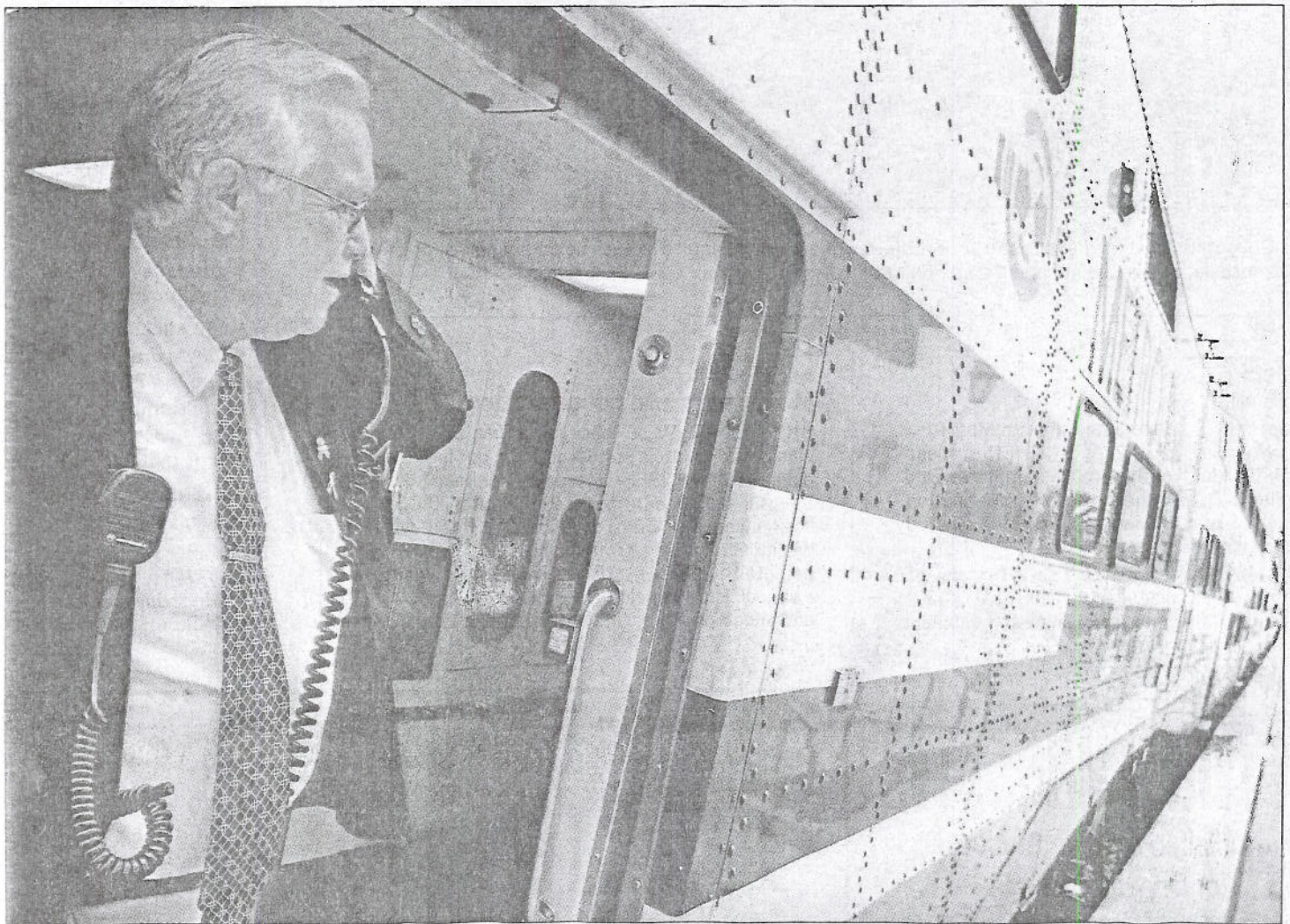
By proceeding with this solicitation, Omnitrans will obtain the necessary software needed to manage technical support efficiently.

PSG:JMS:AA

TRANSPORTATION

# MILLENNIALS MOVE TO PUBLIC TRANSIT

**Trending:** More Americans between 18 and 33 don't have problem with riding bus, rail  
**Holding out:** Boomers sticking with the old, reluctant to follow next generation's lead



STAFF FILE PHOTOS

Metrolink conductor Scott Walker makes a "last call" announcement for passengers to board the morning train to Los Angeles at the San Bernardino station. A new survey says young Americans are more likely to take public transit.



By Steve Scauzillo

steve.scauzillo@langnews.com  
@stevscaz on Twitter

Young people are twice as likely to take public transit than middle-aged Americans, and seven times more likely than those ages 60 and over, according to a new study on transit attitudes.

The trend for Millennials — Americans between 18 and 33 — won't fade when they start having children because even young families are more apt to ride a bus or train than their parents, according to the non-profit Transit Center's survey of nearly 12,000 people in 46 different cities across the country entitled "Who's On Board 2014: Mobility Attitudes Survey," released last week.

Transportation choices are widening the gap between the two generations. Already, Millennials show big differences from Baby Boomers at the same age. Millennials don't buy cars as frequently, they delay learning how to drive, they don't apply for credit cards as often and don't stay in the same jobs very long, survey results and other experts say.

The differences between the two generations should send a signal to transportation planners who may need to adjust to an emerging population group that will make up 50 percent of the workforce by 2020.

Aside from economics and a willingness to try new things, part of the reason Millennials ride public transit is be-

**SURVEY » PAGE 4**



A Transit Center study found Americans between 18 and 33 were more likely to take public transportation than Baby Boomers.



**Online extra:** To view more photos of public transportation users, go to [PHOTOS.SBSUN.COM](http://PHOTOS.SBSUN.COM)

## Survey

FROM PAGE 1

cause of where they live, said David Bragdon, executive director of Transit Center.

"It is their neighborhood choice. Young people are choosing to live in neighborhoods where there is good transit service, so the transportation choice goes along with the neighborhood choice," Bragdon said Monday.

Thirty-one percent of Americans in the West and Southwest under 30 used transit at least once a week.

"Transit brings about a kind of urbanity that people like so much," said Gloria Ohland, communications director with Move LA, a transit-oriented advocacy group. Millennials are getting married later and not moving into single-family homes, she said. "They are living in downtown L.A., where you can be alone but not ever be alone."

Baby Boomers are much more reluctant to use transit or live in denser com-

munities. The study found only 8 percent of those ages 30-60 used transit once a week. For those over 60, the use of transit drops to 3 percent.

Baby Boomers grew up using public transit but now, mostly because they live in suburbs or exurbs with little to no transit options other than a car, hardly use it. Many millennials did not have any experience with public transit growing up but are quite comfortable with it as adults — more so than their parents.

Bragdon said it may be time for parents to listen to their children.

"For Baby Boomers this is going to be a problem as they quit driving. They live in the suburbs where they have no alternative to driving," Bragdon said.

Los Angeles County, which has about \$50 billion invested in transportation improvements, including the construction of five rail lines, is "setting the pace" among all cities in America, Bragdon said.

"Los Angeles has the most ambitious transit expansion plan in the coun-

try but it is also playing catch-up," he said.

The survey said most transit riders come from "traditional cities" such as New York, Chicago, Washington, D.C., Philadelphia, Boston and San Francisco, followed by the "West Coast cities." Los Angeles was listed as "transit progressive" by the surveyors, along with Denver, Salt Lake City, Las Vegas, Austin, Reno, Phoenix, Portland and Seattle. In California, Fresno, Stockton, Redding and Riverside were classified as "transit deficient."

Ohland said L.A. is making tremendous progress but cited the San Fernando Valley, Gateway cities and South Bay cities as "transit underserved."

Bragdon said many cities, such as Pasadena, Monrovia, Claremont, Culver City and Los Angeles, are building denser apartment and condo complexes as well as retail near new light-rail stations, a living choice expressed by 58 percent of the respon-

dents even though only 39 percent currently live in mixed-use, transit-friendly neighborhoods, the survey found.

"As Millennials begin to take center stage in American life and the Baby Boom generation confronts retirement, both the transit industry and the real estate industry will need to adjust," said Rosemary Scanlon, divisional dean of New York University's Schack Institute of Real Estate in a statement.

In terms of race, African Americans are the most frequent transit users, with 39 percent riding at least once a week, followed by Asian, Pacific Islander at 32 percent, tied with American Indian. Hispanic or Latin origin riders make up 20 percent; whites account for 10 percent.



Sun  
Tuesday, September 30, 2014

# THE SUN

## Omnitrans bus driver, union contract may be decided



*Omnitrans driver Ernie Hidalgo gets ready to depart on his route from the Palm Avenue and Kendall Drive park-and-ride facility in San Bernardino on Tuesday. John Valenzuela — the associated press*

**By Ryan Hagen, The Sun**

POSTED: 09/30/14, 7:09 PM PDT | UPDATED: 1 DAY AGO 2 COMMENTS



*An Omnitrans driver heads towards Crafton Hills College on Tuesday. Micah Escamilla — staff photographer*

SAN BERNARDINO >> Three years after negotiations began and six years after they last got a raise, 400 Omnitrans bus drivers will learn as soon as today if they have a new contract — or could prepare to strike.

The transportation agency's board of directors will hold a final public hearing today to review the recommendations of an independent fact-finder and possibly to impose a "last, best and final offer." Union members [voted in March](#) to authorize a strike if that contract were imposed.

But a meeting between union and Omnitrans leaders is already scheduled for Monday and Tuesday of next week to work toward an agreement that both sides say give them hope.

"The situation that's somewhat different now is there's a fact-finding report that's been issued," Omnitrans spokeswoman Wendy Williams said Tuesday. "So I think there's opportunity for movement. We certainly hope that both sides will bring that attitude to the table, that there's opportunity to move forward for the benefit of employees — and our customers, ultimately, as well."

Next week will be the pivotal moment, said Frankie Uribe, vice president of the Amalgamated Transit Union, which represents the drivers.

"This is the end," Uribe said. "We've gone through negotiations, fact finder, all the steps. If they give us something we can work with — since we haven't had a raise since 2009 and the benefits are not good, that's all we're asking for."

The union and Omnitrans disagreed on 17 provisions of the contract, but the dispute really came down to wages and benefits, according to a fact-finding report by chairman Walter F. Daugherty.

Omnitrans said its finances — a \$3 million reduction in the operating budget since 2008-09 — don't allow for any increase in the first year of the new contract, followed by a 2.3 percent increase in Year 2 and a 2.75 percent increase in Year 3.

*Advertisement*

The union, pointing to raises for other unions and management and to static wages as the cost of living increased by 9.5 percent, asked for a 2.3 percent increase effective in March 2013, a 3.4 percent increase effective in March 2014 and a 3.0 percent increase effective in March 2015.

"The Chairperson does not believe it fiscally prudent under the present economic and budget situations to impose this significant cost increase on the Employer," according to the fact-finding report. Instead, he recommends a 3.4 percent increase retroactive to March 2014 and another 3 percent increase to go into effect in March 2015.

On benefits, too, the fact-finder recommends a "bucket" of health, dental and vision insurance, as well as contributions to the California Public Employees' Retirement System and Optional Term Life Insurance, that's more than the union wanted and less than Omnitrans wanted.

Other items included sick leave, overtime pay and uniforms, with the fact-finder landing on Omnitrans' side more often than the union's.

"If you look at the fact finding report on its whole, it sided with Omnitrans on most items in terms of quantity of items, but we have a difference of opinion as it relates to wage and benefits," Williams said. "That being said, we feel fortunate that both sides have agreed to come back to the table on Oct 6 and (Oct.) 7, and hopefully can find a middle ground. If there's movement amongst the parties, then maybe we can continue to meet."

The meeting is at 8 a.m. Wednesday at Omnitrans headquarters, 1700 W. 5th St., San Bernardino.

Sun  
Wednesday, October 01, 2014

# THE SUN

## Omnitrans authorizes replacements if drivers' union strikes



*Drivers for Omnitrans and sbX gather to protest outside Omnitrans headquarters on Wednesday, October 1, 2014 in San Bernardino. Micah Escamilla — Staff photographer*

By [Ryan Hagen](#), *The Sun* POSTED: 10/01/14, 8:11 PM PDT | UPDATED: 41 SECS AGO





*Drivers for Omnitrans and sbX gather to protest outside Omnitrans headquarters on Wednesday, October 1, 2014 in San Bernardino. Micah Escamilla — Staff photographer*

SAN BERNARDINO >> Omnitrans drivers spilled out of the transit agency's board room with signs warning "No raise... No drivers!" at the final public hearing on their contract Wednesday, before board members met in closed session and returned without an announcement.

No announcement means the board didn't vote to impose a contract that union members have said they [would strike](#) over. Instead, they will negotiate at a previously arranged meeting with union representatives on Monday and Tuesday.

The board also voted to authorize up to \$1.5 million to a private company, National Tour Integrated Resources in Rancho Santa Margarita, to temporarily replace the Amalgamated Transit Union drivers if they strike.

Despite what was implied in comments by the drivers, Omnitrans' offer would include raises — 2.5 percent effective as of March 2014 and 2.75 percent in March 2015, plus an additional \$2 per hour for sbX drivers (those buses are larger).

The union asked for a 2.3 percent increase effective as of March 2013, a 3.4 percent increase effective as of March 2014 and a 3.0 percent increase effective in March 2015.

It would be the first raise the approximately 400 union members have received since 2009.

Meanwhile, the cost of living has increased — 9.5 percent, according to an independent [fact-finder's report](#) — and workers said they're tired of waiting.

"I waited for my raise, and I earned it, and I want it," said Kenya Bluitt, who said she has driven for the public bus agency for 16 years.

She suggested that the board members, who are elected leaders of local cities and the county, could be voted out of office if they don't deal fairly with their employees.

"We want our jobs," she said. "And I'm sure you want yours as well."

Omnitrans Chairman Alan Wapner, an Ontario councilman, said he was surprised by the hostile comments when the board had agreed to continue negotiating.

Those negotiations come after a lengthy impasse, but would be the first since a fact-finder issued recommendations that fall between Omnitrans' "last, best and final" offer and the union's offer.

"It's certainly within their rights and I'm always happy to hear what they have to say, but it doesn't really set a good tone for negotiating," Wapner said. "In any case, we're still hoping we can negotiate a deal."

If not, the private company is ready to step in and keep the buses going.

"Certainly we don't want to see that," Wapner said, "but our job is to provide transit for those that need it in the community. It's totally in their hands."



October 1, 2014

OMNITRANS  
BUS DRIVERSContract  
may be  
decided  
tonight

By Ryan Hagen

ryan.hagen@langnews.com  
@sbcitynow on Twitter

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OMNITRANS » PAGE 7

## Omnitrans

FROM PAGE 1

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JOHN VALENZUELA — THE ASSOCIATED PRESS

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TRANSPORTATION

# Replacements OK'd if bus drivers strike

By Ryan Hagen

ryan.hagen@langnews.com  
@sbcitynow on Twitter

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MICAH ESCAMILLA — STAFF PHOTOGRAPHER

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THE SUN  
October 5, 2014

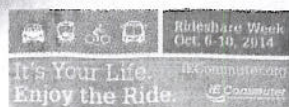
# Enjoy Your Next Ride On Us.



Ride FREE during RIDESHARE WEEK October 9.

Get unlimited free rides on Thursday, October 9 to celebrate Rideshare Week. You'll help cut traffic congestion, reduce air pollution, and save on high gas prices. **Plus, enter to win cool prizes at [iecommuter.org/rideshareweek](http://iecommuter.org/rideshareweek).**

 Cut out along black keyline.



1-800-9-OMNIBUS  
OMNITRANS.ORG

PUBLIC SAFETY

## SBX bus collides with car in SB

By Michel Nolan

*michel.nolan@langnews.com*  
*@MichelNolan on Twitter*

An sbX OmniTrans Bus and a compact passenger car collided on Hospitality Lane in San Bernardino on Monday, trapping the driver of the car, according to a San Bernardino city Fire Department official.

Firefighters used the Jaws of Life to free the trapped driver.

One city medic engine, a ladder truck and battalion chief responded to the collision at 12:36 p.m. Monday in front of 219 E. Hospitality Lane, according to a Fire Department release.

The four passengers on the bus were not injured and there were no passengers in the car, according to Chief Nathan Cooke.

The victim was freed and treated for moderate injuries by firefighter/paramedics and taken to a local trauma center to be evaluated.

By 3:30 p.m. the accident site was cleaned up, and there was no sign of broken glass.

The San Bernardino Police Department is handling the investigation.

ITEM # F1

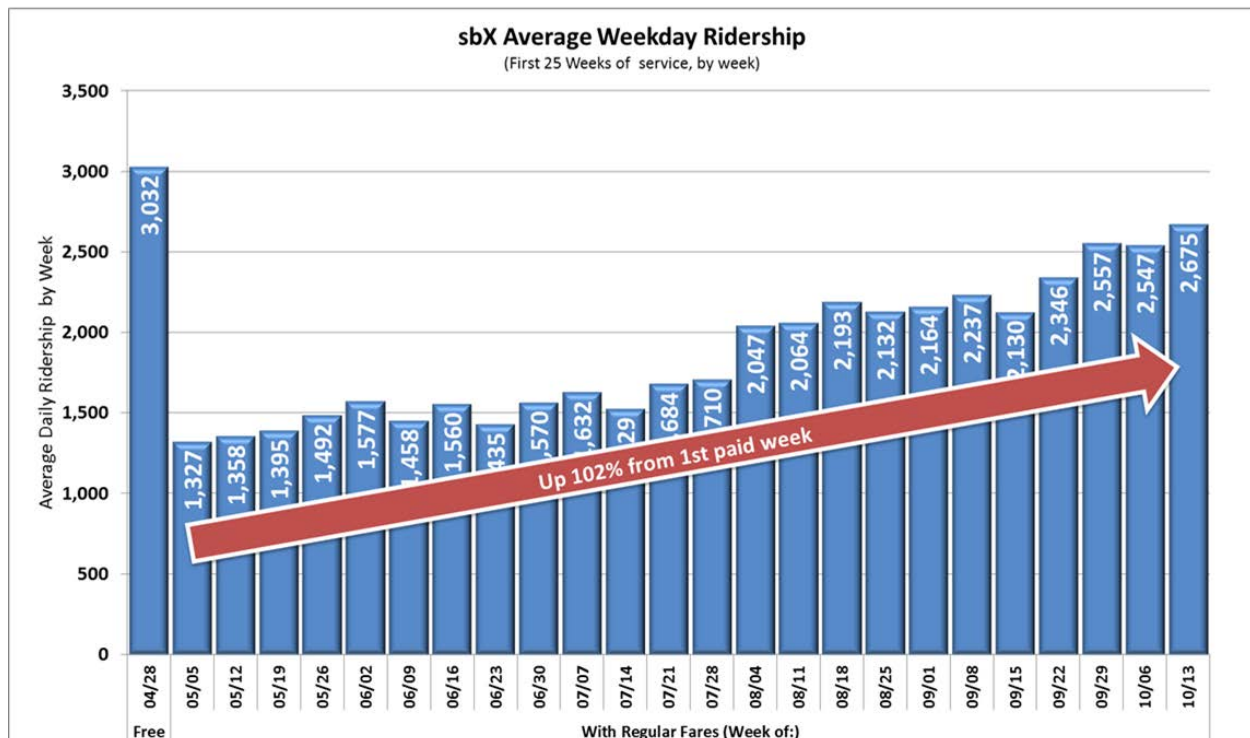
**DATE:** November 5, 2014

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

**FROM:** P. Scott Graham, CEO/General Manager

**SUBJECT: CEO/GENERAL MANAGER'S REPORT**

sbX ridership during the week of October 13 reached 2,675 average daily riders, which is a 102% increase from the first week of paid service. This chart below shows the continued gradual increase on sbX that has allowed Omnitrans to double sbX ridership since the opening paid week. Additionally, the week of 10/13 was the first week that the majority of ridership on the sbX corridor was on sbX. During the first week of paid, 35% of E Street Corridor ridership was on sbX. Now, 51% of corridor ridership has moved to sbX. The Key Performance Indicators (KPI) for the sbX through September 30, 2014, is attached.



The San Bernardino Unified School District adopted a resolution at its October 21, 2014, meeting that encouraged Omnitrans to continue meeting all applicable health and safety

guidelines and continue efforts in identifying an alternative to the on-site storage of LNG/CNG that results in the removal of the LNG/CNG storage tanks from the facility.

Outreach events in September included: City of Rialto Health & Wellness Fair, City of Fontana Family Safety Fair, IEHP Disability Expo in Riverside, Chino Institute for Men Employee Benefits Fair, Redlands Kiwanis Club presentation, Route 66 Cruisin' Reunion in Ontario, and the Rancho Cucamonga Senior Health and Wellness Fair.

PSG:VD



## sbX Key Performance Indicators (September FY2015)

Topic	Measure	Target	Actual	Status
<b>Ridership</b>	Average Daily Ridership (sbX)	5,607	2,675 2,090	Week of 10/13, +102% vs. 1 <sup>st</sup> paid wk YTD FY2015
	Average Daily Ridership (Corridor)	7,049	5,145 4,570	Week of 10/13 YTD FY2015
<b>Productivity</b>	Passengers per Hour	Green: 40; Yellow: 35; Red: 30	15.5 15.4	September, FY2015 YTD FY2015
<b>Cost Efficiency</b>	Farebox Recovery Ratio	Green: 30%; Yellow: 25%; Red: 20%	6.73% 8.61%	September, FY2015 YTD FY2015
<b>Reliability</b>	Headway Adherence	90% of trips spaced ±3 minutes of scheduled headway	63%	YTD, FY2015
<b>Runtime</b>	Median One-Way Runtime	47 minutes	55	YTD, FY2015
<b>Customer Satisfaction</b>	Complaints per 100,000 boardings	<10 complaints per 100,000 boardings	27.9 (64 com./ 229,581 brds) 19.1 (30 com./ 156,406 brds)	Since Inception YTD, FY2015
	Compliments per 100,00 boardings	>1 compliments per 100,000 boardings	3 commendations / 229,581 boardings	Since Inception.
<b>Safety</b>	Preventable Accidents per 100,000 miles	<1 per 100,000 miles	0	Since Inception
<b>Attendance</b>	Driver Attendance	<6 absences per year per operator	0	Since Inception

ITEM #           F2          
**DATE:** November 5, 2014

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

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

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

**SUBJECT: AUTHORIZE AWARD – SOLE SOURCE CONTRACT MKT15-08  
ON-BOARD AUDIO ADVERTISING**

### **FORM MOTION**

Authorize the CEO/General Manager to award sole source contract MKT15-08 to Commuter Advertising of Dayton, OH, for the provision of On-Board Audio Advertising for a three (3) year base period beginning November 5, 2014, with the authority to exercise two (2) additional option years to November 4, 2019 should all option years be exercised, in an amount of \$354,550.

### **BACKGROUND**

Digital onboard advertising using the existing annunciation system inside Omnitrans fleet of buses will provide an additional revenue stream. Similar to Omnitrans' agreement for bus exterior and bus stop amenities advertising agreement, Commuter Advertising will sell audio advertisements. Omnitrans will receive monthly revenue of 35% of the gross billings.

The annual estimated revenue forecast is as follows:

<b>Contract Year</b>	<b>Forecasted Sales</b>	<b>Omnitrans Revenue (35%)</b>
Base Year 1	\$110,000	\$38,500
Base Year 2	\$135,000	\$47,250
Option Year 1	\$240,000	\$84,000
Option Year 2	\$256,000	\$89,600
Option Year 3	\$272,000	\$95,200
<b>TOTAL</b>	<b>\$1,013,000</b>	<b>\$354,550</b>

Revenue projections are conservative estimates and are not guaranteed.

Staff conducted extensive online research and contacted several other transit agencies but was unable to identify other companies capable of providing this service. As a result, Procurement has determined that issuing a Request for Proposals would not generate competition.

In accordance with FTA Circular 4220.1F, Section VI-17, procurement by noncompetitive proposals may be used when the manufacturer is the sole provider of the items compatible with existing equipment/systems and when the equipment/systems are not interchangeable with similar parts and equipment from other manufacturers.

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

### **CONCLUSION**

Award of this contract will allow Omnitrans to create a new revenue source and help its riders benefit from discounts given by vendors along the routes.

PSG:JMS:AA



## CONTRACT AGREEMENT

between

COMMUTER ADVERTISING, INC.  
49 Park Avenue  
Dayton, OH 45419  
Adina@commuter-advertising.com

(hereinafter "CONTRACTOR")  
Telephone: 773-480-3341

And

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

### CONTRACT DOCUMENTS

**CONTRACT NO. MKP15-08**

### Commuter Advertising

Contract Amount: Revenue as specified

### Omnitrans Project Manager:

Name: Diane Bojorquez  
Title: Sales Supervisor  
Telephone: (909) 379-7148  
Email: [diane.bojorquez@omnitrans.org](mailto:diane.bojorquez@omnitrans.org)

### Contract Administrator:

Name: Joanne Cook  
Title: Contract Administrator  
Telephone: (909) 379-7198  
Email: [joanne.cook@omnitrans.org](mailto:joanne.cook@omnitrans.org)



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ATTACHMENT A – SCOPE OF WORK

ATTACHMENT B – PRICE /EXPECTED REVENUE

This Agreement is made and entered into as of this 5TH day of November, 2014 by and between OMNITRANS (hereinafter referred to as "OMNITRANS") and COMMUTER ADVERTISING, INC. (hereinafter referred to as "CONTRACTOR").

## **RECITALS**

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

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

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

### **1. SCOPE OF WORK**

- A. CONTRACTOR will perform the Work and related tasks as described in Attachment A, Scope of Work hereto and is incorporated by reference into and made a part of this Agreement.
- B. This is an 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.
- C. Omnitrans will approve all advertising or any other communications displayed/used on its fleet. No defamatory, libelous, slanderous, obscene, religious or political advertising will be allowed.
- D. Stop announcement prioritization remains with 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 November 4, 2017, unless terminated as specified in Section 8 and 9 of this Agreement. Omnitrans has no obligation to purchase any specified amount of products/services. All applicable indemnification provisions in this Agreement shall remain in effect following the termination of this Agreement.

Omnitrans' election to extend the Agreement beyond the Initial Term shall not diminish its right to terminate the Agreement for Omnitrans' convenience or CONTRACTORS default as provided elsewhere in this Agreement. The "maximum term" of this Agreement shall be the period extended from November 5, 2014 Through November 4, 2019, which period encompasses the Initial Term of the Agreement, Option Year 1, and Option Year 2.

### **3. COMPENSATION – REVENUE SPLIT**

The parties jointly recognize and agree that the purpose of this Agreement is to develop a new revenue stream using proven methods and business services provided by the CONTRACTOR. During the term of this Agreement, the gross total due to OMNITRANS is 35% of collections of gross billings. On a monthly basis and by no later than the 15<sup>th</sup> business day of each month, CONTRACTOR shall submit a sales report to OMNITRANS detailing total audio advertising sales and collections of gross billings received. Any monthly revenue amount properly due and owing to OMNITRANS shall also be submitted to OMNITRANS by CONTRACTOR via check made payable to "OMNITRANS" or via electronic funds transfer by no later than the 15<sup>th</sup> day of each month. CONTRACTOR shall pay OMNITRANS for any staff time required to implement ongoing ads. OMNITRANS and CONTRACTOR shall agree upon rates and number of hours to be dedicated by staff. Reimbursement to OMNITRANS for staff time shall be made as agreed upon by revenue disbursement.

### **4. RESTRICTIONS ON ADVERTISING**

Contractor shall not place, under any circumstances, any Advertisement that violates any federal, state, county, or local regulation, law, code, or ordinance; is or can be construed to be false, misleading, deceptive, or clearly defamatory; violates or can be construed to violate any local community standards including without limitation profanity, obscenity, nudity or pornography; advocates any unlawful action; promotes alcohol, tobacco, violence, firearms, sexual products or services; or contains words or illustrations that can be construed as graffiti. Advertising material that ridicules or mocks, is abusive or hostile to, or debases the dignity or stature of an individual or group of individuals is prohibited.

### **5. MONETARY OFFERING/PAYMENT/INVOICES**

Total compensation to OMNITRANS from the Advertising Company for this Agreement shall be a monthly revenue sharing percentage. Each month's payment shall be based upon the previous month's collections of gross billings, plus other charges due to OMNITRANS under this Agreement. OMNITRANS is not liable for any compensation to the CONTRACTOR, unless otherwise approved and agreed in writing by OMNITRANS.

CONTRACTOR will pay OMNITRANS a total of 35% of collections of gross billings. CONTRACTOR will pay monthly revenue sharing amounts for the term of this Agreement.



Monthly reporting will be provided to OMNITRANS's Project Manager electronically on the 15<sup>th</sup> of the following month. Payments of monthly revenue sharing will be made not later than 15<sup>th</sup> of each month following revenue collection. Payments will be sent to:

OMNITRANS  
ATTN: Accounts Receivable  
1700 W. 5<sup>th</sup> Street, San Bernardino, CA 92411

CONTRACTOR will make payment to OMNITRANS net 15 days after the end of each month based on gross revenue collected in the previous month. CONTRACTOR shall furnish OMNITRANS a detailed statement of audio ads sold for the month ended, providing all information necessary to document payment accruing to OMNITRANS. The statement will also show year-to-date cumulative levels of gross audio advertising sales and collections of gross billings received.

## **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: Joanne Cook  
Contract Administrator

To CONTRACTOR:

Commuter Advertising, Inc.  
49 Park Avenue  
Dayton, OH 45419  
ATTN: Adina M. Salah  
Chief Operating Officer

## **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: Diane Bojorquez, Sales Supervisor.

- 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>
<u>Adina M. Salah</u>	<u>Chief Operating Officer</u>
<u></u>	<u></u>
<u></u>	<u></u>
<u></u>	<u></u>

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

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

**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 \$1,000,000 aggregate; *Endorsement naming OMNITRANS as additional insured.*  
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**

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.

## **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. WORK FOR HIRE**

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

## **21. SUBMITTAL OF CLAIMS BY CONTRACTOR**

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

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

## **22. EQUAL OPPORTUNITY**

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

## **23. STANDARD OF PERFORMANCE**

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

## **24. NOTIFICATION OF EMPLOYMENT OF OMNITRANS BOARD MEMBERS/ALTERNATES AND EMPLOYEES**

To ensure compliance with OMNITRANS' Ethics Policy, CONTRACTOR shall provide written notice to OMNITRANS disclosing the identity of any individual who CONTRACTOR desires to employ or retain under a contract, and who (1) presently serves as a Board Member/Alternate or an employee of OMNITRANS, or (2) served as a Board Member/Alternate or an employee of OMNITRANS within the previous 12 months of the date of the proposed employment or



retention by CONTRACTOR. CONTRACTOR's written notice shall indicate whether the individual will be an officer, principal or shareholder of the entity and/or will participate in the performance of this Agreement.

## **25. DISQUALIFYING POLITICAL CONTRIBUTIONS**

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

## **26. COMPLIANCE WITH LAW**

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

## **27. COMPLIANCE WITH LOBBYING POLICIES**

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

## **28. PUBLIC RECORDS ACT**

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

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

## **29. WAIVER/INVALIDITY**

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

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

## **30. FORCE MAJEURE**

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

## **31. CONFIDENTIALITY**

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

and the like, and will not release any such information to any person, firm, corporation or other entity, either by statement, deposition, or as a witness, except upon direct prior written authority of OMNITRANS.

### **32. CONTRACTOR'S INTERACTION WITH THE MEDIA AND THE PUBLIC**

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

### **33. GOVERNING LAW**

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

### **34. MODIFICATIONS TO AGREEMENT**

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

### **35. LICENSING, PERMITS AND INSPECTION COSTS**

- A. The CONTRACTOR warrants that it has all necessary licenses and permits required by the laws of the United States, State of California, and the County of San Bernardino, the Local Jurisdictions, and all other

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

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

### **36. PRECEDENCE**

Conflicting provisions hereof, if any, shall prevail in the following descending order of precedence: (1) the provisions of this Agreement, (2) Attachment A, Scope of Work, (3) Attachment B, Pricing/Expected Revenue and (4) provisions of 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

COMMUTER ADVERTISING

---

P. SCOTT GRAHAM  
CEO/General Manager

---

ADINA SALAH  
Chief Operating Officer

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DATE

---

DATE

Federal Tax I.D. No.

## **ATTACHMENT A SCOPE OF WORK**

Commuter Advertising will be OmniTrans' exclusive provider of digital onboard advertising to sell and maintain digital audio advertising using the annunciation system inside OmniTrans vehicles for a base period of three (3) years with two (2) single option years. Commuter Advertising will leverage proprietary methods with OmniTrans' onboard technology supplied by Trapeze or any future/alternative annunciation provider to generate new revenue for OmniTrans. The scope of the audio advertising program is full-service and includes the following key services:

- Market and sell targeted location- and time-based audio/visual transit media via a talented team of marketing and sales professionals
- Develop creative assets to add value to advertising clients and riders
- Approve creative assets in line with OmniTrans' advertising policy
- Produce creative assets in state-of-the-art production studio with a variety of voice talent
- Upload creative assets that seamlessly integrates with OmniTrans' operations
- Implement media according to detailed specifications and processes aimed at the highest levels of accuracy
- Track media via ongoing quality control program
- Process invoices to advertisers and maintain high collection performance, returning revenue to OmniTrans

### **WORK REQUIREMENTS**

#### **Kick Off**

Commuter Advertising will create and deliver a project plan including schedule, testing plan and schedule, program launch plan and training plan. Commuter Advertising will present project plan to OmniTrans team for review and approval.

#### **Testing**

Commuter Advertising will coordinate with OmniTrans to implement a thorough and strategically ramped testing program. Testing activities will be discussed with the determined Omnitrans resource(s):

Testing will typically take 1-2 business days. The Commuter Advertising sales ramp-up program will then commence. Once sales begin, the standard engineering protocol will be used ongoing.

#### **Program Launch**

Commuter Advertising will strive for rider support of the program through the Public Service Announcement Program during the program's launch and throughout the life of the program, communicating key benefits to riders, which include:

- The program generates revenue to help support OmniTrans' continued world-class transit service
- The program generates revenue for OmniTrans, which is part of the solution to help keep riders' fares as low as possible
- The program generate revenue for OmniTrans, which potentially helps alleviate the need for fare increases

- The program helps OmniTrans communicate quickly with riders to inform them of important service updates, route changes and more
- The program gives riders access to special discounts and promotions offered by local businesses

CA will produce all PSA spots at no cost to OmniTrans in a state-of-the-art production studio with a range of voice talents. Typically, five PSAs, such as route changes, holiday messages, etc, per month are granted. However, Commuter Advertising is flexible based on the needs of OmniTrans.

Commuter Advertising also provides customer service and call center collateral to address and track communications received by riders. Commuter Advertising sales, marketing and operations implementation activities will occur in tandem to ensure a streamlined launch. Commuter Advertising anticipates generating revenue within 90-120 days of after the completion of successful testing and the first locally consummated advertising sale.

### **Training**

Commuter Advertising will train sales representatives in our corporate HQ's of Dayton, OH on OmniTrans and the San Bernardino area. The sales team must:

- Penetrate advertising agencies, national and local clients
- Be accountable for an annual budget
- Develop integrated marketing concepts with the planning teams
- Negotiate with buying teams at each advertising agency and directly with large clients
- Formulate re-caps of each campaign and other client service activities

The sales team trained for OmniTrans will be responsible for introducing the transit audio and digital text scroll advertising product in the service area and replicating the success in previous markets.

Commuter Advertising's talented and experienced sales staff will present advertisers with numerous competitive advantages offered by Commuter Advertising media, including:

- **Proximity** – Businesses are able to advertise on vehicles near their locations
- **Sell By CPM**- Commuter Advertising has developed a proprietary transit advertising tool that allows the sales team to present proposals to local clients in easy to understand and industry accepted Cost Per Thousand format.
- **Captive Audience** – Commuters remain on vehicles throughout the ride, avoiding the common challenge of switching off advertisements
- **Targeted Messaging** – Rider quantity and profile data allowing advertisers to maximize advertising dollars by selecting buses that service the consumers they want to reach
- **Affordable Mass-Media** – Commuter Advertising creates a new opportunity for smaller advertisers to purchase mass media through a reasonable pricing strategy
- **Integrated Promotions** – Promotional opportunities are nearly limitless; for example advertisers can offer discounts to commuters who show their transit card at purchase points, or coordinate print ads at stations and bus stops with Commuter Advertising voiced spots, or offer product samples or coupons on buses, or use Commuter Advertising to drive commuters to websites
- **Mutually Beneficial Relationships** – OmniTrans increases operating budgets, large advertisers have a new channel to reach customers, smaller advertisers afford effective mass-media, and commuters avoid fare hikes and services cuts on account of new advertising revenue
- **Socially Responsible Business Model** – All San Bernardino-area residents benefit from additional fiscal support of public transit infrastructure

- **Public Relations** – Support of the public transit through advertising spending is an ideal Public Relations opportunity for advertising Clients

### **Financial Management**

Commuter Advertising will pay OmniTrans monthly within 15 days for OmniTrans' percentage of collections in the previous month. Complete reconciliation reporting is provided monthly along with the payment. Month-End Financial Reports will display total campaigns booked, collected and revenue sharing with OmniTrans.

### **PROJECT TEAM**

OmniTrans will be well represented by Commuter Advertising's quality and high-achieving staff and management. The Commuter Advertising sales team is dedicated to transit media products exclusively. The Project Team is built as follows:

***Russ Gottesman, Founder***, manages all major functions of Commuter Advertising, overseeing new product and market development, sales, marketing, operations and finance, including reporting to ensure compliance of all contracts. He is a business executive with wide media experience including transit, Internet, traffic, radio and interactive media. He has proven leadership ability demonstrated in his developing and motivating teams to achieve aggressive objectives. Prior to founding CA, Russ was the Local Sales Manager for CBS Radio: WCKG. Russ holds a BA in Broadcast Journalism from Arizona State University and an MBA from DePaul University's Kellstadt Graduate School of Business. Russ can be reached at [russ@commuter-advertising.com](mailto:russ@commuter-advertising.com) or 937.756.3636

***Katie Gottesman, Founder*** advises strategic decisions with her analytical and solution-driven skills. Katie also developed proprietary mapping software to align Commuter Advertising's inventory with transit data, allowing for the seamless selling of transit media. Katie has been with the company since its inception. She holds a BA in Marketing from Illinois State University and an MBA from the University of Chicago Booth School of Business. Katie can be reached at [kgottesman@commuter-advertising.com](mailto:kgottesman@commuter-advertising.com) or 312.519.0743.

***Adina Salah, Director of Operations\****, is responsible for campaign execution once media is sold. She works directly with transit agency operations teams to develop specific engineering protocols that seamlessly integrate with transit authority operations. Adina has vast knowledge in public transit media, operations, technology and supplier relations. She brings to Commuter Advertising a background in digital database management and operations, and creative insight into transit media potentiality. Adina holds a BS in Marketing from Illinois State University. Adina can be reached at [adina@commuter-advertising.com](mailto:adina@commuter-advertising.com) or 773.480.3341.

*\*Contract & Technical Lead*

***Carol Warner, Chief Financial Officer***, is a finance professional experienced in financial and business planning, investment analysis, strategic planning, accounting and financial reporting, audit and business controls, system development and implementation, business integration and re-engineering and policy administration in multiple industries, domestically and internationally. As Commuter Advertising's CFO, Carol directs finance and administrative functions for the firm. Her responsibilities include business planning, financial analysis, financial regulatory and management reporting, implementation of



business systems and controls, and other administrative functions. She holds a BBA and MBA from Emory University. Carol can be reached at [cwarner@commuter-advertising.com](mailto:cwarner@commuter-advertising.com) or 937-424-8818.

***Sam Parker, Senior Marketing Coordinator***, is responsible for internal and external communications, including script writing, media relations, market research, event planning, social media management and special projects. She develops printed promotional and sales materials to aid in the selling of advertising, and devises promotional calendars to enhance the sales cycle. Sam holds a BA in Public Relations from Franklin College. Sam can be reached at [sam@commuter-advertising.com](mailto:sam@commuter-advertising.com) or 937.416.2105.

***Derryl Glaze, Vice President of New Business Development***, is adept in managing and servicing various accounts while simultaneously motivating a team of Account Directors, ensuring maximum productivity, efficiency and sales generation. He is experienced in organizing and leading regular training schedule, launching sales in new markets, and exceeding aggressive sales budgets. Derryl holds a BA in Communications from the University of Toledo. Derryl can be reached at [dglaze@commuter-advertising.com](mailto:dglaze@commuter-advertising.com) or 419-343-7713.

***Team of Qualified Sales Account Directors*** penetrates advertising agencies, national and local clients to develop integrated advertising campaigns and sell relevant media. The team participates in regular sales enhancement training to continue to develop and implement new sales strategies.

**ATTACHMENT B**  
**PRICING/EXPECTED REVENUE**

Commuter Advertising will pay OmniTrans a total of 35% of collections of gross billings, which simultaneously accounts for approximately 80% of the net when taking overhead, expenses and sales costs associated with the program out of the forecast.

<b>Contract Year</b>	<b>Forecasted Growth</b>	<b>OmniTrans (35%)</b>	<b>Sales (25%)</b>	<b>Overhead (20%)</b>	<b>Commuter Advertising (20%)</b>
Base Year 1	\$110,000	\$38,500	\$27,500	\$22,000	\$22,000
Base Year 2	\$135,000	\$47,250	\$33,750	\$27,000	\$27,000
Option Year 1	\$240,000	\$84,000	\$60,000	\$48,000	\$48,000
Option Year 2	\$256,000	\$89,600	\$64,000	\$51,200	\$51,200
Option Year 3	\$272,000	\$95,200	\$68,000	\$54,400	\$54,400
<b>TOTAL</b>	<b>\$1,013,000</b>	<b>\$260,302</b>	<b>\$253,250</b>	<b>\$202,600</b>	<b>\$202,600</b>

Projections are estimates only and are not guaranteed, but are designed to be conservative and do not account for increased national lift as Commuter Advertising continues to expand in new markets and mature in the San Bernardino market.

ITEM #       F3      

**DATE:** November 5, 2014  
**TO:** Board Chair Alan Wapner and Members of the Omnitrans Board of Directors  
**THROUGH:** P. Scott Graham, CEO/General Manager  
**FROM:** Jennifer Sims, Director of Procurement  
**SUBJECT: AUTHORIZE AWARD - ANNUAL RENEWAL OF BASIC SOFTWARE LICENSE AND MAINTENANCE SERVICES FOR TRAPEZE FLEET OPERATIONS SYSTEM**

### **FORM MOTION**

Authorize the CEO/General Manager to award a sole source Purchase Order to Trapeze, Inc. of Cedar Rapids, Iowa, for the annual renewal of user licenses and purchase of an annual software maintenance service package for Omnitrans' Trapeze Fleet Operations System. The period of coverage is from July 1, 2014 through June 30, 2015, in the amount of \$204,890.

### **BACKGROUND**

Trapeze, Inc., is the sole source provider for the Trapeze software suite and maintenance services. The annual user subscription includes: software maintenance, software upgrades, and all applicable taxes. Annual renewal includes the following modules:

DESCRIPTION	AMOUNT
Trapeze PASS-CERT	\$5,460
Trapeze OPS-Signin-Terminal	\$6,140
Trapeze OPS-Workforce Mgmt.	\$10,100
Trapeze FX MON	\$11,950
Trapeze OPS MON	\$6,100
Trapeze PASS MON (Omnitrans)	\$32,000
Trapeze FX MON	\$29,000
Trapeze OPS	\$46,000
Trapeze PASS	\$35,000
Trapeze INFO-COM	\$6,750
Trapeze – BSM	\$10,300
Trapeze MALTEZE OPS (INTERFACE FINANCE/HR)	\$6,090
<b>GRAND TOTAL</b>	<b>\$204,890</b>

In accordance with FTA Circular 4220.1F, Section VI-17, procurement by noncompetitive proposals may be used when the manufacturer is the sole provider of the items compatible with existing equipment/systems and when the equipment/systems are not interchangeable with similar parts and equipment from other manufacturers. Trapeze, Inc. is the Original Equipment Manufacturer (OEM) and sole manufacturer and seller of these parts/services.

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

### **FUNDING SOURCE**

The cost associated with these services is budgeted in the Information Technology Department's Operating budget as follows:

Department	1320
Expenditure Code	505170

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

### **CONCLUSION**

Approval of this sole source purchase order will allow Omnitrans to pay for licensing and maintenance support for Trapeze Fleet Operations Systems.

PSG:JMS:KT