



**BOARD OF DIRECTORS MEETING
WEDNESDAY, NOVEMBER 6, 2013 – 8:00 A.M.
OMNITRANS METRO FACILITY
1700 WEST 5TH STREET
SAN BERNARDINO, CA 92411**

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

A. CALL TO ORDER

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

B. ANNOUNCEMENTS/PRESENTATIONS

1. Next Board Meeting: Wednesday, December 4, 2013, at 8:00 a.m.
Omnitrans Metro Facility Board Room
2. Presentations: 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 E17, Action on Consent Calendar.

1. Approve Board Minutes – October 2, 2013
2. Receive and File Administrative & Finance Committee Minutes – September 9, 2013
3. Receive and File Agency Management Report – September 2013

4

5

11

14



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WEDNESDAY, NOVEMBER 6, 2013 – 8:00 A.M.
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E. CONSENT CALENDAR CONTINUED

4. Receive and File Construction Progress Report No. 21 through September 25, 2013 – sbX E Street Corridor BRT Project	23
5. Receive and File Quarterly Report – sbX E Street Corridor BRT Project – September 2013	39
6. Receive and File sbX E Street Corridor BRT Project Public Outreach Process and Property/Business Owner Issues Report	41
7. Receive and File Director of Finance Quarterly Report – Forward Fuel Purchases through September 2013	45
8. Receive and File Key Performance Indicators – Fiscal Year 2014, 1 st Quarter Report	49
9. Receive and File Affirmative Action Status Report as of October 17, 2013	53
10. Reappoint Board Vice Chair Spagnolo to Serve Three Year Term on Consolidated Transportation Services Agency Board of Directors (VTrans)	54
11. Authorize Solicitation for Appraisal of Omnitrans' Property located at 12300 Arrow Route, Rancho Cucamonga, California (Mid-Valley)	55
12. Adopt Title VI Service Equity Analysis of sbX Green Line Service	57
13. Authorize Interim CEO/General Manager to Execute Revised Agreement between Inland Empire United Way and Omnitrans	70
14. Adopt Revisions to Personnel Policy #103, Standards of Ethical Conduct, and Personnel Policy #109, Conflict of Interest	75
15. Authorize Award, Sole Source Purchase of Software Maintenance Services for Financial and Operational Reporting to San Bernardino Associated Governments (SANBAG)	86
16. Press Articles and Letters of Interest to the Board	90
17. 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	98
2. Adopt Proposed Board Meeting Calendar for 2014	102
3. Adopt Resolution No. 269-13 Approving the Transit Mutual Assistance Compact (TRANSMAC) Agreement for Public Transit Providers	103
4. Authorize Award, Contract No. IPMO14-103, On-Call Stormwater Prevention Pollution Plan (SWPPP) Plan Oversight Services for sbX E Street Corridor and Vehicle Maintenance Facility Project	122
5. Authorize Award, Contract No. IPMO14-105, On-Call Environmental Support for sbX E Street Corridor and Vehicle Maintenance Facility Project	178



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G. DISCUSSION ITEMS CONTINUED

- | | |
|---|-----|
| 6. Authorize Award, Contract No. HR14-07, Pre-Employment Background Checks | 205 |
| 7. Authorize Award, Contract No. HR13-182, Workers' Compensation Claims Administration Services | 229 |
| 8. Authorize Release, Request for Proposals RFP-ITS14-82, Automatic Passenger Counter | 262 |
| 9. Authorize Release, Request for Proposals RFP-SAS14-09, Security Services | 264 |
| 10. Authorize Release, Request for Proposals RFP-MTN14-81, Compressed Natural Gas (CNG) Fuel Cylinder Replacement | 266 |
| 11. Authorize Release, Invitation for Bids IFB-MNT14-13, Landscaping Services | 268 |

H. PUBLIC HEARINGS

- | | |
|--|-----|
| 1. Call for Public Hearing – Federal Transit Administration Section 5307 and Section 5339 Funds for Fiscal Year 2014 | 270 |
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I. BOARD BUSINESS

Closed Session

1. Conference with Labor Negotiator, P. Scott Graham, concerning labor negotiations with Teamsters Local Union No. 166 regarding the Maintenance and Administrative Support Unit, pursuant to Government Code Section 54957.6
2. 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

J. REMARKS AND ANNOUNCEMENTS

K. ADJOURNMENT

ITEM # D1

DATE: November 6, 2013

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

THROUGH: P. Scott Graham, Interim 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 6, 2013.

Item No.	Contract	Principals & Agents	Subcontractors
E15	Authorize Sole Source Purchase of Software Maintenance Services for Financial & Operational Reporting to SANBAG	<i>TransTrack Systems</i> Mary Sue O'Melia, President	<i>None</i>
F4	Award Contract No. IPMO14-103 On-Call Stormwater Prevention Pollution Plan (SWPPP) Plan Oversight Services for sbX E Street Corridor and Vehicle Maintenance Facility Project	<i>Whitson CM Contracting & Management Inc.</i> Mitchel Whitson, President	<i>N/A</i>
F5	Award Contract No. IPMO14-105 On-Call Environmental Support for the sbX E Street Corridor and Vehicle Maintenance Facility Project	<i>Crable and Associates Environmental Consultants</i> Dennis Crable, Consulting Principal, Owner	<i>N/A</i>
F6	Award Contract No. HR14-07 Pre-Employment Background Checks	<i>Summit Security Services, Inc. dba Summit of California</i> Nicholas M. Auletta, Vice President	<i>N/A</i>
F7	Award Contract No. HR13-182 Workers' Compensation Claims Administration Services	<i>Pacific Claims Management, LLC</i> Jerry Laval, President	<i>N/A</i>

PSG/JS

ITEM # E1

**BOARD OF DIRECTORS' MEETING
MINUTES
OCTOBER 2, 2013**

A. CALL TO ORDER

Chair Alan Wapner called the regular meeting of the Omnitrans Board of Directors to order at 8:03 a.m., Wednesday, October 2, 2013, at the Omnitrans Facility located at 1700 West 5th Street, San Bernardino, California.

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

BOARD MEMBERS PRESENT

Councilmember Alan Wapner, City of Ontario – Chair
Mayor Pro Tem Sam Spagnolo, City of Rancho Cucamonga – Vice Chair
Councilmember Ron Dailey, City of Loma Linda
Mayor Pro Tem Paul Foster, City of Redlands
Councilmember Frank Gonzales, City of Colton
Supervisor Josie Gonzales, County of San Bernardino
Vice Mayor Ed Graham, City of Chino Hills
Mayor Pro Tem Penny Lilburn, City of Highland
Mayor Pat Morris, City of San Bernardino
Mayor Ray Musser, City of Upland
Supervisor Gary Ovitt, County of San Bernardino
Councilmember Ed Palmer, City of Rialto
Supervisor James Ramos, County of San Bernardino
Councilmember Dick Riddell, City of Yucaipa
Mayor Pro Tem John Roberts, City of Fontana
Supervisor Janice Rutherford, County of San Bernardino
Mayor Walt Stanckiewicz, City of Grand Terrace
Mayor Dennis Yates, City of Chino

BOARD MEMBERS NOT PRESENT

Mayor Paul Eaton, City of Montclair
Supervisor Robert Lovingood, County of San Bernardino

OMNITRANS' ADMINISTRATIVE STAFF PRESENT

Scott Graham, Interim CEO/General Manager
Diane Caldera, Interim Director of Operations
Marge Ewing, Director of Human Resources
Sam Gibbs, Director of Internal Audit Services
Jacob Harms, Director of Information Technology
Milind Joshi, sbX Program Manager
Ray Lopez, Director of Safety & Security
Anna Rahtz, Acting Director of Planning & Development Services
Jennifer Sims, Director of Procurement
Don Walker, Director of Finance
Wendy Williams, Director of Marketing
Jeremiah Bryant, Service Planning & Scheduling Manager
Ray Maldonado, Employee Relations Manager
Maurice Mansion, Treasury Manager
Oscar Tostado, Maintenance Manager
Omar Bryant, Maintenance Manager
Eugenia Pinheiro, Contracts Manager
Christine Van Matre, Contracts Administrator
Alesia Atkinson, Contracts Administrator
Joanne Cook, Contracts Administrator
Mark Crosby, Loss Prevention Supervisor
Vicki Osborne, Assistant to CEO/General Manager
Carol Angier, Administrative Secretary

OTHER

Carol Greene, Legal Counsel

B. ANNOUNCEMENTS/PRESENTATIONS

Chair Wapner said the next regular meeting is scheduled Wednesday, November 6, 2013, at 8:00 a.m.

C. COMMUNICATIONS FROM THE PUBLIC

Jeff Caldwell, Coach Operator & ATU Local #1704 President, spoke to the Board regarding the money spent on the sbX and Redlands Rail Projects and no wage or benefit increases in nearly five years. He said that the ATU will not support the sbX side agreement that gives a raise to 23 drivers but not the rest. We must have a contract for all the drivers.

Frank Uribe, Coach Operator & ATU Local #1704 Representative, deferred his comments to Jeff Caldwell.

Gerry Nunez, Coach Operator & ATU Local #1704 Vice President, thanked the Board for giving Jeff Caldwell sufficient time to make his statement.

John Anaya, San Bernardino, stated that persons with disabilities need public transportation to get around that is reliable and affordable. He is not sure what the sbX Project will mean for the disabled.

Luke Connerse, San Bernardino, spoke to the Board about getting a bus bench at the bus stop located at Sierra and Highland. He also asked that bus fares be lowered.

Fran Givens, California Senior Legislature, informed the Board there will be a Senior & Disability Transportation Advisory Committee meeting on October 4 in Fontana.

D. CONFLICT OF INTEREST

Member Rutherford announced a conflict on Agenda Item #F-7, Authorize Amendment No. 2, Contract ADM09-8 Staff Legal Services and Authorize Release of Request for Proposals RFP-ADM14-12, Staff Legal Services.

E. CONSENT CALENDAR

- 1) Approve Board Minutes – September 4, 2013
- 2) Receive and File Administrative & Finance Committee Minutes – August 12, 2013
- 3) Receive and File Agency Management Report – August 2013
- 4) Receive and File Construction Progress Report #20 through August 22, 2013, sbX E Street Corridor BRT Project
- 5) Adopt Revisions to Procurement Policy 4000, Sealed Bids, and Procurement Procedure 4000-1, Formal Procurement Procedures
- 6) Authorize Issuance of Purchase Order for Server Hardware
- 7) Award Contract MKT13-65, Bus Stop Shelter Roof Replacement Panels
- 8) Press Articles and Letters of Interest to the Board

Legal Counsel Greene stated amended versions of Procurement Policy 4000 and Procedure 4000-1 were provided to the Board. On motion by Member Yates, seconded by Member Roberts and carried, the Consent Calendar was approved with the amended Procurement Policy and Procedure.

F. DISCUSSION ITEMS

- 1) CEO/General Manager's Report

Interim CEO/General Manager Graham reviewed the CEO/General Manager's report for August 2013.

- 2) Award Contract ITS14-02, Copier Lease and Maintenance

M/S/C (Roberts/Morris) to authorize the Interim CEO/General Manager to award Contract ITS14-02 to SoCal Office Technologies, Inc., of Cypress, CA, for the provision of Copier Lease and Maintenance beginning October 15, 2013 and ending no later than

December 31, 2018, in the amount of \$154,059.16, plus the 3.27% Cost Allocation Plan (CAP) of \$5,037.73, for a total not-to-exceed amount of \$159,096.89.

3) Award Contract MNT14-04, Standby Generator and Automatic Transfer Switch Service

M/S/C (Stanckiewicz/Musser) to authorize the Interim CEO/General Manager to award Contract MNT14-04 to Johnson Power Systems of Riverside, CA, for the provision of Standby Generator and Automatic Transfer Switch (ATS) Service beginning October 15, 2013 and ending no later than October 14, 2015, in the amount of \$26,660, and the authority to exercise three one-year options, extending the contract to no later than October 14, 2018, in the aggregate amount of \$61,135, and for parts and repairs on an as-needed basis in the amount of \$15,000, for a total five-year contract amount of \$102,795, plus a ten percent contingency of \$10,280, bringing the total not-to-exceed contract amount to \$113,075.

4) Award Contract SAS12-17R2, I Street Generator and Block Wall

M/S/C (Musser/Yates) to authorize the Interim CEO/General Manager to award Contract SAS12-17R2 to Hamel Contracting, Inc., of Murrieta, CA, for the provision of I Street Generator and Block Wall, in the amount of \$210,000, plus a 10% contingency of \$21,000, for a total not-to-exceed amount of \$231,000.

5) Authorize Release, Invitation for Bids IFB-MNT14-01, Industrial Chemicals

M/S/C (Graham/Yates) to authorize the Interim CEO/General Manager to release Invitation for Bids IFB-MNT14-01 for the provision of Industrial Chemicals for a one-year base period beginning December 2013 and ending no later than December 2014 with four one-year options extending the contract to no later than December 2018.

6) Authorize Release, Request for Proposals RFP-OPS14-03, Supervisor Vehicle On-Board Video Surveillance System (OBVSS)

M/S/C (Morris/Stanckiewicz) to authorize the Interim CEO/General Manager to release Request for Proposals RFP-OPS14-03, for the provision of the Supervisor Vehicle On-Board Video Surveillance System (OBVSS) for Omnitrans' fleet of fifteen supervisor vehicles and two security vehicles at the East Valley and West Valley facilities for a six-month installation period and a four-year warranty/maintenance period.

7) Authorize Amendment No. 2, Contract ADM09-8, Staff Legal Services and Authorize Release, Request for Proposals RFP-ADM14-12, Staff Legal Services

M/S/C (Riddell/Ovitt) to authorize the Interim CEO/General Manager to execute Amendment No. 2 to extend Contract ADM09-8 with Best, Best and Krieger LLP for the provision of Staff Legal Services for the sbX E Street Corridor project and related legal requirements through contract closeout and any resolution associated with legal matters and authorize the Interim CEO/General Manager to release Request for Proposals RFP-

ADM14-12 for the provision of Staff Legal Services for a two year base period, plus three single year options.

Member Rutherford abstained.

- 8) Authorize Release, Request for Proposals RFP-OPS14-71, Operation of Bus Rapid Transit (BRT) Bus Service

M/S/C (Yates/Lilburn) to authorize the Interim CEO/General Manager to release Request for Proposals No. RFP-OPS14-71 to provide Operation of BRT Bus Service for a two (2) year base period with three (3) one-year options.

Chair Wapner asked if any other member of the public wished to make a statement. A San Bernardino business owner, who did not provide his name, stated the sbX construction was preventing him and other businesses from getting their mail. Chair Wapner directed staff to discuss this with the local businesses and report back on the status of this issue with the Board.

Mike Pharris, Teamsters Local #166, said issues with the contract need to be resolved.

G. PUBLIC HEARING

1. Cancel Public Hearings for Potential Temporary Service Reductions

M/S/C (Ovitt/Riddell) to grant Interim CEO/General Manager authority to cancel the public hearings concerning a potential temporary reduction of up to forty percent (40%) of service related to the Amalgamated Transit Union's (ATU) objection to the U.S. Department of Labor (DOL) regarding Omnitrans' Federal Transit Administration grant funding if action is taken on Assembly Bill 1222 prior to the hearing schedule.

H. BOARD BUSINESS

Closed Session

1. Conference with Labor Negotiator, P. Scott Graham, concerning labor negotiations with Teamsters Local Union No. 166 regarding the Maintenance and Administrative Support Unit, pursuant to Government Code Section 54957.6
2. 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

The Board adjourned to Closed Session at 8:44 a.m. The Board reconvened at 9:11 a.m. Chair Wapner said no reportable action took place during Closed Session.

I. REMARKS AND ANNOUNCEMENTS

None.

J. ADJOURNMENT

The Board adjourned at 9:12 a.m. The next regular meeting is scheduled for November 6, 2013, at 8:00 a.m., with location posted on the Omnitrans website and at Omnitrans' San Bernardino Metro Facility.

Carol Angier, Recording Secretary

ITEM # E2

**ADMINISTRATIVE & FINANCE COMMITTEE
MINUTES
September 9, 2013**

The Administrative & Finance Committee meeting was called to order by Chair Pat Morris at 11:02 a.m. on September 9, 2013.

Committee Members Attending

Mayor Pat Morris, City of San Bernardino – Chair
Mayor Paul Eaton, City of Montclair
Councilmember Frank Gonzales, City of Colton
Vice Mayor Ed Graham, City of Chino Hills
Supervisor Gary Ovitt, County of San Bernardino
Councilmember Dick Riddell, City of Yucaipa
Mayor Pro Tem John Roberts, City of Fontana
Mayor Walt Stanckiewicz, City of Grand Terrace
Councilmember Alan Wapner, City of Ontario

Committee Members Absent

Mayor Pro Tem Paul Foster, City of Redlands

Omnitrans Staff

Scott Graham, Interim CEO/General Manager
Diane Caldera, Interim Director of Operations
Wendy Williams, Director of Marketing
Sam Gibbs, Director of Internal Audit Services
Don Walker, Director of Finance
Ray Lopez, Director of Safety & Security
Marjorie Ewing, Director of Human Resources
Jennifer Sims, Director of Procurement
Anna Rahtz, Acting Director of Planning & Development Services
Milind Joshi, sbX Program Manager
Oscar Tostado, Maintenance Manager
Maurice Mansion, Treasury Manager
Joanne Cook, Contracts Administrator
Vicki Osborne, Assistant to CEO/General Manager
Carol Angier, Administrative Secretary

C. Communication From the Public

None.

D. Possible Conflict of Interest Issues

None

E. Agenda Items

1. Approve Administrative & Finance Committee Minutes of August 12, 2013

M/S (Graham/Eaton) to approve the minutes of the August 12, 2013 Committee meeting. Motion was unanimous by members present.

2. Receive & File Forward Fuel Purchase Program Update for September 2013

Director of Finance Walker said 150,000 gallons, or 45 percent, of Omnitrans' CNG fuel is hedged under the current contract that expires in June 2014. The FY14 fuel budget was increased from \$0.88 to \$0.92 due to increasing CNG prices. The gain on the fuel hedge for September was \$2,725, with an unrecognized gain of \$53,513. Staff will bring a recommendation whether to continue the fuel hedging program before June 2014.

Member Eaton said the Board was initially apprehensive about the fuel hedge program, but it has improved significantly. Interim CEO/General Manager Graham said the second fuel hedge contract eliminated the overhead of the first one, and that has helped with the gain each month.

This was a receive and file agenda item.

3. Receive & Forward to Board of Directors, Construction Progress Report No. 20 through August 22, 2013 – sbX E Street Corridor BRT Project

sbX Program Manager Joshi presented a PowerPoint that showed before and after photos of various locations along the corridor that showed significant progress of the project. Most of the sbX bus stops have the bus arrival sign, ticket machine, and security cameras already installed. A total of 21 of the 23 sbX stations are almost completed, and two of the four park-and-rides are done.

For the Vehicle Maintenance Facility, the parking lot was restriped and the lights were installed. The temporary fueling station is being tested and should be fully operational by next week. The new bus wash should also be completed soon. The Maintenance bay floor is being demolished in order to install the lifts. After the new fueling station is fully operational, the existing fueling station will be demolished, along with the bus wash. We will be able to start revenue service by April 2014.

Member Wapner asked who will maintain the landscaping after the bus stops are completed. sbX Program Manager Joshi said the cities will be responsible for the landscape maintenance. Member Riddell asked if the project was on budget. sbX Program Manager Joshi said the project is expected to be \$4.5 million under budget.

This was a receive and file agenda item.

4. Adopt Revisions to Omnitrans Procurement Policy 4000-1, Formal Procurement Procedures

Director of Procurement Sims said the FTA has not yet responded to Omnitrans' letter regarding the status of the PSR correction of deficiencies. Revising Procurement Policy 4000 is one of the last items to correct, and the FTA is probably waiting for this to be done. FTA updated its circular in March and prohibited piggybacking in their requirements. Revised Policy 4000 will take out the piggybacking option, along with other minor revisions. Member Wapner asked if Omnitrans could piggyback on non-FTA projects. Director of Procurement Sims said we could, but it is very difficult to segregate the funding Omnitrans receives. Member Gonzales asked if Omnitrans goes out to bid on contracts under \$100,000, and Director of Procurement Sims said yes. Only contracts over \$100,000 goes to the Board for release, but the lower contracts do get bid requests. Member Riddell said that piggybacking saves money on the contracts. Have other agencies objected to the revised FTA circular? Director of Procurement Sims said she has not heard of any. Chair Morris suggested bringing this up at future legislative conferences and requested Interim CEO/General Manager Graham to look into this.

The Administrative & Finance Committee meeting adjourned at 11:30 a.m. The next Administrative & Finance Committee Meeting is scheduled for Tuesday, October 15, 2013 at 11:00 a.m., with location posted on the Omnitrans website and at Omnitrans' San Bernardino Metro Facility.

Carol Angier, Recording Secretary

ITEM # E3

AGENCY MANAGEMENT REPORT

September 2013
FISCAL YEAR 2014

Agency Results

Operating Revenue

September total Operating Revenue of \$6,802,567 is 838,817 over budget. Year-to-Date (YTD) Operating Revenue of \$18,662,721 is \$771,198 over budget. The positive monthly variance is driven by the recognition of CNG fuel tax credit as revenue and recognizing the book value of assets (revenue vehicles) received from another agency. The YTD variance is primarily driven by the same items.

Operating Expense

September Operating Expense of \$5,317,948 is \$646,102 or 11% under budget. YTD Operating Expense of \$15,473,197 is \$2,418,951 or 14% under budget. The positive monthly and YTD variance is driven by labor, fringe benefits, material and supplies, services and occupancy all coming in under budget.

Ridership

During the month of September, Omnitrans carried a total of 1,345,543 passengers. This consisted of 1,304,657 on Fixed Route service and 40,886 on Demand Response routes. YTD Ridership is 3,919,719, which reflects a total system decrease of 2.7% when compared to the same period last year.

Revenue Hours/Revenue Miles

During the month of September, Omnitrans provided a total of 63,495 revenue hours reflecting an increase of .88% versus the same period last year. Omnitrans logged a total of 876,397 revenue miles during the month, reflecting an increase of 2.04% when compared to same period last year. YTD Omnitrans provided a total of 198,744 revenue hours reflecting a decrease of .35% versus the same period last year. Also, YTD Omnitrans logged a total of 2,733,535 revenue miles reflecting an increase of .42% when compared to same period last year.

Farebox Recovery Ratio

September farebox revenue for Fixed Route/Omnalink is \$1,018,130 versus \$1,048,456 for the same period last year. This is a decrease of 2.89%. The farebox recovery ratio for the month is 24.34%. YTD farebox revenue for Fixed Route/Omnalink is \$3,296,291 versus \$3,159,305 for the same period last year. This is an increase of 4.34%. YTD farebox recovery ratio is 26.24%.

September farebox revenue for Access is \$135,798 versus \$132,965 for the same period last year. This is an increase of 2.13%. Farebox recovery ratio for the month is 12.43%. YTD farebox revenue for Access is \$406,541 versus \$397,927 for the same period last year. This is an increase of 2.16%. YTD farebox recovery ratio is 14.36%.

Financials

Total Salaries and Benefits of \$3,074,302 are \$383,615 under budget for the month of September. YTD Salaries and Benefits of \$9,302,937 are \$1,070,815 or 10% under budget. The positive monthly and YTD variances are primarily driven by headcount being less than planned.

Total Services are \$148,187 or \$110,252 under budget in September. YTD Total Services are \$257,929 or \$517,387 under budget. The positive monthly and YTD variances are principally driven by professional services being less than planned.

Materials and Supplies are \$766,726 or \$7,587 under budget in September. YTD Materials and Supplies are \$2,046,473 or \$276,465 under budget. The positive monthly and YTD variance is principally driven by CNG fuel being less than planned.

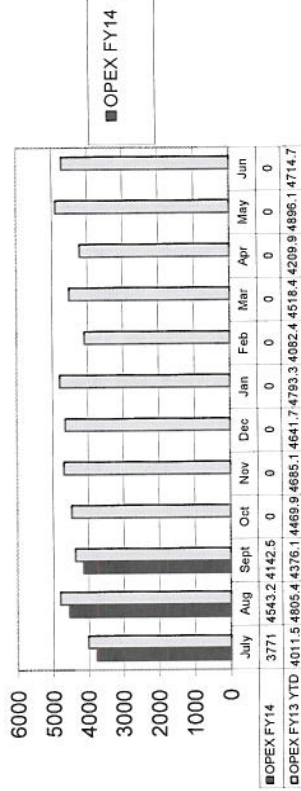
Purchased Transportation is \$732,827 or \$27,485 under budget in September. YTD Purchased Transportation is \$1,976,071 or \$304,866 under budget. The current month and YTD variance is driven by favorable pricing in the current contract based on milestones being met.

Other Expenses are \$553,524 or \$124,645 under budget in September. YTD Other Expenses are \$1,807,219 or \$227,290 under budget. The positive current month variance is principally driven by revenue from the cost allocation plan being higher than planned in the current month. The YTD variance is primarily driven by printing and advertising being less than planned.

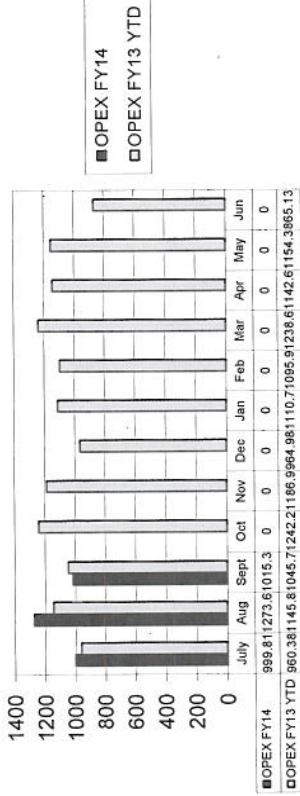
**PERFORMANCE STATISTICS
FISCAL YEAR 2014
September 2013**

	<u>Current Month</u>		<u>YR/YR</u>	<u>Year-To-Date</u>		<u>YR/YR</u>
	<u>September 2013</u>	<u>September 2012</u>	<u>inc/(dec)</u> <u>CURRENT</u>	<u>September 2013</u>	<u>September 2012</u>	<u>inc/(dec)</u> <u>YTD</u>
Total Passenger Revenue & Subsidy						
Fixed Route	\$1,015,278	\$1,045,675	-2.9%	\$3,288,669	\$3,151,825	4.3%
Demand Response	\$138,560	\$135,746	2.1%	\$414,074	\$405,407	2.1%
Total Passengers						
Fixed Route	1,304,657	1,338,146	-2.5%	3,794,403	3,904,471	-2.8%
Demand Response	40,886	39,202	4.3%	125,316	122,715	2.1%
Farebox Recovery Ratio						
Fixed Route/OmniLink	24.34%	23.77%		26.24%	23.76%	
Access	12.43%	13.25%		14.36%	13.58%	
Total Passengers per Revenue Hour						
Fixed Route	26.5	27.6	-4.2%	24.4	25.4	-3.8%
Demand Response	2.9	2.7	6.6%	2.9	2.7	7.1%
Revenue per Passenger						
Fixed Route	0.78	0.78	-0.4%	0.87	0.81	7.4%
Demand Response	3.39	3.46	-2.1%	3.30	3.30	0.0%
Cost per Passenger						
Fixed Route	3.18	3.27	-2.9%	3.28	3.38	-2.8%
Demand Response	27.71	26.49	4.6%	23.41	24.71	-5.2%
Cost per Revenue Hour						
Fixed Route	83.99	90.30	-7.0%	80.19	85.77	-6.5%
Demand Response	79.96	71.71	11.5%	67.46	66.44	1.5%
	<u>Actual</u>	<u>Target</u>				
On Time Performance						
Fixed Route	85.27%	90%				
Demand Response	88.06%	90%				
Headcount	613	669				
(includes PT Operators, excludes IPMO)						

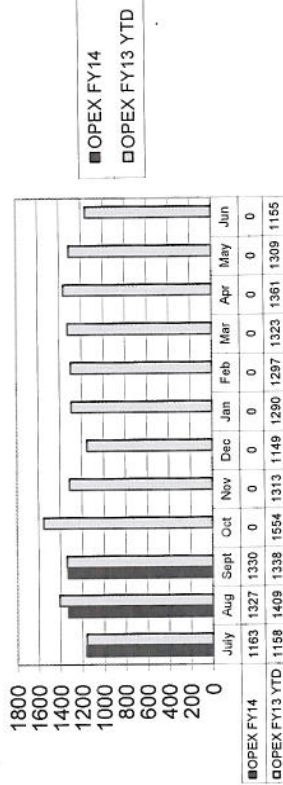
Fixed Route Operating Expense Thousands



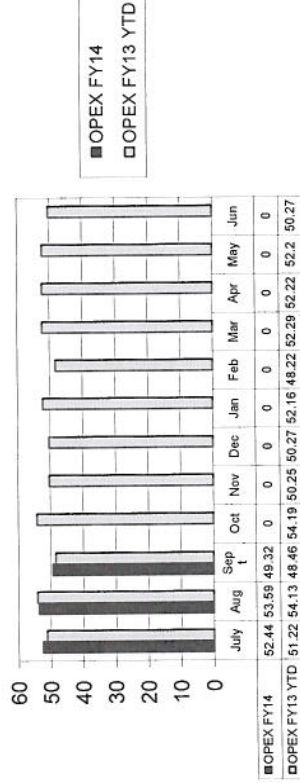
Fixed Route Passenger Revenue Thousands



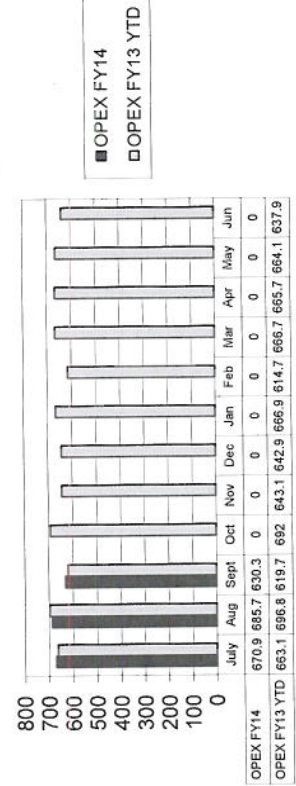
Fixed Route Ridership Thousands



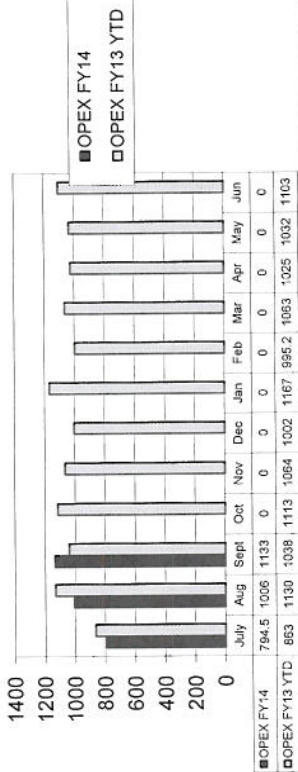
Fixed Route Revenue Hours Thousands



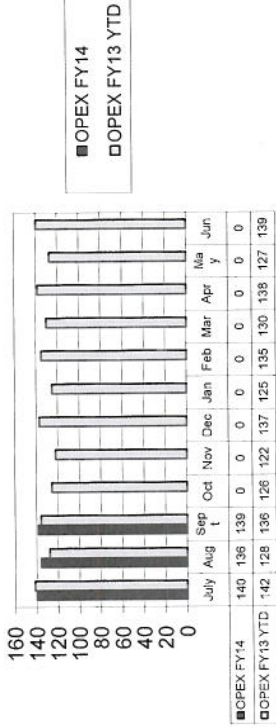
Fixed Route Revenue Miles Thousands



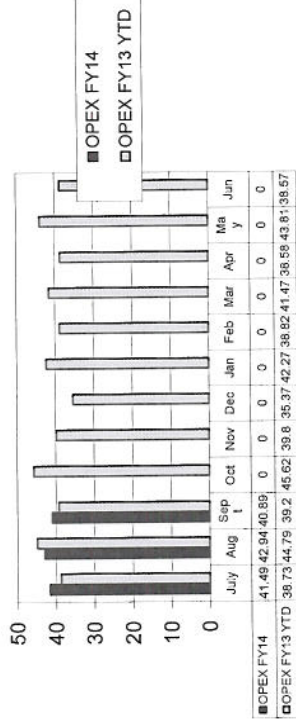
Demand Response Operating Expense Thousands



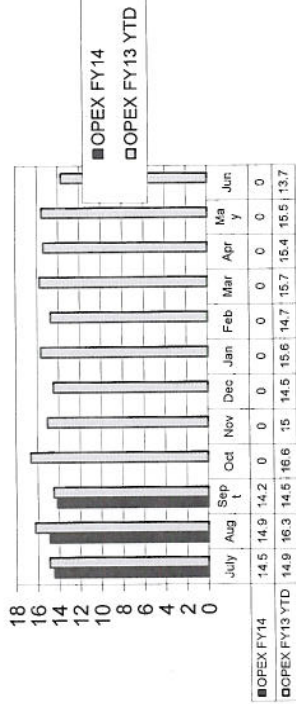
Demand Response Passenger Revenue Thousands



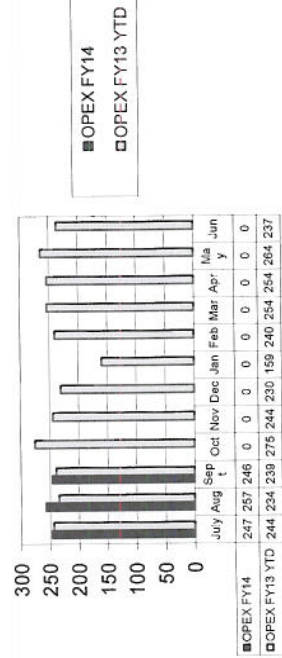
Demand Response Ridership Thousands



Demand Response Revenue Hours Thousands



Demand Response Revenue Miles Thousands



Statement of Operations Fiscal Year: 2014

CURRENT MONTH: September 2013

YEAR-TO-DATE: September 2013

	<u>Actual</u>	<u>Budget</u>	<u>Fav/(Unf)</u>	<u>% of Budget</u>	<u>Operating Revenues</u>	<u>Actual</u>	<u>Budget</u>	<u>Fav/(Unf)</u>	<u>% of Budget</u>
	1,125,569	1,229,823	(104,254)	92%	Passenger Fares	3,615,136	3,689,468	(74,331)	98%
	28,359	27,477	882	103%	Measure I Subsidy - Fares	87,696	82,432	5,264	106%
	397,523	397,523	0	100%	Measure I Subsidy - Operating	1,192,569	1,192,568	1	100%
	27,891	25,000	2,891	112%	Auxiliary Transportation Revenue	74,900	75,000	(100)	100%
	946,977	7,083	939,894	13369%	Non-Transportation Revenue	926,877	21,250	905,627	4362%
	3,029,143	3,029,143	0	100%	LTF Operating	9,087,429	9,087,430	(1)	100%
	145,337	145,337	0	100%	STAF Operating	436,011	436,011	0	100%
	0	0	0	0%	JARC - Operating Assistance	0	0	0	0%
	1,101,769	1,102,455	(686)	100%	Capital Funds for Operations	3,242,103	3,307,364	(65,261)	98%
	6,802,567	5,963,841	838,727	114%	Total Revenues	18,662,721	17,891,523	771,198	104%
					<u>Operating Expenses</u>				
	1,925,563	2,126,187	200,624	91%	Labor	5,919,475	6,378,561	459,086	93%
	1,148,740	1,331,730	182,991	86%	Fringe Benefits	3,383,462	3,995,191	611,729	85%
	148,187	258,439	110,252	57%	Services	257,929	775,317	517,387	33%
	766,726	774,313	7,587	99%	Materials and Supplies	2,046,473	2,322,938	276,465	88%
	260,959	268,350	7,391	97%	Occupancy	579,429	805,050	225,621	72%
	485,104	430,166	(54,938)	113%	Casualty and Liability	1,367,995	1,290,498	(77,497)	106%
	0	4,107	4,107	0%	Taxes and Fees	0	12,321	12,321	0%
	732,827	760,312	27,485	96%	Purchased Transportation	1,976,071	2,280,936	304,866	87%
	61,392	75,797	14,405	81%	Printing and Advertising	66,416	227,390	160,974	29%
	(253,930)	(100,250)	153,681	253%	Miscellaneous Expense	(206,621)	(300,749)	(94,128)	69%
	42,382	34,899	(7,483)	121%	Lease and Rental	82,567	104,696	22,129	79%
	5,317,948	5,964,049	646,102	89%	Total Operating Expense	15,473,197	17,892,148	2,418,951	86%
	1,484,619	(209)	1,484,828		Net Gain (Net Loss)	3,189,524	(625)	3,190,150	
	3,074,302	3,457,917	383,615	89%	Sal & Ben	9,302,937	10,373,752	1,070,815	90%
	553,524	678,170	124,645	82%	Other	1,807,219	2,034,509	227,290	89%

10/21/2013

DATE: November 6, 2013

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

THROUGH: P. Scott Graham, Interim 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 & SUMMARY

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 month of September, 2013. Sufficient funds are available to meet the obligations of the Agency for the next thirty-one days.

SG:MS

OMNITRANS
Treasurer's Report
Month ending September 2013

Institution - Investment Type	Description	Starting Balance	Deposits	Disbursements	Interest Yield	Ending Balance
Cash and Investments Under the Direction of the Treasurer						
Local Agency Investment Fund		\$ 16,684,218.58		\$ (2,400,000.00)	0.25%	
				\$ (3,300,000.00)	0.27%	
					0.25%	
		\$ 16,684,218.58		\$ (5,700,000.00)		
Net LAIF Funds				\$ 10,984,218.58		\$ 10,984,218.58
Fair Marketing Value	Fair Value Factor				1.000273207	\$ 10,987,219.55
Union Bank Money Market GMRA		\$ 2,042,851.76				
	Interest	\$ 65.85		\$ (184,392.50)	0.04%	
		\$ 2,042,917.61		\$ (184,392.50)		
				\$ 1,858,525.11		
				\$ 1,858,525.11		\$ 1,858,525.11
Citybank Morgan Stanley Futures Account		\$ 250,228.11				
	Gain/Loss for month			\$ (10,165.30)		
		\$ 250,228.11		\$ (10,165.30)		
				\$ 240,062.81		\$ 240,062.81
		\$ 1,751,634.09				
	Passenger	\$ 1,206,446.63				
	Grants' Revenue	\$ 7,169,233.44				
	Miscellaneous Revenue	\$ 235,131.63				
	Transfers From (To) LAIF	\$ 5,700,000.00				
	Transfers From (To) Money Market	\$ 184,392.50				
	Transfers From (To) Morgan Stanley Futures Account					
	Accounts Payable			\$ (12,215,180.08)		
	Payroll and Payroll Taxes			\$ (2,109,964.60)		
	Employee Benefits			\$ (182,054.19)		
	Bank Service Charge			\$ (2,880.88)		
Net Union Bank Operating Funds		\$ 16,246,838.29		\$ (14,510,079.75)		
				\$ 1,736,758.54		\$ 1,736,758.54
Petty Cash		\$ 3,700.00		\$ 3,700.00		\$ 3,700.00

Cash and Investments Under the Direction of Fiscal Agents

Wachovia Bank N.A.	\$ 75,000.00					
Workmens' Comp. Adjuster						
York Insurance Services						\$ 75,000.00
Total Cash & Investments						\$ 14,901,266.01

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, Interim 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 6, 2013

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

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

SUBJECT: PAYROLLS AND WARRANTS FOR SEPTEMBER 2013

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

Payroll Period	Amount	Register #
08/21/13-09/03/13	\$332,355.40	18
09/04/13-09/17/13	\$299,278.61	19

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

Payroll Period	Amount	Register #
08/12/13-08/25/13	\$849,723.27	18
08/26/13-09/08/13	\$866,530.46	19

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

Register Date	Amount	Register #
09/05/2013	\$8,322,863.32	641-642
09/12/2013	\$808,109.09	643
09/19/2013	\$543,675.04	644
09/26/2013	\$2,540,532.63	645

I, P. Scott Graham, Interim 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.

SG: ms

ITEM # E4

DATE: November 6, 2013

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

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

FROM: Milind Joshi, sbX Program Manager

SUBJECT: **CONSTRUCTION PROGRESS REPORT NO. 21 THROUGH
SEPTEMBER 25, 2013 - sbX E STREET CORRIDOR BRT PROJECT**

FORM MOTION

Receive and file Construction Progress Report No. 21 for the sbX E Street Corridor BRT Project through September, 25 2013.

This item was reviewed by the Administrative & Finance Committee at its October 15, 2013, meeting and recommended to the Board of Directors for receipt and file.

BACKGROUND

This is Construction Progress Report No. 21 for the sbX E Street Corridor Project.

CONCLUSION

Receive and file Construction Progress Report No.21 for the sbX E Street Corridor BRT Project through September 25, 2013.

PSG:MJ

Attachment



sbX E Street Corridor Bus Rapid Transit (BRT) Project

Construction Progress Report No. 21

As of September 25, 2013

Submitted By:

JACOBS

Contractor:	SBX Corridor - Griffith/Comet VMF – USS Cal Builders
Contractor Contract No.:	IPMO11-5
Project Manager:	Roger Hatton, P.E.
Resident Engineer	Karim Varshochi, P.E. (Corridor) Anni Larkins, P.E. (VMF)
Omnitrans Program Manager:	Andres Ramirez Construction Manager



TABLE OF CONTENTS

- I. Project Status Summary
 - A. Project Description – sbX Corridor
 - B. Summary Status Update – sbX Corridor
 - C. Upcoming Work – sbX Corridor
 - D. Concerns - sbX Corridor
 - E. Project Description - Vehicle Maintenance Facility (VMF)
 - F. Summary Status Update – Vehicle Maintenance Facility (VMF)
 - G. Upcoming Work – Vehicle Maintenance Facility (VMF)
 - H. Concerns - Vehicle Maintenance Facility (VMF)
- II. Project Schedule
 - A. Summary of Project Schedule - sbX Corridor
 - B. Summary of Project Schedule – Vehicle Maintenance Facility (VMF)
- III. RFIs, Submittals, and Non-Conformance Reports
 - A. sbX Corridor
 - B. Vehicle Maintenance Facility (VMF)
- 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. sbX Corridor Photos
 - B. 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 curb 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

In September, the Contractor continued working on the station platforms, installing pavers at Carnegie and Tippecanoe Stations.

In Loma Linda, the base for paver installation was placed at the Anderson/Redlands and Anderson/Prospect Stations. The Anderson Park-and-Ride had completion of the installation of the underground electrical, irrigation work, and completion of the grading and curb installation.

The center running lanes are complete on E Street between Rialto Avenue and 10th Street. Construction and site work including underground conduit was started at the Baseline Station, as well as, installing the reinforcing steel for the platform and placing concrete for station.

Also on E Street, between 6th and 2nd Streets, irrigation and landscape were installed and installation of median island landscape from 2nd Street to Court Station was completed.

In the monthly Risk Register review meetings, the CM team, along with Omnitrans staff, reviewed various risks that are likely to occur. These risks classified based on the likelihood of occurrence and have been assigned rough order of magnitude costs.

Based on current projections, construction projected for completion within the overall project goal. However, it is likely that the contractor may submit delay claims and other costs towards the end of the project. The CM team is committed to providing Omnitrans the input necessary so that appropriate decisions can be made.

As the corridor construction is winding down, the CM team will commence other typical end-of-project activities. The activities include close-out planning, warranty activities, O & M manuals, and assistance in project hand-off to the appropriate parties.

C. Accomplishments – sbX Corridor

- Energizing SCE services for 9 stations was continued, as well as, the installation of the electric equipment for stations and traffic signals.
- Verizon completed relocation of two Cross Connects on the east side of E Street at 4th and 5th Streets.
- The start of the installation of storm drain to San Timoteo Creek.

D. October Work – sbX Corridor

- Install reinforcing steel and place concrete for Court Station platform.
- Installation of station canopies at Baseline and Court Stations.
- Verizon to complete relocation of Cross Connect on west side of E Street at 4th Street and start relocation of Cross Connect on north side of Hospitality Lane west of Hunts Lane.
- Contractor to prepare Hospitality Lane for final AC pavement from Tippecanoe to E Street. Paving to be scheduled for completion by the end of October.
- Complete AC paving at Anderson Park and Ride.
- Installation of butterfly valves and gate valves on the south side of Hospitality Lane.
- Complete storm drain installation at San Timoteo Creek.

E. Project Description – Vehicle Maintenance Facility (VMF)

The Omnitrans' Vehicle Maintenance Facility is a 4.4 acre facility which maintains and services the Omnitrans' bus fleet which is 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, 3-lane CNG fueling station, and re-

configuring bus parking area. Modifications to the maintenance building will also be made in order to accommodate Omnitrans' 60-foot articulated bus fleet.

F. Summary Status Update – Vehicle Maintenance Facility (VMF)

In September 2013 the Contractor completed testing and commission work at the temporary fuel island (Building D), which the Agency accepted effective September 17, 2013.

The Agency turned over the existing fuel island (Bldg C) to the Contractor effective September 19, 2013. A follow-up bird survey was conducted, and it was determined that the active nests found in July 2013 were empty. The Contractor moved k-rail to secure this location and started equipment removal.

Overhead utility work for electrical, HVAC, plumbing and mechanical at Maintenance Building A is ongoing per Contract and the changed scope in Change Order No. 13.

Minor modifications to the 30-yd trash compactor were requested by the Agency, and delivery and installation of the compactor is expected to occur by September 30, 2013.

Resumption of metal stud framing, drywall, and rough-in electrical work at the new Battery Room at Building A is pending issuance of a change order for revisions to the shaft framing.

Construction of the catch basin for the emergency eyewash/shower remains on hold pending final approval from the Agency. Deferment of this work has no impact to the project schedule.

Since the current forecast indicates that substantial completion is going to be delayed, the CM team in consultation with Omnitrans project staff has developed a plan "B" which will ensure that the critical elements of VMF – the maintenance building, bus wash, and fueling facility are available on or before April 30, 2014 to ensure the successful start of Revenue Operations.

G. Accomplishments – Vehicle Maintenance Facility (VMF)

- Successfully tested and turned the Temporary Fuel Island (Bldg D) to the Agency effective September 17, 2013
- Mobilized to the existing Fuel Island (Bldg C) on September 19, 2013 in preparation for demolition operations.
- Continued overhead utility work in Maintenance Building A since August 5, 2013. Work is ongoing.
- Completed concrete pad construction for the 30-yd trash compactor in August 2013. Delivery and installation of the compactor is expected in late September 2013, and will be turned over to the Agency in October 2013.

H. October Work – Vehicle Maintenance Facility (VMF)

- Work is expected to continue at Maintenance Bldg A, including completion of overhead utilities and start of demolition/civil work for the bus lift pits.
- The Contractor has started to remove equipment at the existing fuel island (Building C). Demolition work is planned to start in early October 2013.
- Complete installation of the 30-yd trash compactor for turnover to the Agency by mid October 2013.
- Resume metal stud framing, drywall, and rough-in electrical work at the new Battery Room at Building A.

II. PROJECT SCHEDULE

The CM team and the Contractors are using the latest scheduling tools (Primavera V. P6), available to manage the project schedule.

Due to the actual field conditions (SBX Corridor and the VMF), many construction activities had to be resequenced, resulting in several revisions in the baseline schedules submitted. As a proactive approach, the CM team has created an internal schedule as a guiding tool that is used to monitor and manage the construction progress.

A. Summary of Project Schedule – sbX Corridor

The schedule updates are being submitted on time. However, before accepting them, the CM team is scrutinizing the validity of the durations, especially the delays indicated by the Contractor.

The August update has been submitted and reviewed. Comments regarding delay days are being issued to the Contractor. The CM team believes that many of the delays are either concurrent in nature or do not constitute “critical path”.

Summary of Project Schedule – Vehicle Maintenance Facility (VMF)

The Contractor is currently working on a combined August/September 2013 Monthly Schedule Update and anticipates submitting it by October 1, 2013.

The project is behind schedule, with approximately (+/-) 180-calendar days of negative float projecting a Substantial Completion Date in early/mid June 2014; however current progress and proactive assessment of upcoming work and durations, and potential risks, is ongoing to ensure further delays can be avoided.

The Agency, Contractor and CM Team are collectively working on identifying options to negotiate time impacts incurred to date, and implement options to ensure timely completion of the work relative to the Revenue Start Date (RSD) of April 30, 2014.

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

A. sbX Corridor

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 – 946
Total Open – 12

Total Submittals – 742
Total Open – 21

Total NCRs - 21
Total Open - 4

Weekly RFI meetings are held every Tuesday morning.
Weekly NCR meetings are held every Thursday morning.

B. 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 (totals are as of September 25, 2013).

Total RFIs – 135
Total Open – 4

Total Submittals – 286
Total Open – 5

Total NCRs – 7
Total Open – 2

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.

SbX Corridor - As of September 20, 2013 there are 327,670 “no-lost time” hours.
VMF - As of September 22, 2013 there are 7127 “no-lost time” hours.

V. PROJECT BUDGET AND COST**TOTAL PROGRAM BUDGET**

BUDGET AS OF AUGUST 30, 2013

Approved Budget	\$191,706,000
Cost to Date	\$125,231,359
Estimate to Complete	\$ 62,019,851
Estimate at Completion	\$187,751,210

SBX CORRIDOR PROJECT COSTS - AS OF AUGUST 30, 2013

	CURRENT AUTHORIZED	CURRENT INVOICES PAID	REMAINING CONTRACT BALANCE
Jacobs	\$11,852,647	\$5,713,251	\$6,139,396
Parsons	\$18,097,876	\$16,841,587	\$1,256,289
Griffith/Comet	\$81,834,453	\$55,397,674	\$26,436,779
Total	\$111,784,976	\$77,952,512	\$33,832,464

VMF CORRIDOR PROJECT COSTS - AS OF AUGUST 30, 2013

	CURRENT AUTHORIZED	CURRENT INVOICES PAID	REMAINING CONTRACT BALANCE
STV Inc.	\$1,046,132	\$901,757	\$144,375
USS Cal Builders	\$11,228,896	\$2,225,425	\$9,003,471
Total	\$12,275,028	\$3,127,182	\$9,147,846

SBX CORRIDOR CONTRACT TIME

Activity	Days	Date
Notice to Proceed		11/21/11
Calendar Days per Original Contract	730	
Original Completion Date		12/21/13
Calendar Days Completed as of September 25, 2013	643	
CCO Time Extension to Date	0	
Required Completion Days/Date as of September 25, 2013	87	12/21/13
Forecasted Completion Date as of September 25, 2013		TBD*
Percent Time Elapsed	88%	

VMF CONTRACT TIME

Activity	Days	Date
Notice to Proceed		12/10/12
Calendar Days per Original Contract	425	
Original Completion Date		02/08/14
Calendar Days Completed as of September 25, 2013	217	
CCO Time Extension to Date	0	
Required Completion Days/Date as of September 25, 2013	208	02/08/14
Forecasted Revenue Start Date as of September 25, 2013		04/30/14
Percent Time Elapsed	51%	

*** CONSTRUCTION COMPLETION DATE WILL BE AVAILABLE UPON COMPLETION OF THE SCHEDULE UPDATE.**

CHANGE ORDERS**SBX CORRIDOR CONTRACT CHANGE ORDERS - As of September 25, 2013**

Change Order Status	Amount Approved
Approved Change Orders	\$17,349,215
Pending Change Orders	\$763,390
Potential Change Orders	\$2,360,198
Total	\$20,472,803

VMF CONTRACT CHANGE ORDERS - As of September 25, 2013

Change Order Status	Amount
Approved Change Orders	\$556,847
Pending Change Orders	\$38,150
Potential Change Orders	\$1,352,398
Total	\$1,947,395

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.

Upon the approval of the final to date schedule, an analysis will be completed to determine the effect of the change orders on the scheduled completion date.

VI. Project Photographs

SBX CORRIDOR PROGRESS PHOTOS



1. Baseline Station - Excavation



2. Baseline Station - Excavation



3. Anderson/Redlands Park-and-Ride Storm Drain Activities.



4. Baseline East Station – Water Services

VMF PROGRESS PHOTOS

1. Contractor installing HVAC in Maintenance Facility (Building A).



2. Temporary Fuel Island (Building D) completed and ready for turnover to Agency for full operation/functionality.

IPMO/sbX Project Cost Report
Period Ended 8/31/13

Description	Current Budget	Expenditures \$	%	Remaining Budget	Estimate to Complete	Estimate at Completion	Budget Forecast Variance
BRT Construction	84,637,000	55,494,017	65.6%	29,142,983	31,606,773	87,100,790	(2,463,790)
Vehicle Maintenance Facility (VMF) Construction	8,131,000	2,225,425		5,905,575	12,296,042	14,521,467	(6,390,467)
Vehicles - Design & Manufacturing	16,628,000	14,800,861	89.0%	1,827,139	1,537,869	16,338,730	289,270
ROW Acquisition Services	10,357,000	10,774,663	104.0%	(417,663)	963,737	11,738,400	(1,381,400)
3rd Party Utilities Design & Relocation	1,003,000	970,965	96.8%	32,035	135,152	1,106,117	(103,117)
BRT Design	17,849,400	16,841,587	94.4%	1,007,813	1,256,289	18,097,876	(248,476)
VMF Design	1,007,600	916,157	90.9%	91,443	529,775	1,445,932	(438,332)
Other Professional, Technical & Management Services	34,020,000	23,227,684	68.3%	10,792,316	13,674,214	36,901,898	(2,881,898)
SUB-TOTAL	173,633,000	125,251,359		48,381,641	61,999,851	187,251,210	(13,618,210)
Unallocated Contingency	18,073,000	-		18,073,000	4,454,790	4,454,790	13,618,210
TOTAL	191,706,000	125,251,359	65.3%	66,454,641	66,454,641	191,706,000	-

**IPMO/sbX Project
Through 8/31/13**

Standard Cost Category (SCC)	Description	Approved Current Budget	Expenditures \$ %	Remaining Budget	Estimate to Complete	Estimate at Completion	Budget Forecast Variance
10	GUIDEWAY & TRACK ELEMENTS	19,725,000	11,566,469 58.6%	\$ 8,158,531	\$ 7,541,125	\$ 19,107,594	\$ 617,406
10.02	Guideway: At-grade semi-exclusive (allows cross-traffic)	\$ 18,353,000	9,829,529 53.6%	\$ 8,523,471	\$ 7,018,820	\$ 16,848,349	\$ 1,504,651
10.03	Guideway: At-grade in mixed traffic	\$ 1,372,000	1,736,940 126.6%	\$ (364,940)	\$ 522,305	\$ 2,259,245	\$ (887,245)
20	STATIONS, STOPS, TERMINALS, INTERMODAL	14,917,000	8,732,875 58.5%	\$ 6,184,125	\$ 5,603,204	\$ 14,336,079	\$ 580,921
20.01	At-grade station, stop, shelter, mall, terminal, platform	14,917,000	8,732,875 58.5%	\$ 6,184,125	\$ 5,603,204	\$ 14,336,079	\$ -
30	SUPPORT FACILITIES: YARDS, SHOPS, ADMIN. BLDGS	\$ 8,131,000	2,225,426 27.4%	\$ 5,905,574	\$ 12,296,041	\$ 14,521,467	\$ (6,390,467)
30.02	Light Maintenance Facility	\$ 4,265,000	1,729,156 40.5%	\$ 2,535,844	\$ 9,452,374	\$ 11,181,530	\$ (6,916,530)
30.05	Yard and Yard Track	\$ 3,866,000	496,270 0.0%	\$ 3,369,730	\$ 2,843,667	\$ 3,339,937	\$ 526,063
40	SITEWORK & SPECIAL CONDITIONS	34,271,000	20,766,186 60.6%	\$ 13,504,814	\$ 8,415,017	\$ 29,181,203	\$ 5,089,797
40.01	Demolition, Clearing, Earthwork	\$ 4,741,000	281,559 5.9%	\$ 4,459,441	\$ 174,000	\$ 455,559	\$ 4,285,441
40.02	Site Utilities, Utility Relocation	\$ 4,993,000	7,905,357 158.3%	\$ (2,912,357)	\$ 2,640,658	\$ 10,546,015	\$ (5,553,015)
40.05	Site structures including retaining walls, sound walls	\$ 90,000	67,969 75.5%	\$ 22,031	\$ 98,283	\$ 166,252	\$ (76,252)
40.06	Pedestrian / bike access and accommodation, landscaping	\$ 6,925,000	1,983,071 28.6%	\$ 4,941,929	\$ 2,675,604	\$ 4,658,675	\$ 2,266,325
40.07	Automobile, bus, van accessways including roads, parking lots	\$ 3,601,000	3,335,428 92.6%	\$ 265,572	\$ 911,921	\$ 4,247,349	\$ (646,349)
40.08	Temporary Facilities and other indirect costs during construction	\$ 13,921,000	7,192,802 51.7%	\$ 6,728,198	\$ 1,914,551	\$ 9,107,353	\$ 4,813,647
50	SYSTEMS	\$ 16,727,000	15,379,452 91.9%	\$ 1,347,548	\$ 5,012,584	\$ 20,392,036	\$ (3,665,036)
50.02	Traffic signals and crossing protection	\$ 10,810,000	5,477,547 50.7%	\$ 5,332,453	\$ 1,020,489	\$ 6,498,036	\$ 4,311,964
50.05	Communications	\$ 4,210,000	6,823,349 162.1%	\$ (2,613,349)	\$ 1,470,651	\$ 8,294,000	\$ (4,084,000)
50.06	Fare collection system and equipment	\$ 1,707,000	3,078,556 180.3%	\$ (1,371,556)	\$ 2,521,444	\$ 5,600,000	\$ (3,893,000)
	Pending Change Orders				\$ 3,756,694	\$ 3,756,694	\$ (3,756,694)
	Risk				\$ 1,433,300	\$ 1,433,300	\$ (1,433,300)
Construction Subtotal (10-50)		93,771,000	58,670,408 62.6%	\$ 35,100,592	\$ 44,057,965	\$ 102,728,373	\$ (8,957,373)
60	ROW, LAND, EXISTING IMPROVEMENTS	\$ 6,532,000	\$ 5,847,342 89.5%	\$ 684,658	\$ 1,251,923	\$ 7,099,265	\$ (567,265)
60.01	Purchase or lease of real estate	\$ 6,327,000	5,749,978 90.9%	\$ 577,022	\$ 1,144,287	\$ 6,894,265	\$ (567,265)
60.02	Relocation of existing households and businesses	\$ 205,000	97,364 47.5%	\$ 107,636	\$ 107,636	\$ 205,000	\$ -
70	VEHICLES	\$ 16,628,000	\$ 14,800,861 89.0%	\$ 1,827,139	\$ 1,537,869	\$ 16,338,730	\$ 289,270
70.04	Bus	\$ 15,448,000	14,800,861 95.8%	\$ 647,139	\$ 630,821	\$ 15,431,682	\$ 16,318
70.06	Non-revenue vehicles	\$ 250,000	- 0.0%	\$ 250,000	\$ -	\$ -	\$ 250,000
70.07	Spare parts	\$ 930,000	- 0.0%	\$ 930,000	\$ 907,048	\$ 907,048	\$ 22,952
80	PROFESSIONAL SERVICES	56,702,000	45,912,748 81.0%	\$ 10,789,252	\$ 15,172,094	\$ 61,084,842	\$ (4,382,842)
80.01	Preliminary Engineering	\$ 12,921,000	12,876,525 99.7%	\$ 44,475	\$ 17,502	\$ 12,894,027	\$ 26,973
80.02	Final Design	\$ 7,261,000	6,658,659 91.7%	\$ 602,341	\$ 1,480,257	\$ 8,138,916	\$ (877,916)
80.03	Project Management for Design and Construction	\$ 15,997,000	9,770,732 61.1%	\$ 6,226,268	\$ 4,951,969	\$ 14,722,701	\$ 1,274,299
80.04	Construction Administration & Management	\$ 6,632,000	5,713,251 86.1%	\$ 918,749	\$ 6,139,397	\$ 11,852,648	\$ (5,220,648)
80.05	Professional Liability and other Non-Construction Insurance	\$ 1,112,000	- 0.0%	\$ 1,112,000	\$ 500,000	\$ 500,000	\$ 612,000
80.06	Legal; Permits; Review Fees by other agencies, cities, etc.	\$ 10,596,000	10,893,581 102.8%	\$ (297,581)	\$ 1,336,969	\$ 12,230,550	\$ (1,634,550)
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	\$ 721,000	\$ 721,000	\$ (1,000)
Subtotal (10-80)		\$ 173,633,000	\$ 125,231,359 72.1%	\$ 48,401,641	\$ 62,019,851	\$ 187,251,210	\$ (13,618,210)
90	UNALLOCATED CONTINGENCY	18,073,000	- 0.0%	\$ 18,073,000	\$ 4,454,790	\$ 4,454,790	\$ 13,618,210
Subtotal (10-90)		191,706,000	125,231,359 65.3%	\$ 66,474,641	\$ 66,474,641	\$ 191,706,000	\$ -
100	FINANCE CHARGES	-	-	\$ -	\$ -	\$ -	\$ -
TOTAL PROJECT COST (10-100)		191,706,000	125,231,359 65.3%	\$ 66,474,641	\$ 66,474,641	\$ 191,706,000	\$ -

ITEM # E5

DATE: November 6, 2013

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

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

FROM: Milind Joshi, sbX Program Manager

SUBJECT: sbX E STREET CORRIDOR BRT PROJECT QUARTERLY REPORT –
SEPTEMBER 2013

FORM MOTION

Receive and file sbX Quarterly Report for the sbX E Street Corridor BRT Project through September 2013.

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 2013 for the sbX E Street Corridor Project.

CONCLUSION

Receive and file sbX Quarterly Report for the sbX E Street Corridor BRT Project through September 2013.

PSG:MJ

Attachment

sbX Project Quarterly Update – November 2013

For Period: July 2013 to September 2013

Safety:

As of September 30, 2013, the construction team has performed over 325,000 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 (09-30-2013): \$131,825,236
Estimate-At-Completion: ~\$187,300,000

Schedule:

60-Foot Articulated Buses: Received all 14 buses
Revenue Operations Start: April 30, 2014

Construction:

Corridor construction: The construction of the last three (3) sbX stations out of 23 stations has started. The construction of center-running lanes is completed. The construction activities at the Park-N-Ride facility in Loma Linda are in full swing. Majority of the utilities are relocated. Right of Way settlement negotiations are ongoing on four properties. The final cap and the striping of the newly constructed street sections scheduled to start by the end of October. Traffic Signal and landscaping activities are substantially complete.

Vehicle Maintenance Facility (VMF):

Construction of the temporary fueling station is completed. It has been put in service after satisfactory start-up and testing. The demolition activities at the existing fueling station are scheduled to start by mid-October. The construction activities pertaining to the Maintenance bays, battery room, tire rack, and the trash compactor are in advance stages.

The removal of Underground Storage Tank (UST) and the demolition of the existing bus wash facility are scheduled in October/November timeframe.

60-Foot Articulated Buses:

All of the fourteen (14) 60-foot articulated buses have been received. Omnitrans staff is currently engaged in the field-testing of the buses.

FTA Quarterly Review Meeting:

A Quarterly Meeting was conducted on August 27, 2013. The next quarterly meeting is scheduled on December 3, 2013.

ITEM # E6

DATE: November 6, 2013

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

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

FROM: Milind Joshi, sbX Program Manager

SUBJECT: **sbX E STREET CORRIDOR BRT PROJECT - PUBLIC OUTREACH
PROCESS AND PROPERTY/BUSINESS OWNER ISSUES REPORT**

FORM MOTION

Receive and file Public Outreach Process and Property/Business Owner Issues Report for the sbX E Street Corridor BRT Project.

BACKGROUND

A business owner appeared at the October 2, 2013, Board Meeting to raise concerns with construction activities underway on the sbX E Street Corridor BRT Project. The Board, at that time, instructed staff to bring back a report providing the resolution of the issue, as well as provide the outreach process used to mitigate issues with property/business owners throughout the Project's construction.

Accordingly, below is a summary report prepared by Westbound Communications, the public relations firm for the sbX project, that addresses the concerns raised by at the Board Meeting.

1. Gary Walbourne (Pride Envelope):

Background: Omnitrans has been in contact with Mr. Walbourne for several years throughout the pre-construction and construction process. Mr. Walbourne receives project communications regularly and attends many project meetings. In addition, public outreach team members have made themselves available to Gary via personal cell phones and have visited him numerous times at his place of business.

Claim #1: *Receives no United States Postal Service mail due to loss of street parking*

Resolution: The public outreach team set up a meeting with the United States Postal Service site manager on October 8, 2013, to discuss Mr. Walbourne's

concerns. According to the site manager, mail delivery is the number one priority for his mail carriers. The only reason mail delivery is not completed is because access to a property is impeded in the form of a street closure or there is a safety concern. The site manager stated that even with sbX construction on E Street, that alone would not stop delivery of the mail. Furthermore, while certain areas on E Street will no longer have parking, the United States Postal Service will continue to stop at locations and put on the flashing lights while mail is delivered. In addition, he indicated that it is possible that Mr. Walbourne is not receiving mail six days a week because there is no mail addressed to him on some days. NOTE: While Mr. Walbourne reported that he was not receiving mail at the Board Meeting, he stated to Omnitrans staff afterward and the sbX public outreach team members on October 9, 2013, that he was, in fact, receiving mail four times a week.

In addition, the sbX public outreach team went with Mr. Walbourne to the post office to meet with the same United States Postal Service site manager on October 9, 2013, and re-confirmed the aforementioned details with Mr. Walbourne and indicated he would speak to his mail carriers, as a courtesy. Mr. Walbourne agreed to note the days he did not receive mail and to work with the USPS to determine accurate causes such as no mail, new carrier, safety concerns, and/or blocked access. Mr. Walbourne was appreciative of the effort made by the public outreach team and the USPS site manager to ensure he receives all mail deliveries. He will notify the public outreach team if there are any issues in the future.

When the public outreach team met with Mr. Walbourne, he made some additional claims/complaints, which were addressed as follows:

Claim #2: *Missing Union Street sign*

Resolution: Union Street sign was installed October 2, 2013.

Claim #3: *Loss of Street Parking*

Resolution: Not an Omnitrans issue. City is aware of this concern and needs to address.

Claim #4: *One-Way Street at Union*

Resolution: Not an Omnitrans issue. City is aware of this concern and needs to address.

sbX Public Outreach Process

Omnitrans has been engaged with the public throughout the planning, design and construction phases of the E Street Corridor sbX Bus Rapid Transit (BRT) project. The Public Outreach process includes:

Public Participation in Omnitrans sbX Events (planning):

- Town-hall meetings
- Scoping meetings

At these meetings, staff was able to receive public input, which was incorporated into the planning phase.

Omnitrans Participation in/Sponsorship of Community Events:

- Parades/Street Fairs/Employee Fairs

Staff distributes general information materials and promotional items; markets electronic updates and gathers survey data.

Project Presentations

- Chambers of Commerce, Service clubs and civic organizations
- Neighborhood Watch and Homeowner Association (HOA) meetings

Power Point presentations followed by Q&A (sometimes done in roundtable or fireside-chat format).

Door-to-door business outreach to inform business and property owners of upcoming construction activities in their neighborhood and relay concerns/issues to the Construction Management Team.

Distribution of safety flyers to schools, businesses and residents on and near the corridor.

Weekly Construction Updates and Monthly e-newsletters distributed through an ever-expanding e-mail database.

Monthly Construction Status Meetings at which individuals, organizations and stakeholders can meet directly with members of the Construction Management Team to voice Project concerns.

Social Media Platforms to allow the public to stay informed daily about project activities.

24-hour helpline (855-729-6397) to receive calls on construction-related issues, which are brought to the attention of the Construction Management Team.

CONCLUSION

The above information is provided in response to speaker comments raised at the October 2, 2013, Board Meeting and recommended for receipt and file.

PSG:MJ

ITEM # E7

DATE: November 6, 2013

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

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

FROM: Donald Walker, Director of Finance

SUBJECT: **OMNITRANS' DIRECTOR OF FINANCE QUARTERLY REPORT –
FORWARD FUEL PURCHASES THROUGH SEPTEMBER 2013**

FORM MOTION

Receive and file Omnitrans' Director of Finance Quarterly Report on Forward Fuel Purchases for the period of July through September 2013.

BACKGROUND

This report is submitted in order to comply with the requirements of the Omnitrans Forward Fuel Purchase Policy and Procedure, which requires that Omnitrans submit, at a minimum, an update to the Board semi-annually. At the request of a Board Member, Omnitrans is reporting the status of the program on a quarterly basis.

This program was implemented on May 6, 2009, to increase the predictability of Omnitrans costs and reduce operational uncertainty in the event of dramatic fuel price increases in the open market.

A new hedge was established on January 17, 2012, fixing the price of 150,000 gallons of fuel per month for Omnitrans beginning in February 2012 and continuing through June 2014. The Board authorized the Agency to participate in the New York Mercantile Exchange (NYMEX) market through Morgan Stanley in order to lower the cost of the hedging transaction itself.

Under this hedge program, the hedge cost is averaged over the entire hedge period thereby fixing the per gallon fuel cost for 29 months. In the past, the prices were averaged over periods coinciding with the Agency's fiscal years. The principal objective for the hedge program is to better forecast future compressed natural gas (CNG) cost so the Agency can reduce budgetary uncertainty, volatility risk, and better allocate approved funding towards customer facing transit services.

For the first quarter in FY2014 (July 2013 through September 2013), Omnitrans budget for CNG was \$1,011,959. Before recognizing the gain on the hedge transaction, CNG expenses through September total \$920,714. Including the gain of \$5,581 for the same period, the Agency has a favorable budget variance on CNG of \$96,826 or 90.4% of the budget.

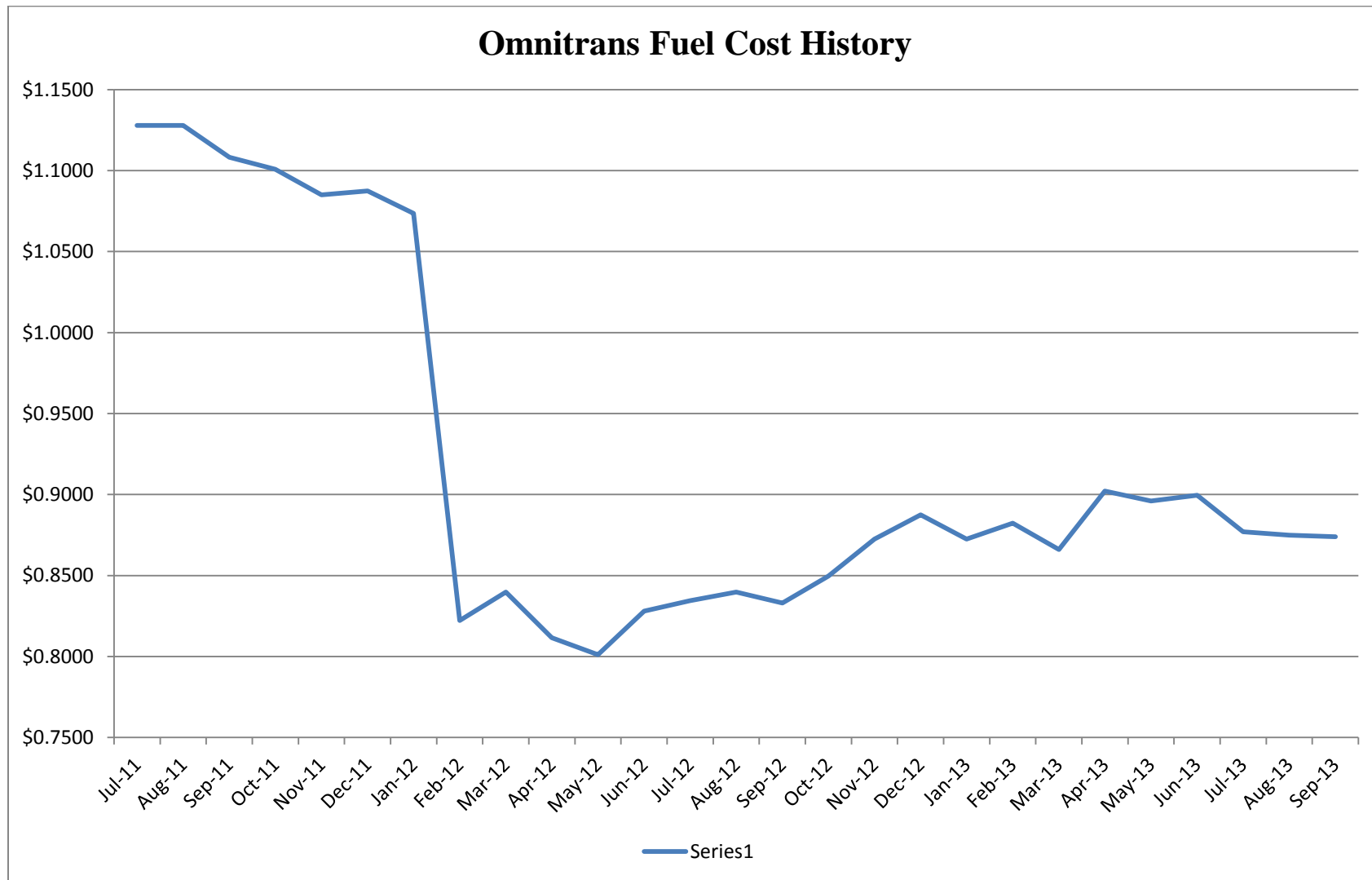
During the last quarter, the price for natural gas averaged \$.29567 per gallon. The hedged price used for approximately 45% of our CNG requirements is set at \$.2768 through June of 2014. Since the implementation of this new hedge program, the Agency has realized a loss of \$44,444. There is an unrealized gain of approximately \$53,513 on contracts that remain open (November 2013 through June 2014). If the market trend continues, Omnitrans is expected to realize a loss of \$9,069 for this 29 month hedge program.

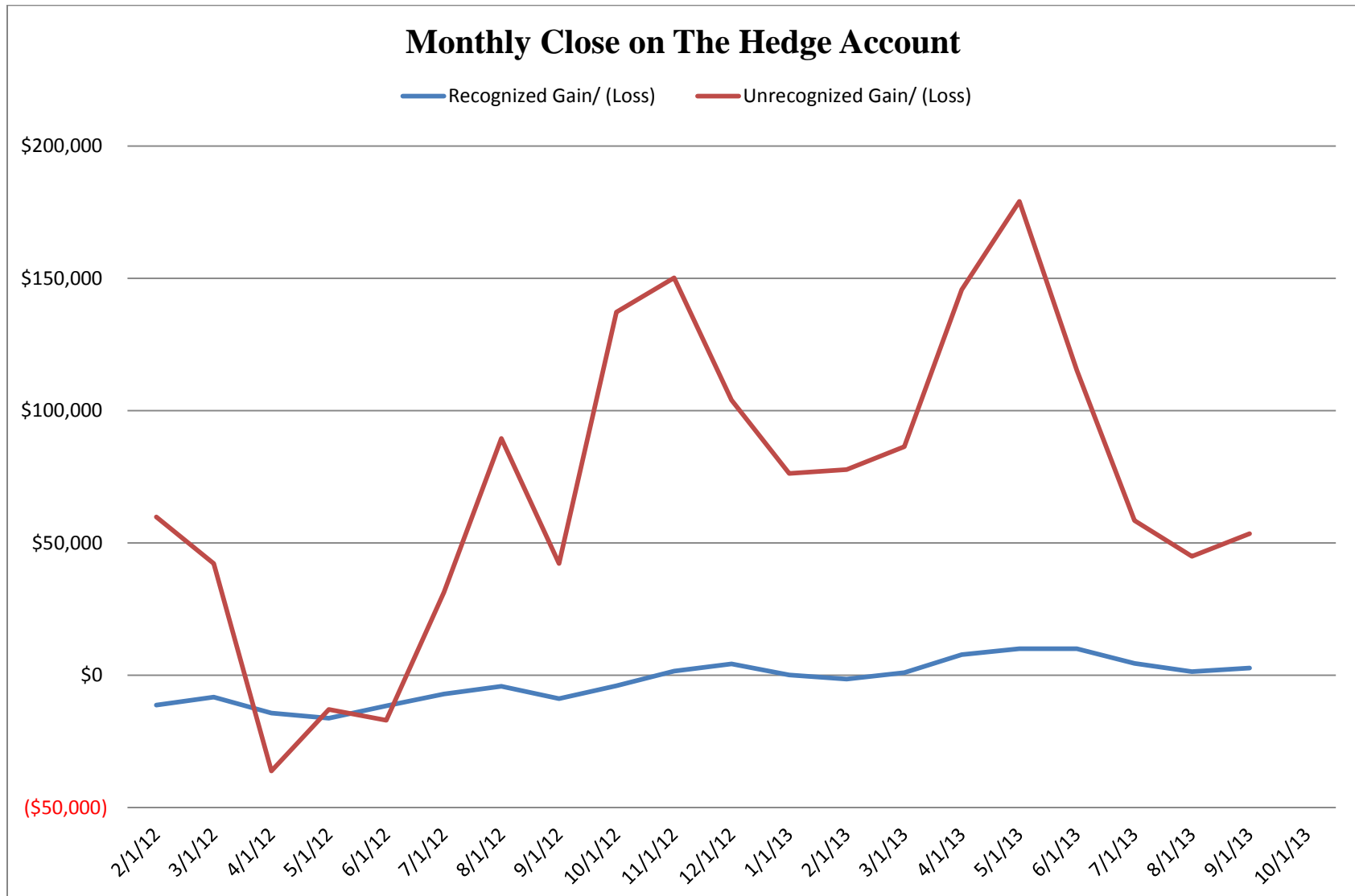
Fuel Hedge Performance History for the Quarter

	Jul-13	Aug-13	Sep-13
Spot Market Price	\$0.30636	\$0.28587	\$0.29479
Hedge Price	\$0.27680	\$0.27680	\$0.27680
Difference	\$0.02956	\$0.00907	\$0.01799
Gain/(Loss) on Hedge	\$4,438	\$1,375	\$2,725
To Date Gain/(Loss) on Hedge	(\$48,544)	(\$47,169)	(\$44,444)
Unrecognized Gain/(Loss) on Open Positions	\$58,425	\$44,888	\$53,513

Staff will make its recommendation to the Administrative and Finance Committee and to the Board of Directors on whether to extend or terminate the hedge program within the next eight months.

PSG:dw





ITEM # E8

DATE: November 6, 2013

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

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

SUBJECT: KEY PERFORMANCE INDICATORS – FY 2014 1ST QUARTER REPORT

FORM MOTION

Receive and file the Key Performance Indicators (KPIs) 1st Quarter Report for Fiscal Year 2014.

BACKGROUND

The Key Performance Indicators were first presented to the Board of Directors during the performance evaluation of the former CEO/General Manager 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 2014 (July 2013 – Sept 2013).

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.

The Key Performance Indicators differ from the Management Plan in that the Management Plan focuses on the larger picture and identifies challenges that lie ahead over the next several years, while the KPIs more specifically tie in to the day-to-day management/operation of the Agency.

A few highlights for the 1st fiscal quarter of 2014 include:

Cost Effectiveness (KPI #1)

Cost per Hour for Fixed Route and Access – Results for the quarter in the cost per hour for fixed route and Access are both favorable. The cost per hour for fixed route for the quarter was \$80.23 compared to the goal of \$90.00, and the cost per hour for Access was \$67.47 vs. the goal of \$70.59.

Service Performance (KPI #2)

Ridership – Growth – Ridership for the quarter finished down at -2.3%. Productivity for Passengers Per Hour Access is at 2.85, just below the goal of 3. However, the Passengers Per Hour Fixed Route was 24.4, exceeding the goal of 23.

Complaints – Per 100,000 Boardings/Compliments – Fixed Route – Complaints for the quarter were 11.4 complaints compared to the goal of 10 and compliments came in favorably at 2.7 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 18.4 compared to the goal of 15, and compliments at 0 vs. the goal of .5.

Reliability (KPI #3)

Mechanical/Mean Distance Between Failures (MDBF) – Quarter end results show the mean distance between failures at 5,162, which is under the goal of 6,500.

On-time Performance Fixed Route and Demand Performance – Fixed Route on time Performance was at 86.2 % and Demand Performance was at 87.64 % for the quarter compared to goals of 90% and 92-95% respectively.

Budget (KPI #4)

Operating Revenue – At the end of the current quarter, operating revenue received and recorded is at 104%, above the goal of 90%. Operating Expenses – Operating expenses recorded for the quarter are at 86%, below the goal of 90%.

Safety & Security (KPI #5)

Injuries – Employee – The quarter ended with 14 employee injuries reported. This is on track to be 35% below the target of only 85 injuries per year.

Labor (KPI #6)

Employee Absenteeism – Represented – The total for the quarter is 28,368 hours which represents a 3.72% increase from last year's numbers.

Turnover – The quarter ended with a 3.63% turnover rate compared to the goal of <8% for the year.

sbX E Street Corridor Project (KPI #7)

The estimated cost at completion is projected to be around \$187.4 million, which is below the approved budget of \$191.7 million. The projected Revenue Start Date (RSD) is April 30, 2014.

PSG

Omnitrans Performance Indicators

Fiscal Year 2014 - As of September, 2013				
Key Performance Indicators	Goal	Strategy	YTD	Lead
1. Cost Effectiveness				
Cost per hour - Fixed Route	\$90.00	Efficient use of resources; All Directors to work with departments to ensure cost reductions/budget compliance with top performance	\$80.23	Donald Walker
Cost per hour - Access	\$70.59	Efficient use of resources; Operations to work with Contractor to ensure budget compliance with top performance	\$67.47	Donald Walker
Fare recovery ratio*	23%	Adhere to the operating budget- Build ridership on continuing service- post service adjustments	24.06%	Donald Walker Anna Rahtz Wendy Williams
2. Service Performance				
Ridership - Growth	5.30%	Develop Marketing initiatives to attract new and retain existing riders	-2.30%	Wendy Williams
Productivity - Passengers Per Hour - Fixed Route	23	Focus service on most productive service offerings; eliminate unproductive service offerings Consistently assess routes, schedules, headways, etc.	24.4	Anna Rahtz
Productivity - Passengers Per Hour - Access	3	Monitor service delivery to find efficiencies, implement and expand on the trip repeater program	2.85	Diane Caldera
Complaints - Per 100,000 boardings Compliments- Fixed Route	10 complaints; 1 compliment	Monitor customer feedback to target improvement efforts Continuous customer service training for Operators; Timely follow up and correction on complaints	11.4/2.7	Wendy Williams Diane Caldera
Complaints - Per 100,000 boardings Compliments- Demand Response	15 complaints .5 compliment	Monitor customer feedback to target contractor improvement efforts; Timely follow up and correction on complaints	18.4/0.0	Wendy Williams Diane Caldera
3. Reliability				
Mechanical/MDBF	6,500	Buses are well maintained, on schedule, fueled and cleaned; Operator training	5,162	Jack Dooley
Loss of Service - Operations	<500 hours per month	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.	26.17	Diane Caldera
Loss of Service - Maintenance	<35 hours per month	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.	174.27	Jack Dooley
Equipment Availability	100%	Equipment is well maintained with parts available for repair; Operate the fleet with no more than 20% spares	98%	Jack Dooley
On-time Performance- Fixed Route	90%	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	86.20%	Diane Caldera Anna Rahtz
On-time Performance- Demand Response	92% - 95% - per contract	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	87.64%	Diane Caldera
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	Diane Caldera
4. Budget				
Operating Revenue	>95%	Ensure all Operating Revenues are recorded and received timely	104%	Donald Walker
Operating Expenses	>90%	Ensure all Operating Expenses are appropriate and accurately recorded	86%	Donald Walker
5. Safety & Security				
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	14	Marjorie Ewing Ray Lopez
Losses/Claims - Passengers (FY)	80	Passenger education through bus books/on board signage; Operator training and follow up training as needed; ATAP Committee; Safety suggestions	22	Diane Caldera

6. Labor				
Passenger Trips/Employee (Annual)	21,870	Ops - Formula Driven; Maintenance - Based on efficiency. Consistently assess and adjust number of personnel/Train and manage workforce.	25,061	Anna Rahtz Alex Chen
Turnover	<10% exclusive of planned reductions	Continue with the Employer of Choice challenge and increase programs related to satisfaction and retention.	3.63%	Marjorie Ewing
Operations Absenteeism - Represented	<101,200 hours	Reduce charged absences by 10% compared to previous year. Develop management strategies to decrease FMLA usage and industrial injury claims.	29,424	Diane Caldera
Training - Development (Annual)	5,000 hours	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	1,262	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	0	Diane Caldera
Teamsters Represented (Annual)	900 hours	Southern California Regional Transit Training Consortium (SCR TTC), supervision, leadership, Toastmasters, tuition reimbursement	184 Maint	Jack Dooley Wendy Williams Don Walker Jennifer Sims
7. 3bX E Street Corridor Project				
60-foot Buses Receipt	Apr., 2013	Conduct Factory inspections & testing. Ensure compliance with FTA's Buy America requirements.	On Schedule	Milind Joshi
60-foot Bus Testing	Feb., 2014	Complete field testing	On Schedule	Milind Joshi
Revenue Operation Start	Apr. 30, 2014	Complete construction and commissioning	On Schedule	Milind Joshi
Cost - Complete Project within Approved Budget	\$191.7M	Follow plans and specifications, value engineering, negotiations, and monitor costs on monthly basis	187.4 Projected	Milind Joshi

Submitted for the
Board Meeting of
November 6, 2013

CHNITRANS
AFFIRMATIVE ACTION STATUS REPORT
WITH PERSONNEL APPOINTMENTS BY DEPARTMENT
As of October 17, 2013

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+							
OPERATIONS	467	68	98	90	5	0	4	42	87	43	1	1	2	26	2	2	3	0	0	0	2	0	0	2	0	0	0	0
MAINTENANCE	106	26	10	50	6	0	0	3	1	0	1	0	0	9	0	0	0	0	0	0	0	0	0	0	0	0	0	0
EXECUTIVE OFFICE	4	1	1	0	0	0	0	2	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
INFORMATION TECH. SERVICES	7	2	0	0	4	0	0	0	0	0	0	0	0	1	4	1	0	0	0	0	1	2	0	0	0	0	0	0
SAFETY/ SECURITY	5	3	0	0	1	0	0	0	0	0	0	0	0	1	0	0	0	0	0	0	0	0	0	0	0	0	0	0
MARKETING	26	2	0	5	1	0	0	3	1	13	0	0	0	1	0	0	0	0	0	0	0	0	0	0	0	0	0	0
PLANNING	7	2	0	0	0	0	0	1	0	2	0	0	0	2	0	0	0	0	0	0	0	0	0	0	0	0	0	0
HUMAN RESOURCES	9	0	0	1	0	0	0	5	0	3	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
PROCUREMENT	22	4	1	6	0	0	0	7	1	2	0	0	0	1	0	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	0
IPMO	10	1	1	2	4	0	0	1	1	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
AGENCY TOTAL	675	109	113	154	23	0	4	66	91	66	4	1	2	42	6	3	3	0	0	0	3	2	0	2	0	0	0	0

* Includes part time

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

*Reflects numbers from the FY14 budget

PERCENTAGES

C	27.65%	B	32.23%	H	34.76%	A	4.27%	AI	0.16%	2+	0.95%	TOTAL	100%
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COMPLETED BY: *Meredith Tshilonda*
Meredith Tshilonda
(HR Analyst)

ITEM #

E9

ITEM # E10

DATE: November 6, 2013

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

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

SUBJECT: **CONSOLIDATED TRANSPORTATION SERVICES AGENCY
REAPPOINT BOARD VICE CHAIR SPAGNOLO TO SERVE THREE
YEAR TERM**

FORM MOTION

Reappoint Board Vice Chair Sam Spagnolo to serve a three-year term on the Consolidated Transportation Services Agency (CTSA) Board of Directors. The new term will be for the period of December 1, 2013 to December 1, 2016.

BACKGROUND

In November 2010, the Omnitrans Board of Directors appointed Board Members Penny Lilburn (Highland) and Lee Ann Garcia (Grand Terrace) to serve on the Consolidated Transportation Services Agency (VTrans) Board of Directors for a three year term, December 1, 2010 through December 1, 2013. The CTSA is governed by a seven member Board of Directors, with three members appointed by the San Bernardino Associated Governments (SANBAG), two members appointed by the County of San Bernardino, and two members appointed by Omnitrans.

To be in compliance with the VTrans amended Bylaws, in April 2013, the Omnitrans Board of Directors extended Board Member Penny Lilburn's term on the VTrans Board of Directors to December 1, 2014, and appointed Board Vice Chair Sam Spagnolo to fill the unexpired term of former Board Member Lee Ann Garcia until December 1, 2013.

On September 30, 2013, Omnitrans received correspondence from the VTrans Board of Directors Chair Dennis Hansberger requesting Omnitrans to reappoint Board Vice Chair to its Board of Directors for a three year period.

CONCLUSION

Reappointing Vice Chair Spagnolo will ensure compliance with VTrans' Bylaws and guarantee Omnitrans' interests are represented on the VTrans Board of Directors.

PSG:VD

ITEM # E11

DATE: November 6, 2013

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

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

FROM: Donald Walker, Director of Finance

SUBJECT: **AUTHORIZE SOLICITATION FOR APPRAISAL OF OMNITRANS' PROPERTY LOCATED AT 12300 ARROW ROUTE, RANCHO CUCAMONGA, CALIFORNIA (MID-VALLEY)**

FORM MOTION

Recommend the Board of Directors authorize the Interim CEO/General Manager to solicit quotes from qualified appraisers who are experienced in the valuation and evaluation of commercial and industrial properties to appraise Omnitrans' property located at 12300 Arrow Route, Rancho Cucamonga, California (Mid-Valley).

This item was reviewed by the Administrative & Finance Committee at its October 15, 2013 meeting and recommended for approval.

BACKGROUND

In May 2001, Omnitrans purchased a 28.73 acre parcel of land located at 12300 Arrow Route, Rancho Cucamonga, California referred to as Mid-Valley. The purchase price was \$5,868,786 consisting of 80% federal funds and 20% local match.

The Mid-Valley Facility Project was the planned construction of an operating and maintenance facility for fixed route and paratransit vehicles. Omnitrans planned to construct the facility in two (2) phases. Phase I of this project would house paratransit vehicles and the necessary facilities to maintain and dispatch the paratransit fleet. Phase II was to be the construction of a second operating and maintenance facility for fixed route vehicles and the necessary facilities to maintain and dispatch the fixed route fleet.

After the purchase of the Mid-Valley property, Omnitrans managed to save over \$25 million in federal and matching funds to complete the project. However with the introduction of the San Bernardino E Street Bus Rapid Transit Corridor Project (sbX), both the Board of Directors and the Federal Transit Administration (FTA) authorized the reallocation of \$20 million of Mid-Valley funding to the sbX project.

Due to the downturn in the economy and the slower than anticipated growth in the San Bernardino Valley, Omnitrans is now exploring its options to leverage the Mid-Valley property to better meet the demands of the existing ridership. Additionally, there is a conscientious effort by the Federal Transit Administration (FTA) to review and close outstanding grants that are not moving forward.

FUNDING SOURCE

The cost associated with this procurement is budgeted in the Administration Department Budget as follows:

Department	1300
Expenditure Code	503060

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

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

CONCLUSION

Staff recommends approval of this item to establish a valid and accurate basis for discussions with the Board of Directors and the FTA on the future of the Mid-Valley Project; otherwise, there is a potential that Omnitrans would have to sell the property and return 80% of the proceeds to FTA. If recommended action is approved by the Board of Directors on November 6, 2013, quotes will be solicited and a contract awarded to the lowest appraiser. Estimated cost of the appraisal is between \$3,000 - \$4,000 and within the Interim CEO/General Manager's approval authority.

PSG:djw

ITEM # E12

DATE: November 6, 2013

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

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

FROM: Anna Rahtz, Acting Director of Planning and Development Services

SUBJECT: **TITLE VI SERVICE EQUITY ANALYSIS OF sbX GREEN LINE SERVICE**

FORM MOTION

Adopt the Title VI Service Equity Analysis of sbX Green Line and accompanying changes to Routes 2 and 7.

This item was reviewed by the Administrative and Finance Committee at its October 15, 2013 meeting, and recommended to the Board of Directors for adoption.

BACKGROUND

As a recipient of funding from the Federal Transit Administration (FTA), Omnitrans is required to report at least triennially regarding compliance with Title VI requirements as outlined in the FTA Circular 4702.1B, dated October 1, 2012, and as originally set forth in Section 601 of Title VI of the Civil Rights Act of 1964. The Agency must demonstrate that it does not discriminate against, exclude from, or deny service based on race, color, or national origin.

In addition to triennial Title VI reporting, FTA guidelines now require a Title VI analysis to be completed and adopted by the recipient's governing board prior to major service changes, fare changes, or the introduction of a fixed guideway system. These are required to ensure that Title VI considerations are part of the planning process prior to implementation. The launch of revenue service for the sbX Green line in April 2014 comprises both a major service change and the introduction of a fixed guideway system. This Title VI analysis constitutes completion of an Environmental Justice assessment begun as part of the planning process for the sbX E Street Corridor BRT Project, originally reported in the *Environmental Assessment Initial Study* done by Parsons Transportation Group in June of 2009 (Chapter 4.11 Demographics and Neighborhoods).

The proposed changes to service include the following:

- **sbX Green Line BRT service:** sbX is a bus rapid transit (BRT) service that will run from the Kendall and Palm station at its north terminus to Loma Linda University/Medical Center and VA Hospital at the south end. Twenty stations (stops) are being constructed at sixteen intersections, with center-running dedicated lanes on E Street in downtown San Bernardino and on Hospitality Lane. Fourteen 60-foot articulated vehicles (11 in service, 3 spares) will be used to provide 28,800 hours of service with ten-minute peak weekday service and fifteen-minute off-peak weekday service.
- **Route 2:** Service frequency will be reduced so as to complement sbX, and the northern terminus of the route will be extended from CSUSB to the new station at Kendall and Palm.
- **Route 7:** Duplicative or nearly duplicative service along Kendall (which will now be covered by route 2 and sbX) will be eliminated. As well, the Palm/Ohio/Pine loop at the end of Kendall will be eliminated as the route will now terminate at CSUSB.

The service changes for the proposed modifications to routes 2 and 7 and for the introduction of sbX service (in terms of hours, miles, and budget) were included in the approved FY 2014 Service and Budget Elements.

An equity analysis was completed for the proposed service changes, using demographic data within a ½ mile walking distance of the sbX corridor and routes 2 and 7. The analysis shows that implementing the proposed service changes will not adversely impact the Low-Income or Minority (LIM) community, but will, rather, augment service to those within walking distance of the sbX stations.

Exhibit 1 shows a GIS (Geographical Information Systems) spatial analysis of census demographic data showing proportion of minority residents in the area affected by the proposed service changes, by block group.

Exhibit 2 shows comparisons of Low-Income or Minority (LIM) populations countywide and within Omnitrans' service area to half-mile pedestrian walking buffers for routes 2, 7, and around the sbX stations. This demonstrates that sbX service is associated with a higher LIM proportion than any other measure, and the reduced area (the Pine/Ohio/Palm loop) buffer has a lower LIM proportion than any other measure. The results of the service equity analysis show that the proposed service changes comply with Title VI requirements.

Exhibit 1: E Street Corridor, sbX service, Routes 2 and 7, and percent minority residents by census blocks.

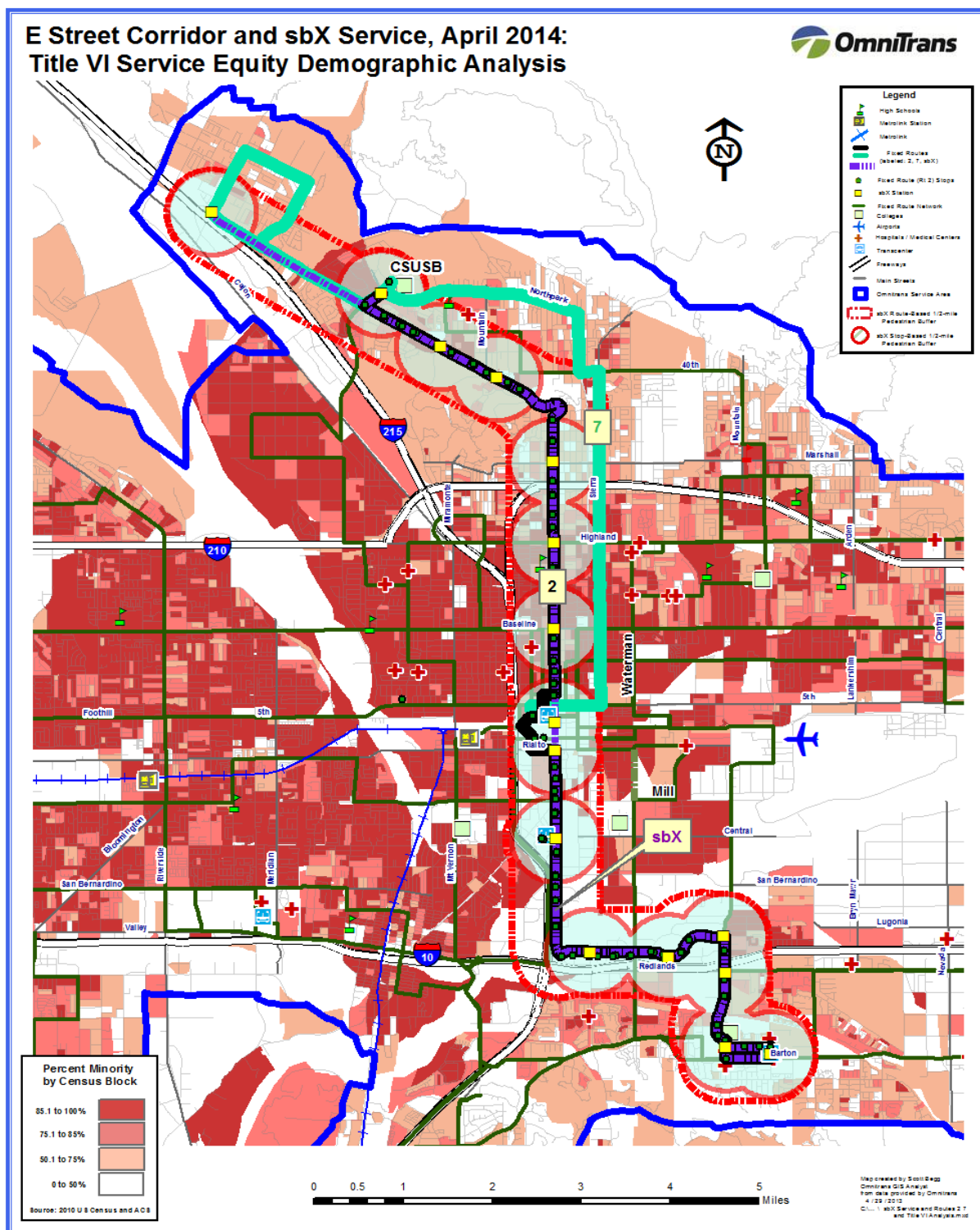


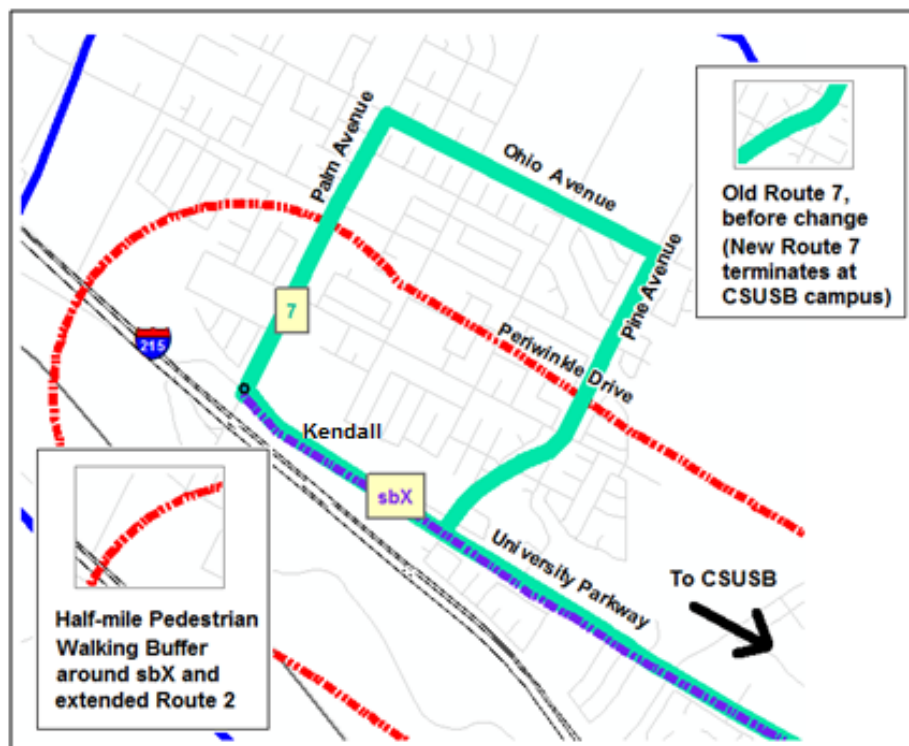
Exhibit 2: Comparison of Low-Income/Minority (LIM) populations within the county, within Omnitrans' service area, and within pedestrian buffers of stops for routes 2, 7, sbX, and Pine/Ohio/Palm loop, taken from ACS and 2010 US Census block group data.

2012-2013 Determination by Route of Title VI Compliance: sbX versus Routes 2 and 7 (STOP BUFFER METHOD)						
Region:	Total Population	Low Income Whites	Minority	TOTAL LIM	% LIW of LIM	Percentage LIM
Countywide	2,035,210	67,850	1,357,612	1,425,462	4.8%	70.0%
Within 3/4-Mile of All Service (ADA/Access Service Area Boundary)	1,386,945	29,647	1,032,311	1,061,958	2.8%	76.6%
One-Half-Mile Pedestrian Buffer surrounding Route:						
Route 2	58,497	1,952	45,202	47,154	4.1%	80.6%
Route 7	68,313	2,013	51,852	53,865	3.7%	78.9%
Routes 2 & 7	99,386	3,017	75,012	78,029	3.9%	78.5%
sbX BRT Route	47,580	1,579	36,264	37,843	4.2%	79.5%
Reduced Area (Pine-Ohio-Palm)	4,741	94	2,815	2,909	3.2%	61.4%

As sbX will traverse the same corridor paralleled or followed by the alignments of fixed routes 2 and 7, it is expected that these two routes will be most directly impacted by sbX service and will see some associated reduction in service. Route 7 can anticipate a weekday loss of 778 service hours. For route 2, the difference will be more significant: annual weekday service hours can expect to be reduced by 11,814 hours. There will also be very minor changes in hours for routes 2 and 7 on the weekend (for a total of 49 hours gained). However, the weekday reductions will be more than compensated for by sbX service, which will add 28,800 hours, for a net positive addition of 16,257 revenue hours. Walking distances will be greater for sbX service due to it being a BRT route, and as such stop spacing will be up to four-times the distance between stops for local routes. For individuals who can not walk to an sbX station, local service will be reduced, but for those who can walk or otherwise access an sbX station, service will be increased.

Reduction in Route 7 will also translate to a loss of service in the Palm/Ohio/Pine Avenues loop at its present terminus. The proportion of Low-Income/Minority (LIM) residents in this buffer area is 61.4%, which is below that of any other measure of the local region (around route 2 or 7, around the sbX corridor, within Omnitrans' service area, or even within the entire county itself). The route will now terminate at the Cal State University of San Bernardino (CSUSB) campus. As shown in Exhibit 3, both Route 2 and sbX will continue to serve the region along University Parkway/Kendall to Palm Avenue, but the loop itself will no longer be served.

Exhibit 3: Route 7 before change to Palm/Ohio/Pine loop, and addition of sbX service to Kendall and Palm.



When compared overall to service before the beginning of sbX along the E Street corridor, the reduction in both routes 2 and 7, along with the addition of sbX service, is seen as a benefit for Omnitrans' Low-Income/Minority (LIM) population within walking distance of the sbX stations in that it adds more service hours and buses along this corridor than had been devoted before.

CONCLUSION

Staff recommends that the Board of Directors adopt the Title VI Service Equity Analysis of the sbX Green Line and the accompanying changes to Routes 2 and 7. Approval of changes to routes 2 and 7 and beginning of sbX service will provide high-speed transit and improved transit efficiency, as it increases service along the E Street corridor.

PSG:AR

Service Equity Analysis: sbX Green Line and Routes 2 and 7

April 2014

Introduction

As a recipient of federal funding under the Federal Transit Administration's guidelines, Omnitrans is required to report at least triennially on compliance with Title VI requirements. These requirements are outlined in the FTA Circular 4702.1B, dated October 1, 2012. More generally, these requirements are set forth in Section 601 of Title VI of the Civil Rights Act of 1964. This states that no person will be discriminated against, excluded from, or denied service based on race, color, or national origin. In order to abide by the Civil Rights Act, each transit agency must report on the services it provides in relation to the population in its service area. In this way, it may be demonstrated that no group or groups are being denied service based on discriminatory planning.

Omnitrans is also required to report in the same manner regarding compliance with Title VI requirements for every major fare and/or service change before it occurs. These reports must be completed and approved by the governing board at least six months before service or fare changes go into effect. Omnitrans' Board will be presented this Title VI Service Equity Analysis for approval in November of 2013, six months before revenue service changes take place in April of 2014.

The E Street Corridor Bus Rapid Transit Project (sbX Green Line)

Following two years of construction, Omnitrans will launch the first of ten planned sbX (San Bernardino Valley Express) corridors into service in April 2014. The bus rapid transit service will employ 60-foot-long articulated coaches, and is designed to optimize vehicle operating speeds and travel time, while minimizing travel delay, right-of-way acquisitions, and other community and environmental impacts. The E Street (Green Line) corridor was designated as the highest priority corridor in the Long Range Transit Plan by the San Bernardino Associated Governments (SANBAG).

The sbX Green Line will operate along the E Street Corridor, generally following Kendall Drive from Palm Avenue to California State University San Bernardino, then along E Street through downtown San Bernardino, along Hospitality Lane, and south to Loma Linda University Medical Center and the Veteran's Administration (VA) Hospital.

Length: The Refined Locally Preferred Alternative (RLPA) as currently defined consists of 15.7 miles of combined mixed-use and dedicated BRT alignment.

No. of Stations: 23 stations (stops) at 16 intersections.

Vehicles: Fourteen (14) articulated BRT vehicles, 11 in service and 3 spares.

Forecast Total Annual Service Revenue Hours: 28,800 revenue hours. Service will initially only be on weekdays.

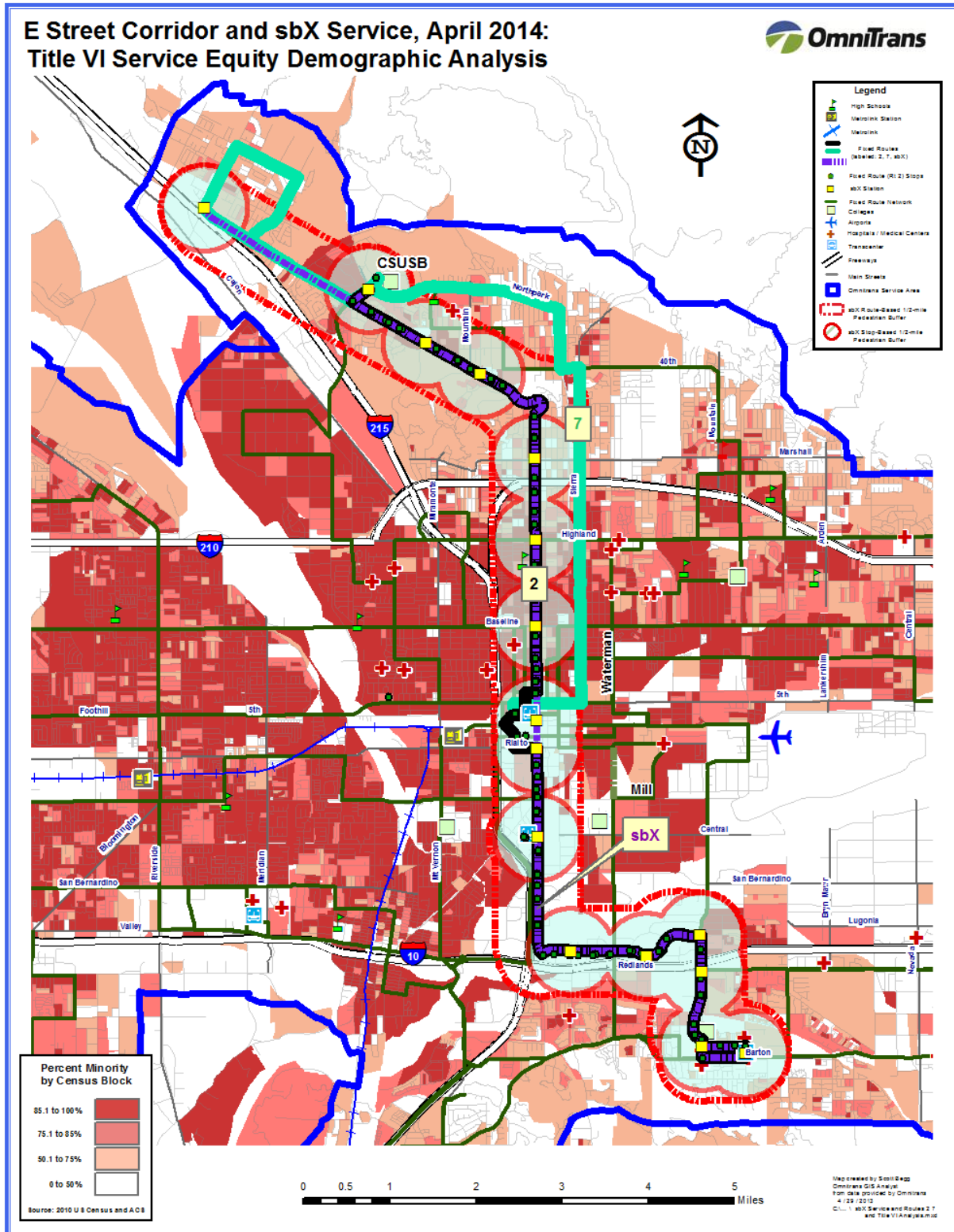
Service Frequency: At peak, ten-minute frequency weekday along the corridor with 15-minute service in the off-peak.

Ridership Forecast: Opening year, April 2014, ridership is projected at 5,600 boardings per day.

Detailed descriptions of the sbX corridor and baseline alternatives analysis are found in previous reports on the Alternative Analysis (September 2004), and the Refined Locally Preferred Alternative (August 2009). (Parsons/Hexagon), and *Operations and Maintenance Plan and Costs* original reports (Parsons Transportation Group, May 2009, August 2009, September 2009).

The operating plan assumes the opening year FY 2014 of sbX service, and is a plan that reflects a conservative approach to the introduction of service by lessening the impact on Omnitrans' overall operating budget. The opening year operating plan is limited to weekday service covering a 14-hour service span, with 10 minute peak period headways and 15 minute off-peak headways. This operating plan will be served by a fleet of 14 sbX vehicles (11 in service and 3 spares). Over the years, as planned development in the E Street Corridor occurs, the operating plan will be expanded to include weekend service, and ultimately will include 5-minute service frequency through the corridor.

The sbX will operate on 10 minute peak headways and 15 minute off-peak headways, and will serve 16 stations designed and constructed specifically for the E Street Corridor project. The alignment of the sbX is displayed in Figure 1. The Refined Locally Preferred Alternative (LPA) is an update to the LPA that was developed during the Alternatives Analysis phase of the E Street project. The details of the Refined LPA was described in Parsons' previous report — *Operations & Maintenance Plan and Costs Report*, September 2009 (Appendix A).



As the Refined Locally Preferred Alternative featured the new sbX as a premium transit service, special enhancements include Transit Signal Priority treatment at intersections. sbX will operate in 5.4 miles of exclusive lanes and 10.3 miles of mixed traffic.

Anticipated benefits of this BRT service will include: encouraging Transit Oriented Development, stimulating the local economy, reducing vehicular traffic and emissions, revitalizing station neighborhoods, creating construction jobs, and lowering transit vehicular emissions by having the articulated coaches be powered by compressed natural gas.

In order for the sbX project to become a reality, agency resources had to be reallocated in a way which minimally impacted local transit-dependent riders and low-income/minority riders within our service area. Every effort was made to meet these requirements. Since the first BRT corridor either paralleled or followed the same alignment as fixed routes 2 and 7, these would be the routes most directly impacted by sbX service. For route 2, there will be concomitant reduction in service from 45,602 total annual service revenue hours to 33,788 predicted annual service revenue hours (this translates to a service frequency reduction from 15-minute frequency to 30-minute frequency on weekdays for Route 2, and no change in frequency at all on weekends); for route 7, there will be reduction in total annual service revenue hours from 12,875 to 12,097 hours. This will need to be seen in light of the accompanying increase in more frequent and direct service along the same corridor by the bus rapid transit sbX line when it begins service in April of 2014: sbX will run ten minute service at its peak along this corridor, complementing Route 2, and will add 28,800 additional service revenue hours.

ANALYSIS: Comparison of Routes 2 and 7 with sbX

An analysis of the demographic character of the regions immediately surrounding both fixed routes 2 and 7 (and the merged combination of 2 and 7), and the proposed sbX BRT route was undertaken using geographic information systems (GIS). For all routes, a one-half mile pedestrian walking buffer was applied, and block- (or tract-) level determinations of proportions of minority and low income (LIM, Low-Income/Minority) populations were made. These were compared, and in turn compared to the level of same for San Bernardino County as a whole. The results are given in the following table.

2012-2013 Determination by Route of Title VI Compliance: sbX versus Routes 2 and 7 (ROUTE BUFFER METHOD)						
Region:	Total Population	Low Income Whites	Minority	TOTAL LIM	% LIW of LIM	Percentage LIM
Countywide	2,035,210	67,850	1,357,612	1,425,462	4.8%	70.0%
One-Half-Mile Pedestrian Buffer surrounding Route:						
Route 2	60,611	2,436	46,919	49,355	4.9%	81.4%
Route 7	69,247	2,038	52,683	54,721	3.7%	79.0%
Routes 2 & 7	100,875	3,065	76,250	79,315	3.9%	78.6%
sbX BRT Route	64,578	1,951	49,133	51,084	3.8%	79.1%
Reduced Area (Pine-Ohio-Palm)	4,741	94	2,815	2,909	3.2%	61.4%

A second analysis was performed using the same methodology. This time, however, the half-mile pedestrian walking buffer was made about all bus stops, and not along the route proper. In the case of the sbX route, there were a total of 23 stops at 16 locations along the route. This form of analysis gives a perhaps more accurate appraisal of real-life walking conditions for riders, as they actually do not board buses anywhere along the route, but only at designated stops. Given an average spacing of two-tenths of a mile for fixed route stops, the difference in demographics between route-based buffers and stop-based buffers is essentially negligible. However, in the case of sbX, which operates as a limited-stop, BRT route, only sixteen stations will exist for the coaches along the entire route, and these will average a mile distance from each other; in this situation, the demographic difference between route-based and stop-based buffers could be significant. The results of this analysis are given in the following table.

2012-2013 Determination by Route of Title VI Compliance: sbX versus Routes 2 and 7 (STOP BUFFER METHOD)						
Region:	Total Population	Low Income Whites	Minority	TOTAL LIM	% LIW of LIM	Percentage LIM
Countywide	2,035,210	67,850	1,357,612	1,425,462	4.8%	70.0%
One-Half-Mile Pedestrian Buffer surrounding Route:						
Route 2	58,497	1,952	45,202	47,154	4.1%	80.6%
Route 7	68,313	2,013	51,852	53,865	3.7%	78.9%
Routes 2 & 7	99,386	3,017	75,012	78,029	3.9%	78.5%
sbX BRT Route	47,580	1,579	36,264	37,843	4.2%	79.5%
Reduced Area (Pine-Ohio-Palm)	4,741	94	2,815	2,909	3.2%	61.4%

TRIP AND SERVICE FREQUENCY REDUCTION:

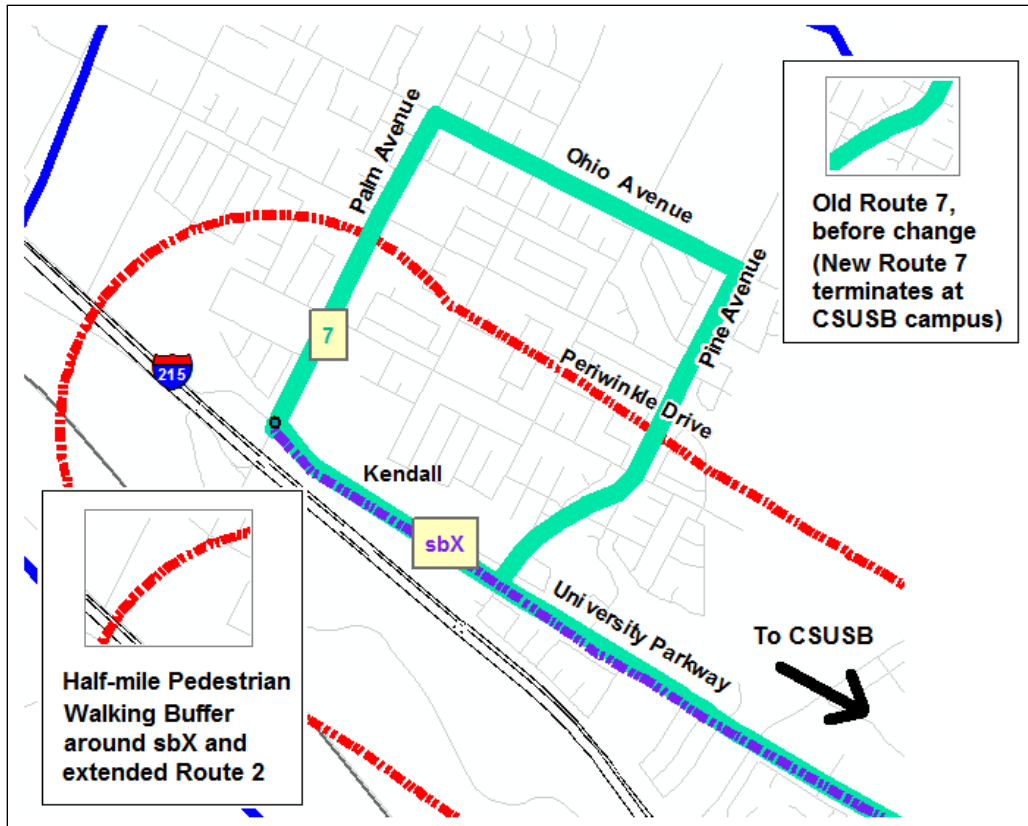
As sbX will traverse the same corridor paralleled or followed by the alignments of fixed routes 2 and (parts of) 7, these would be the routes most directly impacted by sbX service. Implementation of sbX along E Street necessarily translates to some reduction in service for these routes quantitatively.

Following are tabulated data regarding the predicted effect on service for FY2014 (the first full fiscal year of sbX implementation) versus baseline route performance for FY2013, which would not have such service:

Differences in Coaches and Annual Service (Revenue) Hours Between Status Quo and Proposed Change with sbX (Annualized for FY2014)						
TOTAL	Total Number of Coaches		Difference	Total Annual Service Hours (Revenue)		Difference
Route	Status Quo	Proposed Change with sbX		Status Quo	Proposed Change with sbX	
2	11	8	-3	45,520	33,810	-11,710
7	4	3	-1	12,875	12,042	-833
sbX	0	11	11	0	28,800	28,800
					Difference	16,257
WEEKDAYS	Total Number of Coaches		Difference	Total Annual Service Hours (Revenue)		Difference
Route	Status Quo	Proposed Change with sbX		Status Quo	Proposed Change with sbX	
2	11	6	-5	36,049	24,235	-11,814
7	4	3	-1	10,774	9,996	-778
sbX	0	11	11	0	28,800	28,800
		Difference	5		Difference	16,208
SATURDAYS	Total Number of Coaches		Difference	Total Annual Service Hours (Revenue)		Difference
Route	Status Quo	Proposed Change with sbX		Status Quo	Proposed Change with sbX	
2	8	8	0	5,198	5,271	73
7	2	2	0	1,096	1,059	-37
sbX	0	0	0	0	0	0
					Difference	36
SUNDAYS	Total Number of Coaches		Difference	Total Annual Service Hours (Revenue)		Difference
Route	Status Quo	Proposed Change with sbX		Status Quo	Proposed Change with sbX	
2	8	8	0	4,273	4,304	31
7	2	2	0	1,005	987	-18
sbX	0	0	0	0	0	0
					Difference	13
					GRAND TOTAL	16,257
All data taken from Omnitrans' annualized fiscal year estimation of FY2014 total service hours for all routes, status quo and proposed for sbX service.						

Reduced Region: (Pine-Ohio-Palm)

A final analysis was made of the demographic character of the one region that would lose service (not due to the advent of sbX, however): the Pine-Ohio-Palm loop. This is shown in the following inset.



This area has had extremely low ridership, and is notably more affluent than along the rest of the other two routes (routes 2 and 7) or the service area average. It is important to note as well that service will not cease along this loop because of sbX service (this region, again, roughly defined as northeast of the pedestrian buffer region, northeast of Periwinkle drive, and defined by Palm, Ohio, and Pine Avenues). Instead, service will end for this portion of the route simply because it has been very unproductive. For this reason, Route 7 will no longer serve this portion of its route, as it will terminate at the Cal State San Bernardino University campus. Route 2, however, will pick up this portion of the route along University Parkway-Kendall alone, and will serve to the end of Palm and Kendall, on weekdays and weekends, and sbX will serve the same portion on weekdays. The only portion of the coverage to be discontinued, then, will once more be the aforementioned segment (Palm, Ohio, and Pine Avenues).

The analysis shows that the demographics of this segment are characterized by a markedly lower LIM proportion than that seen in over the rest of the routes (2, 7, and sbX), and markedly lower LIM proportion than that seen in the county overall (61.4% LIM, versus 70% to 80%) or Omnitrans' service area (61.4% versus 76.6%).

RESULTS

Demographic analysis of the areas immediately surrounding sbX and routes 2 and 7 by use of GIS spatial tools has determined that implementing sbX along the E Street corridor will not adversely impact the local LIM community, but will, if anything, augment service to those within walking distance of the sbX stations.

In 2014, sbX will not run on weekends (Saturdays and Sundays). This means that sbX will not compete with or limit resources for routes 2 and 7 on weekends. There will be very minor alterations to routes 2 and 7 resulting from the changes to their respective alignments, and this will be reflected in minor changes in service revenue hours on the weekend. For route 2, revenue hours on Saturday will go from 5,198 to 5,271 and on Sundays will increase from 4,273 to 4,304; for route 7 on Saturdays, revenue hours will go from 1,096 to 1,059 and on Sundays will decrease from 1,005 to 987. Overall, this will result in an increase of 36 revenue hours on Saturday and 13 revenue hours on Sunday (49 hours combined) for these two routes.

On weekdays, however, sbX will come online and will be run on the E Street corridor, and as such will limit resources for both routes 2 and 7. Route 7 can anticipate a loss of one coach (seeing a reduction from 4 to 3 coaches) and a reduction of 778 hours of service. For route 2, the difference will be more significant: annual weekday service hours can expect to go down from 36,049 to 24,235—a resulting reduction of 11,814 service hours. The route should also see a loss of 5 vehicles (from 11 coaches to 6 coaches on weekdays).

This reduction in number of trips and frequency of service for these two fixed routes will be more than offset by the introduction of sbX BRT service along the E Street Corridor. During the same year, sbX will introduce 11 new articulated coaches and add 28,800 hours of service. When combined, the reduction in routes 2 and 7 plus the addition of sbX service will yield a gain of 5 vehicles overall to serve this area (11 added minus 6 lost), and an additional 16,257 hours of service (28,800 added minus 12,543 total lost). When seen this way, the addition of sbX service is an overall benefit, which adds more coaches and more service hours along this corridor than had been in place before.

This Service Equity Analysis of sbX and fixed routes 2 and 7 is scheduled to be approved in November, 2013, six months before the beginning of revenue service of sbX and before fixed route service changes go into effect in April, 2014.

ITEM # E13

DATE: November 6, 2013

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

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

FROM: Anna Rahtz, Acting Director of Planning and Development Services

SUBJECT: REVISED AGREEMENT BETWEEN INLAND EMPIRE UNITED WAY AND OMNITRANS

FORM MOTION

Authorize the Interim CEO/General Manager to execute a revised funding agreement with Inland Empire United Way for the purchase of hardware and software to expand the capacity of the 2-1-1 system and create a new Veterans' One Click One Call transportation service regional coordination information center for the San Bernardino County for an additional sum of \$9,056, bringing the total contract amount to \$404,744.

This item was reviewed by the Administrative and Finance Committee at its October 15, 2013 meeting, and recommended to the Board of Directors for approval.

BACKGROUND

On June 6, 2012, the Omnitrans Board of Directors authorized the CEO/General Manager to execute a funding agreement with Inland Empire United Way for a total sum of \$395,688.

A revision is required to match SANBAG's Call for Projects funding award. In the current funding agreement, Omnitrans' funding obligation for Section 5316 Job Access Reverse Commute (JARC) CA-37-X146, Section 5317 New Freedom (NF) CA-57-X062 and Section 5309 Veterans Transportation and Community Living Initiative CA-04-0228 funds, shown in Table 1 below, does not match SANBAG's final approved budget for the project. The revised agreement will modify the original agreement by a total of \$9,056.

Table 1: Funding Agreement

	Current	Revised
Section 5316 JARC	\$ 133,153	\$ 138,701
Section 5317 NF	\$ 44,385	\$ 46,234
Section 5309	\$ 218,150	\$ 219,809
Difference		\$ 9,056

Inland Empire United Way project will expand the 2-1-1 One Click One Call service for Veterans to improve mobility for veterans and their families by developing an information consolidator to provide transportation links tailored to veterans' travel patterns within the Inland Empire region. The project will allow veterans within the county to call into the center and obtain information regarding various transportation services that will transport them to medical and service appointments. The funding will allow for the purchase of hardware, software, dedicated telephone equipment, and electronic real-time bus arrival information signage that will be installed inside and outside the Jerry L. Pettis Memorial Veterans Medical Center, assisting riders traveling on Omnitrans and Riverside Transit Agency.

On December 7, 2011, San Bernardino Associated Governments (SANBAG) was notified that the Federal Transportation Administration (FTA) Section 5309 Veterans Transportation and Community Living Initiative grant had been awarded by FTA to Inland Empire United Way in collaboration with Valley Transportation Agency (VTrans) – the San Bernardino County Consolidated Transportation Services Agency. On March 7, 2012, the SANBAG Board of Directors also awarded FTA Section 5316 – Job Access Reverse Commute and Section 5317 – New Freedom funding to Inland Empire United Way. Since SANBAG is not a designated FTA grantee, Omnitrans will pass through funding to Inland Empire United Way, as well as monitor the project on behalf of FTA. Local match is being provided by VTrans' Measure I allocation.

FUNDING SOURCE

There will be no impact on Omnitrans' operating budget, as the funds are a pass-through of grant funding awarded specifically for this project. The revised agreement will reduce the federal apportionment for administrative costs as seen in Table 2 Allocated Administrative Reimbursement Cost; however, to date the administrative costs associated to this project have not exceeded the revised amount. Therefore, there is no significant impact posed to Omnitrans.

Table 2: Allocated Administrative Reimbursement Cost

	Current	Revised
Agreement	\$ 16,487	\$ 14,828
Difference		(\$ 1,659)

CONCLUSION

Allowing the Interim CEO/General Manager to execute a revised funding agreement with Inland Empire United Way will bring the funding agreement into accordance with the funding awarded to the sub-recipient by SANBAG.

PSG:AR

AMENDMENT NO. 1
FUNDING AGREEMENT FOR JOB ACCESS REVERSE COMMUTE GRANT, NEW
FREEDOM GRANT AND BUS AND BUS FACILITIES LIVABILITY INITIATIVE GRANT
FUNDS

This Amendment No. 1 to the Funding Agreement for Job Access Reverse Commute, New Freedom, and Bus and Bus Facilities Livability Initiative Grant funds (“**Agreement**”) by and between Inland Empire United Way (“**Recipient**”) and Omnitrans, a joint powers authority (“**Omnitrans**”), is entered into this ___ day of _____, 2013. Recipient and Omnitrans are sometimes individually referred to as “**Party**” and collectively as “**Parties**.”

Recitals

A. Inland Empire United Way and Omnitrans Funding Agreement for Job Access Reverse Commute, New Freedom, and Bus and Bus Facilities Livability Initiative Grant funds (“**Agreement**”) was entered into between the parties on June 6, 2012, and describes the respective responsibilities of the Recipient and Omnitrans relative to the pass through of Section 5316 JARC, Section 5317 NF and Section 5309 funds.

B. After the signing of the Agreement, Omnitrans was made aware of a discrepancy of \$9,056 between what SANBAG awarded the Recipient through the Call for Projects and what was outlined in the funding agreement.

C. The Agreement must be amended to reflect the amount of grant funding that will be passed through from Omnitrans to the Recipient.

D. Omnitrans charges subrecipients a fee for administrative purposes. As Inland Empire United Way is a subrecipient of Omnitrans, the agreement must be amended to state that Omnitrans will charge up to \$14,828 of the above-named grants for administrative cost, and a total of up to \$404,744 will be passed through to the Recipient for project expenses.

NOW THEREFORE, the parties agree to amend the Agreement as follows:

A. Omnitrans previously submitted a grant application for Section 5316 JARC funds for Fiscal Year 2008 – 2010, Section 5317 NF funds for Fiscal Year 2008 – 2010, and recently submitted a grant for Section 5309 funds for Fiscal Year 2011 - 2012 to the Federal Transit Administration (“**FTA**”) to obtain funding for the Project. On September 15, 2008, the FTA awarded Omnitrans ~~\$138,701~~ **\$144,249** in Section 5316 JARC funds and ~~\$46,234~~ **\$48,084** in Section 5317 NF funds. FTA is expected to award Omnitrans \$227,240 in Section 5309 funds by June 2012. The Parties now desire that the JARC, NF and Section 5309 funds awarded to Omnitrans be used for the benefit of Recipient, as a Sub-grantee. Recipient desires to use proceeds from JARC, NF and Section 5309 grant funds to finance allowable costs that Recipient incurs in carrying out the Project.

B. To implement the Project, Recipient desires to purchase hardware and software to expand the capacity of the 211 system and create a new veterans One Click information consolidator for the County of San Bernardino.

C. As a Sub-grantee receiving JARC, NF, and Section 5309 funds, Recipient desires to undertake the Project and comply with all provisions of the Grant Agreements and applicable federal, state and local laws and regulations (“**Applicable Law**”).

NOW THEREFORE, the Parties agree to the following as amended:

1. **Obligations of Omnitrans is amended as follows.** Pursuant to, and to the extent provided in, this Agreement, Omnitrans shall take the following actions:
 - a. Reimburse Recipient for the Project, up to ~~\$133,153~~ **\$138,701** in Section 5316 JARC funds, up to ~~\$44,385~~ **\$46,234** in Section 5317 NF funds, and up to ~~\$218,150~~ **\$219,809** in Section 5309 funds in conformity with the procedure detailed in the original Agreement.
2. **Payment of Administrative Expenses of Omnitrans is amended as follows.** As compensation for the obligations undertaken by Omnitrans pursuant to the terms of this Agreement, an indirect overhead charge will be charged to and paid from Section 5316 Grant No. CA-37-X146, Section 5317 Grant No. CA-57-X062 and Section 5309 Grant No. CA-04-0228 grant funds to account for all administration costs associated with managing the Project (the “**Administrative Expenses**”). Omnitrans costs will be charged to the total FTA amount (approximately ~~\$16,487~~ **\$14,828**) as Administrative Expenses. Project funds shall not be used for the Administrative Expenses.
3. **Warranties of Recipient.** Recipient warrants to Omnitrans is amended as follows:
 - a. Recipient has or will have, prior to the necessity of expending them, all funds necessary to provide the local matching funds required to receive the FTA Section 5316, Section 5317 and Section 5309 grant funds (the “**Match Obligation**”). The approximate amount of the Match Obligation for the Project is ~~\$234,348~~ **\$243,293**.
4. **Term.** This Agreement shall terminate upon the rejection of any grant application for the Project by the FTA or, assuming the award of the grant sought, upon the completion of the disbursement of the funds obtained from the grant and the completion of all reports, updates or any other documentation or responsibility of Omnitrans related to the grant. In all events, this Agreement shall terminate within the time limits set forth in applicable FTA procedures and regulations, but in no event later than three (3) years from the date of the Agreement’s execution date.
5. **Originals and Copies.** This Agreement with the Exhibits attached hereto may be executed in counterparts, each of which shall be deemed an original. In any action or proceeding, an exact and correct copy may be used in lieu of an original.
6. **Notices.** All notices hereunder shall be in writing and shall be effective upon receipt. All notices and communications, including invoices, between the Parties to this Agreement shall be either personally delivered, sent by first-class mail, return receipt requested, or sent by overnight express delivery service, postage or other charges fully prepaid, as follows:

TO OMNITRANS:

Omnitrans
1700 West Fifth Street
San Bernardino, California 92411
Attention: Brenda Ramirez, Planner II

TO RECIPIENT:

Inland Empire United Way
9644 Hermosa Avenue
Rancho Cucamonga, CA 91730
Attention: Gary Madden, President/CEO

7. **No Third Party Beneficiaries.** There are no third party beneficiaries to this Agreement. Other than the Parties, no person, political subdivision, agency, board, department, division or

commission shall be entitled to bring an administrative or judicial proceeding to enforce or interpret its terms.

**[SIGNATURES ON FOLLOWING PAGE]
SIGNATURE PAGE TO FUNDING AGREEMENT FOR JOB ACCESS REVERSE COMMUTE
GRANT, NEW FREEDOM GRANT AND BUS AND BUS FACILITIES LIVABILITY
INITIATIVE GRANT**

IN WITNESS WHEREOF, this Agreement has been executed by the Parties hereto as of the day and year first written above.

OMNITRANS

Inland Empire United Way

By: _____
P. Scott Graham, Interim CEO/General
Manager

By: _____
Signature

Name

Title

APPROVED AS TO FORM:
COUNTY COUNSEL

By: _____
Legal Counsel

ITEM # E14

DATE: November 6, 2013

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

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

FROM: Marjorie Ewing, Director of Human Resources

SUBJECT: **ADOPT REVISIONS TO PERSONNEL POLICY #103, STANDARDS OF ETHICAL CONDUCT AND PERSONNEL POLICY #109, CONFLICT OF INTEREST**

FORM MOTION

Adopt proposed changes to Personnel Policy #103 Standards of Ethical Conduct and Personnel Policy #109 Conflict of Interest, effective November 6, 2013.

This item was reviewed by the Administrative & Finance Committee at its October 15, 2013, meeting and recommended for adoption.

BACKGROUND

In August 2013, Omnitrans utilized outside legal services for an investigation dealing with an anonymous complaint. The investigation revealed that Omnitrans Personnel Policy #103, Standards of Ethical Conduct, initially approved in January 1999, with one revision in 2004, and Personnel Policy #109, Conflict of Interest, initially approved in January 1999, with no revisions since, hold a very high standard. However, it was recommended that Omnitrans add language to both policies addressing the State of California Form 700, Statement of Economic Interests, which has reporting requirements based on the individual's designated filing disclosure category defined in Omnitrans Conflict of Interest Code. As currently written, an individual only reading the personnel policies may perceive an ethical or conflict situation. The addition of language related to Form 700 is intended to further clarify requirements relating to potential Conflicts of Interest or ethical related matters.

FUNDING SOURCE

There are no increased costs associated with the recommendation.

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

CONCLUSION

Adoption of the proposed changes to Personnel Policy #103, Standards of Ethical Conduct, and Personnel Policy #109, Conflict of Interest, further clarifies requirements, both for those employees designated in Omnitrans Conflict of Interest Code and those that are not specifically designated.

PSG:ME

Attachments



PERSONNEL POLICY MANUAL

POLICY 103 PAGE 1 OF 7

SUBJECT

Standards of Ethical Conduct

APPROVED BY OMNITRANS
BOARD OF DIRECTORS
PROPOSED FOR BOARD APPROVAL

DATE: ~~May 5, 2004~~ November 6, 2013

I. PURPOSE

To state Standards of Ethical Conduct.

II. SCOPE

All Departments

III. PROCEDURE

A. Definitions

For the purpose of this policy, the following definitions will apply:

1. Abuse of Power- Wrongful use of a position of authority to influence employees, colleagues, customers, or volunteers (e.g., coercion to participate in activities or decision making in violation of laws, regulations, or policies).
2. Conflict of Commitment – A situation in which an employee's additional employment or other activity, whether internal or external to Omnitrans, interferes with his or her performance of his/her in the primary duties appoint at Omnitrans.
3. Conflict of Interest – A situation in which an individual or any of his or her family has an existing or potential financial or other material interest that impairs or might appear to impair the individual's independence and objectivity of judgment in the discharge of responsibilities of Omnitrans. A conflict of interest also arises when an individual evaluates the work or performance of a person with whom he or she is engaged in a romantic or sexual relationship.
4. Ethical Conduct – Behavior conducted according to Omnitrans' "Statement of Ethical Conduct" and this policy.
5. Financial Irregularity – An intentional misstatement, omission, or failure to disclose information related to a financial transaction that is detrimental to the interests of Omnitrans, including embezzlement, fraud, or falsification or records; to misappropriate assets.
6. Fraud - An intentional act of misrepresentation, dishonesty, trickery, or deceit (including the concealment or suppression of the truth), designed to obtain information or assets without approval.
7. Kickback – The act of accepting a payment to improperly obtain or reward with favorable treatment in connection with either a contract or subcontract relating to a prime contract.
8. Misconduct - Cheating, falsification, fabrication, misappropriation, plagiarism, or other practice that seriously deviates from those commonly accepted as



PERSONNEL POLICY MANUAL

POLICY 103 PAGE 2 OF 7

SUBJECT

Standards of Ethical Conduct

APPROVED BY OMNITRANS
BOARD OF DIRECTORS
PROPOSED FOR BOARD APPROVAL

DATE: May 5, 2004 November 6, 2013

proper.

9. Stewardship - The management of tangible and intangible assets of Omnitrans.

B. Omnitrans' commitment to the highest standard of ethical conduct is an integral part of its mission "to provide the San Bernardino Valley with comprehensive public mass transportation services which maximize customer use, comfort, safety and satisfaction while efficiently using financial and other resources in an environmentally sensitive manner." That commitment upholds the reputation of Omnitrans and encourages compliance with applicable laws and regulations.

C. In cases when Omnitrans policies appear ambiguous, difficult to interpret or apply; and, when it is difficult to identify your responsibilities in situations of potential violations of standards of ethical conduct, contact your immediate supervisor, manager, director, or the Human Resources Department for assistance/interpretation.

D. Omnitrans will not tolerate retaliation toward or harassment of employees who report actual or possible violations. The identity of individuals providing information concerning possible violations, including fraud, will be protected within legal limits. Individuals who take retaliatory action will be subject to discipline, up to and including discharge.

E. Suspected violations will be investigated by the appropriate Omnitrans personnel, depending on the nature of the violation. Disciplinary measures may be taken, in accordance with applicable regulations, if appropriate to the circumstances.

F. Omnitrans is committed to the protection of both the accused and the accuser in the reporting of any violation of this policy. Therefore, attempts by individuals to discredit others through inappropriate use of this policy are not permitted. ~~and may be considered for disciplinary action.~~

G. To report an actual or suspected violation:

1. Discuss the violation with the immediate supervisor, except when the supervisor is involved, in which case, discuss it with the person at the next supervisory level.

2. If you cannot address the situation in this manner, you may contact the Director of Human Resources.

Caution: Failure of a supervisor to report actual or possible violations may be a subject of appropriate Omnitrans discipline.

H. Direct any questions about the Standards of Ethical Conduct Policy to the Director of Human Resources.



SUBJECT

Standards of Ethical ConductAPPROVED BY OMNITRANS
BOARD OF DIRECTORS
PROPOSED FOR BOARD APPROVALDATE: ~~May 5, 2004~~ November 6, 2013**IV. STANDARDS OF ETHICAL CONDUCT**

- A. An environment that encourages the highest level of integrity from its members is critical to Omnitrans. Therefore, adherence by executive officers, directors, managers, supervisors, staff and others acting on behalf of Omnitrans to the standards of ethical conduct set forth in this document is an integral part of Omnitrans' long-range goals of attracting quality employees; ensuring proper stewardship of its resources; and attracting gifts, grants, and other forms of support.

Omnitrans executive officers, directors, managers, supervisors, staff and others acting on behalf of Omnitrans should not commit acts contrary to these standards or support the commission of such acts by others.

Further, employees of Omnitrans are expected to assume personal responsibility and accountability for their actions by maintaining these standards. In an effort to ensure that employees are adequately informed of Omnitrans' expectations, all employees will be asked to read a Statement of Ethical Conduct (see the "Appendix A" Section of this document).

Omnitrans employees that are designated in Omnitrans Conflict of Interest Code (COI) are required to submit California Form 700, Statement of Economic Interests, and shall comply with reporting requirements, including gifts limits established in Form 700. This policy is indicating a higher standard exists. No gift shall be accepted by employees, without approval of the CEO/GM. If approved, it must be reported in compliance with Form 700 and on file in the Administration Office.

Omnitrans employees not governed by California Form 700: No gifts shall be accepted by employees, without approval of the CEO/GM. If approved by the CEO/GM, receipt of gift from any single source or multiple sources that have a cumulative value of more than \$50.00 in a calendar year must be on file in the Administration Office.

- B. Listed below are some of the areas where frequent ethical questions arise, and some general principles of ethical conduct that apply to these areas:

Abuse of Power

- Support the creation and maintenance of an environment in which the abuse of power is not tolerated.

Communication

- Communicate judgments, opinions, and other information--both positive and negative--fairly and objectively.



PERSONNEL POLICY MANUAL

POLICY 103 PAGE 4 OF 7

SUBJECT

Standards of Ethical Conduct

APPROVED BY OMNITRANS
BOARD OF DIRECTORS
PROPOSED FOR BOARD APPROVAL

DATE: ~~May 5, 2004~~ November 6, 2013

Computer Use

- Use electronic communications and systems in a responsible manner.

Confidentiality

- Use confidential information acquired in the course of Omnitrans affiliation only for official or legal purposes, and not for personal or illegal advantage, during or after such affiliation;
- Disclose confidential information acquired in the course of employment or Omnitrans affiliation on a need-to-know basis and only when authorized to do so.

Conflicts of Interest and Commitment

- Advise appropriate parties of potential conflicts in accordance with applicable Omnitrans conflicts policies;
- Avoid any activity that hinders your ability to carry out responsibilities to Omnitrans.

Financial Transactions

- Conduct, process, and report all financial transactions with integrity.

Grants and Contracts

- Adhere to grant and contractual obligations of Omnitrans, including proper allocation of expenses;
- Comply with applicable laws and regulations governing the receipt and disbursement of sponsored funds.

Intellectual Property

- Honor non-disclosure agreements;
- Abide by all rules and laws governing the use of copyrighted materials, patented ideas, licenses, and proprietary information;
- Properly attribute the ideas and work of others.

Kickbacks

- Refrain from making or accepting payments to improperly obtain or reward with favorable treatment in connection with either a contract or subcontract relating to a prime contract.



PERSONNEL POLICY MANUAL

POLICY 103 PAGE 5 OF 7

SUBJECT

Standards of Ethical Conduct

APPROVED BY OMNITRANS
BOARD OF DIRECTORS
PROPOSED FOR BOARD APPROVAL

DATE: ~~May 5, 2004~~ November 6, 2013

Reporting

- Meet accurately and fully reporting obligations that are required by federal and state regulations.

Stewardship

- Use Omnitrans resources or assets legally and properly;
- Refrain from engaging in personal use of Omnitrans facilities, equipment, employees, or voluntary help unless written permission is obtained in accordance with applicable procedures.

IV. RESPONSIBILITIES

A. The major responsibilities each party has in connection with Omnitrans Standards of Ethical Conduct Policy are as follows:

CEO/General Manager	Ensure that directors and managers are aware of the need for complete compliance with the Statement of Ethical Behavior. Report suspected violations to appropriate Omnitrans personnel. Take appropriate action with regard to violations by direct reports.
Directors & Managers	Encourage and support efforts by employees to perform duties and responsibilities at the highest standards. Ensure that supervisors are promoting excellence in ethical practices through periodic training and daily reinforcement. Report suspected violations to appropriate Omnitrans personnel to protect both the alleged violator and the individual reporting a suspected violation.
Human Resources	Investigate alleged policy violations and determine whether a violation has occurred, and whether action is required.
You	Conduct Omnitrans-related activities according to the Statement of Ethical Conduct.

APPENDIX A

The federal government provides significant support to Omnitrans. Included in this section is a brief overview of some of the laws, regulations, and guidelines that may be used to evaluate the actions of Omnitrans as well as its executive officers, directors, supervisors, staff and others. Omnitrans and these individuals are expected to be in full compliance with



PERSONNEL POLICY MANUAL

POLICY 103 PAGE 6 OF 7

SUBJECT

Standards of Ethical Conduct

APPROVED BY OMNITRANS
BOARD OF DIRECTORS
PROPOSED FOR BOARD APPROVAL

DATE: ~~May 5, 2004~~ November 6, 2013

all federal and state laws.

Anti-Kickback Act of 1986

This act was passed to deter subcontractors from making payments and contractors from accepting payments to improperly obtain or reward with favorable treatment in connection with either a contract or subcontract relating to a prime contract.

Federal Sentencing Guidelines

1991 Federal Sentencing Guidelines define an effective internal control program in the following seven steps:

1. Compliance programs have been established to reduce the prospect of criminal conduct by the employees or agents of the organization. Other References include the Procurement Policy Manual. Omnitrans employees are to comply with other policies referencing Conflict of Interest such as Procurement Policy 1050 "Standards of Conduct and Conflict of Interest; Procurement Policy 1060 "Contractor Relations", as examples.
2. High-level individuals have been assigned responsibility to oversee compliance with the standards and procedures.
3. The organization has taken steps to install monitoring and auditing systems designed to detect criminal conduct.
4. Evidence confirms that substantial discretionary authority has not been delegated to individuals who the organization knows or should have known have a propensity to engage in illegal activities.
5. Standards and procedures have been communicated to all employees and agents through training programs and printed materials.
6. Standards and procedures have been consistently reinforced through appropriate disciplinary mechanisms.
7. Appropriate responses are made to reported offenses, with action taken to prevent recurrence.

Under the legal concept of *respondent superior*, or "let the master answer", the organization is responsible for the wrongful acts of its employees, as long as the employees are acting in their official capacity. Employees and agents are expected to be trained and counseled to act in a lawful and ethical fashion. Establishing a visible "track record" of prevention and detection within an organization is critical. The organization must be proactive in establishing anti-fraud programs and compliance audits.

Foreign Corrupt Practices Act of 1977



PERSONNEL POLICY MANUAL

POLICY 103 PAGE 7 OF 7

SUBJECT

Standards of Ethical Conduct

APPROVED BY OMNITRANS
BOARD OF DIRECTORS
PROPOSED FOR BOARD APPROVAL

DATE: ~~May 5, 2004~~ November 6, 2013

The anti-bribery provisions of this act require that books, records and accounts be maintained that accurately and fairly reflect the transactions and disposition of assets, and that a system of internal accounting control be maintained.

Office of Federal Procurement Policy Act Regarding Procurement Integrity

This act states that no competing contractor or any officer, employee, representative, agency, or consultant of such competing contractor shall knowingly:

- Make, directly or indirectly, any offer or promise of future employment with any procurement officer of such agency;
- Offer or give, directly or indirectly, any money, gratuity, or other thing of value to any procurement officer of such agency;
- Solicit or obtain, directly or indirectly, any proprietary or source selection information regarding such procurement.



PERSONNEL POLICY MANUAL

POLICY 109 PAGE 1 OF 2

SUBJECT

Conflict of Interest

APPROVED BY OMNITRANS
BOARD OF DIRECTORS

PENDING BOARD APPROVAL 11-6-13

DATE: January 1, 1999

I. Purpose

To state Omnitrans' policy on conflict of interest.

II. Scope

All Departments

III. Procedure

No employee will engage in any business or transaction or will have a financial or other personal interest or association which is in conflict with the proper discharge of official duties, or would tend to impair independence of judgment or action in the performance of official duties. Personal as distinguished from financial interest includes an interest arising from blood or marriage relationships or close business, personal, or political association. An employee is also subject to the provisions of California Government Code Sections 1090, 1126, 87100, and any other applicable provisions of the Government Code and any conflict of interest Code applicable to Omnitrans employment.

- A. Section 1090. Prohibits conflict of interest in contracts, sales, and interests in a government entity.
- B. Section 1126. Prohibits engagement in employment actions for compensation which is inconsistent with official duties.
- C. Section 87100. General conflict of interest. Prohibits employee interest in decisions made on behalf of the government.
- D. No employee or Board Member shall act in violation of ~~Resolution No. 140-96, dated September 6, 1995, in compliance~~ of Government Code Section 87306 this is in reference to the requirement when change is necessitated by changed circumstances in existing positions, and including the creation of new positions which must be designated pursuant to be included in the Conflict of Interest Code.
- E. Omnitrans employees that are designated in Omnitrans Conflict of Interest Code (COI) are required to submit California Form 700, Statement of Economic Interests, and shall comply with reporting requirements, including gift limits established in Form 700. This policy is indicating a higher standard exists. No gift shall be accepted by employees without approval of the CEO/GM. If approved, it must be reported in compliance with Form 700 and on file in the



PERSONNEL POLICY MANUAL

POLICY 109 PAGE 2 OF 2

SUBJECT

Conflict of Interest

APPROVED BY OMNITRANS
BOARD OF DIRECTORS

PENDING BOARD APPROVAL 11-6-13

DATE: **January 1, 1999**

Administration Office.

- F. Omnitrans employees not governed by California Form 700: No gifts shall be accepted by employees, without approval of the CEO/GM. If approved by the CEO/GM, receipt of Gifts from any single source or multiple sources that have a cumulative value of more than \$50.00 in a calendar year must be on file in the Administrative Office
- G. Omnitrans employees are to comply with other policies referencing Conflict of Interests such as Procurement Policy 1050 "Standards of Conduct and Conflicts of Interest" and Procurement Policy 1060 "Contractor Relations", for example, when dealing with contracts.

DRAFT

ITEM # E15

DATE: November 6, 2013

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

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

FROM: Jacob Harms, Director of Information Technology

SUBJECT: AUTHORIZE SOLE SOURCE PURCHASE OF 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, 2013, and ending June 30, 2014, for the TransTrack software utilized by the Agency for financial & operational reporting to SANBAG (San Bernardino Associated Governments) in the amount of \$36,050.00.

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.

FUNDING SOURCE

Funding for this contract is budgeted in the operating budget for Fiscal Year 2014.

Department Number 1320
Expenditure Code 505170

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

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

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

October 21, 2013

Mr. Scott Graham
Chief Executive Officer
Omnitrans
1700 W. 5th Street
San Bernardino, California 92501

Subject: FY 2014 Renewal of End User License Maintenance & Support Agreement – Amendment #009

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 2014 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 \$36,050 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 \$36,050 payment, it will serve to renew the End User License for the 2014 fiscal year term, subject to all other terms and conditions of the End User License remaining the same.

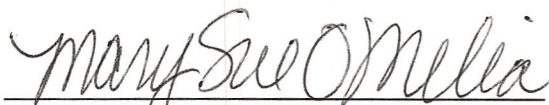
This letter shall also amend Exhibit F by adding the following sentence:

"Annual Maintenance and Support Fee (July 1, 2013 to June 30, 2014): \$36,050."

All other terms and conditions of the License shall remain in full force and effect.

AGREED AND ACCEPTED

TransTrack Systems®, Inc.



Mary Sue O'Melia
President

Date: 10/21/2013

AGREED AND ACCEPTED

Omnitrans

Scott Graham
CEO/General Manager

Date: _____



Inland Empire Community Newspapers • September 12, 2013 • Page A17

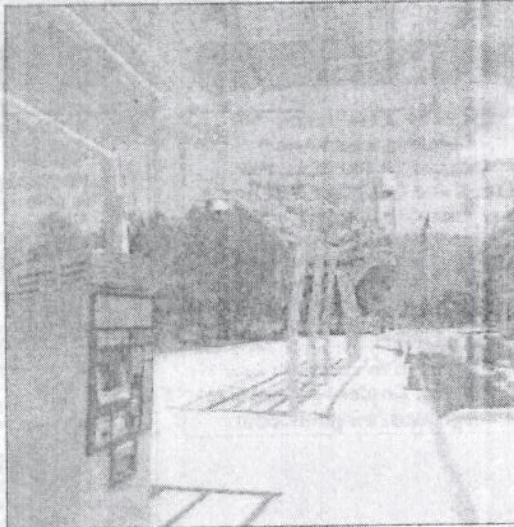
Cal State Students Get Free Ride to College

Omnitrans Go Smart Program Returns to CSUSB for 2013-14

San Bernardino, CA - Students at California State University, San Bernardino can get a free ride to college thanks to the Go Smart program that offers them unlimited rides just by swiping their college IDs on Omnitrans buses. Beginning Wednesday, September 11, students enrolled for the fall quarter can climb aboard any Omnitrans bus route for free.

The campus currently is served by four Omnitrans bus routes, 2, 5, 7, 11. Coming in April 2014, the new sbX bus rapid transit line will provide frequent weekday service to the CSUSB station located at the University's main entrance.

"We are proud to be partnering with Omnitrans on the sbX line to bring rapid transit service to our campus," said Bob Gardner, CSUSB vice president of administration and finance. "When the San Bernardino Transit Center project is completed in 2015, the direct connection between sbX and Metrolink will greatly expand commuting op-



tions for our students."

CSUSB participated in the Go

Smart pilot program in 2011-12. During that year, over 194,000 bus

trips were tallied by more than 3,000 students who used the program, which represented about 17 percent of enrollment. But funding challenges kept the University from continuing Go Smart the following year.

"The Associated Students Inc. are partially responsible for bringing the Go Smart program back to CSUSB students again this year," Gardner said. "We're thankful for ASI's funding support and valuable partnership with Omnitrans and the university."

"We applaud ASI and the Administration at CSUSB for supporting a program that saves students money and saves our environment," said Omnitrans Director of Marketing Wendy Williams. "Just one student riding one day on transit instead of driving eliminates 20 lbs. of carbon emissions. Plus, students can expect to save over \$2,800 per year in auto, fuel, and parking expenses by switching to transit."

Students can use their college ID card to ride Omnitrans at any time on any route, not just trips to and from campus. ID cards are swiped in the fare box on board buses which allows the agency to capture usage data by school, by route and even individual ID.

Without Go Smart college students would have to pay \$1.50 per trip or \$4.00 for a one-day pass to ride the bus; 7-day passes are \$15 and 31-day passes are \$47.

Other area colleges participating in the Omnitrans Go Smart program include Art Institute of California - Inland Empire, Chaffey College, Cuyamaca College, and San Bernardino Valley College. During the 2012-13 academic year, students at these partner schools took over 1.4 million bus trips.

Omnitrans offers personalized trip planning at 1-800-9-OMNIBUS or online at www.omnitrans.org. Information about the sbX project is available at www.omnitrans-sbx.org.

Sun
Monday, September 23, 2013

THE SUN

CSUSB students will ride free on Omnitrans buses

By Staff reports

POSTED: 09/23/13, 7:54 PM PDT

SAN BERNARDINO >> Because they demanded it, Cal State San Bernardino students will again be riding free on area buses.

During the 2011-2012 school year, CSUSB took part in a pilot program with area bus system Omnitrans, offering free rides to Coyotes with their college identification. More than 3,000 students took more than 194,000 rides during the school year — about 17 percent of all students.

The university ended the Go Smart program after a single year, as part of a cost-cutting measure.

But students demanded it back.

"The Associated Students Inc. are partially responsible for bringing the Go Smart program back to CSUSB students again this year," Bob Gardner, CSUSB vice president of administration and finance, was quoted as saying in a statement. "We're thankful for ASI's funding support and valuable partnership with Omnitrans and the university."

As of Sept. 11, students are again able to ride free with their college IDs.

The campus is served by four Omnitrans bus routes: 2, 5, 7 and 11. Starting in April 2014, the new sbX bus rapid transit line will provide weekday service to the university's main entrance.

University officials are already looking ahead to the future:

"When the San Bernardino Transit Center project is completed in 2015, the direct connection between sbX and Metrolink will greatly expand commuting options for our students," Gardner said.

Normally, students would have to pay \$1.50 per trip or \$4 for a one-day pass to ride the bus. Seven-day and 31-day passes are also available. Omnitrans officials estimate students can save more than \$2,800 per year in auto, fuel, and parking expenses by using the bus line.

Other local colleges participating in the Go Smart program include Art Institute of California – Inland Empire, Chaffey College, Cerritos College and San Bernardino Valley College. Students at those partner schools took more than 1.4 million bus trips during the 2012-2013 school year.

CSUSB

Students will get a free ride on Omnitrans buses

Staff reports

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Other local colleges participating in the Go Smart program include Art Institute of California – Inland Empire, Chaffey College, Crafton Hills College and San Bernardino Valley College. Students at those partner schools took more than 1.4 million bus trips during the 2012-2013 school year.

Other Monday, September 30, 2013

www.ChinoHills.com

OCTOBER 2013 News and Views By Vice Mayor ED GRAHAM

September 30, 2013 By Ed Graham

"My 22nd Year of Commitment and Communication to Chino Hills"

In this stage of my life (just had another birthday on 9-11) my needs are simple...the love of a great woman (I should get points with Denise), family (our three sons are home for a few days and I love listening to their discussions and digressions), friends, football and hanging out with my sisters. As to my sisters, I need to have more time with them (one lives in San Clemente and the other in Montana.) They always like to rewrite our childhood history into something that never happened so as the eldest, I'm always correcting their stories. See the insert to see if we have any similar family traits (I'm the one in the middle.) For the first time I'm participating in Fantasy Football and hold the title of commissioner of the league! It's very entertaining and casual. Next year we should have a league for Chino Hills residents only...anyone?

There was a flier that was making the online rounds of "curb marking" (elaborate symbols allegedly used by gangs to identify potential targets of crimes) that was occurring in LA and residents were afraid it had spilled over to Chino Hills. We have NOT had any reports of this in Chino Hills or in San Bernardino County. The flier has been extensively distributed and all police agencies are well aware of the information. Our PD had several reports of this and found that none were victims of crime. That being said, report anything that is suspicious...like markings on a curb. You just never know.

The condition of the landscaping throughout the City has raised concerns (the browning of some of the turf areas and medians.) The seasonal hot weather we have suffered in late Aug and Sept has really increased our water costs. The city is the biggest consumer of water and this year our water budget is \$1.75M. This cost is 33% higher than in 2011. Additionally the rates are scheduled to increase by 10% for the next two years. On top of those prices, 22 backflow devices were stolen and a malfunction of our irrigation pumps also occurred. In response to all this, the landscape program had to change. The turf watering was reduced by 25%, and mowing has become bi-weekly. Watering in our parks and planted slopes areas has not been decreased at this time.

We certainly understand your concerns regarding the city-maintained landscaping. Unfortunately, we are currently challenged with continually rising maintenance and water costs, which significantly exceed our Landscape and Lighting District revenues.

We acknowledge that the hot summer weather has browned a number of landscaped areas. Staff has maintained watering schedules consistent with the budget. However, we have recently increased the landscape watering cycles to hopefully mitigate this challenge. We anticipate that these areas will become greener as the weather cools in the upcoming weeks.

The CH Wine Walk is Sat, Oct. 12th from 4-7pm at the Shoppes of CH. This event is sponsored by the CH Community Foundation and the money raised goes to projects in the Hills. Twenty wines and appetizers will be featured, raffle prizes, music. Wander from store to store drinking and eating. Bring friends, it is a very social event. \$40 if you pay in advance. www.chinohills.org/winewalk

Landscape maintenance is provided by City Staff at Community Park, McCoy Equestrian Center, and Founders Recreation Center. This has been a stopgap measure, as we have had to reduce our maintenance costs in those areas so staff has taken on these additional duties with no increase in personnel. These areas will most likely be contracted out again when funding becomes available. The City is currently engaged in very serious discussions to find a funding solution for the increased costs to these L and L Districts that were formed in 1996. It should be noted, that there have been no increases to these districts prior to the adoption of Proposition 218 in '98. Pursuant to Proposition 218, the funding for the Landscape and Lighting Districts cannot be increased without voter approval. Therefore, the costs not covered by these districts are taken out of the City's General Fund, which should go to support other critical services such as law enforcement, road maintenance, recreation, economic development, etc.

A resident was asking about construction noise so here is the official word. Our City's Municipal Code regarding construction noise, which is similar to the majority of cities across the nation, allows for such work to occur between the hours of 7:00 a.m. and 7:00 p.m. on weekdays, and between 8:00 a.m. and 6:00 p.m. on Saturdays, excluding federal holidays.

For those of you that like numbers, Which San Bernardino County city has the least amount of residents on welfare as a percentage of its population? CH is the lowest with .7%, with Rancho Cucamonga next at 1.8%. Chino came in at 2.3% of its population. The highest in the county is the City of Adelanto at 14%.

Based upon your feedback several years ago, I requested a dedicated right turn lane for the southbound 71 Soquel Canyon off-ramp. Initially the city set aside \$175,000 as a 50/50 match with Caltrans but Caltrans expanded the scope of the project and requested the city to participate to the tune of \$350K. We did not agree with the concept that the city should share the cost of the expanded project but this fell on deaf ears. We never received any form of response from CT so this project was dropped for this fiscal year. However, after adoption of this year's budget, we received word from Caltrans that they would go forward with the project at the city's initial \$175K participation level. Therefore, we will add the project to our Capital Improvement Project list at the next budget cycle. The project will lengthen the third lane with additional pavement.

The CH housing market is changing. Currently there are 787 multifamily and 577 single family units that have already been entitled, many of which are now getting ready to build.

Bus service to CHIIS in the morning and afternoon has a good chance of expanding to the Butterfield Ranch area. Omnitrans has agreed to study what could be done on a trial basis with the hope of starting something in January.

The Fire District election is over and congrats to two CH residents elected to public office! Mike Kreeger and Brian Johns. So why does the Fire District have an election in August? Why is it only done by mail? Why does it take Brian and Mike until December to sit on the board when the election is over in August? I can make an educated guess as to why the board does it that way, can you?

The city received a grant for citywide bus stop improvements. Eleven bus stops will now have pads installed with ADA accessible ramps. The city will spend \$25K and the grant will contribute \$58K. Shelter improvements will be in the future.

The Bay Delta Conservation Plan will soon be on the street for comments. This is the plan to build a tunnel under the Sacramento Delta to provide water to SF and So Cal. The document is only 26,000 pages so there is plenty to comment on.

We hear so much about Caltrans all the time I thought it would be prudent to tell you who exactly they are. CT has 19,500 employees with a budget of \$12.8B. They design and oversee construction of highways, operate and maintain the state's highway system, fund three intercity passenger rail routes, and oversee funding for local mass transit. The highway inventory is around 50,000 lane miles. The 12,910 bridges are also in their purview. Inspections are done at the 812 public and special use airports and heliports. Largest source of funding is the excise tax paid at the pump, federal funds from fuel taxes, and weight fees on trucks. About 13% of their budget pays for debt service on past commitments.

More than 40% of container cargo in the US enters thru CA ports. But the Panama Canal completion in 2014 could cause CA to lose as much as 25% of cargo business and its related jobs. Currently CA generates about \$7B in state and local taxes through cargo. CA legislators and the CA ports need to develop a comprehensive port strategy and update their Goods Movement Action Plan. I bring this up because the Inland Empire is critical for moving cargo out of the ports and across the country and our regional economy will also be hit hard unless CA acts.

I appreciate those who stop and ask a question or register a complaint when I'm in a store or restaurant (and more of you are doing that, which is great). Besides, it is part of the work that I was elected to do, so I welcome your input. The Grahams love Chino Hills and want to make it a better place, just like you.

Yours in service,

Vice Mayor Ed

Redlands Daily Facts
Wednesday, October 02, 2013

REDLANDS DAILY FACTS

Ride free on Omnitrans Oct. 9

By Staff Report

POSTED: 10/02/13, 2:51 PM PDT

Omnitrans urges commuters to take a break from traffic and try transit on Wednesday, using a free ride coupon available online at www.omnitrans.org that allows unlimited bus travel for the entire day.

Omnitrans is serving up free rides in support of Inland Empire Commuter Services' annual Rideshare Week, Monday through Oct. 11.

The event promotes the benefits of carpooling, vanpooling, walking, bicycling and riding public transit as alternatives to solo driving, which contributes to traffic congestion, smog and stress for commuters.

Participants who pledge to rideshare at least one day during Rideshare Week 2013 can register to win one of more than 100 prizes at www.ie511.org.

"We hope a free ride encourages people to take us for a test ride," said Omnitrans director of marketing Wendy Williams. "We offer routing assistance online or by phone and with our new 'NexTrip' real-time technology (www.omnitrans.org/nextrip), riders can text, click or call to find out when the next bus will arrive at their specific bus stop location."

In Southern California, transit users save more than \$11,000 per year compared to driving.

One person switching to public transit can reduce carbon emissions by 20 pounds per day, or more than 4,800 pounds in a year.

Omnitrans' bus fleet is 100 percent powered by clean natural gas, which significantly reduces smog-causing emissions compared to other fuels.

During Rideshare Week 2012, Omnitrans saw record ridership with an average of 66,000 riders each day. On a typical weekday, the transit agency tallies about 52,500 boardings.

Omnitrans operates 28 bus routes stretching across the San Bernardino Valley from Yucaipa to Montclair, with some routes running every 15 minutes. Personalized routing assistance is available at 1-800-9-OMNIBUS (800-966-6428) or online at www.omnitrans.org.

Source: Omnitrans

Other
Thursday, October 03, 2013

INLAND VALLEY NEWS

Ride Free on Omnitrans

10/3/2013 11:46 a.m.

San Bernardino, CA— Omnitrans urges commuters to take a break from traffic and try transit on Wednesday, October 9th, using a free ride coupon available online at www.omnitrans.org that allows unlimited bus travel for the entire day.

Omnitrans is serving up free rides in support of Inland Empire Commuter Services' annual Rideshare Week, October 7 through 11. The event promotes the benefits of carpooling, vanpooling, walking, bicycling, and riding public transit as alternatives to solo driving, which contributes to traffic congestion, smog, and stress for commuters. Participants who pledge to rideshare at least one day during Rideshare Week 2013 can register to win one of over 100 prizes at: www.ie511.org.

"We hope a free ride encourages people to take us for a test ride," said Omnitrans Director of Marketing Wendy Williams. "We offer routing assistance online or by phone and with our new 'NexTrip' real-time technology (www.omnitrans.org/nextrip), riders can text, click or call to find out when the next bus will arrive at their specific bus stop location."

Omnitrans provides an economical and environmentally friendly alternative to driving. In southern California, transit users save over \$11,000 per year compared to driving.¹ One person switching to public transit can reduce carbon emissions by 20 pounds per day, or more than 4,800 pounds in a year. Omnitrans' bus fleet is 100 percent powered by clean natural gas, which significantly reduces smog-causing emissions compared to other fuels.

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1. American Public Transportation Association's (APTA) September Transit Savings Report. www.publictransportation.org

ITEM # F1

DATE: November 6, 2013

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

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

SUBJECT: CEO/GENERAL MANAGER'S REPORT

Board Chair Alan Wapner and I, along with members of staff, attended the CalACT/California Transit Association Fall Conference in Anaheim, October 16-18.

Omnitrans will be a sponsor/participant in the November 3 American Lung Association Fight for Air Walk in Ontario. Board Chair Alan Wapner is the honorary chair of the event.

Over the next two weeks, placement of the final asphalt cap will be done on the majority of the corridor. Starting Monday, October 28, 2013, the asphalt cap will be placed on Hospitality starting from Tippecanoe and continuing to E Street. Cap placement on Hospitality will mainly be done at night and should take three to four days and will be complete by the November 1 moratorium near Costco, just in time for the start of the holiday shopping season. Paving for E Street from 10th to Rialto is scheduled to start on November 4.

I will be attending the Redlands Rail Working Group hosted by Supervisor James Ramos on Wednesday, October 30. At the meeting, staff will be presenting information on Omnitrans current service and how Omnitrans bus network can meet the needs of Rail-to-Redlands stations and beyond.

Acting Planning Director Anna Rahtz was selected by Mass Transit magazine as one of their "Top 40 Under 40" transit professionals for 2013. Anna's accomplishments at Omnitrans include securing grant funding for the San Bernardino Transit Center and for Planning Department internships, along with overseeing Omnitrans' Transit Design Guidelines document which earned the Focused Issue Planning Award from the American Planning Association – Inland Empire Section.

The "Go Smart" pilot program that more than doubled the number of local college students using public transit and eliminated an estimated 129 tons of pollution earned Omnitrans a Clean Air Award from the South Coast Air Quality Management District. Board Chair Wapner, Vice Chair Spagnolo, and Board Member Dick Riddell accompanied myself and staff to the awards ceremony in Los Angeles on October 4, 2013.

MONTHLY STATISTICS

Ridership for September 2013 was 1,345,543 compared to 1,377,348 in September 2012. This is a 2.3 percent decrease from September of last year. Year-to-date ridership through September 2013 was 3,919,719, which is a decrease of 2.7 percent from last year-to-date. Fixed route ridership decreased by 110,068 passengers year-to-date. Ridership on Access increased by 2,545 passengers, and OmniLink increased by 56 passengers. OmniGo ridership was 38,281 year-to-date, which is up 18.4 percent.

Year-to-date pass outlet sales through September 2013 decreased by 21,252 units with 10,931 sold compared to 32,183 last year. This represents a decrease of 66 percent. This is due to Stater Brothers returning their passes. Revenue from bus pass and ticket sales, combined with the Go Smart college program revenue, decreased 4.0 percent through September (\$1,446,559.24 vs. \$1,506,936.35 last year, a decrease of \$60,377.11).

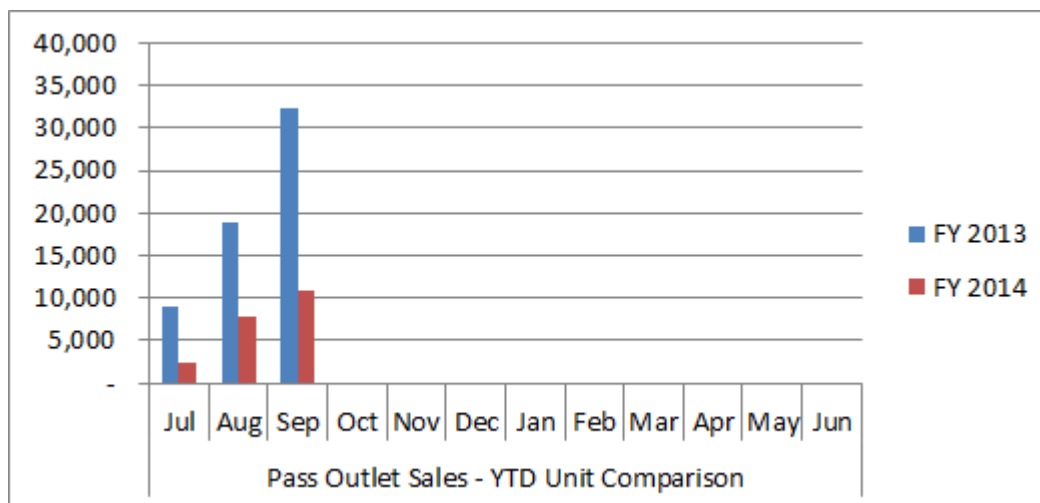
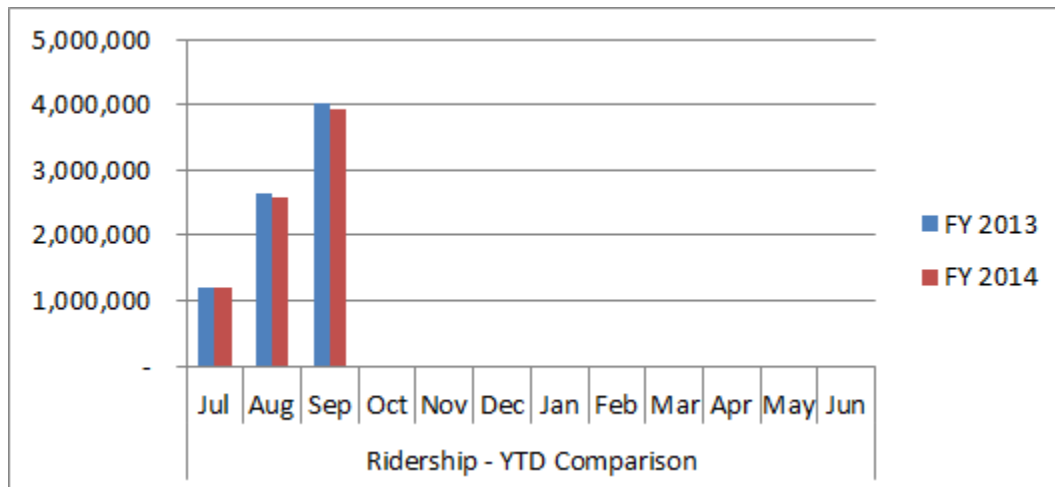
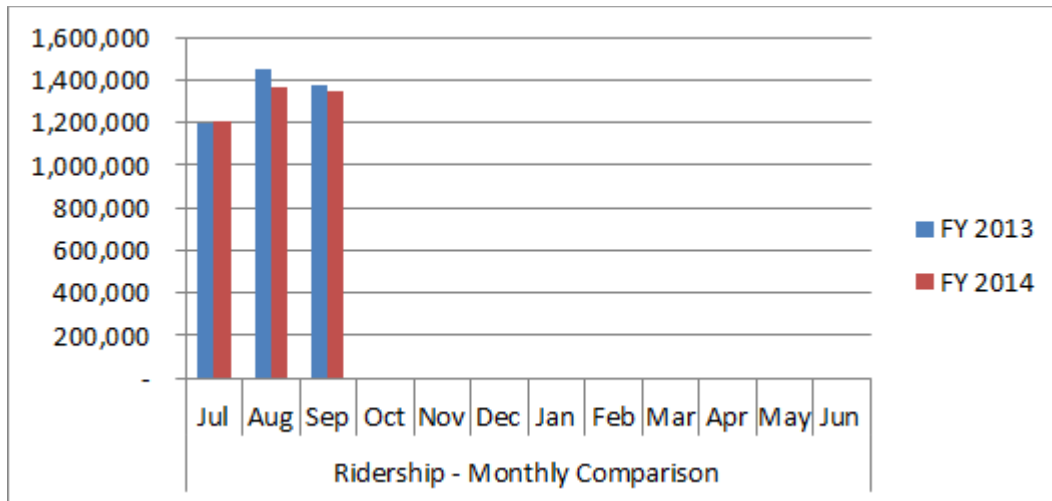
Year-to-date fixed route revenue through September 2013 was \$3,296,291 compared to \$3,159,305 last year, which is an increase of 4.34 percent.

On-time performance for September 2013 was 85.27 percent.

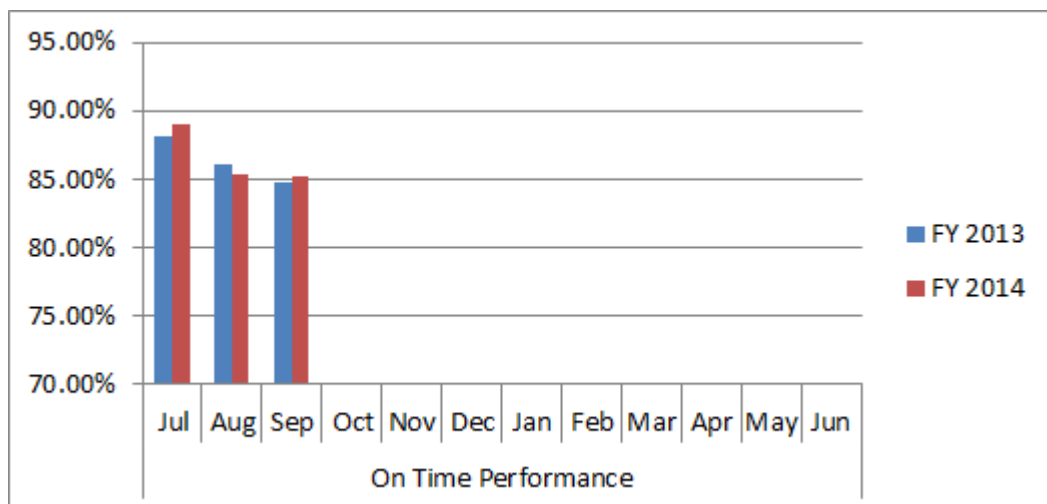
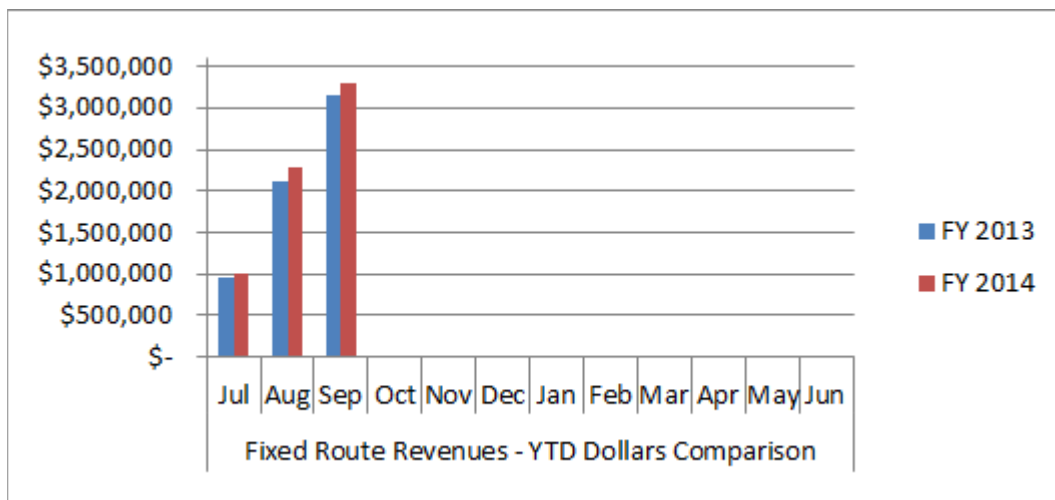
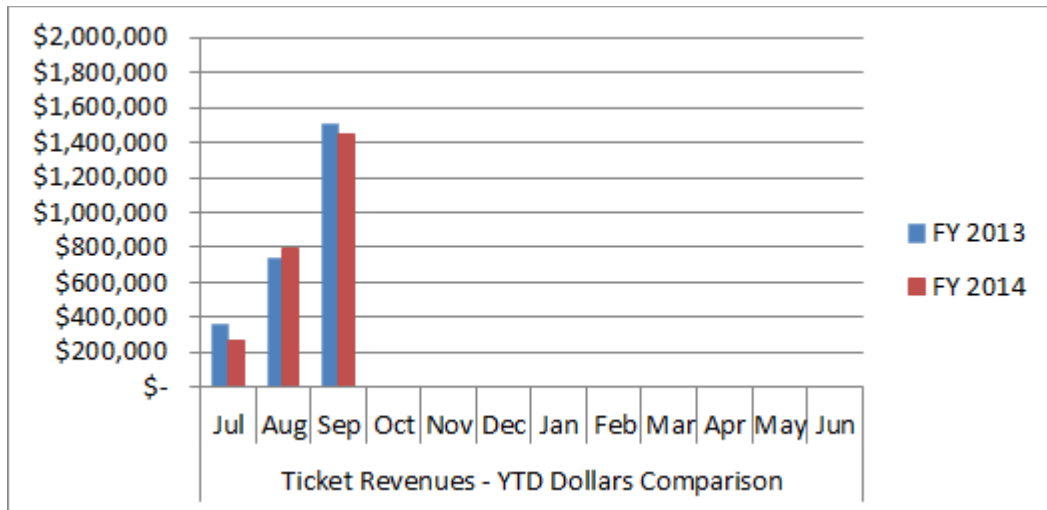
Omnitrans participated in eleven outreach events in September – Travel Training Bus at OPARC in Montclair, September 9; Inland Empire Commuter Services Rideshare Week Kickoff in Ontario, September 11; Go Smart Presentation at SB Community College District, September 12; American Lung Association Fight for Air Walk Kickoff in Ontario, September 12; Fontana Family Health & Safety Fair, September 14; Disabilities Collaborative Conference in San Bernardino, September 17; ARMC “Pink Glove” Breast Cancer Awareness Video Filming, September 18; Route 66 Cruisin’ Reunion in Ontario, September 20 through 22; Go Smart Outreach at Cal State San Bernardino, September 26; Senior Health & Wellness Fair in Rancho Cucamonga, September 27; and Travel Training Bus at Citrus High School in Fontana, September 30.

PSG:CA

CEO/General Manager Report - September 2014



CEO/General Manager Report - September 2014



ITEM # F2

DATE: November 6, 2013

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

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

SUBJECT: PROPOSED BOARD MEETING CALENDAR FOR 2014

FORM MOTION

Adopt the proposed Board Meeting Calendar for 2014.

January 8, 2014¹

February 5, 2014

March 5 2014

April 2, 2014

May 7 2014

June 4, 2014

July 2, 2014

August 6, 2014

September 3, 2014

October 1, 2014

November 5, 2014

December 3, 2014

¹Second Wednesday of month. Coincides with SANBAG's proposed meeting date.

PSG:vd

ITEM # F3

DATE: November 6, 2013

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

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

FROM: Marjorie Ewing, Director of Human Resources

SUBJECT: ADOPT RESOLUTION #269-13 APPROVING THE TRANSIT MUTUAL ASSISTANCE COMPACT (TRANSMAC) AGREEMENT FOR PUBLIC TRANSIT PROVIDERS

FORM MOTION

Adopt Resolution No. 269-13 approving the Transit Mutual Assistance Compact (TransMAC) Agreement for public transit providers and authorize the Interim CEO/General Manager to execute all necessary documents for the Agreement.

BACKGROUND

TransMAC is related to a program to better prepare Omnitrans to respond to, and recover from emergencies and disasters while fulfilling its obligation to provide essential services to the community, or assist its fellow public transit providers in doing the same. A formal mutual assistance agreement for public transit agencies has been developed with wide participation from transit providers, emergency management agencies and legal counsels in California. The resulting California Transit Mutual Assistance Compact (TransMAC) is similar to those that have existed and been tested in other disciplines for many decades (e.g., law enforcement, public works, utilities). TransMAC will help Omnitrans forge a resilient, formal and mutually beneficial relationship with its fellow public transit providers for emergency situations. TransMAC facilitates rapid, short-term deployment of emergency support (personnel, equipment, materials and other associated services) prior to, during, and/or after an incident or pre-planned event amongst its Membership. The TransMAC establishes the framework for activation, withdrawal, member responsibilities, reimbursement, documentation, legal and liability issues; yet provides great flexibility for Members to negotiate terms appropriate to the situation at the time of activation. TransMAC will also assist Omnitrans in joining a community of its fellow transit providers that are creating and codifying a united and strong voice for transit among our public safety and emergency services counterparts.

During the response to, and the period of recovery from, an emergency that may impact our operations or other event, it may be necessary for Omnitrans to sustain and rebuild its operation quickly in order to maintain essential services and support other agencies. Omnitrans' Counsel

has identified the CEO/General Manager power to contract in an emergency as set forth in California Public Utilities Code sections 130234 and 130235, as well as the general power of the CEO/General Manager to enter into contracts required to obtain the necessary construction, goods, and services to allow Omnitrans to begin the rebuilding process as identified in California Public Utilities Code section 130051.9. Omnitrans need to support other transit agencies and the potential need of Omnitrans to be assisted by other agencies would be enhanced by this formal agreement with those other Members to the TransMAC. To facilitate and enable Omnitrans to join the TransMAC, it is advisable to empower the CEO/General Manager to act on Omnitrans' behalf to take necessary actions as authorized by statute when the TransMac is activated.

FUNDING SOURCE

There is no fiscal impact associated with this agreement unless Omnitrans activates TransMAC in the event of an emergency or planned event.

CONCLUSION

Adopting Resolution #269-13 allows Omnitrans to be part of TransMAC and will allow the Agency to respond to emergencies utilizing assistance from other transit providers.

PSG:MJC

RESOLUTION NO. 269-13

A RESOLUTION OF THE OMNITRANS BOARD OF DIRECTORS, SAN BERNARDINO COUNTY, CALIFORNIA, APPROVING THE TRANSIT MUTUAL ASSISTANCE COMPACT AGREEMENT FOR PUBLIC TRANSIT PROVIDERS

WHEREAS, Omnitrans needs to respond to, and recover from emergencies and disasters while fulfilling its obligation to provide transit services or assist its fellow public transit providers in doing the same; and

WHEREAS, a formal mutual assistance agreement for public transit agencies has been developed with wide participation from transit providers, emergency management agencies and legal counsels in California; and

WHEREAS, Omnitrans participated in coordinating and developing the Transit Mutual Assistance Compact (“TransMAC”) along with Los Angeles County Metropolitan Authority, Orange County Transportation Authority, Foothill Transit, Sunline Transit, North County Transit District, Orange County Sheriff’s Department – Emergency Management Division, and the California Emergency Management Agency; and

WHEREAS, TransMAC will help Omnitrans forge a resilient, formal and mutually beneficial relationship with its fellow public transit providers for emergency situations; and

WHEREAS, TransMAC facilitates rapid, short term deployment of emergency support (personnel, equipment, materials, and other associated services) prior to, during, and/or after an incident or pre-planned event amongst its membership; and

WHEREAS, Omnitrans need to support other transit agencies and the potential need of Omnitrans to be assisted by other agencies would be enhanced by a formal agreement with other members in TransMAC.

BE IT THEREFORE RESOLVED that Omnitrans adopt Resolution No. 269-13, approving the Transit Mutual Assistance Compact Agreement for Public Transit Providers.

I HEREBY CERTIFY that the foregoing resolution was duly adopted by the Omnitrans Board of Directors, at their regular meeting held on the 6th day of November, 2013, by the following vote to wit:

AYES:

NOES:

ABSENT:

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

Alan Wapner, Chair
Omnitrans Board of Directors

Approved as to form:

Carol Greene
Legal Counsel for Omnitrans

CALIFORNIA STATEWIDE

**TRANSIT MUTUAL
ASSISTANCE COMPACT
(TransMAC)**

MAY 2013

TABLE OF CONTENTS

PREAMBLE.....	1
ARTICLE I: PREAMBLE.....	1
ARTICLE II: DEFINITIONS.....	2
ARTICLE III: ADMINISTRATION	3
ARTICLE IV: PROCEDURES.....	4
ARTICLE V: MEMBER RESPONSIBILITIES.	4
ARTICLE VI: REQUESTS FOR ASSISTANCE.....	5
ARTICLE VII: COST REIMBURSEMENT.	6
ARTICLE VIII: RESPONSE COORDINATION.	8
ARTICLE IX: ARBITRATION.	10
ARTICLE X: REQUESTING MEMBER'S DUTY TO INDEMNIFY.....	10
ARTICLE XI: SIGNATORY INDEMNIFICATION.....	10
ARTICLE XII: WORKERS' COMPENSATION CLAIMS.	11
ARTICLE XIII: NOTICE.	11
ARTICLE XIV: INSURANCE.....	11
ARTICLE XV: SENSITIVE SECURITY INFORMATION.	11
ARTICLE XVI: EFFECTIVE DATE.	11
ARTICLE XVII: WITHDRAWAL.	11
ARTICLE XVIII: MODIFICATION.....	12
ARTICLE XIX: SEVERABILITY.	12
ARTICLE XX: PRIOR AGREEMENTS.	12
ARTICLE XXI: PROHIBITION ON THIRD PARTIES.....	12
ARTICLE XXII: TORT CLAIMS.....	12
ARTICLE XXIII: INTRASTATE AND INTERSTATE MUTUAL ASSISTANCE PROGRAMS. ...	12
EXECUTION OF THE AGREEMENT	13

**CALIFORNIA STATEWIDE
TRANSIT MUTUAL ASSISTANCE COMPACT (TransMAC)**

PREAMBLE

This Transit Mutual Assistance Compact (TransMAC) and its Members have established a formal process whereby they may receive and provide Mutual Assistance to each other in the form of personnel, services, and equipment as deemed to be necessary or advisable in an emergency. The Mutual Assistance Agreement contained herein, sets forth the terms and conditions under which the undersigned Members agree to provide or receive Mutual Assistance. However, if a Requesting Member and one or more Providing Members are parties to another mutual assistance agreement at the time the Mutual Assistance is requested, such other mutual agreement shall govern the Mutual Assistance among those Members insofar as the previous agreements are not inconsistent with this Agreement.

In consideration of the foregoing, the TransMAC Member hereby agrees as follows:

- A. When providing Mutual Assistance to, or receiving Mutual Assistance from, another Member, the Member will adhere to these written principles to govern Mutual Assistance arrangements that are in effect as of the date of a specific request for Mutual Assistance, unless otherwise agreed to in writing by each Member.
- B. With respect to each Period of Assistance, Requesting Members agree that they will provide appropriate reimbursement to the Providing Member regarding all costs and expenses incurred by the Providing Member in furnishing Mutual Assistance as identified under the articles of this Agreement, unless otherwise agreed to in writing by each Member. Entities must maintain auditable records in a manner consistent with generally accepted practices and in a manner consistent with the Member's adopted practices and methods of record keeping and retention.
- C. During each Period of Assistance, the conduct of the Requesting Member and the Providing Member shall be subject to the liability and indemnification provisions set forth herein.
- D. A Member may withdraw from this Agreement at any time. In such an event, the Member should provide written notice to the Chairperson of the TransMAC Steering Committee.
- E. The TransMAC Steering Committee Chairperson shall maintain a current list of Members, which shall be distributed to all Members no less than twice annually; however, a Member may at any time request a copy of the signed Agreement of another Member prior to providing or receiving Mutual Assistance.

**ARTICLE I.
PURPOSE**

Recognizing that emergencies and other events may overwhelm the resources and capabilities of transit agencies, and that transit agencies may require assistance in the form of personnel, services, and equipment to continue to deliver critical services, the TransMAC Members hereby establish an intrastate program for Mutual Assistance. Through the TransMAC, Members

coordinate response activities and share resources when deemed to be necessary or advisable in an emergency. This Agreement sets forth the policies and standards for the administration of the TransMAC.

This Agreement shall be in accordance with the California Emergency Services Act, the California Disaster and Civil Defense Master Mutual Aid Agreement, the State Emergency Plan, and other existing state and local emergency operations plans, and shall be by and among Member transportation providers in the State of California.

ARTICLE II. DEFINITIONS

- A. **Associate Member** – Any non-transit providers, approved by the TransMAC Steering Committee, which play a supporting role for the TransMAC program. For example, the U.S. Department of Transportation (U.S. DOT), Federal Transit Administration (FTA), California Department of Transportation (CalTrans), California Emergency Management Agency (CalEMA), local emergency management organizations, and/or others who are not signatories to the TransMAC, but manifest the intent to offer support or coordination.
- B. **Authorized Official** – An employee or officer of a Member who is empowered and legally authorized to: (1) request assistance; (2) offer assistance; (3) refuse to offer assistance; (4) cancel a request or release assistance; or (5) withdraw assistance under this Agreement.
- C. **Emergency** – A natural or human caused event or circumstance causing, or imminently threatening to cause, impact to the operations of a Member, loss of life, injury to person or property, human suffering or financial loss, and includes, but is not limited to, fire, flood, severe weather, earthquake, civil disturbance, riot, explosion, drought, volcanic activity, spills or releases of oil or hazardous material, utility interruption, transportation emergencies, disease, blight, infestation, intentional acts, sabotage, declaration of war, or other conditions which are, or are likely to exceed, the resources of a Member and requires Mutual Assistance.
- D. **Founding Members** – The original agencies that coordinated and drafted this Agreement, which include: Los Angeles County Metropolitan Transportation Authority, Orange County Transportation Authority, Foothill Transit, SunLine Transit, Omnitrans, Long Beach Transit, California Emergency Management Agency, and the Orange County Sheriff-Coroner Department - Emergency Management Division.
- E. **Incident Command System (ICS)** – A management system designed to enable effective and efficient domestic incident management by integrating a combination of facilities, equipment, personnel, procedures, and communications operating within a common organizational structure.
- F. **Independent Contractor** – Independent entity that agrees to furnish certain number or quantity of goods, materials, equipment, personnel, and/or services, at a mutually agreed upon price and within a specified timeframe to Members.
- G. **Member** – Any public or private transit provider who participates in the transit mutual assistance program by executing the TransMAC Agreement.

- H. **Mutual Assistance** – Any assistance provided under this Agreement. Mutual assistance is to be provided to a Requesting Member with the expectation of cost reimbursement as negotiated with the Providing Member.
- I. **Mutual Assistance Agreement** – A written agreement between and among Members that provides a mechanism to quickly obtain Mutual Assistance in the form of personnel, services, and equipment. The primary objective is to facilitate rapid, short-term deployment of emergency support prior to, during, and/or after an emergency.
- J. **National Incident Management System (NIMS)** – A national, standardized approach to incident management and response that sets uniform processes and procedures for emergency response operations.
- K. **Period of Assistance** – A specified period of time when a Providing Member assists a Requesting Member. The period shall commence when personnel and/or equipment expenses are initially incurred by the Providing Member in response to the official request of the Requesting Member and shall end upon agreement of the parties.
- L. **Providing Member** – A Member that responds to a Requesting Member by agreeing to provide personnel, services, equipment, etc. under the terms and conditions of this Agreement.
- M. **Requesting Member** – A Member who requests Mutual Assistance under this Agreement.
- N. **Sensitive Security Information** – Any document marked Sensitive Security Information (SSI), including but not limited to any map, report, notes, papers, plans, opinion, or e-mail, which relates to the system vulnerabilities of a Member or Associate Member, shall be handled consistent with proper protocols for Sensitive Security Information under 49 CFR Parts 15 and 1520.
- O. **Standardized Emergency Management System (SEMS)** – A standardized approach to command and jurisdictional management and response set forth by State of California Code of Regulations for multi-agency or multi-jurisdictional response to an emergency.

ARTICLE III. ADMINISTRATION

The administration of the TransMAC will be through the TransMAC Steering Committee and ad hoc project committees as designated by the Steering Committee.

The Steering Committee will be established by representatives from the Members to the TransMAC Agreement and will be originally comprised of the Founding Members that established this Agreement. Membership in the Steering Committee will be by nomination of the current Steering Committee membership from among the Members and Associate Members to this Agreement. The Steering Committee shall be comprised of no more than sixteen (16) Members and no more than eight (8) Associate Members. Steering Committee Members will have full voting rights. Associate Members will serve as advisors and will not have voting rights. A Chair and Vice-Chair will be elected by majority vote for a period of two (2) years and will act as administrators for the TransMAC during that time.

At a minimum, the Steering Committee will meet twice each year and issue a list of current Members and Associate Members. The Steering Committee will also address administrative issues such as database and document management, communications, funding, organization, and annual membership events.

In the event membership to this Agreement grows beyond the original region, comprised of the Counties of Los Angeles, Orange, San Bernardino, and Riverside, to include Members throughout the State of California, then the Steering Committee will explore options for establishing Regional Steering Committees and a State Steering Committee.

ARTICLE IV. PROCEDURES

An Operational Guide, detailing the processes for implementing this Agreement will be developed and adopted by majority vote of the Steering Committee. The Operational Guide will be reviewed and updated at least annually to reflect new material, processes, and to remove obsolete materials and processes. The document and revisions and updates will be reviewed and approved by the Steering Committee prior to publication and dissemination to the Members.

- A. In coordination with local and state emergency management organizations, the TransMAC Steering Committee shall develop operational and planning processes for the implementation of the TransMAC that shall be consistent with the California Emergency Services Act, SEMS, the State Emergency Plan, and the NIMS, reviewed annually and updated as needed by the Steering Committee.
- B. Requests for Mutual Assistance under this Agreement shall be directed to appropriate Authorized Official(s) from the list of Members.
- C. Any private sector Member to this Agreement shall be requested and tasked by a public sector Member before furnishing Mutual Assistance. Private sector Members may not be eligible to receive Mutual Assistance from public sector Members.
- D. Consistent with SEMS, when more than one County is impacted by a disaster, requests for mutual assistance under this Agreement may be channeled through the Regional Emergency Operations Centers and/or the State Operations Center to ensure maximum effectiveness in allocating resources to the highest priority needs.

ARTICLE V. MEMBER RESPONSIBILITIES

- A. Consistent with the NIMS, SEMS, and this Agreement, each Member shall develop a plan providing for the effective mobilization of its resources and personnel, both public and private, to cope with emergencies.
- B. Each Member agrees to furnish personnel, services, and/or equipment to each and every other Member to this Agreement to prevent and/or respond to any type of emergency in accordance with duly adopted plans, whether heretofore or hereafter adopted, detailing the method and manner by which such personnel, services, and equipment are to be made available and furnished; provided, however, that no Member shall be required to unreasonably deplete its own personnel, services, and/or equipment in furnishing such Mutual Assistance.

- C. It is expressly understood that any Mutual Assistance extended under this Agreement and the operational plans adopted pursuant thereto, is furnished in accordance with the California Emergency Services Act and other applicable provisions of law.
- D. Members shall identify an Authorized Official and alternates; provide contact information including 24-hour access; and maintain resource information made available by the Member for Mutual Assistance purposes, as allowed by the Member's policies. Such information shall be updated annually or as changes occur (whichever is sooner) and shall be provided to the TransMAC Steering Committee.
- E. Personnel of the Providing Member shall at all times during the Period of Assistance continue to be personnel of the Providing Member and shall not be deemed personnel of the Requesting Member for any purpose. Wages, hours, and other terms and conditions of employment of the Providing Member shall remain applicable to its personnel during the Period of Assistance.
- F. The Providing Member shall make available a sufficient number of Supervisors during its provision of Mutual Assistance consistent with the Providing Member's policies for personnel. All instructions for work to be done by Providing Member's personnel shall be given by Requesting Member to Providing Member supervisor(s); or when Providing Member personnel are to work in separate areas, to such of Providing Member's supervisors as may be designated for the purpose by Providing Member's policies/management.
- G. Unless otherwise agreed, the Requesting Member shall be responsible for supplying and/or coordinating support functions such as travel, lodging, meals, materials, etc. from the time Mutual Assistance arrives to the time of release when it is reasonably able to do so. The Providing Member shall normally be responsible for arranging travel, lodging and meals en route to the Requesting Member and for the return trip home.
- H. The Providing Member's safety and security rules, procedures, policies, guidelines, regulations, and laws shall apply to all work done by its personnel unless as mutually agreed otherwise. Any conflict, disagreement, questions and/or concerns arising about any safety and security rules and/or procedures should be brought to the Authorized Officials for prompt resolution between the Requesting Member and Providing Member.
- I. All time sheets and work records pertaining to the Providing Member's personnel furnishing Mutual Assistance shall be kept by the Providing Member.

ARTICLE VI.

REQUESTS FOR ASSISTANCE

In general, Mutual Assistance will be in the form of resources, such as personnel, services equipment, and/or supplies. Mutual Assistance shall be given only when Providing Member, in its sole and absolute discretion, determines that its own needs can be met while rendering Mutual Assistance. The execution of this Agreement shall not create any duty to furnish Mutual Assistance on the part of any Member hereto.

- A. **Member Request** – In the event of an emergency, a Member's Authorized Official may request Mutual Assistance from another Member. Requests for Mutual Assistance may be made orally or in writing. When made orally, the request for Mutual Assistance shall

also be prepared in writing and submitted to the Member as soon as possible, but in no event longer than forty-eight (48) hours after the oral request was made. Requests for Mutual Assistance shall be directed to the Authorized Official of the other Member.

- B. **Response to a Request for Assistance** – After a Member receives a request for Mutual Assistance, the Authorized Official evaluates whether or not to respond, whether resources are available to respond, and/or if other circumstances will hinder response. Following the evaluation, the Authorized Official shall inform, as soon as possible, the Requesting Member of its decision.
- C. **Discretion of Providing Member's Authorized Official** – Execution of this Agreement does not create any duty to furnish Mutual Assistance. When a Member receives a request for Mutual Assistance, the Authorized Official shall have sole and absolute discretion as to whether or not to furnish Mutual Assistance, or the availability of resources to be furnished in such response. A potential Providing Member shall not be held liable for refusing to provide Mutual Assistance. An Authorized Official's decisions on the availability of resources and the furnishing of Mutual Assistance shall be final.
- D. **Specifying Type and Quantity of Mutual Assistance Resources** – The Requesting Member shall indicate to the Providing Member the number and specific types of resources desired, but the extent to which the Providing Member makes available such resources shall be at the Providing Member's sole discretion. Every effort will be made, to the extent reasonably possible, to accommodate the Providing Member's personnel with assigned work in their job classification.
- E. **Period of Assistance** – The Period of Assistance shall commence when personnel, services and/or equipment expenses are initially incurred by the Providing Member in response to the official request of the Requesting Member. This may include any request for the Providing Member to prepare its personnel, services, and/or equipment for transport and/or to prepare them for the Mutual Assistance assignment, and/or while awaiting further instructions before departing. The Period of Assistance shall terminate when such personnel and/or equipment have returned to the Providing Member, and may include any mandated U.S. Department of Transportation rest time resulting from the Mutual Assistance provided and reasonable time required to prepare the equipment for return to normal activities (e.g., cleaning, repair of vehicles, restocking parts).

The Requesting Member and Providing Member should reach a mutual understanding and agreement in advance as to the anticipated length, in general, of the Period of Assistance. For extended Periods of Assistance, there should be agreement on the process for replacing or providing extra rest for the Providing Member's personnel. It is understood and agreed that if, in the Providing Member's judgment, such action becomes necessary; the decision to terminate the assistance and recall personnel and equipment lies solely with the Providing Member. The Requesting Member will take the necessary action to return such personnel and equipment promptly (See Right to Withdraw Resources).

ARTICLE VII.

COST REIMBURSEMENT

Except as herein otherwise provided, the Requesting Member shall reimburse the Providing Member for each of the following categories of costs and expenses incurred by the Providing

Member as a result of furnishing Mutual Assistance during the specified Period of Assistance, as set forth below, or by written mutual agreement reached at the time the request for assistance is agreed to by the Providing Member. Members will use their respective documented financial, accounting, and procurement policies in managing costs and coordinating reimbursement and payment.

- A. **Personnel** – Providing Member's fully burdened personnel costs (i.e., equal to the personnel's applicable salary or hourly wage plus fringe benefits and overhead, and consistent with Providing Member's collective bargaining agreements or other prescribed conditions). All personnel costs incurred for work performed during the specified Period of Assistance will be included. The Requesting Member shall be responsible for all direct and indirect labor costs.
- B. **Equipment** – Use of equipment, including construction equipment, revenue and/or non-revenue vehicles, or any other equipment, shall be at Providing Member's current equipment rates and subject to the following conditions:
 - 1. The Requesting Member shall reimburse the Providing Member for the use of equipment during the specified Period of Assistance, including, but not limited to, any rental rates, fuel, lubrication, maintenance, transportation, and loading/unloading of equipment furnished for Mutual Assistance. Alternatively, Requesting Member may, at its own expense, provide fuel, lubrication and maintenance for furnished equipment until such time as the equipment is returned to the Providing Member.
 - 2. Providing Member's costs related to the transportation, handling and loading/unloading of equipment shall be chargeable to the Requesting Member.
 - 3. In the event equipment is damaged while being dispatched to the Requesting Member, or while in the custody and use of the Requesting Member, the Requesting Member shall reimburse the Providing Member for the reasonable cost of repairing said damaged equipment. If the equipment cannot be repaired, then the Requesting Member shall reimburse the Providing Member for the cost of replacing said equipment with equipment that is of at least equal capability as determined by the Providing Member. If the Providing Member must lease equipment while the equipment furnished to the Requesting Member is being repaired or replaced; then the Requesting Member shall reimburse the Providing Member for such lease costs.
- C. **Materials and Supplies** – Requesting Member shall reimburse the Providing Member in kind or at actual replacement cost, plus handling charges, for use of expendable or non-returnable supplies. Other supplies and reusable items that are returned to the Providing Member in a clean, damage-free condition shall not be charged to the Requesting Member and no rental fee will be charged; otherwise, they shall be treated as expendable supplies. Supplies that are returned to the Providing Member with damage must be treated as expendable supplies for purposes of cost reimbursement.
- D. **Payment Period** – Providing Member shall provide an itemized invoice to the Requesting Member for all expenses incurred by the Providing Member while furnishing Mutual Assistance. The Providing Member shall send the itemized invoice not later than ninety (90) days following the end of the Period of Assistance. The Providing Member may request additional periods of time within which to submit the itemized invoice, and Requesting Member shall not unreasonably withhold consent to such requests. The

Requesting Member agrees to reimburse the Providing Member within sixty (60) days from receipt of an invoice for Mutual Assistance furnished under this Agreement. The Requesting Member may request additional periods of time within which to pay the itemized invoice, and Providing Member shall not unreasonably withhold consent to such requests, provided, however, that all payments shall occur no later than one (1) year after the date a final itemized invoice was submitted to the Requesting Member.

E. **Records** – Each Providing Member and Requesting Member and their duly authorized representatives shall have access to books, documents, notes, reports, papers and records, which are directly pertinent to this Agreement and the Period of Assistance for the purposes of reviewing the accuracy of an invoice or making a financial, maintenance or regulatory audit. Such records shall be maintained in a manner consistent with the Member's records retention policy for at least three (3) years after the close of the Period of Assistance or longer where required by law and as needed for federal reimbursement practices.

1. The Providing Member shall furnish documentation of expenses to the Requesting Member when it submits its invoice. Such documented costs and expenses shall include, but not be limited to the following:
 - a. Employees' wages and salaries for time during the Period of Assistance spent in Requesting Member's service, and time during travel to and from such service area, plus the Providing Member's standard payable additives to cover all personnel benefits and allowances for vacation, sick leave and holiday pay, social and retirement benefits, all payroll taxes, workers' compensation, employer's liability insurance, and other contingencies and benefits imposed by applicable law or regulation.
 - b. Personnel travel and support functions such as lodging, meals, materials, etc.
 - c. Replacement costs of expendable materials and supplies furnished.
 - d. Repair or replacement costs of equipment damaged or lost.
 - e. Charges for the use of vehicles and other equipment furnished.
 - f. Administrative and general costs, which are properly allocated to Mutual Assistance, to the extent such costs are not chargeable pursuant to the foregoing subsections.

ARTICLE VIII. **RESPONSE COORDINATION**

When providing assistance under this Agreement, the Requesting Member and Providing Member shall be organized by and shall function under the NIMS and SEMS protocols and procedures.

A. **Resources** – Providing Member retains the right to identify the resources that are available for Mutual Assistance.

- B. **Control** – While personnel furnished through Mutual Assistance shall remain under the employment and supervision of the Providing Member, the Providing Member's personnel come under the direction and control of the Requesting Member when providing Mutual Assistance, consistent with the NIMS and the ICS to address the needs of the Requesting Member and/or as deemed appropriate by the Incident Commander. The Requesting Member's Authorized Official shall coordinate Mutual Assistance activities with the designated supervisor(s) of the Providing Member(s). The Providing Member's designated supervisor(s) must keep accurate records, consistent with Federal Emergency Management Agency (FEMA) standards, of work performed by personnel during the specified Period of Assistance.
- C. **Lodging and Meals** – As set forth in Article V Section I of this Agreement or unless otherwise agreed to in writing by the Requesting and Providing Members, the Requesting Member remains responsible for reimbursing the Providing Member for all reasonable and necessary costs associated with providing lodging and meals, if such resources are not provided.
- D. **Communications** – The Requesting Member shall provide the Providing Member's personnel with communications equipment such as radio equipment as available, or radio frequency information to program existing radios, in order to facilitate communications with local responders and/or the Requesting Member's command and control structure.
- E. **Status** – Unless otherwise provided by law, the Providing Member's officers and personnel retain the same privileges, immunities, rights, duties and benefits as provided in their respective home jurisdictions.
- F. **Licenses and Permits** – To the extent permitted by law, Providing Member personnel who hold licenses, certificates, or permits evidencing professional, mechanical, or other skills shall be allowed to carry out activities and tasks relevant and related to their respective credentials while providing Mutual Assistance during the specified Period of Assistance.
- G. **Right to Withdraw Resources** – The Providing Member's Authorized Official retains the right to withdraw some or all of its resources at any time for any reason in the Providing Member's sole and absolute discretion. Notice of intention to withdraw resources must be communicated by the Providing Member to the Requesting Member's Authorized Official as soon as possible under the circumstances. Actual release of the Providing Member's furnished resources shall be made as soon as it is safe and practicable as determined by the Requesting Member's Authorized Official. All resources shall be returned to the Providing Member as soon as is practicable and reasonable under the circumstances.
- H. **Right to Cancel a Request for Mutual Assistance or Release Resources** – The Requesting Member's Authorized Official retains the right to cancel a request for Mutual Assistance at any time for any reason prior to the deployment of Mutual Assistance resources by a Providing Member. The Requesting Member also retains the right to release the Providing Member's furnished resources at any time, including when they are en route, for any reason so long as it is safe and practicable to do so. In accordance with Article VII of this Agreement, all policies related to cost reimbursement still apply to the Period of Assistance even if that Period of Assistance is terminated early. Notice of

intention to release resources must be communicated by the Requesting Member to the Providing Member's Authorized Official as soon as possible under the circumstances.

ARTICLE IX. ARBITRATION

If any controversy or claim arises out of, or relates to, this Agreement, including, but not limited to an alleged breach of the Agreement, the disputing Members shall first attempt to resolve the dispute by negotiation, followed by mediation or arbitration in accordance with the Rules of the American Arbitration Association. Each Member reserves the right at any time after mediation or arbitration to pursue its rights and remedies in a court of law.

ARTICLE X. REQUESTING MEMBER'S DUTY TO INDEMNIFY

The Requesting Member shall indemnify, hold harmless, and defend the Providing Member from and against any and all liability for loss, damage, cost, or expense which the Providing Member may incur by reason of bodily injury, including death, to any person or persons, or by reason of damage to or destruction of any property, including the loss of use thereof, which result from furnishing Mutual Assistance and whether or not due in whole or in part to any act, omission, or negligence of the Providing Member, except to the extent that such death or injury to person, or damage to property, is caused by the willful or wanton misconduct and/or gross negligence of the Providing Member, its employees, officers, contractors, or agents. Where payments are made by the Providing Member under a workers' compensation or disability benefits law or any similar law for bodily injury or death resulting from furnishing or Mutual Assistance, the Requesting Member shall reimburse the Providing Member for such payments, except to the extent that such bodily injury or death is caused by the willful or wanton misconduct and/or gross negligence of the Providing Member, its employees, officers, contractors, or agents.

In the event any claim or demand is made, or suit or action is filed against the Providing Member alleging liability for which the Requesting Member shall indemnify and hold harmless the Providing Member under the above paragraph, the Providing Member shall promptly notify the Requesting Member thereof; and the Requesting Member, at its sole cost and expense, shall settle, compromise, or defend the same in such manner as it deems necessary or prudent. The Requesting Member shall consult the Providing Member on all such litigation and will not compromise any issue or claim without the concurrence of the Providing Member, which will not be unreasonably withheld. The Providing Member shall cooperate with the Requesting Member's reasonable efforts to investigate, defend, and settle the claim or lawsuit.

ARTICLE XI. SIGNATORY INDEMNIFICATION

In the event of a liability, claim, demand, action or proceeding, of whatever kind or nature arising out of the rendering of Mutual Assistance through this Agreement, the parties involved in rendering or receiving Mutual Assistance agree to indemnify and hold harmless all Members whose only involvement is the execution and approval of this Agreement, in the transaction or occurrence which is the subject of such claim, action, demand or other proceeding. Such indemnification shall include indemnity for all claims, demands, liability, damages and costs, including reasonable attorneys' fees and other costs of defense, for injury, property damage and workers' compensation.

ARTICLE XII.
WORKERS' COMPENSATION CLAIMS

The Providing Member and Requesting Member are responsible for providing workers' compensation benefits and administering workers' compensation for their respective personnel.

ARTICLE XIII.
NOTICE

Each Member hereto shall give to the others prompt and timely written notice, within fifteen (15) business days of any claim made or any suit instituted coming to its knowledge, which in any way, directly or indirectly, contingently or otherwise, affects or might affect them, and each Member shall have the right to participate in the defense of the same, as it considers necessary to protect its own interests.

ARTICLE XIV.
INSURANCE

Members shall maintain an insurance policy or maintain a self-insurance program that covers activities that it may undertake by virtue of membership in the TransMAC. Proof of General Liability and Workers' Compensation coverage must be provided to any Requesting or Providing Member or the Steering Committee upon request.

ARTICLE XV.
SENSITIVE SECURITY INFORMATION

To the extent allowed by law, any Member or Associate Member shall maintain in the strictest confidence and shall take all reasonable steps necessary to prevent the disclosure of any confidential or Sensitive Security Information provided to it by another Member pursuant to this Agreement. If any Member, Associate Member, or third party requests or demands, by subpoena or otherwise, that a Member or Associate Member disclose any confidential or Sensitive Security Information provided to it under this Agreement, the Member or Associate Member shall immediately notify the owner of the confidential or Sensitive Security Information and shall take all reasonable steps necessary to prevent the disclosure of any confidential or Sensitive Security Information by asserting all applicable rights and privileges with respect to such information and shall cooperate fully in any judicial or administrative proceeding relating thereto.

ARTICLE XVI.
EFFECTIVE DATE

This Agreement shall take effect for a new Member immediately upon its execution by said Member.

ARTICLE XVII.
WITHDRAWAL

Any Member may terminate its participation in this Agreement by written notice to the Chair of the TransMAC Steering Committee. Withdrawal takes effect sixty (60) days after the appropriate officials receive notice. Withdrawal from this Agreement shall in no way affect a Requesting

Member's duty to reimburse a Providing Member for costs incurred during a Period of Assistance, which duty shall survive such withdrawal.

ARTICLE XVIII. MODIFICATION

No provision of this Agreement may be modified, altered or rescinded by individual Members to the Agreement. Modifications to this Agreement require a simple majority vote of Members. The TransMAC Steering Committee will notify all parties of modifications to this Agreement in writing and those modifications shall be effective upon sixty (60) days written notice to the Members.

ARTICLE XIX. SEVERABILITY

If any term or provision of this Agreement is declared by a court of competent jurisdiction to be illegal or in conflict with any law, the validity of the remaining terms and provisions shall not be affected, and the rights and obligations of the parties shall be construed and enforced as if the Agreement did not contain the particular term or provision held to be invalid.

ARTICLE XX. PRIOR AGREEMENTS

To the extent that prior mutual assistance agreements among Members are inconsistent with this Agreement, such agreements are hereby superseded.

ARTICLE XXI. PROHIBITION ON THIRD PARTIES AND ASSIGNMENT OF RIGHTS/DUTIES

This Agreement is for the sole benefit of the Members and no other person or entity has rights under this Agreement as a third party beneficiary. Assignment of benefits or delegation of duties created by this Agreement to third parties that are not Members is prohibited and without effect.

ARTICLE XXII. TORT CLAIMS

This Agreement in no way abrogates or waives any immunity or defense available under Federal laws and/or the laws of the State of California.

ARTICLE XXIII. INTRASTATE AND INTERSTATE MUTUAL ASSISTANCE PROGRAMS

To the extent practicable, Members retain the right to participate in mutual assistance activities conducted under the State of California Civil Defense and Master Mutual Aid Agreement, the TransMAC, and the interstate Emergency Management Assistance Compact (EMAC) and similar programs.

**CALIFORNIA STATEWIDE
TRANSIT MUTUAL ASSISTANCE COMPACT (TransMAC)
EXECUTION OF THE AGREEMENT**

Name of Organization

Authorized Signature

Printed Name: _____

Title: _____

Date: _____

Note: Upon obtaining proper signatures, this form must be returned to the TransMAC Chairperson at the regular business address of the Chairperson's agency.

ITEM # F4

DATE: November 6, 2013

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

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

FROM: Jennifer M. Sims, Director of Procurement

SUBJECT: AUTHORIZE AWARD - CONTRACT NO. IPMO14-103, ON-CALL STORMWATER PREVENTION POLLUTION PLAN (SWPPP) OVERSIGHT SERVICES FOR THE SBX E STREET CORRIDOR AND VEHICLE MAINTENANCE FACILITY PROJECT

FORM MOTION

Authorize the Interim CEO/General Manager to award Contract IPMO14-103 to Whitson CM Contracting and Management Inc., of San Diego, California, for the provision of On-Call Stormwater Prevention Pollution Plan (SWPPP) Oversight Services for the sbX E Street Corridor and Vehicle Maintenance Facility Project beginning November 11, 2013, for a period of ten (10) months, with an option to extend the term for an additional one-year period, ending no later than August 11, 2015, on an on-call basis with a total amount not-to-exceed \$79,750.00, plus the 3.27% Cost Allocation Plan (CAP) of \$2,608.00, for a total not-to-exceed amount of \$82,358.00

BACKGROUND

Omnitrans is required to provide oversight to the Stormwater Prevention Pollution Plan monitoring provided by Jacobs Engineering, Inc., on the sbX E Street Corridor and Vehicle Maintenance Facility Project to ensure compliance under the Federal Clean Water Act, and through the National Pollutant Discharge Elimination System (NPDES). The compliance ensures regulation and management of the quality of urban runoff throughout the project jurisdiction. On-call SWPPP services were previously provided by APSI. As part of the corrective action required in response to the Procurement System Review, the agreement with APSI was terminated on August 7, 2013.

On October 7, 2013, staff released Request for Quotes RFQ-IPMO14-103 for the provision of Stormwater Prevention Pollution Plan (SWPPP) Oversight – On-Call Services for the sbX E Street Corridor and Vehicle Maintenance Facility Project to provide compliance with the Stormwater Pollution Prevention Plan (SWPPP), as described in the California Stormwater Quality Association's Handbook for Construction and the Stormwater Best Management Practices (BMP's). Compliance and oversight will include identification of pollutant sources, and provide practices to reduce sediment transport of pollutants in stormwater discharges. The

RFQ was posted on Omnitrans' online bidding system which was distributed to one hundred and twelve (112) registered firms. The Independent Cost Estimate for this solicitation was \$79,750.00. The total cost of the services shall not exceed the amount of \$79,750.00, including the option to extend the agreement for an additional one year period.

Four (4) bids were received electronically by the deadline date of October 21, 2013, three bids were found to be responsible and responsive. One bid was rejected by failing to provide the requested rate sheet. The bids were based on an hourly rate schedule. Listed below are the primary rates:

<u>Company</u>	<u>Project Manager/ Construction Manager</u>	<u>Senior Engineer Resident Engineer</u>	<u>Assistant Engineer</u>	<u>Qualified System Developer</u>	<u>Qualified System Practitioner</u>	<u>Resident Inspector</u>	<u>Inspector</u>
RFB Consulting	\$170.00	\$148.00	\$102.00	\$148.00	\$148.00	\$148.00	\$102.00
Twining	\$125.00	\$145.00	\$110.00	\$125.00	\$115.00	\$90.00	\$90.00
Whitson CM Contracting and Management, Inc.	\$125.00	\$150.00	\$90.00	\$100.00	\$75.00	\$75.00	\$75.00
AEI-CASC	Non – Responsive						

Award recommendation is being made to the lowest responsive and responsible bidder. Whitson CM Contracting and Management, Inc., is a certified Disadvantage Business Enterprise.

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

FUNDING SOURCE

The cost associated with this procurement is budgeted as follows:

FUNDING	GRANT #	FISCAL YEAR	PROJECT NAME	AMOUNT
FTA	CA-90-Y775	2010	E Street Corridor-sbX	\$65,886.00
STA	13-10-OMN-B	2012	E Street Corridor - sbX	\$16,472.00

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

CONCLUSION

Approving award of this contract will ensure FTA compliance and federal, state, and local stormwater compliance.

PSG:JMS:dr



ATTACHMENT C
SAMPLE CONTRACT

CONTRACT AGREEMENT

between

CONTRACTOR

Whitson CM
Contracting & Management Inc.
11021 Via Frontera, Suite E
San Diego, CA 92127

(hereinafter "CONTRACTOR")
Telephone: (858)673-0966
Fax: (858)487-8355

And

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

CONTRACT DOCUMENTS

**CONTRACT NO.
RFQ-IPMO14-103**

Contract Amount: \$ 79,750.00

Omnitrans Project Manager:

Name: Teck Loh
Title: Engineering Services
Manager
Telephone: (909) 963-5236
Fax: (909) 963-5249
Email: teck.loh@omnitrans.org

Contract Administrator:

Name: Dennice Raygoza
Title: Sr. Contracts Administrator
Telephone: (909) 379-7186
Fax: (909) 379-7170
Email: dennice.raygoza@omnitrans.org



TABLE OF CONTENTS

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

21.	EQUAL OPPORTUNITY.....	13
23.	NOTIFICATION OF EMPLOYMENT OF OMNITRANS BOARD MEMBERS/ALTERNATES AND EMPLOYEES	14
24.	DISQUALIFYING POLITICAL CONTRIBUTIONS	14
25.	COMPLIANCE WITH LAW	14
26.	COMPLIANCE WITH LOBBYING POLICIES	14
27.	PUBLIC RECORDS ACT	15
28.	WAIVER/INVALIDITY	15
29.	FORCE MAJEURE.....	16
30.	CONFIDENTIALITY	16
31.	CONTRACTOR’S INTERACTION WITH THE MEDIA AND THE PUBLIC	16
32.	GOVERNING LAW	16
33.	MODIFICATIONS TO AGREEMENT	17
34.	DISPUTE RESOLUTION.....	17
35.	LICENSING, PERMITS AND INSPECTION COSTS.....	17
36.	PRECEDENCE	18
37.	ENTIRE AGREEMENT	18

ATTACHMENT A - SCOPE OF WORK

ATTACHMENT B - REGULATORY REQUIREMENTS

This Agreement is made and entered into as of this 6th day of November, 2013 by and between Omnitrans (hereinafter referred to as "OMNITRANS") and Whitson CM Contracting and Management Inc. of San Diego, CA, 92127 (hereinafter referred to as "CONTRACTOR").

RECITALS

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

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

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

1. SCOPE OF WORK

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

2. PERIOD OF PERFORMANCE

The term of this Agreement shall be from the date of execution of this Agreement and continue in effect through August 11, 2014, 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 11, 2013, Through August 11, 2015, which period encompasses the Initial Term.

3. COMPENSATION

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

OMNITRANS' maximum cumulative payment obligation under this Agreement shall not exceed Seventy Nine Thousand Seven Hundred and Fifty Dollars (\$79,750.00), including all amounts payable to CONTRACTOR for all costs, including but not limited to direct labor, other direct costs, subcontracts, indirect costs including, but not limited to, leases, materials, taxes, insurance, and profit.

4. INVOICING AND PAYMENT

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

CONTRACTOR shall submit invoices in duplicate to:

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

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

- Contract number
 - Invoice number
 - Description of delivery
 - Service Date
 - Hours Worked listed with staff titles and names
 - Information as requested by OMNITRANS
- B. OMNITRANS shall remit payment within thirty (30) calendar days of approval of the invoices by OMNITRANS' Project Manager.

In the event OMNITRANS should overpay CONTRACTOR, such overpayment shall not be construed as a waiver of OMNITRANS' right to obtain reimbursement for the overpayment. Upon discovering any

overpayment, either on its own or upon notice of OMNITRANS, CONTRACTOR shall immediately reimburse OMNITRANS the entire overpayment or, at its sole discretion, OMNITRANS may deduct such overpayment amount from monies due to CONTRACTOR under this Agreement or any other Agreement between OMNITRANS and CONTRACTOR.

5. AUDIT AND INSPECTION OF RECORDS

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

6. NOTIFICATION

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

To OMNITRANS:

Omnitrans
1700 West Fifth Street
San Bernardino, CA 92411
Attn: Sr. Contracts Administrator
Dennice Raygoza

To CONTRACTOR:

Whitson CM
Contracting and Management Inc.
11021 Via Frontera, Suite E
San Diego, CA 92127
Attn: President
Mitchel Whitson

7. OMNITRANS' AND CONTRACTOR'S REPRESENTATIVES

A. OMNITRANS' Project Manager

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

Project Manager: Ben Greenbeck, Systems Coordinator.

- 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>
_____	_____
_____	_____
_____	_____
_____	_____

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

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

8. TERMINATION FOR CONVENIENCE

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

9. TERMINATION FOR BREACH OF AGREEMENT

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

- E. All finished or unfinished documents and materials produced or procured under this Agreement shall become OMNITRANS' property upon date of such termination.
- F. If, after notice of termination of this Agreement under the provisions of this Section, it is determined for any reason that CONTRACTOR was not in default under the provisions of this Section, or that the default was excusable under the terms of this Agreement, the rights and obligations of the parties shall be the same as if the notice of termination had been issued pursuant to Section 8, Termination for Convenience.
- G. The rights and remedies of OMNITRANS provided in this Article shall not be exclusive and are in addition to any other rights and remedies provided by law or under this Agreement.

10. ASSIGNMENT

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

11. SUBCONTRACTING

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

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

12. INDEPENDENT CONTRACTOR

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

13. INSURANCE

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

- A. **Commercial General Liability including Products/Completed Operations:** \$1,000,000 per occurrence for bodily and property damage liability and \$2,000,000 aggregate; *Endorsement naming Omnitrans as Additional Insured.*
- B. **Automobile Liability:** \$1,000,000 combined single limit bodily and property damage liability per accident; *Endorsement naming Omnitrans as Additional Insured.*
- C. **Workers' Compensation:** statutory limits or, a State-Approved program in an amount and form that meets all applicable requirements of the Labor Code of the State of California; *waiver of subrogation that includes Omnitrans.*
- D. **Employers Liability** Applicable to the work being performed, with a limit no less than \$1,000,000 per claim or occurrence and \$2,000,000 aggregate; *Endorsement naming Omnitrans as additional insured.*
- E. **Professional Liability:** Consultant shall procure and maintain, and require its sub-consultants to procure and maintain, for a period of two (2) years following completion of the Project, errors and omissions liability insurance appropriate to their profession. Such insurance shall be in an amount not less than \$1,000,000

Additional Insured:

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

14. INDEMNITY

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

15. REVISIONS IN SCOPE OF WORK

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

16. RIGHTS IN TECHNICAL DATA

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

17. OWNERSHIP OF REPORTS AND DOCUMENTS

The originals of all letters, documents, reports and other products and data produced under this Agreement shall be delivered to, and become the sole and exclusive property of OMNITRANS. Copies may be made for CONTRACTOR's

records, but shall not be furnished to others without prior written authorization from OMNITRANS. Such deliverables shall be deemed works made for hire, and all rights in copyright therein shall be retained by OMNITRANS.

18. OWNERSHIP RIGHTS

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

19. WORK FOR HIRE

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

rights to such work(s), as defined under federal copyright law, that may be created or produced under this Agreement by its suppliers, contractors or subcontractors.

20. SUBMITTAL OF CLAIMS BY CONTRACTOR

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

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

21. EQUAL OPPORTUNITY

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

22. STANDARD OF PERFORMANCE

- A. CONTRACTOR shall perform and exercise, and require its subcontractors to perform and exercise due professional care and competence in the performance of the Work in accordance with the requirements of this Agreement. CONTRACTOR shall be responsible for the professional quality, technical accuracy, completeness and coordination of the Work, it being understood that OMNITRANS will be relying upon such professional quality, accuracy, completeness and coordination in utilizing the Work. The foregoing obligations and standards shall constitute the "Standard of Performance" for purposes of this Agreement. The provisions of this paragraph shall survive termination or expiration of this Agreement and/or final payment thereunder.
- B. All workers shall have sufficient skill and experience to perform the Work assigned to them. OMNITRANS shall have the right, at its sole discretion, to require the immediate removal of CONTRACTOR's personnel at any level assigned to the performance of the Work at no additional fee or cost to OMNITRANS, if OMNITRANS considers such removal in its best interests and requests such removal in writing and such request is not

done for illegal reasons. Further, an employee who is removed from performing Work under this Agreement under this Article shall not be re-assigned to perform Work in any other capacity under this Agreement without OMNITRANS' prior written approval.

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

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

24. DISQUALIFYING POLITICAL CONTRIBUTIONS

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

25. COMPLIANCE WITH LAW

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

26. COMPLIANCE WITH LOBBYING POLICIES

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

OMNITRANS shall have the right to immediately terminate or suspend this Agreement.

27. PUBLIC RECORDS ACT

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

28. WAIVER/INVALIDITY

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

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

29. FORCE MAJEURE

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

30. CONFIDENTIALITY

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

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

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

32. GOVERNING LAW

The validity of this Agreement and of any of its terms or provisions, as well as the rights and duties of the parties hereunder, shall be governed by the laws of the

State of California, and the proper venue of any action brought hereunder is and shall be the County of San Bernardino, California.

33. MODIFICATIONS TO AGREEMENT

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

34. DISPUTE RESOLUTION

A. Any disputes between Contractor and Omnitrans relating to the implementation or administration of the Contract shall be resolved in accordance with this section.

- 1) The parties shall first attempt to resolve the dispute informally in meetings or communications between Contractor and Omnitrans.
- 2) If the dispute remains unresolved fifteen (15) days after it first arises, Contractor 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 Contractor.
- 3) 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.
- 4) Pending final resolution of a dispute under this section, Contractor shall proceed diligently with performance in accordance with the Contract and Omnitrans' CEO/General Manager's recommended decision.

35. LICENSING, PERMITS AND INSPECTION COSTS

A. The FIRM warrants that it has all necessary licenses and permits required by the laws of the United States, State of California, and the County of San Bernardino, the Local Jurisdictions, and all other appropriate governmental agencies, and agrees to maintain these licenses and permits in effect for the duration of the Agreement. Further, FIRM warrants that its employees, agents, and contractors and subcontractors shall conduct themselves in compliance with such laws and licensure requirements including, without limitation, compliance with laws applicable

to nondiscrimination, sexual harassment and ethical behavior throughout the duration of this Agreement. FIRM further warrants that it shall not retain or employ an unlicensed subcontractor to perform work on this Project. FIRM shall notify OMNITRANS immediately and in writing of its employees', agents', contractors' or subcontractors' inability to obtain or maintain, irrespective of the pendency of any appeal, any such licenses, permits, approvals, certificates, waivers, exemptions. Such inability shall be cause for termination of this Agreement.

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

36. PRECEDENCE

Conflicting provisions hereof, if any, shall prevail in the following descending order of precedence: (1) the provisions of this Agreement, (2) Attachment A, Scope of Work, (3) provisions of Omnitrans's Request for Proposal and (4) CONTRACTOR's proposal dated October 7, 2013.

37. ENTIRE AGREEMENT

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

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

OMNITRANS

CONTRACTOR
Whitson CM
Contracting and Management Inc.

P. SCOTT GRAHAM
Interim CEO/General Manager

Mitchel Whitson
President

DATE

Federal Tax I.D. No. 2T

ATTACHMENT “A”

ON-CALL NATIONAL POLLUTION DISCHARGE ELIMINATION SYSTEM (NPDES) COMPLIANCE AND STORMWATER POLLUTION PREVENTION PLAN (SWPPP) SCOPE OF WORK

I. BACKGROUND

Under the federal Clean Water Act, Stormwater discharges are regulated through National Pollutant Discharge Elimination System (NPDES) Municipal Stormwater Permits. Municipal Stormwater permits require municipalities to regulate and manage the quality of urban runoff throughout their jurisdictions.

The Stormwater Pollution Prevention Plan (SWPPP), as described in the California Stormwater Quality Association’s Handbook for Construction requires the use of Stormwater Best Management Practices (BMP’s) tailored to the circumstances of a particular site or project. The SWPPP has two main objectives: 1) identify pollutant sources, and 2) describe practices to reduce sediment transport of pollutants in Stormwater discharges.

The sbX – E Street Corridor Bus Rapid Transit (BRT) project is in construction phase. The major components of the sbX projects include Corridor Construction, Upgrades to Vehicle Maintenance Facility (VMF), and the procurement of 60-foot Articulated Buses. The construction activities started in January 2012 and completion date is targeted for February 2014. The date for Revenue Operations is targeted for April 30, 2014. The final completion date of the Vehicle Maintenance Facility is targeted for August 17, 2014.

In order to assist the sbX Project Team to meet the above targeted milestones and in order to deliver project that complies with the overall project goals including Federal Transit Authority (FTA) compliance, adherence to the requirements of the applicable Regulatory Agencies requirements and to Omnitrans’ Policies and Procedures, we are soliciting “On Call” environmental compliance services from a qualified Firm specifically as related to the corridor construction and the upgrades to VMF.

The successful contractor or consultant will work closely with the Omnitrans' project team, Construction Management Consultant (Jacobs), and Contractor/s.

II. SCOPE OF WORK

National Pollution Discharge Elimination System (NPDES) compliance and Stormwater Pollution Prevention Plan (SWPPP) services:

Omnitrans proposes to retain the services of a "On-Call" Consultant to provide services by highly trained, experienced and/or certified personnel to perform inspections in accordance with applicable local and state regulating authority. "On-Call" Consultant will have the support staff having experience working on Public Works Construction Project and Facility construction types of projects and have the expertise in NPDES compliance and SWPPP and other related environmental documents/compliance procedures being used by the construction contractor/s.

1. Consultant to provide professional expertise for the review of SWPPP. The selected consultant/contractor shall ensure these documents meet all local, state and federal guidelines.
2. Review SWPPPs for thoroughness and applicability of construction Best Management Practices (BMPs), and provide written comments and direction to ensure the intent of the NPDES Permit is being met.
3. Provide guidance to Omnitrans staff and Jacobs Construction Management team on the specified projects in regard to construction and structural BMPs.

III. CONSULTANTS/CONTRACTORS RESPONSIBILITIES

The scope of the services will include but are not limited to the following tasks:

1. Third party review on behalf of Omnitrans of the monthly SWPPP updates prepared by the contractor/Jacobs as requested by Omnitrans. The SWPPP updates will be reviewed primarily by Jacobs.
2. Conduct observation reviews and assessments as it relates to SWPPP a minimum of once every two weeks in non-rainy season and once every week during rainy season.

3. Review of the Plan during each regular inspection to make sure the current site activity is recorded properly.
4. Review of site, reports, and inspections determine NPDES compliance level required and make recommendations accordingly.
5. Work with site managers to update the Plan to reflect changes in site conditions and construction progress or phasing.
6. Prepare an inspection report onsite and making it available electronically. Provide notification of non-compliance issues observed in the field to Jacobs and Omnitrans.
7. Participate in any NDPES/SWPPP discussions with the project team – Omnitrans, Jacobs, and the contractor/s as requested by Omnitrans.
8. Planned attendance of weekly construction meetings in person or conference as requested by Jacobs/Omnitrans.
9. Attend meetings with FTA, Project Management Oversight Consultant (PMOC), and other entities as requested by Omnitrans.
10. Ensure that Omnitrans specified projects have been entered into the “SMARTS” account on the California State Water Board’s website.
11. Provide project oversight and inspection during construction of projects to ensure compliance with State and Federal storm water regulations.

IV. DELIVERABLES:

1. Provide written weekly updates and summary reports of findings in monthly progress report of SWPPP.

V. SCHEDULE

Omnitrans anticipates contracting with the selected Consultant/Contractor in November 2013.

Omnitrans intends to enter into a professional service contract with the selected consultant for a period of ten (10) months, with the option to renew for an additional one-year contract extension.

Omnitrans will require the services of the Consultant to provide professional SWPPP services on an as-needed basis for various sbX E Street Corridor Project and the Vehicle Maintenance Facility Project.

VI. CONSULTANT'S QUALIFICATIONS AND EXPERIENCE:

Only staff committed to the project should be set forth in the proposal. The minimum qualifications of the Consultant to be provided include, but are:

1. The Consultant shall have on their staff a Qualified System Developer (QSD) as recognized and certified by the State of California.
2. The Consultant shall have on their staff a Qualified System Practitioner (QSP) as recognized and certified by the State of California.
3. The Consultant must demonstrate recent direct experience providing similar services on at least five (5) projects.
4. The Consultant's team members must be listed in the proposal including other subconsultants (if any) who will provide special professional services.
5. Ability to communicate effectively, both verbally and in writing.
6. Minimum ten (10) years of progressively responsible work experience in construction
7. Oversight with a minimum of five (5) years of work in California.
8. Qualified Resident Engineer with a minimum five (5) years of experience in Construction
9. Qualified Resident Inspector with a minimum ten (10) years of experience in Construction Inspection.
10. Qualified and certified QSD/QSP with a minimum ten (10) years of working experience (experience working in stormwater, permitting and SWPPP related efforts)
11. Experience working with the California Department of Fish and Game, United States Forest Service, U.S. Army Corp of Engineers, and California Regional Water Quality Control Board.
12. Experience working with Caltrans, and the Caltrans Local Assistance Procedures Manual
13. Knowledge of laws, codes, and regulations pertaining to construction within (California).
14. Ability to read drawings, interpret specifications, keep accurate and detailed records.
15. Establish and maintain effective public and contractor relations.

16. Ability to use and generate reports via Windows, Microsoft Office (including Microsoft, Word, Excel and Project).
17. Application of NPDES requirements in San Bernardino County. Specifically selection, and review of construction and structural BMPs for addressing; water quality issues; State Water Resources Control Board (SWRCB); Regional Water Quality Control Board (RWQCB); Federal Clean Water Act; Current and upcoming NPDES Permit requirements; and Local watershed issues.

ATTACHMENT B

REGULATORY REQUIREMENTS

**THESE REGULATORY REQUIREMENTS APPLY TO THE
FOLLOWING DISCUSSION ITEMS**

- **ITEM #F4, ON-CALL STORMWATER PREVENTION
POLLUTION PLAN (SWPP) PLAN OVERSIGHT
SERVICES FOR SBX E STREET CORRIDOR**
- **ITEM #F5, ON-CALL ENVIRONMENTAL SUPPORT
FOR SBX E STREET CORRIDOR**
- **ITEM #F6, PRE-EMPLOYMENT BACKGROUND CHECKS**
- **ITEM #F7, WORKERS' COMPENSATION CLAIMS
ADMINISTRATION SERVICES**

REGULATORY REQUIREMENT

Table of Contents

Contents

ADMINISTRATIVE CODE	2
DISCRIMINATION	2
WHISTLEBLOWER REQUIREMENTS	3
PUBLIC RECORDS ACT	3
ACCESS TO RECORDS	4
FEDERAL FUNDING, INCORPORATION OF FEDERAL TRANSIT ADMINISTRATION (FTA) TERMS, AND FEDERAL CHANGES	4
ENERGY CONSERVATION REQUIREMENTS	5
CIVIL RIGHTS REQUIREMENTS	5
NO GOVERNMENT OBLIGATION TO THIRD PARTIES	6
PROGRAM FRAUD AND FALSE OR FRAUDULENT STATEMENTS OR RELATED ACTS.....	7
SUSPENSION AND DEBARMENT.....	7
RECYCLED PRODUCTS	8
CLEAN WATER AND CLEAN AIR REQUIREMENTS	8
COMPLIANCE WITH FEDERAL LOBBYING POLICY	9
BUY AMERICA	9
CARGO PREFERENCE	10
FLY AMERICA	11
CONTRACT WORK HOURS AND SAFETY STANDARDS ACT.....	11
DISADVANTAGED BUSINESS ENTERPRISE (DBE) 49 CFR Part 26.....	13
ADA ACCESS	14
ALCOHOL AND DRUG-FREE WORKPLACE PROGRAM.....	15
TRANSIT EMPLOYEE PROTECTIVE ARRANGEMENTS	16
BONDING REQUIREMENTS	18
DAVIS-BACON AND COPELAND ANTI-KICKBACK ACTS	18
PRIVACY ACT - 5 U.S.C. 552.....	25
TERMINATION 49 U.S.C. Part 18 FTA Circular 4220.1F.....	26
SEISMIC SAFETY REQUIREMENTS 42 U.S.C. 7701 et seq. 49 CFR Part 41	28
BREACHES AND DISPUTE RESOLUTION 49 CFR Part 18 FTA Circular 4220.1F.....	28
VETERANS PREFERENCE	29

REGULATORY REQUIREMENTS

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

RR-01

ADMINISTRATIVE CODE *

A. Applicability

This Article applies to all contracts.

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

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

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

C. Campaign Contributions

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

RR-02

DISCRIMINATION *

A. Applicability

This Article applies to all contracts.

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

RR-03

WHISTLEBLOWER REQUIREMENTS *

A. Applicability

This Article applies to all contracts.

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

RR-04

PUBLIC RECORDS ACT *

A. Applicability

This Article applies to all contracts.

- B. Except as otherwise provided herein, all records, documents, drawings, plans, specifications, and all other information relating to the conduct of Omnitrans business, including all information and documents submitted by Contractor ("Records"), shall become the exclusive property of Omnitrans and shall be deemed public records. Said Records are subject to the provisions of the California Public Records Act (Government Code §6250 et. seq.). Omnitrans use and disclosure of its records are governed by this Act. Omnitrans will use its best efforts to inform the Contractor of any request for any financial records or documents marked "Trade Secret", "Confidential" or "Proprietary" provided by Contractor to Omnitrans. Omnitrans will not advise as to the nature or content of documents entitled to protection from disclosure under the California Public Records Act.
- C. In the event of litigation concerning the disclosure of any Records, Omnitrans sole involvement will be as a stakeholder, retaining the Records until otherwise ordered by a court. The submitting party, at its sole expense and risk, shall be fully responsible for any and all fees for prosecuting or defending any action concerning the Records and shall indemnify and hold Omnitrans harmless from all costs and expenses including attorney's fees in connection with any such action.

RR-05

ACCESS TO RECORDS *

A. Applicability

This Article applies to all federally funded contracts.

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

RR-06

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

A. Applicability

This Article applies to all federally funded contracts.

- B.** This Contract includes, in part, certain Standard Terms and Conditions required by DOT, whether or not expressly set forth in the Contract provisions. All contractual provisions required by DOT, as set forth in FTA Circular 4220.1F, dated November 1, 2008 and revised March 18, 2013 (including any changes), and are hereby incorporated by reference. Anything to the contrary herein notwithstanding, all FTA mandated terms shall be deemed to control in the event of a conflict with other provisions contained in this

Contract. Contractor shall not perform any act, fail to perform any act, or refuse to comply with any Omnitrans requests which would cause Omnitrans to be in violation of the FTA terms and conditions.

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

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

RR-07

ENERGY CONSERVATION REQUIREMENTS

A. Applicability

This Article applies to all federally funded contracts.

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

RR-08

CIVIL RIGHTS REQUIREMENTS *

A. Applicability

This Article applies to all federally funded contracts.

- B. Nondiscrimination - In accordance with Title VI of the Civil Rights Act, as amended, 42 U.S.C. § 2000d, section 303 of the Age Discrimination Act of 1975, as amended, 42 U.S.C. § 6102, section 202 of the Americans with Disabilities Act of 1990, 42 U.S.C. § 12132, and Federal transit law at 49 U.S.C. § 5332, Contractor shall not discriminate against any employee or applicant for employment because of race, color, creed, national origin, sex, age, or disability. In addition, Contractor shall comply with applicable Federal implementing regulations and other implementing requirements FTA may issue.
- C. Equal Employment Opportunity

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

RR-09

NO GOVERNMENT OBLIGATION TO THIRD PARTIES *

A. Applicability

This Article applies to all federally funded contracts.

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

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

RR-10

PROGRAM FRAUD AND FALSE OR FRAUDULENT STATEMENTS OR RELATED ACTS *

A. Applicability

This Article applies to all federally funded contracts.

- B. The provisions of the Program Fraud Civil Remedies Act of 1986, as amended, 31 U.S.C. § 3801 et seq. and U.S. DOT regulations, "Program Fraud Civil Remedies," 49 C.F.R. Part 31, shall apply to actions pertaining to this Contract. Upon execution of this Contract, Contractor certifies or affirms the truthfulness and accuracy of any statement it has made, it makes, it may make, or causes to be made, pertaining this Contract or the FTA assisted project for which this Contract work is being performed. In addition to other penalties that may be applicable, Contractor further acknowledges that if it makes, or causes to be made, a false, fictitious, or fraudulent claim, statement, submission, or certification, the Federal Government reserves the right to impose the penalties of the Program Fraud Civil Remedies Act of 1986 on Contractor to the extent the Federal Government deems appropriate.
- C. Contractor also acknowledges that this Contract is connected with a project that is financed in whole or in part with Federal assistance originally awarded by FTA under the authority of 49 U.S.C. § 5307 and if it makes, or causes to be made, a false, fictitious, or fraudulent claim, statement, submission, or certification to the Federal Government, the Government reserves the right to impose the penalties of 18 U.S.C. § 1001 and 49 U.S.C. § 5307(n)(1) on Contractor, to the extent the Federal Government deems appropriate.
- D. Contractor shall include this Article in each subcontract financed in whole or in part with Federal assistance provided by FTA. Contractor shall not modify the Article, except to identify the Subcontractor who will be subject to the provisions.

RR-11

SUSPENSION AND DEBARMENT*

A. Applicability

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

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

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

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

RR-12 RECYCLED PRODUCTS

A. Applicability

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

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

RR-13 CLEAN WATER AND CLEAN AIR REQUIREMENTS*

A. Applicability

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

B. CLEAN WATER REQUIREMENTS

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

C. CLEAN AIR

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

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

RR-14

COMPLIANCE WITH FEDERAL LOBBYING POLICY *

A. Applicability

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

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

RR-15

BUY AMERICA *

A. Applicability

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

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

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

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

RR-16

CARGO PREFERENCE*

A. Applicability

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

B. USE OF UNITED STATES FLAG VESSELS

Contractor shall use privately owned United States-Flag commercial vessels to ship at least 50 percent of the gross tonnage (computed separately for dry bulk carriers, dry cargo liners, and tankers) involved, whenever shipping any equipment, material, or commodities pursuant to this Contract to the extent such vessels are available at fair and reasonable rates for United States-Flag commercial vessels.

Contractor shall furnish within 20 working days following the date of loading for shipments originating within the United States or within 30 working days following the date of leading for shipments originating outside the United States, a legible copy of a

rated, "on-board" commercial ocean bill-of-lading in English for each shipment of cargo described in the preceding paragraph to the Division of National Cargo, Office of Market Development, Maritime Administration, Washington, DC 20590 and to the Omnitrans (through Contractor in the case of a subcontractor's bill-of-lading.)

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

RR-17

FLY AMERICA

A. Applicability

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

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

RR-18

CONTRACT WORK HOURS AND SAFETY STANDARDS ACT *

A. Applicability

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

- B. Pursuant to the Labor Standards Provisions Applicable to Non-construction Contracts subject to the Federal Contract Work Hours and Safety Standards Act, 40 U.S.C.A. § 327 through 332 as implemented by U.S. Department of Labor regulations, 29 CFR 5.5 (b) and (c) Contractor and Subcontractor's contracting for any part of the Contract work shall comply with the following:

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

DISADVANTAGED BUSINESS ENTERPRISE (DBE) 49 CFR Part 26

Disadvantaged Business Enterprises

- A. This Contract is subject to the requirements of Title 49, Code of Federal Regulations, Part 26, *Participation by Disadvantaged Business Enterprises in Department of Transportation Financial Assistance Programs*. The national goal for participation of Disadvantaged Business Enterprises (DBE) is 10%. The agency's overall goal for DBE participation is 8.4%.
- B. Contractor shall not discriminate on the basis of race, color, national origin, or sex in the performance of this contract. Contractor shall carry out applicable requirements of 49 CFR Part 26 in the award and administration of this DOT-assisted Contract. Failure by Contractor to carry out these requirements is a material breach of this Contract, which may result in the termination of this Contract or such other remedy as Omnitrans deems appropriate. Each subcontract Contractor signs with a subcontractor must include the assurance in this paragraph (*see* 49 CFR 26.13(b)).
- C. Bidders are required to document sufficient DBE participation to meet these goals or, alternatively, document adequate good faith efforts to do so, as provided for in 49 CFR 26.53. Award of this contract is conditioned on submission of the following concurrent with and accompanying sealed bid concurrent with and accompanying an initial proposal prior to award:
 - 1. The names and addresses of DBE firms that will participate in this contract;
 - 2. A description of the work each DBE will perform;
 - 3. The dollar amount of the participation of each DBE firm participating;
 - 4. Written documentation of the bidder's commitment to use a DBE subcontractor whose participation it submits to meet the contract goal;
 - 5. Written confirmation from the DBE that it is participating in the contract as provided in the prime contractor's commitment; and
 - 6. If the contract goal is not met, evidence of good faith efforts to do so.

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

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

- D. Contractor is required to pay its subcontractors performing work related to this contract for satisfactory performance of that work no later than 7 days after the contractor's receipt of payment for that work from the Omnitrans. In addition, Contractor is required to return any retainage payments to those subcontractors within 30 days after the subcontractor's work related to his contract is satisfactorily completed.

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

RR-20

ADA ACCESS

A. Applicability

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

B. Access Requirements for Persons with Disabilities

Contractor shall comply with:

1. The requirements of 49 U.S.C. § 5301(d), which states the Federal policy that elderly persons and persons with disabilities have the same right as other persons to use mass transportation service and facilities, and that special efforts shall be made in planning and designing those services and facilities to implement that policy;
2. All applicable requirements of section 504 of the Rehabilitation Act of 1973, as amended, 29 U.S.C. § 794, which prohibits discrimination on the basis of handicaps;
3. The Americans with Disabilities Act of 1990 (ADA), as amended, 42 U.S.C. § 12101 et seq., which requires that accessible facilities and services be made available to persons with disabilities, including any subsequent amendments to that Act;
4. The Architectural Barriers Act of 1968, as amended, 42 U.S.C. §§ 4151 et seq., which requires that buildings and public accommodations be accessible to persons with disabilities, including any subsequent amendments to that Act; and
5. All applicable requirements of the following regulations and any subsequent amendments thereto:
 - (1) U.S. DOT regulations, "Transportation Services for Individuals with Disabilities (ADA)," 49 C.F.R. Part 37;

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

RR-21

ALCOHOL AND DRUG-FREE WORKPLACE PROGRAM *

A. Applicability

This Article applies to federally funded contracts for transit operations.

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

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

C. Certificate of Compliance

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

D. Drug and Alcohol Testing Program

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

E. Alcohol and Drug Free Workplace Program

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

RR-22

TRANSIT EMPLOYEE PROTECTIVE ARRANGEMENTS *

A. Applicability

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

B. General Transit Employee Protective Requirements

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

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

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

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

If FTA has determined that this Contract involves transit operations financed in whole or in part with Federal assistance authorized by 49 U.S.C. § 5311, Contractor shall comply with the terms and conditions of the Special Warranty for the Nonurbanized Area Program agreed to by the U.S. Secretaries of Transportation and Labor, dated May 31, 1979, and the procedures implemented by U.S. DOL or any revision thereto.

E. Indemnity

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

RR-23

BONDING REQUIREMENTS

Applicability to Contracts

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

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

RR-24

DAVIS-BACON AND COPELAND ANTI-KICKBACK ACTS

Background and Application

The Davis-Bacon and Copeland Acts are codified at 40 USC 3141, *et seq.* and 18 USC 874. The Acts apply to grantee construction contracts and subcontracts that "at least partly are financed by a loan or grant from the Federal Government." 40 USC 3145(a), 29 CFR 5.2(h), 49 CFR 18.36(i) (5). The Acts apply to any construction contract over \$2,000. 40 USC 3142(a), 29 CFR 5.5(a). 'Construction,' for purposes of the Acts, includes "actual construction, alteration and/or repair, including painting and decorating." 29 CFR 5.5(a). The requirements of both Acts are incorporated into a single clause (*see* 29 CFR 3.11) enumerated at 29 CFR 5.5(a) and reproduced below.

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

Clause Language

Davis-Bacon and Copeland Anti-Kickback Acts

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

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

(ii)(A) The contracting officer shall require that any class of laborers or mechanics, including helpers, which is not listed in the wage determination and which is to be employed under the contract shall be classified in conformance with the wage determination. The contracting officer shall approve an additional classification and wage rate and fringe benefits therefore only when the following criteria have been met:

- (1) Except with respect to helpers as defined as 29 CFR 5.2(n)(4), the work to be performed by the classification requested is not performed by a classification in the wage determination; and
- (2) The classification is utilized in the area by the construction industry; and
- (3) The proposed wage rate, including any bona fide fringe benefits, bears a reasonable relationship to the wage rates contained in the wage determination; and

(4) With respect to helpers as defined in 29 CFR 5.2(n)(4), such a classification prevails in the area in which the work is performed.

(B) If the contractor and the laborers and mechanics to be employed in the classification (if known), or their representatives, and the contracting officer agree on the classification and wage rate (including the amount designated for fringe benefits where appropriate), a report of the action taken shall be sent by the contracting officer to the Administrator of the Wage and Hour Division, Employment Standards Administration, U.S. Department of Labor, Washington, DC 20210. The Administrator, or an authorized representative, will approve, modify, or disapprove every additional classification action within 30 days of receipt and so advise the contracting officer or will notify the contracting officer within the 30-day period that additional time is necessary.

(C) In the event the contractor, the laborers or mechanics to be employed in the classification or their representatives, and the contracting officer do not agree on the proposed classification and wage rate (including the amount designated for fringe benefits, where appropriate), the contracting officer shall refer the questions, including the views of all interested parties and the recommendation of the contracting officer, to the Administrator for determination. The Administrator, or an authorized representative, will issue a determination within 30 days of receipt and so advise the contracting officer or will notify the contracting officer within the 30-day period that additional time is necessary.

(D) The wage rate (including fringe benefits where appropriate) determined pursuant to paragraphs (a)(1)(ii) (B) or (C) of this section, shall be paid to all workers performing work in the classification under this contract from the first day on which work is performed in the classification.

(iii) Whenever the minimum wage rate prescribed in the contract for a class of laborers or mechanics includes a fringe benefit which is not expressed as an hourly rate, the contractor shall either pay the benefit as stated in the wage determination or shall pay another bona fide fringe benefit or an hourly cash equivalent thereof.

(iv) If the contractor does not make payments to a trustee or other third person, the contractor may consider as part of the wages of any laborer or mechanic the amount of any costs reasonably anticipated in providing bona fide fringe benefits under a plan or program, Provided, That the Secretary of Labor has found, upon the written request of the contractor, that the applicable standards of the Davis-Bacon Act have been met. The Secretary of Labor may require the contractor to set aside in a separate account assets for the meeting of obligations under the plan or program.

(v)(A) The contracting officer shall require that any class of laborers or mechanics which is not listed in the wage determination and which is to be employed under the contract shall be classified in conformance with the wage determination. The contracting officer shall approve an additional classification and wage rate and fringe benefits only when the following criteria have been met:

(1) The work to be performed by the classification requested is not performed by a classification in the wage determination; and

(2) The classification is utilized in the area by the construction industry; and

(3) The proposed wage rate, including any bona fide fringe benefits, bears a reasonable relationship to the wage rates contained in the wage determination.

(B) If the contractor and the laborers and mechanics to be employed in the classification (if known), or their representatives, and the contracting officer agree on the classification and wage rate (including the amount designated for fringe benefits where appropriate), a report of the action taken shall be sent by the contracting officer to the Administrator of the Wage and Hour Division, Employment Standards Administration, Washington, DC 20210. The Administrator, or an authorized representative, will approve, modify, or disapprove every additional classification action within 30 days of receipt and so advise the contracting officer or will notify the contracting officer within the 30-day period that additional time is necessary.

(C) In the event the contractor, the laborers or mechanics to be employed in the classification or their representatives, and the contracting officer do not agree on the proposed classification and wage rate (including the amount designated for fringe benefits, where appropriate), the contracting officer shall refer the questions, including the views of all interested parties and the recommendation of the contracting officer, to the Administrator for determination. The Administrator, or an authorized representative, will issue a determination within 30 days of receipt and so advise the contracting officer or will notify the contracting officer within the 30-day period that additional time is necessary.

(D) The wage rate (including fringe benefits where appropriate) determined pursuant to paragraphs (a) (1) (v) (B) or (C) of this section, shall be paid to all workers performing work in the Classification under this contract from the first day on which work is performed in the classification.

(2) **Withholding** - Omnitrans shall upon its own action or upon written request of an authorized representative of the Department of Labor withhold or cause to be withheld from the contractor under this contract or any other Federal contract with the same prime contractor, or any other federally-assisted contract subject to Davis-Bacon prevailing wage requirements, which is held by the same prime contractor, so much of the accrued payments or advances as may be considered necessary to pay laborers and mechanics, including apprentices, trainees, and helpers, employed by the contractor or any subcontractor the full amount of wages required by the contract. In the event of failure to pay any laborer or mechanic, including any apprentice, trainee, or helper, employed or working on the site of the work (or under the United States Housing Act of 1937 or under the Housing Act of 1949 in the construction or development of the project), all or part of the wages required by the contract, Omnitrans may, after written notice to the contractor, sponsor, applicant, or owner, take such action as may be necessary to cause the suspension of any further payment, advance, or guarantee of funds until such violations have ceased.

(3) **Payrolls and basic records** - (i) Payrolls and basic records relating thereto shall be maintained by the contractor during the course of the work and preserved for a period of three years thereafter for all laborers and mechanics working at the site of the work (or under the United States Housing Act of 1937, or under the Housing Act of 1949, in the construction or development of the project). Such records shall contain the name, address, and social security number of each such worker, his or her correct classification, hourly rates of wages paid (including rates of contributions or costs anticipated for bona fide fringe benefits or cash equivalents thereof of the types described in section 1(b)(2)(B) of the Davis-Bacon Act), daily and weekly number of hours worked, deductions made and actual wages paid. Whenever the Secretary of Labor has found under 29 CFR 5.5(a)(1)(iv) that the wages of any laborer or mechanic include the amount of any costs reasonably anticipated in providing benefits under a plan or program described in section 1(b)(2)(B) of the Davis-Bacon Act, the contractor shall maintain records which show that the commitment to provide such benefits is enforceable, that the plan or program is financially responsible, and that the plan or program has been communicated in writing to the laborers or mechanics affected, and records which show the costs anticipated or the actual cost incurred in providing such benefits. Contractors employing apprentices or trainees under approved programs shall maintain written evidence of the registration of apprenticeship programs and certification of trainee programs, the registration of the apprentices and trainees, and the ratios and wage rates prescribed in the applicable programs.

(ii)(A) The contractor shall submit weekly for each week in which any contract work is performed a copy of all payrolls to the Omnitrans for transmission to the Federal Transit Administration. The payrolls submitted shall set out accurately and completely all of the information required to be maintained under section 5.5(a)(3)(i) of Regulations, 29 CFR part 5. This information may be submitted in any form desired. Optional Form WH-347 is available for this purpose and may be purchased from the Superintendent of Documents (Federal Stock Number 029-005-00014-1), U.S. Government Printing Office, Washington, DC 20402. The prime contractor is responsible for the submission of copies of payrolls by all subcontractors.

(B) Each payroll submitted shall be accompanied by a "Statement of Compliance," signed by the contractor or subcontractor or his or her agent who pays or supervises the payment of the persons employed under the contract and shall certify the following:

(1) That the payroll for the payroll period contains the information required to be maintained under section 5.5(a)(3)(i) of Regulations, 29 CFR part 5 and that such information is correct and complete;

(2) That each laborer or mechanic (including each helper, apprentice, and trainee) employed on the contract during the payroll period has been paid the full weekly wages earned, without rebate, either directly or indirectly, and that no deductions have been made either directly or indirectly from the full wages earned, other than permissible deductions as set forth in Regulations, 29 CFR part 3;

(3) That each laborer or mechanic has been paid not less than the applicable wage rates and

fringe benefits or cash equivalents for the classification of work performed, as specified in the applicable wage determination incorporated into the contract.

(C) The weekly submission of a properly executed certification set forth on the reverse side of Optional Form WH-347 shall satisfy the requirement for submission of the "Statement of Compliance" required by paragraph (a)(3)(ii)(B) of this section.

(D) The falsification of any of the above certifications may subject the contractor or subcontractor to civil or criminal prosecution under section 1001 of title 18 and section 231 of title 31 of the United States Code.

(iii) The contractor or subcontractor shall make the records required under paragraph (a)(3)(i) of this section available for inspection, copying, or transcription by authorized representatives of the Federal Transit Administration or the Department of Labor, and shall permit such representatives to interview employees during working hours on the job. If the contractor or subcontractor fails to submit the required records or to make them available, the Federal agency may, after written notice to the contractor, sponsor, applicant, or owner, take such action as may be necessary to cause the suspension of any further payment, advance, or guarantee of funds. Furthermore, failure to submit the required records upon request or to make such records available may be grounds for debarment action pursuant to 29 CFR 5.12.

(4) **Apprentices and trainees** - (i) Apprentices - Apprentices will be permitted to work at less than the predetermined rate for the work they performed when they are employed pursuant to and individually registered in a bona fide apprenticeship program registered with the U.S. Department of Labor, Employment and Training Administration, Bureau of Apprenticeship and Training, or with a State Apprenticeship Agency recognized by the Bureau, or if a person is employed in his or her first 90 days of probationary employment as an apprentice in such an apprenticeship program, who is not individually registered in the program, but who has been certified by the Bureau of Apprenticeship and Training or a State Apprenticeship Agency (where appropriate) to be eligible for probationary employment as an apprentice. The allowable ratio of apprentices to journeymen on the job site in any craft classification shall not be greater than the ratio permitted to the contractor as to the entire work force under the registered program. Any worker listed on a payroll at an apprentice wage rate, who is not registered or otherwise employed as stated above, shall be paid not less than the applicable wage rate on the wage determination for the classification of work actually performed. In addition, any apprentice performing work on the job site in excess of the ratio permitted under the registered program shall be paid not less than the applicable wage rate on the wage determination for the work actually performed. Where a contractor is performing construction on a project in a locality other than that in which its program is registered, the ratios and wage rates (expressed in percentages of the journeyman's hourly rate) specified in the contractor's or subcontractors registered program shall be observed. Every apprentice must be paid at not less than the rate specified in the registered program for the apprentice's level of progress, expressed as a percentage of the journeymen hourly rate specified in the applicable wage determination. Apprentices shall be paid fringe benefits in accordance with the provisions of the apprenticeship program. If the apprenticeship program does not specify fringe benefits, apprentices must be paid the full amount of fringe benefits listed on the wage determination for the applicable

classification. If the Administrator of the Wage and Hour Division of the U.S. Department of Labor determines that a different practice prevails for the applicable apprentice classification, fringes shall be paid in accordance with that determination. In the event the Bureau of Apprenticeship and Training, or a State Apprenticeship Agency recognized by the Bureau, withdraws approval of an apprenticeship program, the contractor will no longer be permitted to utilize apprentices at less than the applicable predetermined rate for the work performed until an acceptable program is approved.

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

(iii) Equal employment opportunity - The utilization of apprentices, trainees and journeymen under this part shall be in conformity with the equal employment opportunity requirements of Executive Order 11246, as amended and 29 CFR part 30.

(5) **Compliance with Copeland Act requirements** - The contractor shall comply with the requirements of 29 CFR part 3, which are incorporated by reference in this contract.

(6) **Subcontracts** - The contractor or subcontractor shall insert in any subcontracts the clauses contained in 29 CFR 5.5(a)(1) through (10) and such other clauses as the Federal Transit Administration may by appropriate instructions require, and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The prime contractor shall be responsible for the compliance by any subcontractor or lower tier subcontractor with all the contract clauses in 29 CFR 5.5.

(7) **Contract termination: debarment** - A breach of the contract clauses in 29 CFR 5.5 may be

grounds for termination of the contract, and for debarment as a contractor and a subcontractor as provided in 29 CFR 5.12.

(8) Compliance with Davis-Bacon and Related Act requirements - All rulings and interpretations of the Davis-Bacon and Related Acts contained in 29 CFR parts 1, 3, and 5 are herein incorporated by reference in this contract.

(9) Disputes concerning labor standards - Disputes arising out of the labor standards provisions of this contract shall not be subject to the general disputes clause of this contract. Such disputes shall be resolved in accordance with the procedures of the Department of Labor set forth in 29 CFR parts 5, 6, and 7. Disputes within the meaning of this clause include disputes between the contractor (or any of its subcontractors) and the contracting agency, the U.S. Department of Labor, or the employees or their representatives.

(10) Certification of eligibility - (i) By entering into this contract, the contractor certifies that neither it (nor he or she) nor any person or firm who has an interest in the contractor's firm is a person or firm ineligible to be awarded Government contracts by virtue of section 3(a) of the Davis-Bacon Act or 29 CFR 5.12(a)(1).

(ii) No part of this contract shall be subcontracted to any person or firm ineligible for award of a Government contract by virtue of section 3(a) of the Davis-Bacon Act or 29 CFR 5.12(a)(1).

(iii) The penalty for making false statements is prescribed in the U.S. Criminal Code, 18 U.S.C. 1001.

RR-25 PRIVACY ACT - 5 U.S.C. 552

Applicability to Contracts

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

Flow Down

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

Model Clause/Language

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

Contracts Involving Federal Privacy Act Requirements - The following requirements apply to the Contractor and its employees that administer any system of records on behalf of the Federal Government under any contract:

- (1) The Contractor agrees to comply with, and assures the compliance of its employees with, the information restrictions and other applicable requirements of the Privacy Act of 1974,

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

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 # F5

DATE: November 6, 2013

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

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

FROM: Jennifer M. Sims, Director of Procurement

**SUBJECT: AUTHORIZE AWARD - CONTRACT NO. IPMO14-105
ON-CALL ENVIRONMENTAL SUPPORT FOR THE SBX E STREET
CORRIDOR AND VEHICLE MAINTENANCE FACILITY PROJECT**

FORM MOTION

Authorize the Interim CEO/General Manager to award Contract IPMO14-105 to Crable and Associates, Environmental Consultants, of Altadena, California, for the provision of On-Call Environmental Support for the sbX E Street Corridor and Vehicle Maintenance Facility Project beginning November 11, 2013, for a period of ten (10) months, with an option to extend the term for an additional one-year period, ending no later than August 11, 2015, on an on-call basis with a total amount not-to-exceed \$97,900.00, plus the 3.27% Cost Allocation Plan (CAP) of \$3,201.00 for a total not-to-exceed amount of \$101,101.00

BACKGROUND

Omnitrans is required to provide oversight to the environmental consulting services provided by Jacobs Engineering, Inc., on the sbX E Street Corridor and Vehicle Maintenance Facility Project to ensure compliance with the California Environmental Quality Act (CEQA), National Environmental Policy Act (NEPA), Air Quality Management District regulations (AQMD), State and County Hazardous Material programs and various other federal, state and local environmental regulations. On-call environmental services were previously provided by APSI. As part of the corrective action required in response to the Procurement System Review, the agreement with APSI was terminated on August 7, 2013.

On October 8, 2013, staff released Request for Quotes RFQ-IPMO14-105 for the provision of on-call environmental support for oversight on Environmental Documents (Environmental Analysis/Impact Studies), Mitigation Monitoring & Reporting Plan (MMRP), Paleontological Monitoring, Mitigation Plan and Conduct Awareness Training, and other related environmental documents/compliance procedures being used by the construction contractors and consultants for the sbX E Street Corridor and Vehicle Maintenance Facility Project. The RFQ was posted on Omnitrans' online bidding system and distributed to one hundred and forty-eight (148) registered firms. The Independent Cost Estimate for this solicitation was \$97,900.00. The total cost of the

services shall not exceed the amount of \$97,900.00, including the option to extend the agreement for an additional one year period.

Five (5) bids were received electronically by the deadline date of October 21, 2013, and all bids were found to be responsible and responsive. The bids were based on an hourly rate schedule which primarily included a Principle and Project Manager. Listed below are the fully burdened hourly rates:

<u>Company</u>	<u>Principal Rate</u>	<u>Project Manager Rate</u>
ECORP Consulting, Inc.	\$185.00	\$150.00
Lilburn Corporation	\$170.00	\$150.00
Ultra Systems Environmental, Inc.	\$170.00	\$125.00
Pacifica Services, Inc.	\$160.00	\$135.00
Crabbe and Associates	\$100.00	\$100.00

Award recommendation is being made to the lowest responsive and responsible bidder. Crabbe and Associates is a Sole Proprietor and a certified Disadvantage Business Enterprise.

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

FUNDING SOURCE

The cost associated with this procurement is budgeted as follows:

FUNDING	GRANT #	FISCAL YEAR	PROJECT NAME	AMOUNT
FTA	CA-90-Y775	2010	E Street Corridor-sbX	\$80,880
STA	13-10-OMN-B	2012	E Street Corridor - sbX	\$20,221

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

CONCLUSION

Approving award of this contract will ensure FTA compliance and federal, state, and local environmental compliance.

PSG:JMS:dr



CONTRACT AGREEMENT

between

Crable and Associates
Environmental Consultants
765 West Altadena Drive
Altadena, CA 91001

(hereinafter "CONSULTANT")
Telephone: (626) 676-6993
Fax: (626) 421-6058

And

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

CONTRACT DOCUMENTS

**CONTRACT NO.
RFQ-IPMO14-105**

Contract Amount: \$ 97,900.00

Omnitrans Project Manager:

Name: Teck Loh
Title: Engineering Services
Manager
Telephone: (909) 963-5236
Fax: (909) 963-5249
Email: teck.loh@omnitrans.org

Contract Administrator:

Name: Dennice Raygoza
Title: Sr. Contracts Administrator
Telephone: (909) 379-7186
Fax: (909) 379-7170
Email: dennice.raygoza@omnitrans.org



TABLE OF CONTENTS

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

21.	EQUAL OPPORTUNITY.....	13
23.	NOTIFICATION OF EMPLOYMENT OF OMNITRANS BOARD MEMBERS/ALTERNATES AND EMPLOYEES	14
24.	DISQUALIFYING POLITICAL CONTRIBUTIONS	14
25.	COMPLIANCE WITH LAW	14
26.	COMPLIANCE WITH LOBBYING POLICIES	15
27.	PUBLIC RECORDS ACT	15
28.	WAIVER/INVALIDITY	16
29.	FORCE MAJEURE.....	16
30.	CONFIDENTIALITY	16
31.	CONSULTANT’S INTERACTION WITH THE MEDIA AND THE PUBLIC.....	16
32.	GOVERNING LAW	17
33.	MODIFICATIONS TO AGREEMENT	17
34.	DISPUTE RESOLUTION.....	17
35.	LICENSING, PERMITS AND INSPECTION COSTS.....	18
36.	PRECEDENCE	18
37.	ENTIRE AGREEMENT	18

ATTACHMENT A - SCOPE OF WORK

ATTACHMENT B - REGULATORY REQUIREMENTS

This Agreement is made and entered into as of this 6th day of November, 2013 by and between Omnitrans (hereinafter referred to as "OMNITRANS") and Crable & Associates, Environmental Consultants of Altadena, CA, 91001 (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 Attachment 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. 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 execution of this Agreement and continue in effect through August, 11, 2014, 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 CONSULTANTS' default as provided elsewhere in this Agreement. The "maximum term" of this Agreement shall be the period extended from November 11, 2013 Through August 11, 2015, 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 an On-Call Basis the fully burdened fixed rates shown in Attachment B, and subject to the maximum cumulative payment obligation.

OMNITRANS' maximum cumulative payment obligation under this Agreement shall not exceed Ninety Seven Thousand Eight Hundred Dollars (\$97,800.00), 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 15th of each month. CONSULTANT shall furnish information as may be requested by OMNITRANS to substantiate the validity of an invoice.

CONSULTANT shall submit invoices in duplicate to:

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

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

- Contract number
 - Invoice number
 - Description of delivery
 - Service Date
 - Hours Worked listed with staff titles and names
 - Information as requested by OMNITRANS
- B. OMNITRANS shall remit payment within thirty (30) calendar days of approval of the invoices by OMNITRANS' Project Manager.

In the event OMNITRANS should overpay 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: Sr. Contracts Administrator
Dennice Raygoza

To CONSULTANT:

Crable and Associates
Environmental Consultants
765 West Altadena Drive
Altadena, CA 91001
Attn: Consulting Principal, Owner
Dennis Crable

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: Teck Loh, Engineering 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:

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

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 so 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 Name and Address

Work to Be Performed

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. **Workers' Compensation:** statutory limits or, a State-Approved program in an amount and form that meets all applicable requirements of the Labor Code of the State of California; *waiver of subrogation that includes Omnitrans.*
- D. **Employers Liability** Applicable to the work being performed, with a limit no less than \$1,000,000 per claim or occurrence and \$2,000,000 aggregate; *Endorsement naming Omnitrans as additional insured.*

- E. **Professional Liability:** Consultant shall procure and maintain, and require its sub-consultants to procure and maintain, for a period of two (2) years following completion of the Project, errors and omissions liability insurance appropriate to their profession. Such insurance shall be in an amount not less than \$1,000,000

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.

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. DISPUTE RESOLUTION

- A. Any disputes between Consultant and Omnitrans relating to the implementation or administration of the Contract shall be resolved in accordance with this section.
 - 1) The parties shall first attempt to resolve the dispute informally in meetings or communications between Consultant and Omnitrans.
 - 2) If the dispute remains unresolved fifteen (15) days after it first arises, Consultant 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 Consultant.
 - 3) 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.
 - 4) Pending final resolution of a dispute under this section, Consultant shall proceed diligently with performance in accordance with the Contract and Omnitrans' CEO/General Manager's recommended decision.

35. LICENSING, PERMITS AND INSPECTION COSTS

- A. The FIRM warrants that it has all necessary licenses and permits required by the laws of the United States, State of California, and the County of San Bernardino, the Local Jurisdictions, and all other appropriate governmental agencies, and agrees to maintain these licenses and permits in effect for the duration of the Agreement. Further, FIRM warrants that its employees, agents, and consultants and subconsultants shall conduct themselves in compliance with such laws and licensure requirements including, without limitation, compliance with laws applicable to nondiscrimination, sexual harassment and ethical behavior throughout the duration of this Agreement. FIRM further warrants that it shall not retain or employ an unlicensed subconsultant to perform work on this Project. FIRM shall notify OMNITRANS immediately and in writing of its employees', agents', consultants' or subconsultants' 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. Consultant 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) provisions of Omnitrans's Request for Proposal and (4) CONSULTANT's proposal dated October 8, 2013.

37. ENTIRE AGREEMENT

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

CONSULTANT
Cable and Associates
Environmental Consultants

P. SCOTT GRAHAM
Interim CEO/General Manager

DENNIS CRABLE
Consulting Principal, Owner

DATE

Federal Tax I.D. No. 2T

ATTACHMENT “A”

ON-CALL ENVIRONMENTAL COMPLIANCE SUPPORT FOR THE sbX E STREET CORRIDOR AND VEHICLE MAINTENANCE FACILITY PROJECT SCOPE OF WORK

I. BACKGROUND

Omnitrans’ has two existing projects, sbX E Street Corridor Project and the Vehicle Maintenance Facility Project that require compliance with the California Environmental Quality Act (CEQA), National Environmental Policy Act (NEPA), Air Quality Management District regulations (AQMD), State and County Hazardous Material programs and various federal, state and local environmental compliance.

The sbX – E Street Corridor Bus Rapid Transit (BRT) project is in construction phase. The major components of the sbX projects include Corridor Construction, Upgrades to Vehicle Maintenance Facility (VMF), and the procurement of 60-foot Articulated Buses. The construction activities started in January 2012 and completion date is targeted for February 2014. The date for Revenue Operations is targeted for April 30, 2014. The final completion date for the Vehicle Maintenance Facility is targeted for August 17, 2014.

In order to assist the sbX Project Team to meet the above targeted milestones and in order to deliver project that complies with the overall project goals including FTA compliance, adherence to the requirements of the applicable Regulatory Agencies requirements and to Omnitrans’ Policies and procedures, we are soliciting “On Call” environmental compliance services from a qualified Firm specifically as related to the E Street corridor construction and the upgrades to VMF.

This Request for Quotations (RFQ) is intended to select a qualified firm for the provision of environmental consulting and inspection services for the specified projects on an as-needed basis. The selected Firm will work with the Omnitrans’ project team, Construction Management Consultant (Jacobs), and Contractor/s.

II. SCOPE OF WORK

Consultant will provide services as needed by the experienced Environmental Specialists and the support staff having experience working on Public Works and Facility construction types of projects and have the expertise in Environmental Documents (Environmental Analysis/Impact Studies), Mitigation Monitoring & Reporting Plan (MMRP), Paleontological Monitoring, Mitigation Plan and Conduct Awareness Training, and other related environmental documents/compliance procedures being used by the construction contractor/s.

III. CONSULTANTS/CONTRACTORS RESPONSIBILITY

The scope of the services will include but are not limited to the following tasks:

1. Third party review on behalf of Omnitrans of the monthly MMRP updates prepared by the contractor/Jacobs as requested by Omnitrans. MMRP updates will be reviewed including Inspector's Daily Reports, Noise and Vibration Reports, Safety Reports, and Diesel Equipment Rating Reports. In addition, review documents related CEQA/NEPA documents and associated MMRP.
2. Conduct observation reviews and assessments as it relates to MMRP once every month and on "as-needed" basis.
3. In accordance with mitigation measure of the MMRP, prepare Paleontological Monitoring and Mitigation Plan (PMMP) and Conduct Awareness Training for the project as requested by Omnitrans. Tasks shall include basic research on compliance obligations and project site resource conditions, compilation of presentation materials, preparation of a Power Point presentation and handouts (if necessary), basic coordination with appropriate project team staff in the development and review of materials, and conducting one training session of no more than two (2) hours at a location on or in proximity to the project site.
4. In accordance with mitigation measure of the MMRP, conduct Paleontological Monitoring and prepare Report for the project as requested by Omnitrans. Task shall include oversight of the paleontological monitoring and project-related management and coordination with the project team, the monitor, and the on-site construction supervisor. Project management may vary weekly, pending excavation and monitoring

schedules. Task also includes the preparation of a Daily Monitoring Log that will outline the results of the monitoring effort on a daily basis.

5. At Omnitrans' request prepare any environmental analysis pertaining to construction scope changes, any unforeseen environmental hazards arising during construction, and/or final environmental documentation or related activities not specifically mentioned above.
6. Participate in any environmental discussions with the project team – Omnitrans, Jacobs, and the contractor/s as requested by Omnitrans.
7. Planned attendance of weekly construction meetings in person or conference as requested by Omnitrans.
8. Attend the meetings with FTA, Project Management Oversight Consultant (PMOC), and other entities as requested by Omnitrans.
9. Provide project oversight and inspection during construction of projects to ensure compliance with Federal, State and local regulations.

IV. SCHEDULE

1. Omnitrans' anticipates contracting with the selected Consultant/Contractor in November 2013.
2. Omnitrans' intends to enter into a professional service contract with the selected consultant for a period of ten (10) months, with the option to extend the agreement on a month-to-month basis through project completion.
3. Omnitrans' will require the services of the Consultant to provide professional environmental consulting services on an as-needed basis for the sbX E Street Corridor Project and the Vehicle Maintenance Facility Project.

V. CONSULTANTS QUALIFICATION AND EXPERIENCE

1. Experience and interpretation of the California Environmental Quality Act (CEQA).
2. Experience with the National Environmental Policy Act (NEPA).
3. Knowledge of City codes, regulations, permits, and local policies.

4. The Consultant must demonstrate recent direct experience providing similar services on at least five (5) projects.
5. The Consultant's team members must be listed in the proposal including other subconsultants (if any) who will provide special professional services.
6. Ability to communicate effectively, both verbally and in writing.
7. Minimum ten (10) years of progressively responsible work experience in construction and environmental related work.
8. Oversight of environmental reviews with a minimum of five (5) years of work in California.
9. Consultant must provide all required and necessary licenses and accreditations related to environment mental compliances.
10. Knowledge of laws, codes, and regulations pertaining to construction within (California).
11. Ability to read drawings, interpret specifications, keep accurate and detailed records.
12. Establish and maintain effective public and contractor relations.
13. Ability to use and generate reports via Windows, Microsoft Office (including Microsoft, Word, Excel and Project).

V. OMNITRANS RESPONSIBILITIES

1. Omnitrans' will coordinate with Consultant to ensure schedule feasibility.
2. Omnitrans' will provide a designated Project manager to the project for the time period as stated in the contract documents.
3. Omnitrans' will advise consultant in writing of needed on-call services.

VI. DELIVERABLES

1. Provide weekly email updates and summary of findings in monthly progress report of MMRP.
2. Provide written weekly updates and summary reports of other environmental findings in monthly progress reports.

3. Provide one (1) electronic and two (2) hard copies of the Paleontological Monitoring Report. One (1) additional copy of the report will be submitted to an appropriate paleontological institution.

Provide one (1) electronic and two (2) hard copies of the Paleontological Monitoring and Mitigation Plan (PMMP). One (1) additional copy of the report will be submitted to an appropriate paleontological institution.

**ATTACHMENT “B”
REGULATORY REQUIREMENTS**

(SEE ATTACHED)

ITEM # F6

DATE: November 6, 2013

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

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

FROM: Jennifer M. Sims, Director of Procurement

**SUBJECT: AUTHORIZE AWARD - CONTRACT NO. HR14-07
PRE-EMPLOYMENT BACKGROUND CHECKS**

FORM MOTION

Authorize the Interim CEO/General Manager to award Contract HR14-07 to Summit Security Services, Inc., dba Summit of California, Uniondale, New York , for the provision of Pre-employment Background Checks beginning December 1, 2013 and ending no later than November 30, 2015, in the aggregate amount of \$54,648, and the authority to exercise three one-year options, extending the contracts to no later than November 30, 2018, in the aggregate amount of \$27,324 for each of the option years, totaling \$136,620, plus a 10% contingency of \$13,662, for a five year not-to-exceed amount of \$150,282, should all option years be exercised.

BACKGROUND

Pre-employment background checks are completed prior to extending offers of employment. The standard background check includes a four-county search, Social Security Number trace, National Criminal File, Sex Offender trace and E-verify. Other checks may include employment and education verifications, as well as previous Department of Transportation (DOT) drug and alcohol testing, depending on the minimum qualifications of the positions.

On August 7, 2013, the Omnitrans Board of Directors authorized the release of Request for Proposals (RFP) HR14-07. Staff released the RFP, notices were published in two local newspapers of general circulation and posted on Omnitrans' online bidding system which was distributed to forty (40) registered firms. The Independent Cost Estimate for this solicitation was \$136,620.

Seven proposals were received electronically on September 11, 2013. Five proposals were found to be responsive.

Omnitrans' evaluation team, comprised of representatives from the Human Resources, Finance, and the sbX project, met and evaluated the proposals based upon the criteria set forth in the RFP. A total of 100 points were possible. The following firms ranked from highest to lowest.

	Summit Security Services, Inc.	Accusource, Inc.	Castle Branch	First Choice Research and Investigations, Inc.	Inquiries, Inc.
Responsiveness to the RFP	33.33	34.67	30.67	32.00	31.33
Experience of Staff	27.00	27.00	26.00	22.99	23.00
References	10.00	10.00	10.00	9.00	10.00
Price	20.00	17.77	11.95	13.08	12.53
Total	90.33	89.44	78.62	77.07	76.86
BAFO	90.33	89.73			

Staff requested a Best and Final Offer (BAFO) from the two highest ranked firms. Both firms submitted their BAFO by the deadline. Although both firms reduced their price, the ranking of the firms stayed the same. The BAFO resulted in a \$.90 savings per standard background check from Summit Security Services, Inc.

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

FUNDING SOURCE

The cost associated with this procurement is budgeted as follows:

Department Number 1600
Expenditure Code 503060

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

CONCLUSION

Award of this contract ensures that all Omnitrans employees have met the background requirements of the Agency.

PSG:JMS:aa



CONTRACT AGREEMENT

between

CONTRACTOR

SUMMIT SECURITY SERVICES, INC. dba
SUMMIT OF CALIFORNIA
390 RxR Plaza
Uniondale, NY 11556

(hereinafter "CONTRACTOR")
Telephone: 516-240-2415
Email: nmauletta@summitsecurity.com

And

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

CONTRACT DOCUMENTS

CONTRACT NO.
HR14-07

PRE-EMPLOYMENT BACKGROUND CHECKS

Contract Amount:
not to exceed \$ 54,648.00

Omnitrans Project Manager:
Name: Denise Gibson
Title: HR Specialist
Telephone: 909-379-7262
Fax: 909-379-7108
Email: denise.gibson@omnitrans.org

Contract Administrator:
Name: Alesia Atkinson
Title: Contract Administrator
Telephone: 909-379-7314
Fax: 909-379-7107
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TABLE OF CONTENTS

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

21.	EQUAL OPPORTUNITY.....	13
22.	STANDARD OF PERFORMANCE	13
22.	NOTIFICATION OF EMPLOYMENT OF OMNITRANS BOARD MEMBERS/ALTERNATES AND EMPLOYEES	14
23.	DISQUALIFYING POLITICAL CONTRIBUTIONS	14
24.	COMPLIANCE WITH LAW	14
25.	COMPLIANCE WITH LOBBYING POLICIES.....	14
26.	PUBLIC RECORDS ACT.....	15
27.	WAIVER/INVALIDITY	15
28.	FORCE MAJEURE.....	15
29.	CONFIDENTIALITY	16
30.	CONTRACTOR’S INTERACTION WITH THE MEDIA AND THE PUBLIC	16
31.	GOVERNING LAW	16
32.	MODIFICATIONS TO AGREEMENT	16
33.	PRECEDENCE	17
34.	ENTIRE AGREEMENT	17

Attachment A – Scope of Work

Attachment B – Rates

Attachment C – Regulatory Requirements

This Agreement is made and entered into as of this 1st day of December, 2013 by and between Omnitrans (hereinafter referred to as "OMNITRANS") and SUMMIT SECURITY SERVICES, INC., DBA SUMMIT OF CALIFORNIA (hereinafter referred to as "CONTRACTOR").

RECITALS

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

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

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

1. SCOPE OF WORK

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

2. PERIOD OF PERFORMANCE

The term of this Agreement shall be from December 1, 2013 and continue in effect through November 30, 2015, unless terminated as specified in Section 8 or 9 of this Agreement. Omnitrans reserves the right at its sole discretion to exercise a total of three (3) one-year options with no obligation to purchase any specified amount of products/services. All applicable indemnification provisions in this Agreement shall remain in effect following the termination of this Agreement.

3. CONTRACT SUM

For CONTRACTOR's full and complete performance of its obligations under this Agreement, OMNITRANS shall pay CONTRACTOR on a FIXED PRICE basis at the fully burdened fixed rates shown in Attachment B, Rates, plus reimbursement of any direct costs agreed to in accordance with the provisions of this Section, and subject to the maximum cumulative payment obligation.

OMNITRANS' maximum cumulative payment obligation under this Agreement shall not exceed Fifty Four Thousand Six Hundred Forty Eight and 00/100 Dollars (\$ 54,648.00), including all amounts payable to CONTRACTOR for all costs, including but not limited to direct labor, other direct costs, subcontracts, indirect costs including, but not limited to, leases, materials, taxes, insurance, and profit.

4. INVOICING AND PAYMENT

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

CONTRACTOR shall submit invoices in duplicate to:

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

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

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

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

In the event OMNITRANS should overpay CONTRACTOR, such overpayment shall not be construed as a waiver of OMNITRANS' right to

obtain reimbursement for the overpayment. Upon discovering any overpayment, either on its own or upon notice of OMNITRANS, CONTRACTOR shall immediately reimburse OMNITRANS the entire overpayment or, at its sole discretion, OMNITRANS may deduct such overpayment amount from monies due to CONTRACTOR under this Agreement or any other Agreement between OMNITRANS and CONTRACTOR.

5. AUDIT AND INSPECTION OF RECORDS

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

6. NOTIFICATION

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

To OMNITRANS:

Omnitrans
1700 West Fifth Street
San Bernardino, CA 92411
Attn: Alesia Atkinson
Contract Administrator

To CONTRACTOR:

Summit Security Services, Inc. dba
Summit Services of California
3191 West Temple Avenue
Pomona, CA 91768
Attn: William Gock
Business Communications

7. OMNITRANS' AND CONTRACTOR'S REPRESENTATIVES

A. OMNITRANS' Project Manager

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

Project Manager: Denise Gibson, HR Specialist

- a. OMNITRANS has the final approval in all matters relating to or affecting the Work. Except as expressly specified in this Agreement, the Contracting Officer may exercise any powers,

rights and/or privileges that have been lawfully delegated by OMNITRANS. Nothing in this Agreement should be construed to bind OMNITRANS for acts of its officers, employees, and/or agents that exceed the delegation of authority specified herein.

- b. The Contracting Officer has delegated to the Project Manager certain powers and duties in connection with this Agreement. The Project Manager is the authorized representative of the Contracting Officer for matters related to this Agreement. The Project Manager or his/her designee is empowered to:
 - 1. Have general oversight of the Work and this Agreement, including the power to enforce compliance with this Agreement.
 - 2. Reserve the right to remove any portion of the Work from CONTRACTOR which have not been performed to OMNITRANS' satisfaction.
 - 3. Subject to the review and acceptance by OMNITRANS, negotiate with CONTRACTOR all adjustments pertaining to this Agreement for revision.
- c. In addition to the foregoing, the Project Manager shall have those rights and powers expressly set forth in other sections of this Agreement.

B. Contractor's Key Personnel

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

<u>Name</u>	<u>Role</u>
Nicholas M. Auletta	Vice President
Lisa Worgull	Regional Manager
_____	_____
_____	_____

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

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

8. TERMINATION FOR CONVENIENCE

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

9. TERMINATION FOR BREACH OF AGREEMENT

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

- E. All finished or unfinished documents and materials produced or procured under this Agreement shall become OMNITRANS' property upon date of such termination.
- F. If, after notice of termination of this Agreement under the provisions of this Section, it is determined for any reason that CONTRACTOR was not in default under the provisions of this Section, or that the default was excusable under the terms of this Agreement, the rights and obligations of the parties shall be the same as if the notice of termination had been issued pursuant to Section 8, Termination for Convenience.
- G. The rights and remedies of OMNITRANS provided in this Article shall not be exclusive and are in addition to any other rights and remedies provided by law or under this Agreement.

10. ASSIGNMENT

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

11. SUBCONTRACTING

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

Subcontractor's Name and Address	Work to Be Performed
n/a	

12. INDEPENDENT CONTRACTOR

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

13. INSURANCE

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

- A. **Commercial General Liability including Products/Completed Operations:** \$1,000,000 per occurrence for bodily and property damage liability and \$2,000,000 aggregate; *Endorsement naming Omnitrans as Additional Insured.*
- B. **Automobile Liability:** \$1,000,000 combined single limit bodily and property damage liability per accident; *Endorsement naming Omnitrans as Additional Insured.*
- C. **Workers' Compensation:** statutory limits or, a State-Approved program in an amount and form that meets all applicable requirements of the Labor Code of the State of California; *waiver of subrogation that includes Omnitrans.*
- D. **Errors and Omissions Liability:** \$1,000,000; combined single limit bodily and property damage liability per occurrence and \$3,000,000 aggregate or,
- E. **Professional Liability:** \$1,000,000 per occurrence and aggregate.
- F. **Employers Liability:** \$1,000,000 per occurrence.

Additional Insured:

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

14. INDEMNITY

CONTRACTOR shall indemnify, defend and hold harmless OMNITRANS, and its member agencies, and their officers, directors, employees and agents from and

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

15. REVISIONS IN SCOPE OF WORK

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

16. RIGHTS IN TECHNICAL DATA

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

17. OWNERSHIP OF REPORTS AND DOCUMENTS

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

18. OWNERSHIP RIGHTS

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

19. WORK FOR HIRE

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

20. SUBMITTAL OF CLAIMS BY CONTRACTOR

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

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

21. EQUAL OPPORTUNITY

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

22. STANDARD OF PERFORMANCE

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

22. 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.

23. 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).

24. 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.

25. 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.

26. 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.

27. 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.

28. 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.

29. 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.

30. 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.

31. 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.

32. 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.

33. 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, Rates (4) provisions of RFP No. HR14-07 and (5) CONTRACTOR's proposal dated September 11, 2013.

34. 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

SUMMIT SECURITY SERVICES, INC.
DBA SUMMIT OF CALIFORNIA

P. SCOTT GRAHAM
Interim CEO/General Manager

NICHOLAS M. AULETTA
VICE- PRESIDENT

Date

Date

Federal Tax I.D. No. _____

DP _____

CM _____

1. STATEMENT OF WORK

- A. Contractor has a minimum of five (5) years experience in conducting pre-employment background investigations and producing comprehensive reports that shall include: Federal, State and local criminal records search, previous employment information, E verify services, self-employment information, credit reports, professional and educational credentials, social security validation, criminal records and previous DOT drug and alcohol test results. Out-of-country and self-employment checks may be requested on an as-needed basis.
- B. Employment verification shall cover the applicant's and employee's previous education and degrees obtained certification, licenses and current and previous employment information.
- C. A Standard Check is defined as information that Omnitrans will receive on every candidate submitted unless otherwise instructed. This "standard check" will always include the following:
 - 1. SSN Trace
 - 2. National Criminal File Search
 - 3. Sex Offender Trace
 - 4. Criminal History Checks from the following counties: San Bernardino, Los Angeles, Riverside, Orange; also any county that is pulled through the SSN trace where the candidate may have resided.
- D. Contractor uses a web-based system.

2. TYPES OF BACKGROUND CHECKS

- A. Employment verification: reference past employers and previous work history; includes dates of employment, reason for termination (voluntary or involuntary) position held, salary (if available) and performance information, including verification of self-employment.
- B. Criminal: comprehensive search at the county for any jurisdiction identified by the applicant's current and prior addresses whether indicated by applicant or revealed by Social Security or other check. The search shall involve all levels of criminal offense, all types of adjudications, all legal processes not yet resolved and all types of offenses extending as far back as possible within statutory restriction. Standard checks shall **always** include the counties of Orange, Los Angeles, Riverside and San Bernardino and shall **always** include a Social Security Number Trace, National Criminal File Search and Sex Offender Trace and E-verify services.
- C. Social Security: verifies previous addresses and protects against fictitious name.

- A. Education: verification includes all degrees or highest degree completed, dates of awarded degree and grade point average, depending on the position requested. (If available, include primary source verification.)
- B. Department of Transportation Drug and Alcohol Test Results: in accordance with the Department of Transportation §382, inquire into applicant's previous history of alcohol and substance abuse from their former employer. Information received shall include whether or not the applicant has ever tested positive for a controlled substance within the past two years, if the applicant ever had an alcohol test with a breath alcohol concentration of 0.04 or greater in the past two years and whether or not the applicant has ever refused a required test for drugs or alcohol within the past two years.

3. FEDERAL AND STATE-WIDE CRIMINAL RECORDS

Contractor shall provide follow-up services to re-check results that are disputed by the employee or applicant or will check additional jurisdictions if information revealed by the first check indicates that more information is required.

4. COMPLIANCE

- A. Contractor will conduct background investigations in compliance with the Fair Credit Reporting Act. The applicant must be notified and must provide written authorization to allow information contained on the application to be investigated including criminal records, education, employment, reputation and credit history. Omnitrans will be responsible to obtain the required signatures on the authorization for release form provided by the Contractor
- B. Section 604 of the Fair Credit Reporting Act identifies the permissible purposes for conducting a credit check. Application for employment is one area identified by the Act as a permissible purpose for accessing credit records. Any employee, who is denied employment, in whole or in part due to the information contained in a report, must be notified of this decision and must be informed of the agency that provided the information. Firm shall provide, on their letterhead, the FCRA required adverse action and disclosure notifications with proof of service. (See sample in Attachment "A")
- C. CONTRACTOR WILL NOT, DURING THE COURSE OF A BACKGROUND INVESTIGATION, CONDUCT ANY QUESTIONING OF FORMER EMPLOYERS AND REFERENCES THAT WOULD IDENTIFY AN APPLICANT'S RACE, RELIGION, COUNTRY OF NATURAL ORIGIN, MARITAL STATUS OR AGE. REIMBURSEMENT

In the event the Contractor is unable to provide all of the background information required by the Contract or within the time allotted, and Omnitrans' staff must research this information, Contractor shall reimburse Omnitrans at Omnitrans' hourly labor rate based on Omnitrans' current labor cost accounting system for a Human Resources Specialist wage rate plus 35% fringe benefits costs. This amount shall be deducted from the Contractor's monthly invoice.

5. TRAINING

Contractor shall provide orientation and training for Human Resources personnel who will be administering and utilizing these services.

****End of Attachment A – Scope of Work**

ATTACHMENT "A"

PRE-ADVERSE ACTION NOTIFICATION

DATE:

APPLICANT NAME
ADDRESS
CITY, STATE, ZIP

DEAR APPLICANT:

A decision is currently pending concerning your application for employment at Omnitrans. We are forwarding a copy of the consumer report that you authorized in regard to your application for employment, together with a "Summary of Rights Under the Fair Credit Reporting Act." The contents of the enclosed report are currently under review in consideration of your employment

If this report contains any information that is inaccurate or incomplete, you should contact the Omnitrans Human Resources Department immediately so that the corrected information can be reviewed prior to an employment decision being made.

Sincerely,

SCHEDULE OF FEES

Service	Unit Price*				
	Base Year 1	Base Year 2	Option Year 1	Option Year 2	Option Year 3
Civil Suits and Judgments:	EACH	EACH	EACH	EACH	EACH
Upper and Lower	\$10.50	\$10.50	\$10.85	\$10.85	\$10.85
Credit Searches:					
Individual	\$6.50	\$6.50	\$6.70	\$6.70	\$6.70
Criminal Searches:					
Four county search	\$12.95	\$12.95	\$13.35	\$13.35	\$13.35
All counties, statutory limits	\$7.40	\$7.40	\$7.65	\$7.65	\$7.65
Statewide search	\$7.95	\$7.95	\$8.15	\$8.15	\$8.15
Federal search	\$7.80	\$7.80	\$8.00	\$8.00	\$8.00
International search	\$Note A	\$Note A	\$Note A	\$Note A	\$Note A
National Criminal File Search	\$6.25	\$6.25	\$6.45	\$6.45	\$6.45
Sex Offender Search	\$1.75	\$1.75	\$1.75	\$1.75	\$1.75
Identity Validation					
Social Security Validation	\$Note B	\$Note B	\$Note B	\$Note B	\$Note B
Verifications					
Employment	\$12.60	\$12.60	\$12.95	\$12.95	\$12.95
Self-employment	\$12.60	\$12.60	\$12.95	\$12.95	\$12.95
Employment, International	\$Note A	\$Note A	\$Note A	\$Note A	\$Note A
Education	\$12.60	\$12.60	\$12.95	\$12.95	\$12.95
License / Professional	\$12.60	\$12.60	\$12.95	\$12.95	\$12.95
Military	\$12.60	\$12.60	\$12.95	\$12.95	\$12.95
Drug / Alcohol test results from prior DOT employers	\$15.60	\$15.60	\$16.00	\$16.00	\$16.00
Personal References	\$12.60	\$12.60	\$12.95	\$12.95	\$12.95
E Verify	\$2.75	\$2.75	\$2.85	\$2.85	\$2.85

Note A: See Pricing Notes / Associated Fees attachment

Note B: Free with Standard Search

ITEM # **F7**

DATE: November 6, 2013

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

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

FROM: Jennifer M. Sims, Director of Procurement

**SUBJECT: AUTHORIZE AWARD – CONTRACT NO. HR13-182 WORKERS’
COMPENSATION CLAIMS ADMINISTRATION SERVICES**

FORM MOTION

Authorize the Interim CEO/General Manager to award Contract HR13-182 to Pacific Claims Management, LLC of Fresno, CA for the provision of Workers’ Compensation Claims Administration Services for a base period of three years beginning December 1, 2013 and ending no later than November 30, 2016, for a three year total of \$570,024, with the authority to exercise two one year options, beginning December 1, 2016 and ending November 30, 2018. The five year contract amount is \$950,040, plus a ten percent contingency of \$95,004, for a total contract amount not-to-exceed \$1,045,044.

BACKGROUND

On June 5, 2013, the Omnitrans Board of Directors authorized release of RFP-HR13-182 for the provision of Workers’ Compensation Claims Administration Services. Public notices were published in two local newspapers of general circulation and posted on Omnitrans’ online bidding system which was distributed to ten registered firms.

Five proposals were received by the deadline and all were found to be responsive. Evaluation of each proposal was based on the criteria as stated in the solicitation. The quality of work as broken down in the methodology of a more aggressive approach to claims management was weighted heavily and Pacific Claims Management was found to provide the best value to the agency.

A total of 100 points were possible. The following firms ranked from highest to lowest:

Criteria	Pacific Claims Management	Keenan Associates	Intercare Holdings	Republic Capital	York Risk Services
Responsiveness	8.67	9.33	9.67	9.00	9.33
Quality of Work	36.00	32.67	32.00	28.00	31.33
Experience	13.50	12.50	14.25	11.75	12.00
References	13.50	15.00	13.50	13.50	13.50
Cost/Price	13.42	15.20	13.08	20.00	12.82
TOTAL	85.09	84.70	82.50	82.25	78.98

FUNDING SOURCE

The cost associated with this procurement is budgeted in the Human Resource Department's Budget as follows:

Departments 1600
Expenditure Code 503060

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

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

CONCLUSION

Approval of this contract for Workers' Compensation Claims Administration Services will ensure continuation of required services.

PSG:JMS:JC



CONTRACT AGREEMENT

between

PACIFIC CLAIMS MANAGEMENT, LLC
7060 N. MARKS AVE., #118
FRESNO, CA 93711

(hereinafter "CONTRACTOR")
Telephone: (559) 432-9400
Fax: (559) 272-6174

And

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

CONTRACT DOCUMENTS

CONTRACT NO.
HR13-182

**Workers' Compensation Claims
Administration Services**

Contract Amount: \$570,024

Omnitrans Project Manager:

Name: Jennifer Villalobos
Title: Leave Administrator
Telephone: (909) 379-7170
Email: jennifer.villalobos@omnitrans.org

Contract Administrator:

Name: Joanne Cook
Title: Contract Administrator
Telephone: (909) 379-7198
Email: joanne.cook@omnitrans.org



TABLE OF CONTENTS

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

21.	EQUAL OPPORTUNITY.....	11
23.	NOTIFICATION OF EMPLOYMENT OF OMNITRANS BOARD MEMBERS/ALTERNATES AND EMPLOYEES	12
24.	DISQUALIFYING POLITICAL CONTRIBUTIONS	13
25.	COMPLIANCE WITH LAW	13
26.	COMPLIANCE WITH LOBBYING POLICIES.....	13
27.	PUBLIC RECORDS ACT.....	13
28.	WAIVER/INVALIDITY	14
29.	FORCE MAJEURE.....	14
30.	CONFIDENTIALITY	14
31.	CONTRACTOR’S INTERACTION WITH THE MEDIA AND THE PUBLIC	15
32.	GOVERNING LAW	15
33.	MODIFICATIONS TO AGREEMENT	15
34.	PRECEDENCE	15
35.	ENTIRE AGREEMENT.....	16

ATTACHMENT A – SCOPE OF WORK

ATTACHMENT B – REGULATORY REQUIREMENTS

ATTACHMENT C - PRICING

This Agreement is made and entered into as of this 1st day of December, 2013 by and between Omnitrans (hereinafter referred to as "OMNITRANS") and Pacific Claims Management, LLC (hereinafter referred to as "CONTRACTOR").

RECITALS

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

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

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

1. SCOPE OF WORK

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

2. PERIOD OF PERFORMANCE

The term of this Agreement shall be from December 1, 2013 and continue in effect through November 30, 2016, unless otherwise terminated as specified in Section 8 or 9 of this Agreement. Omnitrans reserves the right at its sole discretion to exercise a total of two (2) one year options with no obligation to purchase any specified amount of products/services. All applicable indemnification provisions in this Agreement shall remain in effect following the termination of this Agreement.

3. CONTRACT SUM

For CONTRACTOR's full and complete performance of its obligations under this Agreement, OMNITRANS shall pay CONTRACTOR on a FIXED PRICE basis at

the fully burdened fixed rates shown in Attachment C, Pricing, plus reimbursement of any direct costs agreed to in accordance with the provisions of this Section, and subject to the maximum cumulative payment obligation.

OMNITRANS' maximum cumulative payment obligation under this Agreement shall not exceed Five Hundred Seventy Thousand Twenty Four Dollars (\$570,024), including all amounts payable to CONTRACTOR for all costs, including but not limited to direct labor, other direct costs, subcontracts, indirect costs including, but not limited to, leases, materials, taxes, insurance, and profit.

4. INVOICING AND PAYMENT

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

CONTRACTOR shall submit invoices in duplicate to:

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

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

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

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

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

Agreement or any other Agreement between OMNITRANS and CONTRACTOR.

5. AUDIT AND INSPECTION OF RECORDS

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

6. NOTIFICATION

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

To OMNITRANS:

Omnitrans
1700 West Fifth Street
San Bernardino, CA 92411
Attn: Joanne Cook
Contract Administrator

To CONTRACTOR:

Pacific Claims Management, LLC
7060 N. Marks Avenue, #118
Fresno, CA 93711
ATTN: Jerry Laval, President

7. OMNITRANS' AND CONTRACTOR'S REPRESENTATIVES

A. OMNITRANS' Project Manager

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

Project Manager: Jennifer Villalobos, Leave Administrator

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

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

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

B. Contractor's Key Personnel

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

<u>Name</u>	<u>Role</u>
<u>Jerry Laval</u>	<u>President</u>

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

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

8. TERMINATION FOR CONVENIENCE

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

9. TERMINATION FOR BREACH OF AGREEMENT

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

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

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

10. ASSIGNMENT

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

11. SUBCONTRACTING

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

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

12. INDEPENDENT CONTRACTOR

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

13. INSURANCE

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

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

Additional Insured:

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

14. INDEMNITY

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

15. REVISIONS IN SCOPE OF WORK

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

16. RIGHTS IN TECHNICAL DATA

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

17. OWNERSHIP OF REPORTS AND DOCUMENTS

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

18. OWNERSHIP RIGHTS

- A. In the event OMNITRANS rightfully obtains copies of Proprietary Data under the terms of the separate License Agreement and Escrow Agreement that govern rights in Documentation, Software and Intellectual Property created and/or developed by Contractor, its Third Party Software Contractors and its Suppliers as part of the Project, any derivative works and associated documentation created by or on behalf of OMNITRANS by Permitted Programmers (as defined in the License Agreement) shall be the sole and exclusive property of OMNITRANS (collectively, "OMNITRANS Intellectual Property"), and OMNITRANS may use, disclose and exercise dominion and full rights of ownership, in any manner in OMNITRANS Intellectual Property in connection with the use, operation and maintenance of a transportation system administered by OMNITRANS. No use of OMNITRANS Intellectual Property shall be made for any purpose other than in conjunction with a transportation

system administered by CONTRACTOR, and OMNITRANS shall not sell, lease, rent, give away or otherwise disclose any OMNITRANS Intellectual Property to any outside third party other than Permitted Programmers. To the extent there may be any question of rights of ownership or use in any OMNITRANS Intellectual Property, Contractor shall require all of its subcontractors and suppliers (including without limitation its Third Party Software Contractors) to assign to OMNITRANS, all worldwide right, title and interest in and to all OMNITRANS Intellectual Property in a manner consistent with the foregoing terms of this paragraph. Contractor shall execute any documents as OMNITRANS may from time to time reasonably request to effectuate the terms of this paragraph.

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

19. WORK FOR HIRE

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

20. SUBMITTAL OF CLAIMS BY CONTRACTOR

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

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

21. EQUAL OPPORTUNITY

CONTRACTOR shall not discriminate against, or grant preferential treatment to, any individual or group, or any employee or applicant for employment because of

race, age, religion, color, ethnicity, sex, national origin, ancestry, physical disability, mental disability, political affiliation, sexual orientation, marital status or other status protected by law. CONTRACTOR shall take action to ensure that applicants and employees are treated without regard to the above.

22. STANDARD OF PERFORMANCE

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

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

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

24. DISQUALIFYING POLITICAL CONTRIBUTIONS

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

25. COMPLIANCE WITH LAW

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

26. COMPLIANCE WITH LOBBYING POLICIES

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

27. PUBLIC RECORDS ACT

- A. All records, documents, drawings, plans, specifications and other material relating to conduct of OMNITRANS' business, including materials submitted by CONTRACTOR in its proposal and during the course of performing the Work under this Agreement, shall become the exclusive property of OMNITRANS and may be deemed public records. Said materials may be subject to the provisions of the California Public Records Act. OMNITRANS' use and disclosure of its records are governed by this Act.
- B. OMNITRANS will not advise as to the nature or content of documents entitled to protection from disclosure under the California Public Records Act, including interpretations of the Act or the definitions of trade secret, confidential or proprietary. OMNITRANS will accept materials clearly and prominently labeled "TRADE SECRET" or "CONFIDENTIAL" or

"PROPRIETARY" as determined by CONTRACTOR. OMNITRANS will endeavor to notify CONTRACTOR of any request of the disclosure of such materials. Under no circumstances, however, will OMNITRANS be liable or responsible for the disclosure of any labeled materials whether the disclosure is required by law or a court order or occurs through inadvertence, mistake or negligence on the part of OMNITRANS or its officers, employees and/or contractors.

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

28. WAIVER/INVALIDITY

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

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

29. FORCE MAJEURE

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

30. CONFIDENTIALITY

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

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

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

32. GOVERNING LAW

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

33. MODIFICATIONS TO AGREEMENT

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

34. PRECEDENCE

Conflicting provisions hereof, if any, shall prevail in the following descending order of precedence: (1) the provisions of this Agreement, (2) Attachment A, Scope of Work, (3) Attachment B, Regulatory Requirements (4) Attachment C, Pricing (5) provisions of RFP No. HR13-182 and (5) CONTRACTOR's proposal dated August 22, 2013.

35. ENTIRE AGREEMENT

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

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

OMNITRANS

PACIFIC CLAIMS MANAGEMENT, LLC

P. SCOTT GRAHAM
CEO/General Manager

JERRY LAVAL
PRESIDENT

Date

Date

Federal Tax I.D. No. 26-2666031

ATTACHMENT A - SCOPE OF WORK

I. INTRODUCTION AND PROJECT OVERVIEW

A. Introduction

- 1) Contractor shall provide state of the art, ongoing and latest technological, integrated claims administration services including, but not limited to, frequent contact with medical providers and compassionate communication with injured employees, cost containment practices, aggressive pursuit of fraud and system abuse, aggressive pursuit of subrogate cases to maximize recoveries, stability of provider claims staff, aggressive administration to claim resolution and prompt contact, communication and follow-up with Omnitrans' designated staff to facilitate the review of claims, settlement of cases and approval of payments, as required. Omnitrans reserves the right to unbundled services with a 30-day notice.
- 2) Contractor shall represent the Agency in such, that includes, but is not limited to, financial conservativeness, aggressive approach in regards to medical treatment and treating all employees with dignity and respect that is favorable and fosters good employee relations and is maintained during all phases of the claims process.

B. General

- 1) Omnitrans employees may supplement leave benefits (sick leave, vacation) with temporary disability benefits to full salary. Total number of open indemnity files is 150, future medical is 21 and medical only claims are 8.
- 2) The California State Association of Counties (CSAC) provides the Agency's excess workers' compensation coverage. Omnitrans has a self-insurance retention of \$1,000,000 per claim.
- 3) Omnitrans worker compensation program is managed by the Human Resources Leave Administrator, under the auspices of the Director of Human Resources. This management encompasses many cost-saving practices that include evaluating current practices, risks and exposures, and processes to reduce claim frequency, severity, and financial impact upon the Agency. This management function also manages employee benefit programs, risk assessment, insurance acquisition, and coordination with safety programs and staff.

2. STATEMENT OF WORK/PERFORMANCE SPECIFICATIONS

A. Background and Experience

Contractor must provide a current certificate to administer self-insured Workers' Compensation Claims in the State of California.

WORKERS' COMPENSATION CLAIMS ADMINISTRATION SERVICES

B. Minimum Qualifications

- 1) The dedicated Claims Adjuster assigned to the Omnitrans account must have a minimum of five years experience as an adjuster level in addition to lower level position experience (claims assistant, medical only adjuster). The claims adjuster must be in possession of a self-insurance certificate issued by the State of California, or be certified within six months of the award of the contract. The dedicated Claims Examiner-Adjuster must also possess a professional designation and certification as a WCCA – Workers' Compensation Claims Administration and WCCP – Workers' Compensation Claims Professional through a recognized professional organization such as IEA – Insurance Education Association.
- 2) Successful and effective working relationship experience with industrial clinics, medical specialists, physical therapy providers, alternative medicine providers such as acupuncture, chiropractic care, defense lawyers, applicant counsel and other service providers in the Inland Empire (i.e., Riverside, San Bernardino and Ontario Standard Metropolitan Statistical Area) and Los Angeles and Orange Counties.
- 3) The dedicated claims adjuster, and/or senior personnel, must be experienced in issues involving coordination of ADA, FEHA and CalPERS disability retirements.
- 4) The dedicated claims adjuster must be experienced in public entity client work.
- 5) Contractor must have a strong customer service orientation at all levels of the firm. A designated manager must have the authority to resolve client issues immediately, including re-assignment of adjusting firm's staff to client's satisfaction.
- 6) The dedicated claims adjuster shall have a maximum caseload of 150 open indemnity files only.
- 7) The Contractor must provide a qualified back up adjuster in the event of absence of the dedicated adjuster.
- 4) Claims Examiners on Omnitrans' account shall be subject to prior approval by Omnitrans' Director of Human Resources.

C. Reports and Loss Runs

- 1) Contractor shall provide a detailed description of all forms, reports and loss runs that it anticipates using if awarded the contract including, but not limited to, the following:
 1. Loss Experience Report;
 2. Check Register;
 3. Cost & Frequency Report;

WORKERS' COMPENSATION CLAIMS ADMINISTRATION SERVICES

4. Injuries by Day of Week Report;
 5. Open Indemnity File List;
 6. TD Payment Strata Report;
 7. Claim File Status Report;
 8. Claim File Payment History;
 9. Claim File Report;
 10. Weekly Reserve Changes Report;
 11. Excess Claims (at \$500,000) Report;
 12. Safety Analysis Report;
 13. Denied Claims Report;
 14. Occurrence Repeater Report;
 15. Settlement Award Log;
 16. Litigation Assignment Log; and
 17. Penalties Log.
- 2) Contractor shall provide summaries on a monthly basis of all open and closed claims, medical only, future medical and indemnity, sub totaled by each department and division, and total for Agency by claim year;
 - 3) Contractor shall upon request provide various responsive reports on demand, at no additional charge, such as injury analysis reports, i.e., by age, occupation, cause, site, years of service, etc;
 - 4) Provide monthly claim summary reports within 5 days from month end;
 - 5) Provide loss run data and required reports for actuarial, auditing and reserve analysis purposes, on an as needed basis;
 - 6) Prepare and submit, in a timely manner, all reports, including statistical reports required by the State to include the annual Self-insurer's Report;
 - 7) Provide a report writer function for Omnitrans staff to design customized ad hoc and standard reports to be printed at Omnitrans office; and
 - 8) Provide, at no additional charge, 24-hour on-line claims reporting system for use by Omnitrans staff, including training of Omnitrans staff.

D. Claims Management/Administration Services

- 1) Contractor shall provide complete claims management/administration services including, but not limited to:
 1. Assume all open claims existing at the beginning of the contract terms;
 2. Reduce or resolve older claims;

WORKERS' COMPENSATION CLAIMS ADMINISTRATION SERVICES

3. Allow Omnitrans to participate in the selection process when the need arises to reassign a dedicated claims adjuster to the contract;
4. Obtain Omnitrans' approval before making changes to the reserves.

G. Claim File Set-Up

- 1) Prepare individual claim files within two (2) working days for each claim. File preparation shall include, but not be limited to:
 - a) Data entry into database system and establishing appropriate reserves;
 - b) Claims files shall be reviewed, at a minimum, every 30 days for active status and settled claims shall be reviewed at a minimum every 6 months;
 3. Files shall contain separate, but detailed historical case documentation plan of action with the most up-to-date details and regular diary review.
- 2) Contractor must provide Omnitrans' staff with detailed and electronic information regarding the:
 - a) Type and nature of services provided for the injured employee and to Omnitrans;
 - b) Types of correspondence sent to employees; and
 - c) Types of brochures describing benefits, posters, training, classes, etc.
- 3) Review and process all claims for Workers' Compensation benefits within 24 hours in coordination with the requirements of the California Department of Industrial Relations for reporting and notification.
- 4) Employee/Claimant Contact: Compassionate interface and contact with the injured worker within one working day of receipt of claims and assist employees in understanding and explaining the workers' compensation process. Contact shall continue monthly, or more frequently as needed, until the claim has been closed.
- 5) Demonstrate procedures to remind employees about QME or AME appointments,
- 6) Thoroughly investigate all claims to determine AOE/COE and the compensability of claimed injuries and illnesses in coordination with the California's Workers' Compensation laws.

WORKERS' COMPENSATION CLAIMS ADMINISTRATION SERVICES

H. Medical Control

- 1) Determine the eligibility and authorize payments of medical benefits and authorize examinations and other medical treatments timely and promptly within 24 hours of receipt of request/reports, when appropriate, and determine the nature and extent of disability and if it requires Utilization Review submission. Authorization will be granted by the dedicated claims adjuster, not to exceed the first six (6) physical therapy visits;
- 2) Coordinate the reduction of medical bill payments to the Relative Value Schedule (RVS) recommend rates set by the Administrative Director, Division of Workers' Compensation and other negotiated price reductions;
- 3) Monitor treatment programs for injured or ill employees, including review of all doctor's reports, referring as necessary to a state-approved and Omnitrans-approved utilization review management program for required determinations;
- 4) Recommend referrals and with the consent of Omnitrans, submit a claim for nurse case management services for assistance in medical control of claim;
- 5) Maintain close liaison with treating physicians, all other care providers and provide Omnitrans with reported updates;
- 6) Provide guidance in the evaluation of physical capacity of injured employees and their ability to return to work with or without restrictions;
- 7) Immediately challenge any treatment, service, medication, etc. which may be unnecessary or excessive;
- 8) Determine the eligibility for, and authorize payment of, temporary disability compensation in coordination with medical advice and rehabilitation efforts;
- 9) Determine the degree of permanent disability, if any, of injured workers utilizing, as necessary and desirable, advisory ratings of the Permanent Disability Rating Bureau;
- 10) Authorize the payment of permanent disability compensation and death benefits in coordination with advisory ratings, orders of the Workers' Compensation Appeals Board, Compromise and Release settlements, and Litigation Avoidance Programs;
- 11) Be responsible for payment of any penalties incurred as a result of the failure to comply with any statutory laws and regulations. Payment of these penalties shall be the sole responsibility of the Contractor. Omnitrans shall be notified in writing within 30 days of any penalty paid by the Contractor and the reason for the penalty;
- 12) Develop a Plan of Action for each new claim/case that includes maintaining current estimates of costs of all anticipated benefits and

WORKERS' COMPENSATION CLAIMS ADMINISTRATION SERVICES

related expenses and keeping it up-to-date. Maintain procedures for reviewing and adjusting reserve adequacy no less frequently than every ninety (90) days. Ensure each file contains a clearly outlined plan of action for future handling.

- 13) Monitor and maintain claims statistics as they relate to the Cal/OSHA 300 and 300A requirements so that reports are ready for Omnitrans to post each year as required by law.
- 14) Submit a written request for settlement approval to Omnitrans' Director of Human Resources for every settlement which exceeds their contract authority. This request will include:
 - a) A brief history of the injury and file diary
 - b) The ratings of all pertinent medical reports
 - c) The amounts paid and reserved on the claim
 - d) The proposed settlement details and amount
 - e) The recommendation for settlement
 - f) The pros and cons of the proposed settlement including an estimate of future cost of consequences if Omnitrans rejects the proposed settlement.
 - g) Any other pertinent information available to the Board.
- 15) Develop and recommend, as requested by Omnitrans, a panel of attorneys, and investigators through the local vicinity of Omnitrans.
- 16) Manage all claims electronically through claims management software, which is also accessible to Omnitrans.
- 17) Investigate, or arrange investigation of, when appropriate, questionable cases and the status of disabled employees to adjust all cases and to assist in the trial or settlement of litigated cases;
- 18) Seek Agency authorization before conducting an outside investigation;
- 20) Consult with Omnitrans for returning injured employees to modified duty or in cases of employees whose injuries result in permanent or possible permanent restrictions and/or retirement and/or for employees with physical or performance limitations resulting from industrial injuries, when medically appropriate
- 21) Permanent Disability – Shall assist and explain to injured employees all necessary forms needed to obtain a permanent disability rating. Shall determine the nature and extent of the permanent disability and assist with the informal disability rating as needed. Shall assure permanent disability benefit notices shall be sent to employees required by the Labor Code.

WORKERS' COMPENSATION CLAIMS ADMINISTRATION SERVICES

- 22) Provide monthly reports to the Agency that will set forth requested accounting and statistical data to allow Omnitrans to interpret and evaluate its self-insurance program
- 25) Act as the liaison between the Excess insurance carrier and the Agency on matters affecting the adjustment of such claims
- 26) Prepare the Agency's Self-Insured Annual Report in a timely fashion for submission to the Department of Self-Insurance Plans prior to the October 1st deadline
- 27) Provide and send IRS Forms to all qualifying providers of services and send Omnitrans a listing of 1099 Forms sent
- 28) Monitor and maintain an imprest trust account for payment of the Agency's Worker's Compensation expenses
- 29) Maintain an initial imprest balance of \$75,000 which may be adjusted upon mutual approval of both parties
- 30) Provide all printed Workers' Compensation forms which the members and employees of Omnitrans will need for claims processing purposes
- 31) Provide posters and notices required by the State of California;
- 32) Provide posters with the name and address of the Contractor; and
- 33) Provide a written procedural claims manual within 180 days of the contract award which will:
 - a) Establish standards of performance detailing how Contractor will administer the Agency's Workers' Compensation Program; and
 - c) Chargeable expenses to the Agency as part of the claims cost, as is customary under insured plans when computing losses for experience rating, retrospective rating, or dividend computation of non-staff expenses such as:
 1. Legal costs and fees;
 2. Investigations and rehabilitation vendor fees;
 3. Costs of employing experts for professional advice;
 4. Expert Opinion or testimony; and
 5. Similar costs normally considered as Allocated Loss Expenses are not included in the compensation to Contractor as set forth hereinafter.

I. Medical Case Management and Integrated Cost Savings

- 1) Contractor must provide Omnitrans with a detail of:
 1. Procedures used and made available to Omnitrans, and the benefits of those procedures that demonstrate cost containment.
 2. Incorporate an Integrated Cost Savings Program that includes, but is not limited to:
 1. Prescription Benefit Network (PBN) (prescription of opioids will be authorized by claims adjuster for first fill (two weeks) then sent to utilization review for authorization; and the claims adjuster will have the physician enter into an opioid contract upon the first prescription)
 2. Health Care Organization/Health Care Organization (CHCO/MPN)
 3. Litigation Cost Containment that includes legal PPO and Legal Bill Review
 4. Nurse Screening on Claims
 5. Medical Utilization and Bill Review
 6. Early Return to Work Strategies
 7. Use of Analytics to demonstrate results
 8. Explanation of Benefits (EOBs)

E. Annual Cost

- 1) Contractor must provide Omnitrans with a detail of its:
 1. Annual Cost for Claims Administration Services.
 2. Cost Breakdowns for the fixed costs per claim should be included.

3. OBLIGATIONS OF THE CONTRACTOR

A. General

- 1) GENERAL REQUIREMENTS:
 1. Supervise and administer the Self-Insurance Workers' Compensation Program for the Agency;
 2. Represent Omnitrans in all matters related to the investigation, adjustment, processing, supervision and resolution of Workers' Compensation claims asserted by employees against the Agency.

B. Litigation Management and Legal Support Services

- 1) Contractor shall provide, but not limited to, the following litigation management and legal support services on each claim wherein the

WORKERS' COMPENSATION CLAIMS ADMINISTRATION SERVICES

claimant has commenced litigation. 2) Assign litigation cases, when appropriate, to attorneys utilizing a previously agreed upon listing of legal firms that are at least 85% workers' compensation defense; who are also certified as workers' compensation specialists by the state bar with ten years of experience in workers' compensation. Also, have expertise in litigation management for public entities. Hourly rates will be capped at a negotiated discounted rate.

- 3) Assist in the preparation of litigation cases, negotiations of stipulations, compromise and release settlements and subrogation actions.
- 4) Monitor cases to ensure that:
 - a) Necessary subpoenas for records and/or witnesses are issued; depositions are taken
 - b) Medical reports and legal documents, including, but not limited to, Answers to Applications, Liens, Motions, Dismissals, etc. and are filed and served in full compliance with California legal statutes.
 - c) Track and maintain master calendars from each attorney weekly to include all WCAB appearances, depositions, meetings, etc.
 - d) Obtain defense counsel's litigation reports no later than 30 days prior to Mandatory Settlement Conferences (MSCs) or trials and all hearing and deposition reports no later than 10 days following each appearance.
 - e) Obtain approval from Omnitrans for each Compromise and Release or Stipulations with Request for Award settlement that falls within Omnitrans' Workers' Compensation Settlement Agreement procedure.
 - f) Consult with Omnitrans before incurring expenses for fraud investigation and before referring any matter involving fraud to the District Attorney or Department of Insurance.
- 5) The Contractor/TPA will manage litigated files where appropriate and will work with legal counsel to manage the defense of the claim, including, but not limited to, the preparation of litigated cases, submittal of regular and timely reports, negotiations of Compromise and Release or Stipulated Award settlements, Stipulated Findings and Awards, and filing of Recon and/or Writs.

4. MEDICAL MANDATORY SET ASIDE REPORT (MMIR)

- A. Contractor shall be responsible for assisting Omnitrans with mandatory registration for the required Medicare Mandatory Insurer Reporting Requirements. The Contractor shall provide the following:

WORKERS' COMPENSATION CLAIMS ADMINISTRATION SERVICES

- 1) Assistance with RRE registration
 - 2) EDI set-up and testing with the CMS
 - 3) Initial and subsequent quarterly reporting
 - 4) Claims data clean-up and modifications
 - 5) Verification of Medicare eligibility
 - 6) Basic claims matching services involves sending claims information as gathered by the client or Contractor to CMS to determine whether or not the claimants are on Social Security
 - 7) Provide MSA allocation report services.
- B. Contractor shall be responsible for assisting with any questions regarding Medicare Set-Asides.
- C. Contractor shall be responsible for tracking the submission progress.

5. QUALITY CONTROL PLAN**A. Disposition of Files on Termination of Contract**

- 1) All files on each claim are and shall be the property of Omnitrans
 - a) Upon expiration of the Contract Contractor shall:
 - (1) Place all completed and pending claims files in sealed boxes and forward to Agency or its designee within 14 calendar days;
 - (2) Invoice Agency, subject to the rate quoted in the Bid Pricing Form (Section 5.0) for work completed on each claim
 - b) Upon cancellation of this Contract by Agency, Contractor shall:
 - (1) Place all completed and pending claims files in sealed boxes and forward to the Agency or designee within 14 calendar days;
 - (2) Agency requests Contractor to continue to process such files pursuant to Contractor's current time and expense rates at the time such services are rendered.
- 2) Failure to comply with this section will result in forfeiture of the fidelity bond and appropriate legal action.

B. Financial Accounting Services

- 1) Contractor shall:
 - a) Maintain a trust fund for the purpose of paying benefits that may be due on the claims. The amount that will be maintained in the

WORKERS' COMPENSATION CLAIMS ADMINISTRATION SERVICES

trust fund shall be determined by the parties and confirmed by written document.

- b) Maintain a copy of all checks, vouchers or warrants drawn by the Contractor to pay benefits on the Agency's claims. These shall be provided at no additional expense to Omnitrans upon request.
 - c) Prepare and maintain a monthly check/voucher register of all transactions made for the period. These shall be provided at no additional expense to Omnitrans upon request.
 - d) Must have the functionality and ability to deliver funds to all parties via Electronic Fund Transfer (EFT), also known as direct deposits to banking and financial institutions for payment of a myriad of expenses including, but not limited, Temporary Total Disability (TTD) and Permanent Disability payments.
- 2) Omnitrans shall reserve the right to conduct a financial audit of the trust account to insure the integrity of the account at any time during the contract period. Contractor will make all documents available for any audit available in a timely manner. Agency will provide a minimum of 10 days notice of any audit request.

C. Additional Services

- 1) Examiner attendance at workers' compensation appeals board hearing, rehabilitation conference, conferences with legal counsel (defense counsel), and meetings with Omnitrans staff, departments and employee groups when required.
- 2) Communication, written, oral and in person, with Omnitrans staff by the claims examiner is an important element of the services expected.
- 3) Provide all forms necessary for Omnitrans processing of benefits or claims information at the expense of the contractor, with Omnitrans and Contractor information preprinted.
- 4) All records, files, transcripts, computer tapes and other materials stored by all methods available (paper, electronic, etc.) on workers' compensation adjusting activity developed on the Omnitrans workers' compensation claims is the property of Omnitrans and must be relinquished in good order and condition upon termination of this contract with Contractor. Omnitrans shall not be required to pay any additional cost for the transfer of files to Omnitrans.
- 5) Attend all meetings with Omnitrans staff as requested.
- 6) Be available for spot audit checks by Omnitrans when requested.
- 7) Cooperate with file and program audits with state agencies and Omnitrans designated auditors.

WORKERS' COMPENSATION CLAIMS ADMINISTRATION SERVICES

- 8) Be available to respond to a major emergency or catastrophe involving injuries to Omnitrans employees to expedite treatment and claims processing.
- 9) Provide quarterly reports to Omnitrans staff listing all claims by claim number and client name assigned to Omnitrans designated claims adjusters.
- 10) Provide Monthly claims review of all active indemnity files and enter review notes on claim daily reporting system.
- 11) Assist Omnitrans with developing medical treatment and reporting protocols with area medical service providers to enhance return to work and light duty program effectiveness.
- 12) Recommend medical bill review, utilization review and medical case management service providers to Omnitrans staff.
- 13) Provide training to Omnitrans managers and supervisors on claims reporting, responsibilities to employees, and practices to improve return to work of injured employees.
- 14) Provide internet e-mail communications for designated claims adjuster to Omnitrans staff.
- 15) If available, loss control, investigative services (Subrosa, AOE/COE), safety and ergonomic services should be stated, including additional costs for such services.

6. OMNITRANS' OBLIGATIONS

A. In addition to other valuable consideration Omnitrans' obligations include the following:

- 1) Agency hereby agrees to pay Contractor and Contractor agrees to accept in full satisfaction for its services provided herein, compensation as detailed in the Bid Pricing Form in Section 5.0;
- 2) Indemnity claims, transferred from the prior Contractor, will be subject to a service charge as detailed in the Bid Pricing Form in Section 5.0.

B. Availability of Omnitrans Documents and Personnel

- 1) Agency shall provide Contractor with copies of all relevant documents upon request and without charge;
- 2) Agency shall make available to Contractor, any Agency employee for interviews by Contractor at reasonable times concerning any investigations of a claim or incident pursuant to this Contract;
- 3) Associated data will be transferred to Contractor's computerized system utilizing appropriate magnetic media or data transfer and most efficient and latest technological media, by an agreed upon date; and

C. Execution of Imprest Account

- 1) Agency shall execute payment to Contractor to establish the Imprest account.
- 2) The Imprest account shall be established upon execution of all contract documents on the start date of the contract or as shortly thereafter as reasonably possible.
- 3) The Imprest account shall be under the guardianship of the Contractor and collateralized by the fidelity bond described in Section 3.0 (Bonding Requirements).
- 4) Associated data will be transferred to Contractor's computerized system utilizing appropriate magnetic media or data transfer, and most efficient and latest technological media by an agreed upon date.
- 5) The data will be provided by the Contractor.

HR13-182
WORKERS' COMPENSATION CLAIMS
ADMINISTRATION SERVICES

ATTACHMENT C - PRICING					
	Year 1	Year 2	Year 3	OY1 Year 4	OY2 Year 5
Monthly Administrative Fee	\$ 15,834 /mo.	\$ 15,834 /mo.	\$ 15,834 /mo.	\$ 15,834 /mo.	\$ 15,834 /mo.

ITEM # F8

DATE: November 6, 2013

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

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

FROM: Jennifer M. Sims, Director of Procurement

SUBJECT: AUTHORIZE RELEASE - RFP-ITS14-82, AUTOMATIC PASSENGER COUNTER

FORM MOTION

Authorize the Interim CEO/General Manager to release Request for Proposals RFP-ITS14-82, for the provision of Automatic Passenger Counters for the sbX articulated buses beginning February 2014 and ending no later than July 2019.

BACKGROUND

Omnitrans utilizes Automatic Passenger Counters (APCs) on ten percent of the fleet of 40-foot buses. APCs allow for accurate and automated passenger boarding and alighting counts by route, stop, trip and time of day. APCs provide the data necessary to continually optimize Omnitrans' routing. The data from APCs is also used to complete required annual reports to the Federal Transit Administration's National Transit Database (FTA's NTD), which ultimately feed into federal transit funding formulas.

The sbX buses allow for boarding at all five doors, rendering the APCs a crucial component, as the farebox will not be the primary ridership data source. The APC data will become the official ridership reporting mechanism for all purposes related to sbX, including official reports to the FTA and NTD. sbX APC data will be the baseline for reporting all ridership levels to Omnitrans' Board of Directors and for providing the granular data necessary to continually monitor and enhance sbX service.

Since sbX includes all door boarding and fares that are checked occasionally, the APC data collected and then compared to the farebox data will be used to generate reliable estimates of the fare evasion rate. Once this rate is known, staff will have the tools necessary to monitor and prevent fare erosion due to fare evasion.

In accordance with the Procurement Policy 2000, Section 2.3.5.1.3, Board authorization and use of a formal procurement procedure is required to release Request for Proposals for procurements

for goods/services exceeding \$100,000. The Independent Cost Estimate for this project is \$199,957.

FUNDING SOURCES

Funding for this purchase is as follows:

FUNDING	GRANT #	FISCAL YEAR	PROJECT NAME
FTA	CA-95-X124	2011	sbX E Street Corridor

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

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

CONCLUSION

By proceeding with this solicitation to equip the sbX buses with APCs, Omnitrans will be provided with the most efficient and reliable method to accurately capture ridership levels at the required reporting detail.

PSG:JMS:CV

ITEM # F9

DATE: November 6, 2013

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

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

FROM: Jennifer M. Sims, Director of Procurement

SUBJECT: AUTHORIZE RELEASE - RFP-SAS14-09, SECURITY SERVICES

FORM MOTION

Authorize the Interim CEO/General Manager to release Request for Proposals RFP-SAS14-09, for the provision of Security Patrol Services for the sbX Green Line corridor, stations, and park and rides beginning February 24, 2014, and Security Services for Omnitrans' fixed-route and paratransit operations facilities beginning July 1, 2014, with the base year period ending June 30, 2016, and three single option years ending June 30, 2019.

BACKGROUND

Since 2002, Omnitrans has required security personnel to provide twenty-four hour service at the East and West Valley facilities, with service at I-Street, Sunday through Thursday, from 5:00 p.m. to 5:00 a.m., and Friday and Saturday from 6:00 p.m. to 6:30 a.m.

The current contract's, SAS11-11, two-year base period is due to expire June 30, 2014. Due to the additional security requirements for the sbX Green Line corridor, which is not covered under the current contract, a new solicitation is required. The new contract will be phased to allow for security patrol services for the sbX Green Line to commence February 24, 2014. The balance of the security services shall begin July 1, 2014, at the expiration of the current contract.

In the past, Omnitrans has used unarmed guard services. This solicitation requests proposers to quote unarmed security services, and, as an option, to also quote armed security services. Due to the addition of patrol services along the sbX Green Line corridor, Omnitrans may, at some future date, require the use of armed security services.

In accordance with the Procurement Policy 2000, Section 2.3.5.1.3, Board authorization and use of a formal procurement procedure is required to release Request for Proposals for procurements for goods/services exceeding \$100,000. The Independent Cost Estimate for this project for unarmed security services is \$3,983,041 or for armed security services is \$4,408,590.

FUNDING SOURCES

The cost associated with this procurement will be budgeted in the Safety & Security Department's Operating budget as follows:

Department Number 1630, 2110, 2600
Expenditure Code 503210

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

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

CONCLUSION

By proceeding with this solicitation, Omnitrans will have the ability to continue to promote a safe and secure environment for its passengers, employees, contractors, and visitors.

PSG:JMS:CV

ITEM # F10

DATE: November 6, 2013

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

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

FROM: Jennifer M. Sims, Director of Procurement

SUBJECT: AUTHORIZE RELEASE - RFP-MNT14-81 COMPRESSED NATURAL GAS (CNG) FUEL CYLINDER REPLACEMENT

FORM MOTION

Authorize the Interim CEO/General Manager to release Request for Proposals RFP-MNT14-81 for the provision of the Compressed Natural Gas (CNG) Fuel Cylinder Replacement for eleven forty-foot buses.

BACKGROUND

Eleven model year 2000 New Flyer SR585 buses will become non-serviceable due to the CNG cylinders expiring September 2014. Once expired, it is unlawful to add fuel to the cylinders. In order for Omnitrans to continue operating the SR585 buses, the CNG fuel cylinders must be replaced. The statutes that govern the characteristics and operating parameters for these cylinders are the United States Department of Transportation, Code of Federal Regulations Title 49: Federal Motor Vehicle Safety Standards and California Code of Regulations Title 13.

In accordance with the Procurement Policy 2000, Section 2.3.5.1.3, Board authorization and use of a formal procurement procedure is required to release Request for Proposals for procurements for goods/services exceeding \$100,000. The Independent Cost Estimate for this project is \$465,000.

FUNDING SOURCES

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

FUNDING	GRANT #	FISCAL YEAR	PROJECT NAME
FTA	CA-90-Y602	2008	A0840101F
STA	12-09-OMN-B	2012	A0840101F

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

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

CONCLUSION

By proceeding with this solicitation, Omnitrans will extend the useful life of the eleven buses and have the ability to keep them in service.

PSG:JMS:CV

ITEM # F11

DATE: November 6, 2013

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

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

FROM: Jennifer M. Sims, Director of Procurement

**SUBJECT: AUTHORIZE RELEASE – IFB-MNT14-13
LANDSCAPING SERVICES**

FORM MOTION

Authorize the Interim CEO/General Manager to release Invitation for Bids, IFB-MNT14-13 for the provision of Landscaping Services for a three (3) year base contract, and two (2) one-year options beginning January 13, 2014, and ending no later than January 12, 2019.

BACKGROUND

The current contract for landscaping services expires on January 11, 2014. Omnitrans utilizes landscaping services for weekly maintenance at East Valley, West Valley, “I” Street, and the “J” Street lot, which includes lawn maintenance, irrigation system inspection, trimming of hedges and bushes, weeding all gardens and flowerbeds, and clean-up of sidewalks and entrances. Beginning approximately January 2015, the landscaping services of the sbX Green Line corridor and park and rides will be turned over to Omnitrans. Those services have been included in this solicitation.

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 \$325,500 for the base period, plus the two (2) one-year options.

FUNDING SOURCE

The cost associated with this procurement will be budgeted in the Maintenance Department’s Operating budget as follows:

Department Number	1200
Expenditure Code	505210

_____ Verification of Funding Sources and Availability of Funds.

(Verified and initialed by Finance)

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

CONCLUSION

By proceeding with this solicitation, Omnitrans properties will be aesthetically maintained.

PSG:JMS:aa

ITEM # **G1**

DATE: November 6, 2013

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

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

FROM: Maurice A. Mansion, Treasury Manager

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

FORM MOTION

Call for a public hearing concerning the Federal Transit Administration (FTA) §5307 and §5339 for Fiscal Year 2014, to be held at 8:00 a.m., Wednesday, December 4, 2013, at the Omnitrans Metro Facility, 1700 West Fifth Street, San Bernardino, CA 92411.

SUMMARY

The date and time for the federally required public hearing to receive comments on projects involving Federal assistance will be set for December 4, 2013 at 8:00 a.m. at the Omnitrans Metro Facility.

A public hearing affords the opportunity to obtain views of officials and citizens regarding the proposed use of Federal assistance and community support for the amended program of projects.

BACKGROUND

To qualify for Federal assistance through the FTA, Omnitrans is required to hold a public hearing on the proposed use of Federal funds. FTA also requires that Omnitrans give the public sufficient notice, that any comments be incorporated into the grant application and that the notice include language which indicates that in the absence of substantive comments, Federal assistance will be sought.

The projects shown in the Public Hearing Notice are included in the Fiscal Year 2014 budget and were approved at the May 1, 2013 Board of Directors meeting.

FINANCIAL IMPACT

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

PSG:mm

NOTICE OF PUBLIC HEARING

Fiscal Year 2013 Capital Projects

Using §5307 and §5339

CAPITAL PROJECTS – FY 2014

Project Description	Total Cost	Federal Share
		FTA 5307
Management Information Systems	\$ 3,385,000	\$ 2,708,000
Facility Improvement	\$ 1,506,640	\$ 1,246,040
Replacement of Revenue Vehicles	\$ 5,197,506	\$ 5,197,506
Replacement of Revenue Vehicles	\$ 1,500,000	\$ 1,200,000
Replacement/Lease of Service Vehicles	\$ 565,000	\$ 452,000
1% Transit Enhancements	\$ 250,000	\$ 200,000
Stops & Zones	\$ 297,000	\$ 237,600
Capitalization of Tires	\$ 499,015	\$ 399,212
Capitalization of Security	\$ 192,440	\$ 153,952
Capitalization of Leases	\$ 138,000	\$ 104,396
Capitalization of ACCESS Service Costs	\$ 3,200,000	\$ 1,600,000
Capitalization of Preventive Maintenance	\$ 10,800,000	\$ 8,640,000
Downtown SB Passenger Rail Project-SANBAG	\$ 15,000,000	\$ 12,000,000
San Bernardino Transit Center - SANBAG	\$ 1,240,000	\$ 992,000
Total	\$ 43,770,601	\$ 33,942,706
		FTA CMAQ
Replacement of Revenue Vehicles	\$ 5,197,506	\$ 5,197,506
Downtown SB Passenger Rail Project-SANBAG	\$ 12,882,500	\$ 10,306,000
Total	\$ 18,080,006	\$ 15,503,506
		FTA 5339
Replacement of Heavy Duty Coaches	\$ 3,525,294	\$ 3,525,294
Total	\$ 3,525,294	\$ 3,525,294
TOTAL FEDERAL SHARE		\$ 52,971,506