



BOARD OF DIRECTORS MEETING
WEDNESDAY, OCTOBER 2, 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, November 6, 2013, at 8:00 a.m.
Omnitrans Metro Facility Board Room

C. COMMUNICATIONS FROM THE PUBLIC

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

D. POSSIBLE CONFLICT OF INTEREST ISSUES

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

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 E9, Action on Consent Calendar.

- | | |
|---|----|
| 1. Approve Board Minutes – September 4, 2013 | 5 |
| 2. Receive and File Administrative & Finance Committee Minutes – August 12, 2013 | 10 |
| 3. Receive and File Agency Management Report – August 2013 | 14 |
| 4. Receive and File Construction Progress Report No. 20 through August 22, 2013 – sbX E Street Corridor BRT Project | 23 |



BOARD OF DIRECTORS MEETING
WEDNESDAY, OCTOBER 2, 2013 – 8:00 A.M.
OMNITRANS METRO FACILITY
1700 WEST 5TH STREET
SAN BERNARDINO, CA 92411

E. CONSENT CALENDAR CONTINUED	
5. Adopt Revisions to Procurement Policy 4000, Sealed Bids, and Procurement Procedure 4000-1, Formal Procurement Procedures	37
6. Authorize Issuance of Purchase Order for Server Hardware	52
7. Award Contract MKT13-65, Bus Stop Shelter Roof Replacement Panels	54
8. Press Articles and Letters of Interest to the Board	80
9. 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	91
2. Award Contract ITS14-02, Copier Lease and Maintenance	95
3. Award Contract MNT14-04, Standby Generator and Automatic Transfer Switch Service	124
4. Award Contract SAS12-17R2, I Street Generator and Block Wall	152
5. Authorize Release, Invitation for Bids IFB-MNT14-01, Industrial Chemicals	174
6. Authorize Release, Request for Proposals RFP-OPS14-03, Supervisor Vehicle On-Board Video Surveillance System (OBVSS)	176
7. Authorize Amendment No. 2, Contract ADM09-8, Staff Legal Services and Authorize Release, Request for Proposals RFP-ADM14-12, Staff Legal Services	178
8. Authorize Release, Request for Proposals RFP-OPS14-71, Operation of Bus Rapid Transit (BRT) Bus Service	182
G. PUBLIC HEARINGS	
1. Cancel Public Hearings for Potential Temporary Service Reductions	184
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	
I. REMARKS AND ANNOUNCEMENTS	
J. ADJOURNMENT	

ITEM # D1

DATE: October 2, 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 October 2, 2013.

Item No.	Contract	Principals & Agents	Subcontractors
E6	Issuance of Purchase Order for Server Hardware	<i>Context Solutions Austin TX Steven Kahn, Owner</i>	<i>None</i>
E7	Award Contract MKT13-65 Bus Stop Shelter Roof Replacement Panels	<i>Graffiti Guards Ontario, CA Don Alvarez, Owner</i>	<i>None</i>
F2	Award, Contract ITS14-02 Copier Lease and Maintenance	<i>SoCal Office Technologies, Inc. Cypress, CA Doug MacPhee, Director of Sales – Public Sector</i>	<i>None</i>
F3	Award Contract MNT14-04 Standby Generator and Automatic Transfer Switch (ATS) Service	<i>Johnson Power Systems Riverside, CA Mitch Ryder, Product Support Representative</i>	<i>None</i>
F4	Award Contract SAS12-17R2 I Street Generator and Block Wall	<i>Hamel Contracting, Inc. Murrieta, CA Grant Hamel, Owner</i>	<i>Econo Fence Riverside, CA AEP Electric Hemet, CA ABBCO Services Redlands, CA Bay City Equipment Ind.</i>

Item No.	Contract	Principals & Agents	Subcontractors
			<i>Poway, CA</i> <i>Kretschmar and Smith</i> <i>Riverside, CA</i> <i>JBH Structural Concrete, Inc.</i> <i>Murrieta, CA</i> <i>Ben's Asphalt & Maintenance</i> <i>Company, Inc.</i> <i>Riverside, CA</i>
F7	Authorize Amendment No. 2 Contract ADM09-8 Staff Legal Services	<i>Best, Best and Krieger LLP</i> <i>Riverside, CA</i> <i>Richard T. Egger, Partner</i>	<i>None</i>

PSG/JS

ITEM # E1

**BOARD OF DIRECTORS' MEETING
MINUTES
SEPTEMBER 4, 2013**

A. CALL TO ORDER

Chair Alan Wapner called the regular meeting of the Omnitrans Board of Directors to order at 8:01 a.m., Wednesday, September 4, 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
Mayor Pete Aguilar, City of Redlands (alternate)
Councilmember Ron Dailey, City of Loma Linda
Mayor Paul Eaton, City of Montclair
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

Supervisor Robert Lovingood, County of San Bernardino

OMNITRANS' ADMINISTRATIVE STAFF PRESENT

Scott Graham, Interim CEO/General Manager
Diane Caldera, Interim Director of Operations
Jack Dooley, Director of Maintenance
Marge Ewing, Director of Human Resources
Sam Gibbs, Director of Internal Audit Services
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
David Rutherford, Public Relations Manager
Eugenia Pinheiro, Contracts Manager
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, October 2, 2013, at 8:00 a.m.

C. COMMUNICATIONS FROM THE PUBLIC

Jeff DeFillipes, San Bernardino, complimented a Coach Operator that helped him when he had a seizure on the bus and complained about another Coach Operator that did not help him when a passenger shoved him.

D. CONFLICT OF INTEREST

None.

E. CONSENT CALENDAR

- 1) Approve Board Minutes – August 7, 2013
- 2) Receive and File Administrative & Finance Committee Minutes – July 8, 2013

- 3) Receive and File Agency Management Report – July 2013
- 4) Claims Filed Against Omnitrans – Information Item Only
- 5) Receive and File Construction Progress Report #19 through July 15, 2013, sbX E Street Corridor BRT Project
- 6) Receive and File Summary of Risk Assessment Results and Fiscal Year 2014 Internal Audit Workplan
- 7) Adopt Revisions to Personnel Policy #701, Substance Abuse
- 8) Press Articles and Letters of Interest to the Board

On motion by Member Eaton, seconded by Member Roberts and carried, the Consent Calendar was approved. Member J. Gonzales abstained.

F. DISCUSSION ITEMS

- 1) CEO/General Manager's Report

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

- 2) Receive and File FTA Procurement System Review Final Report and Corrective Action Plan

Director of Procurement reviewed the FTA Procurement System Review Final Report and Corrective Action Plan. This was a receive and file agenda item.

- 3) Authorize Amendment No. 2, Contract FIN14-08, Security Transportation Services and Authorize Release of Request for Proposals No. RFP-FIN14-38, Armored Vehicle & Fare Collection Counting Services

M/S/C (Yates/Spagnolo) to authorize the Interim CEO/General Manager to execute Amendment No. 2 to extend Contract FIN14-08 with Los Angeles Federal Armored, Inc. DBA LA Federal Armored Services, Los Angeles, CA, for the provision of Security Transportation Services, from September 15, 2013 to January 31, 2014, and increase the contract amount by \$50,000, for a new total not-to-exceed contract amount of \$75,000 and authorize the Interim CEO/General Manager to release Request for Proposals No. RFP-FIN14-38 for the provision of Armored Vehicle & Fare Collection Counting Services for a two year base period with three one-year options.

G. PUBLIC HEARING

1. Call for Public Hearings for Potential Temporary Service Reductions

M/S/C (Eaton/Yates) to approve a Call for a Public Hearing concerning a potential temporary up to forty percent (40%) service reduction related to the Amalgamated Transit Union's (ATU) objection to the U.S. Department of Labor (DOL) regarding

Omnitrans' Federal Transit Administration grant funding to be held at listed times and locations.

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
3. Conference with Legal Counsel from Nossaman LLP, Existing Litigation, Government Code Section 54956.9, subdivision (a) – SANBAG v. Orange Show Road Properties, LLC, et al., San Bernardino County Superior Court, Case No. CIVDS 1104962, Parcel B-239
4. Conference with Legal Counsel pursuant to Government Code Section 54956.95(a) regarding Maudester Palmer – Case #ADJ2596844 and ADJ323523
5. Conference with Legal Counsel, Significant Exposure to Litigation, pursuant to Government Code Section 54956.9(d)(2) – Rohan A. Kuruppu

The Board adjourned to Closed Session at 8:22 a.m. The Board reconvened at 8:45 a.m. Legal Counsel Greene said Board action was taken on Closed Session #3, SANBAG v. Orange Show Road Properties, LLC, et al., San Bernardino County Superior Court Case No. CIVDS 1104962, Parcel B-239, at 1198 South E Street, San Bernardino, to approve a settlement of \$100,000 to San Bernardino Oil, Inc., the business owner.

I. REMARKS AND ANNOUNCEMENTS

Chair Wapner mentioned that SANBAG is holding the first Ad Hoc Committee regarding the proposed Consolidation Study, which is now renamed the Transportation Review Study. He will attend this meeting to get a better determination of what actions Omnitrans should take in the future.

He will report the status to the Board after a couple meetings have been held to discuss whether Omnitrans needs to take any action or remain in a “wait and see” mode to see what develops.

Chair Wapner said he will recommend that a monthly Executive Committee meeting be held to provide direction to staff. He is also proposing establishing a Safety & Operations Committee meeting in the future.

J. ADJOURNMENT

The Board adjourned at 8:53 a.m. The next regular meeting is scheduled for October 2, 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
August 12, 2013**

The Administrative & Finance Committee meeting was called to order by Chair Pat Morris at 11:00 a.m. on August 12, 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
Jack Dooley, Director of Maintenance
Don Walker, Director of Finance
Ray Lopez, Director of Safety & Security
Marjorie Ewing, Director of Human Resources
Jennifer Sims, Director of Procurement
Oscar Tostado, Maintenance Manager
Tech Loh, Engineering Services Manager
Maurice Mansion, Treasury Manager
Dennice Raygoza, Sr. Contracts Administrator
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 July 8, 2013

M/S (Riddell/Roberts) to approve the minutes of the July 8, 2013 Committee meeting. Motion was unanimous by members present.

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

Director of Finance Walker said 45 percent of the natural gas fuel is hedged through June 2014 to offset the cost of fuel. For FY14, the fuel budget was increased from \$0.88 to \$0.92 to compensate for the increase in CNG fuel prices. There was a gain of \$1,375 for August and a favorable variance of \$15,399 through August. There was a total loss from February 2012 to August 2013 of \$47,133 on the hedge, with an unrecognized gain of \$44,888 from September 2013 through June 2014.

This was a receive and file agenda item.

3. Receive & Forward to Board of Directors, Construction Progress Report No. 19 through July 15, 2013 – sbX E Street Corridor BRT Project

Chair Morris said that a couple of weeks ago, there was a Letter to the Editor in the *San Bernardino Sun* regarding problems with the road paving along the sbX corridor. On Sunday, Interim CEO/General Manager Graham published a response to the letter that answered all concerns.

Engineering Services Manager Loh said that all the asphalt work on E Street and Hospitality Lane will be completed by the mid-September. The project is on time, on budget, and revenue start date will be April 30, 2014. The sbX bus stations are 70 percent completed. The sbX station at Cal State San Bernardino is completed with all equipment installed and power supplied to the station. Only Verizon connections remain to be done at that location. The construction team will be completing the other stations within the next few months. The FTA quarterly meeting will be held the end of this month, and current and updated construction schedules will be supplied at that meeting.

Member Graham asked about security at sbX bus stations. Engineering Services Manager Loh said Cal State has their own police force, and they will provide security at that station. The sbX team and Omnitrans Safety & Security staff are working with the San Bernardino Police Department to determine the best way to provide security at the other stations. Until the construction is completed, the construction company is responsible for security at the stations and other locations. Chair Morris asked when the art work will be installed at the sbX stations, and Engineer Service Manager Loh said installing the art will be the last step in the process. Chair Morris asked if the security cameras at the college station are working. Engineer Services Manager Loh said they are, and images are being sent to the Omnitrans facility to monitor.

Engineering Services Manager Loh said in September, the sbX articulated buses will be tested to ensure they are all working properly. Member Wapner said the signage at the center divider on Hospitality Lane is difficult to see. Engineering Services

Manager Loh said his staff will be meeting with the City Engineer to determine the best way to modify the signage at that location.

Member Graham asked if the Vehicle Maintenance Facility (VMF) is behind schedule. Engineering Services Manager Loh said substantial completion of the VMF will be completed by April 22, 2014, and revenue service starts April 30. There were 26 "rain days" in the VMF schedule, and staff is negotiating a reduction of those days to get the VMF time table back on track.

This was a receive and file agenda item.

4. Receive and Forward to Board of Directors, FTA Procurement System Review Final Report and Corrective Action Plan

Director of Procurement Sims said in April the FTA Procurement System Review (PSR) was conducted. The PSR consultants reviewed 44 contracts and analyzed 60 system-wide and individual elements defined in FTA Circular 4220.1F. The draft report was sent to Omnitrans in May listing 32 deficiencies. Omnitrans disagreed with four of the deficiencies, but FTA did not remove any of the challenged deficiencies. Eighteen of the deficiencies were regarding training, and all necessary staff has received the required training to date. One deficiency necessitated a revision to Procurement Policy 4000 related to Piggyback/Intergovernmental agreements. This revised policy will be presented to this Committee in September and to the full Board in October. All deficiencies will require an internal audit within 30 days of the PSR Final Report, which will be done by Director of Internal Audit Services Gibbs.

Chair Morris said he expected some deficiencies in the PSR, but is concerned about the amount of deficiencies found. Director of Procurement Sims said the VMF contract was done after the sbX contract, and only one deficiency was found for that contract. Chair Morris asked about the Out of Scope changes on the sbX contract. Director of Procurement Sims said Omnitrans will be meeting with FTA to discuss ways to resolve the current issues, but this will not occur in the future, as staff has received training on this. Director of Procurement Sims said that the sbX contract contained a 15 percent markup on all time and material change orders, which made this a cost plus percentage of cost type contract. FTA prohibits this type of contract. All change orders have to be negotiated independently. Omnitrans will amend the contract, training was conducted, and compliance will be verified by the Internal Audit. Staff has been working with FTA to find an alternate solution for this issue in the hope that FTA does not give an unfavorable determination requiring Omnitrans to pay for these items with another source of funds.

Member Graham asked how many deficiencies were related to the sbX contract. Director of Procurement Sims said 19 were for sbX. There was some discussion among Committee members that future BRT construction projects would be best for SANBAG to oversee, with Omnitrans providing the bus service. Member Graham asked about the deficiency related to sole source contracts awarded. Director of Procurement Sims said many of these awards were done in 2008 under the prior PSR, but training has been conducted to alleviate confusion on FTA-funded versus non-FTA-funded procurements.

Member Wapner said in 2008, both Omnitrans and SANBAG were going through some major changes, which may have affected the way the sbX contract was managed. Also, many of the Procurement staff then is no longer working at

Omnitrans. The Committee commended Director of Procurement Sims on getting the Agency back on track in the right direction.

5. Recommend Approval to Board of Directors, Adopt Revisions to Personnel Policy #701, Substance Abuse

Director of HR Ewing said staff was attempting to meet all FTA requirements on Substance Abuse in this policy, but found the "self-identification" portion to be confusing. Therefore, it was left out. A recent arbitration decision stipulated that the self-identification need to be put back in with non-FTA language. As an arbitrator's decision is binding, this has been done.

M/S (Ovitt/Eaton) to recommend approval to the Board of Directors, adoption of proposed changes to Personnel Policy #701, Substance Abuse, effective September 4, 2013. Motion was unanimous by members present.

6. Receive & Forward to Board of Directors, Summary of Risk Assessment Results and Fiscal Year 2014 Internal Audit Workplan

Director of Internal Audit Services Gibbs said he reviewed the areas at Omnitrans that had the highest risk assessment, especially Procurement and cash handling, to develop his FY2014 internal Audit Workplan. He said he is very familiar with the FTA procurement requirements, and he will audit the contracts to ensure they are being followed. Chair Morris asked how often he meets with the Interim CEO/General Manager. Director of Internal Audit Services Gibbs said he meets with him monthly, but can meet with him more frequently if warranted. Member Graham asked for an opinion of Omnitrans fuel hedge. Director of Internal Audit Services Gibbs said the purpose of the fuel hedge was to mitigate high fuel costs, and that has been successful in providing more certainty for the fuel budget. Member Graham asked how often reports will be given to this Committee and the Board. Director of Internal Audit Services Gibbs said reports will be given on a quarterly basis.

The Administrative & Finance Committee meeting adjourned at 12:09 p.m. The next Administrative & Finance Committee Meeting is scheduled for September 9, 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

August 2013
FISCAL YEAR 2014

Agency Results

Operating Revenue

August total Operating Revenue of \$6,084,162 is 120,321 over budget. Year-to-Date (YTD) Operating Revenue of \$11,860,154 is \$67,528 under budget. The positive monthly variance is driven by pass sales coming in higher than planned. The YTD variance is primarily driven by capital funds for operations coming in lower than planned.

Operating Expense

August Operating Expense of \$5,600,474 is \$363,367 or 6% under budget. YTD Operating Expense of \$10,179,640 is \$1,748,042 or 15% 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 August, Omnitrans carried a total of 1,369,934 passengers. This consisted of 1,326,992 on Fixed Route service and 42,942 on Demand Response routes. YTD Ridership is 2,574,176, which reflects a total system decrease of 2.86% when compared to the same period last year.

Revenue Hours/Revenue Miles

During the month of August, Omnitrans provided a total of 68,444 revenue hours reflecting a decrease of 2.76% versus the same period last year. Omnitrans logged a total of 942,843 revenue miles during the month, reflecting a decrease of 2.20% when compared to same period last year. YTD Omnitrans provided a total of 135,346 revenue hours reflecting a decrease of .84% versus the same period last year. Also, YTD Omnitrans logged a total of 1,860,581 revenue miles reflecting a decrease of .14% when compared to same period last year.

Farebox Recovery Ratio

August farebox revenue for Fixed Route/Omnalink is \$1,276,332 versus \$1,148,516 for the same period last year. This is an increase of 11.13%. The farebox recovery ratio for the month is 27.87%. YTD farebox revenue for Fixed Route/Omnalink is \$2,278,162 versus \$2,110,849 for the same period last year. This is an increase of 7.93%. YTD farebox recovery ratio is 27.19%.

August farebox revenue for Access is \$133,000 versus \$125,095 for the same period last year. This is an increase of 6.32%. Farebox recovery ratio for the month is 13.70%. YTD farebox revenue for Access is \$270,743 versus \$264,962 for the same period last year. This is an increase of 2.18%. YTD farebox recovery ratio is 15.58%.

Financials

Total Salaries and Benefits of \$3,093,295 are \$364,623 under budget for the month of August. YTD Salaries and Benefits of \$6,228,635 are \$687,199 or 10% under budget. The positive monthly and YTD variances are primarily driven by headcount being less than planned.

Total Services are \$89,869 or \$168,445 under budget in August. YTD Total Services are \$109,743 or \$406,885 under budget. The positive monthly and YTD variances are principally driven by professional services being less than planned.

Materials and Supplies are \$734,305 or \$40,508 under budget in August. YTD Materials and Supplies are \$1,279,748 or \$269,878 under budget. The positive monthly and YTD variance is principally driven by gasoline and CNG fuel being less than planned.

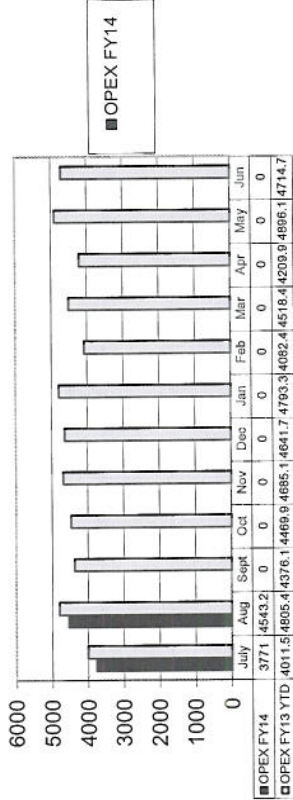
Purchased Transportation is \$627,854 or \$132,458 under budget in August. YTD Purchased Transportation is \$1,243,244 or \$277,380 under budget. The current month and YTD variance is driven by favorable pricing in the current contract based on milestones being met.

Other Expenses are \$1,014,967 or \$337,381 over budget in August. YTD Other Expenses are \$1,278,086 or \$77,087 under budget. The current month overage is principally driven by booking the IBNR reserve in the current month. The YTD variance is primarily driven by printing and advertising being less than planned.

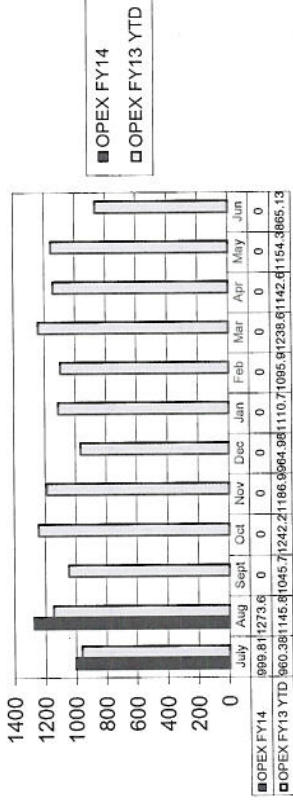
**PERFORMANCE STATISTICS
FISCAL YEAR 2014
August 2013**

	<u>Current Month</u>		<u>YR/YR</u>	<u>Year-To-Date</u>		<u>YR/YR</u>
	<u>August 2013</u>	<u>August 2012</u>	<u>inc/(dec)</u> <u>CURRENT</u>	<u>August 2013</u>	<u>August 2012</u>	<u>inc/(dec)</u> <u>YTD</u>
Total Passenger Revenue & Subsidy						
Fixed Route	\$1,273,583	\$1,145,773	11.2%	\$2,273,391	\$2,106,150	7.9%
Demand Response	\$135,750	\$127,838	6.2%	\$275,514	\$269,661	2.2%
Total Passengers						
Fixed Route	\$1,326,992	\$1,408,815	-5.8%	\$2,489,746	\$2,566,325	-3.0%
Demand Response	\$42,942	\$44,787	-4.1%	\$84,430	\$83,513	1.1%
Farebox Recovery Ratio						
Fixed Route/OmniLink	27.87%	27.31%		27.19%	23.76%	
Access	13.70%	11.44%		15.58%	13.75%	
Total Passengers per Revenue Hour						
Fixed Route	24.8	26.0	-4.9%	23.5	24.4	-3.6%
Demand Response	2.9	2.8	4.9%	2.9	2.7	7.4%
Revenue per Passenger						
Fixed Route	0.96	0.81	18.0%	0.91	0.82	11.3%
Demand Response	3.16	2.85	10.8%	3.26	3.23	1.1%
Cost per Passenger						
Fixed Route	3.42	3.41	0.4%	3.34	3.44	-2.8%
Demand Response	23.43	25.24	-7.2%	21.33	23.87	-10.6%
Cost per Revenue Hour						
Fixed Route	84.78	88.78	-4.5%	78.42	83.69	-6.3%
Demand Response	67.73	69.55	-2.6%	61.41	63.99	-4.0%
	<u>Actual</u>	<u>Target</u>				
On Time Performance						
Fixed Route	85.43%	90%				
Demand Response	90.99%	90%				
Headcount	619	669				
(includes PT Operators, excludes IPMO)						

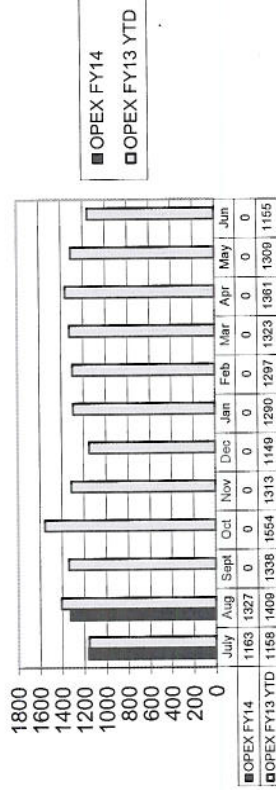
Fixed Route Operating Expense Thousands



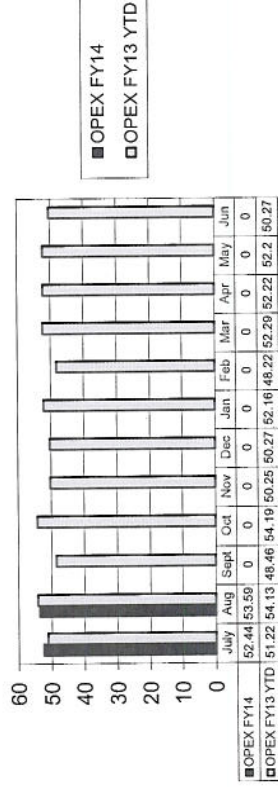
Fixed Route Passenger Revenue Thousands



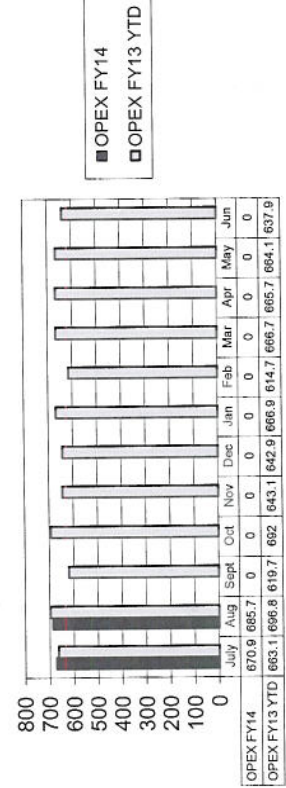
Fixed Route Ridership Thousands



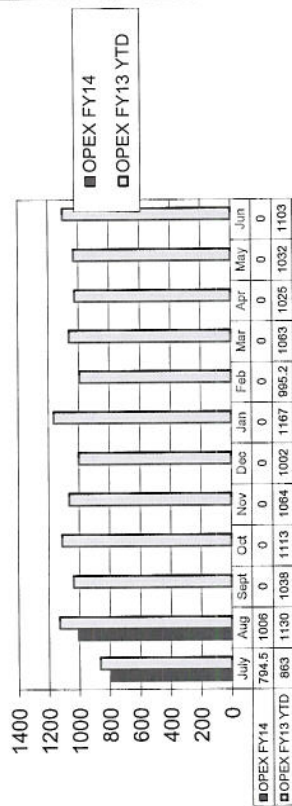
Fixed Route Revenue Hours Thousands



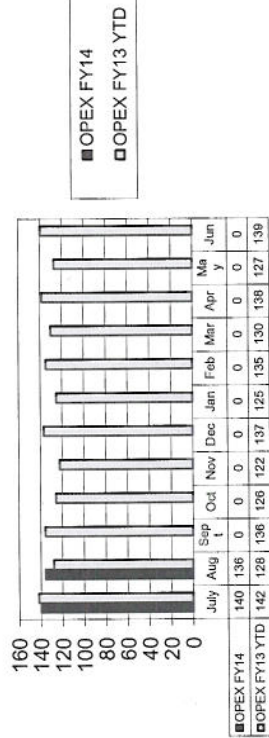
Fixed Route Revenue Miles Thousands



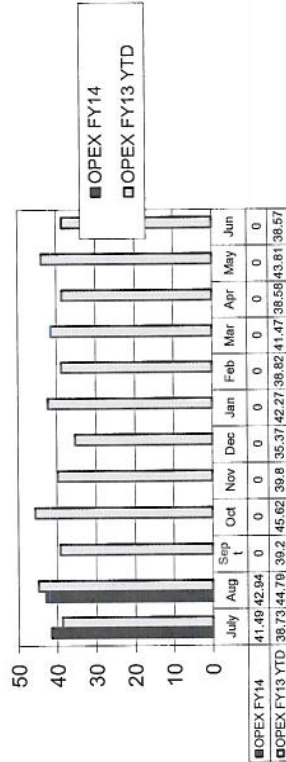
Demand Response Operating Expense Thousands



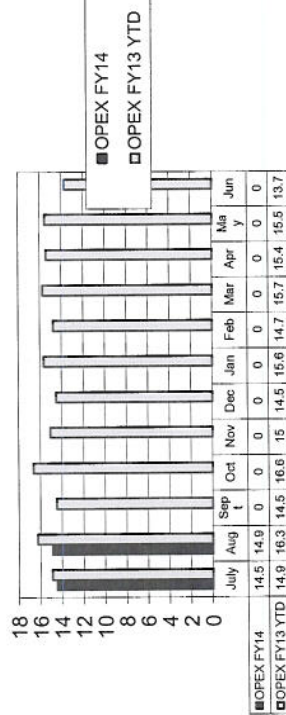
Demand Response Passenger Revenue Thousands



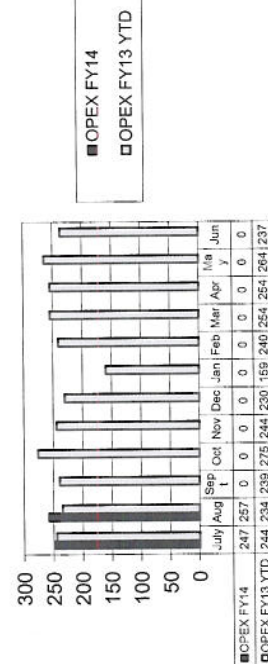
Demand Response Ridership Thousands



Demand Response Revenue Hours Thousands



Demand Response Revenue Miles Thousands



Statement of Operations Fiscal Year: 2014

CURRENT MONTH: August 2013

YEAR-TO-DATE: August 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>
	1,379,066	1,229,823	149,243	112%	Passenger Fares	2,489,568	2,459,645	29,923	101%
	30,267	27,477	2,790	110%	Measure I Subsidy - Fares	59,337	54,955	4,382	108%
	397,523	397,523	0	100%	Measure I Subsidy - Operating	795,046	795,046	0	100%
	24,093	25,000	(907)	96%	Auxiliary Transportation Revenue	47,009	50,000	(2,991)	94%
	(12,231)	7,083	(19,315)	0%	Non-Transportation Revenue	(20,099)	14,167	(34,266)	-142%
	3,029,143	3,029,143	0	100%	LTF Operating	6,058,286	6,058,286	0	100%
	145,337	145,337	0	100%	STAF Operating	290,674	290,674	0	100%
	0	0	0	0%	JARC - Operating Assistance	0	0	0	0%
	1,090,964	1,102,455	(11,491)	99%	Capital Funds for Operations	2,140,334	2,204,909	(64,575)	97%
	6,084,162	5,963,841	120,321	102%	Total Revenues	11,860,154	11,927,682	(67,528)	99%
					<u>Operating Expenses</u>				
	2,035,155	2,126,187	91,032	96%	Labor	3,993,912	4,252,374	258,462	94%
	1,058,139	1,331,730	273,591	79%	Fringe Benefits	2,234,723	2,663,461	428,738	84%
	89,869	258,314	168,445	35%	Services	109,743	516,628	406,885	21%
	734,305	774,813	40,508	95%	Materials and Supplies	1,279,748	1,549,626	269,878	83%
	232,071	268,350	36,279	86%	Occupancy	318,470	536,700	218,230	59%
	745,124	430,166	(314,958)	173%	Casualty and Liability	882,891	860,332	(22,559)	103%
	0	4,107	4,107	0%	Taxes and Fees	0	8,214	8,214	0%
	627,854	760,312	132,458	83%	Purchased Transportation	1,243,244	1,520,624	277,380	82%
	2,950	75,797	72,847	4%	Printing and Advertising	5,024	151,593	146,569	3%
	24,022	(100,833)	(124,855)	-24%	Miscellaneous Expense	47,310	(201,666)	(248,976)	-23%
	40,185	34,899	(5,286)	115%	Lease and Rental	40,185	69,797	29,612	58%
	10,801	0	(10,801)		Capital Purchase Expense	24,391	0	(24,391)	
	5,600,474	5,963,841	363,367	94%	Total Operating Expense	10,179,640	11,927,682	1,748,042	85%
	483,687	(0)	483,688		Net Gain (Net Loss)	1,680,514	(0)	1,680,515	
	3,093,295	3,457,917	364,623	89%	Sal & Ben	6,228,635	6,915,834	687,199	90%
	1,014,967	677,586	(337,381)	150%	Other	1,278,086	1,355,173	77,087	94%

9/16/2013

DATE: October 2, 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 August, 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 August 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		\$ 10,234,218.58			0.27%	
			\$ 12,650,000.00	\$ (1,700,000.00)	0.27%	
				\$ (2,450,000.00)	0.28%	
				\$ (350,000.00)	0.27%	
				\$ (1,400,000.00)	0.26%	
					0.25%	
		\$ 22,884,218.58		\$ (5,900,000.00)		
Net LAIF Funds				\$ 16,984,218.58		\$ 16,984,218.58
Fair Marketing Value	Fair Value Factor				1.000273207	\$ 16,988,858.79
Union Bank Money Market GMRA		\$ 2,272,496.24				
	Interest	\$ 69.09		\$ (229,713.57)	0.04%	
		\$ 2,272,565.33		\$ (229,713.57)		
				\$ 2,042,851.76		
				\$ 2,042,851.76		\$ 2,042,851.76
Citybank Morgan Stanley Futures Account		\$ 239,005.91				
	Gain/Loss for month	\$11,222.20				
		\$ 250,228.11		\$ -		
				\$ 250,228.11		\$ 250,228.11
		\$ 1,035,760.11				
	Passenger	\$ 1,126,396.17				
	Grants' Revenue	\$ 18,451,692.86				
	Miscellaneous Revenue	\$ 32,210.61				
	Transfers From (To) LAIF	\$ 6,200,000.00		\$ (12,650,000.00)		
	Transfers From (To) Money Market	\$ 229,713.57				
	Transfers From (To) Morgan Stanley Futures Account					
	Accounts Payable			\$ (9,956,664.84)		
	Payroll and Payroll Taxes			\$ (2,352,429.56)		
	Employee Benefits			\$ (363,243.33)		
	Bank Service Charge			\$ (1,801.50)		
Net Union Bank Operating Funds		\$ 27,075,773.32		\$ (25,324,139.23)		
				\$ 1,751,634.09		\$ 1,751,634.09
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						\$ 21,112,272.75

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: October 2, 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 AUGUST 2013

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

Payroll Period	Amount	Register #
07/24/13-08/06/13	\$316,445.20	16
08/07/13-08/20/13	\$306,771.49	17

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

Payroll Period	Amount	Register #
07/15/13-07/28/13	\$853,519.01	16
07/29/13-08/11/13	\$858,266.67	17

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

Register Date	Amount	Register #
08/01/2013	\$6,375,606.25	635-636
08/08/2013	\$704,983.23	637
08/15/2013	\$1,553,801.43	638
08/22/2013	\$873,299.17	639
08/29/2013	\$448,974.76	640

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: October 2, 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. 20 THROUGH AUGUST 22, 2013 - sbX E STREET CORRIDOR BRT PROJECT**

FORM MOTION

Receive and file Construction Progress Report No. 20 for the sbX E Street Corridor BRT Project through August 22, 2013.

This item was reviewed by the Administrative & Finance Committee at its September 9, 2013, meeting and recommended to the Board of Directors for receipt and file.

BACKGROUND

This is Construction Progress Report No. 20 for the sbX E Street Corridor Project.

CONCLUSION

Receive and file Construction Progress Report No.20 for the sbX E Street Corridor BRT Project through August 22, 2013.

PSG:MJ

Attachment



sbX E Street Corridor Bus Rapid Transit (BRT) Project

Construction Progress Report No. 20

As of August 22, 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 Construction Manager:	Andres Ramirez



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 August construction continued on the platforms; installing pavers at the North Mall and Hunts Lane stations, as well as, placing base for paver installation at the Carnegie and Tippecanoe stations.

Completed construction of the center running lanes on Hospitality Lane between Carnegie West and Tippecanoe and started construction of center running lanes on E Street from Rialto Avenue to 10th Street.

Contractor continued installation of electrical equipment for stations and traffic signals, as well as irrigation and landscaping work on E Street between 6th Street and 2nd Street.

In Loma Linda, pavement striping took place for new asphalt and concrete.

C. Accomplishments – sbX Corridor

- Verizon completed the relocation of manhole at Baseline and E Street for the north bound station.
- Began energizing SCE services to stations.
- 94 COR's have been approved and executed.

D. September Work – sbX Corridor

Work planned for September is as follows:

- Continue energizing SCE services to stations.
- Construct two catch basins along the south side of Hospitality Lane.
- Complete center running lanes E Street between Rialto Avenue and 10th Street.
- Start Construction of Baseline Station and site work.
- Construct sewer at Court Station.
- Start construction of Court Station.

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 be made in order to accommodate Omnitrans' 60-foot articulated bus fleet.

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

In August 2013, the Contractor completed work at the temporary fuel island (Building D). Pre-functionality testing and commissioning started on August 16, 2013, in preparation for turnover to the Agency. It is expected that Bldg. D will be ready for turnover effective August 30, 2013. Coordination meetings were held in August 2013 to ensure Building D, and all IT components, CCTV cameras and associated items are operational for turnover to the Agency.

The 1,000 gallon unleaded fuel tank was filled and functionality tested, Agency personnel trained, and turned over to the Agency effective July 25, 2013.

Change Order No. 13 for design changes to the lift locations, and associated electrical and mechanical components, at the Maintenance Building (Building A) was approved on August 2, 2013. Overhead work started on August 5, 2013 and is currently ongoing.

The Contractor completed reinforcing steel placement and slab thickness revisions to the thirty-yard trash compactor pad per Change Order No. 14. Concrete poured on August 22, 2013.

Contractor continued construction of the metal stud framing, drywall, and rough-in electrical work at the new Battery Room at Building A. Installation of the drain pipe for the emergency eyewash/shower in the storage room was also completed and concrete was placed in the battery room pit.

G. Accomplishments – Vehicle Maintenance Facility (VMF)

- Completed installation of all light poles in the parking lot in July 2013.
- Successfully tested and turned over 1,000 gallon unleaded AST to the Agency effective July 25, 2013.
- Completed work at the Temporary Fuel Island (Bldg D), and started testing and commissioning for turnover to the Agency; expected turnover by August 30, 2013.
- Started overhead utility work in Maintenance Building A on August 2, 2013. Work is ongoing.
- The new lifts for the maintenance pits in Bldg. A delivered in August 2013.

H. September Work – Vehicle Maintenance Facility (VMF)

In September 2013 the Contractor is expected to continue work at Maintenance Bldg. A, including completion of overhead utilities and start of demolition of the pits.

Pending successful commissioning and turnover of the temporary fuel island (Building D) in late August 2013, the Contractor plans to start demolition work at the existing fuel island (Building C).

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 were re-sequenced, 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 used to monitor and manage the construction progress.

Based on the latest updates, the CM team is confident of commencing Revenue Services Operations on April 30, 2014.

A. Summary of Project Schedule – sbX Corridor

The preliminary July schedule update was submitted on August 9, 2013. The Jacobs and Omnitrans CM team began review of the schedule in anticipation of the official cost loaded schedule submitted on August 20, 2013.

The CM team is currently continuing review of the schedule and shall submit comments to the contractor by August 27, 2013.

B. Summary of Project Schedule – Vehicle Maintenance Facility (VMF)

The Contractor submitted its combined June/July 15, 2013 Monthly Schedule Update on July 24, 2013. The monthly update was reviewed and returned "For Record Purposes Only – Make Corrections Noted" on August 6, 2013. The submitted project schedule includes approximately 160-calendar days of negative float projecting a Substantial Completion Date of May 18, 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 – 926	Total Submittals – 727	Total NCRs - 20
Total Open – 24	Total Open – 19	Total Open - 5

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

Total RFIs – 126	Total Submittals – 275	Total NCRs – 6
Total Open – 3	Total Open – 12	Total Open – 3

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 July 16, 2013 there are 306,456 “no-lost time” hours.
VMF - As of July 16, 2013 there are 5572 “no-lost time” hours.

V. PROJECT BUDGET AND COST

TOTAL PROGRAM BUDGET

BUDGET AS OF JULY 31, 2013

Approved Budget	\$191,706,000
Cost to Date	\$119,528,405
Estimate to Complete	\$ 72,177,595
Estimate at Completion	\$187,395,958

SBX CORRIDOR PROJECT COSTS - AS OF JULY 31, 2013

	CURRENT AUTHORIZED	CURRENT INVOICES PAID	REMAINING CONTRACT BALANCE
Jacobs	\$11,852,647	\$5,713,251	\$6,139,396
Parsons	\$18,097,876	\$16,841,566	\$1,256,310
Griffith/Comet	\$80,226,664	\$50,195,537	\$30,031,127
Total	\$110,177,187	\$72,750,354	\$37,426,833

VMF CORRIDOR PROJECT COSTS - AS OF JULY 31, 2013

	CURRENT AUTHORIZED	CURRENT INVOICES PAID	REMAINING CONTRACT BALANCE
STV Inc.	\$1,046,132	\$901,757	\$144,375
USS Cal Builders	\$11,228,896	\$2,027,562	\$9,201,334
Total	\$12,275,028	\$2,929,319	\$9,345,709

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 August 22, 2013	631	
CCO Time Extension to Date	0	
Required Completion Days/ Date as of August 22, 2013	99	12/21/13
Forecasted Completion Date as of August 22, 2013		TBD*
Percent Time Elapsed	86%	

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 August 22, 2013	255	
CCO Time Extension to Date	0	
Required Completion Date as of August 22, 2013	177	02/08/14
Forecasted Revenue Start Date as of August 22, 2013		04/30/14
Percent Time Elapsed	60%	

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

CHANGE ORDERS**SBX CORRIDOR CONTRACT CHANGE ORDERS - As of July 22, 2013**

Change Order Status	Amount Approved
Approved Change Orders	\$15,219,061
Pending Change Orders	\$3,260,428
Potential Change Orders	\$3,119,035
Total	\$21,598,524

VMF CONTRACT CHANGE ORDERS - As of July 22, 2013

Change Order Status	Amount
Approved Change Orders	\$556,847
Pending Change Orders	\$35,250
Potential Change Orders	\$1,436,526
Total	\$2,028,623

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. Pot holing for utilities at Anderson/Redlands Park-N-Ride in Loma Linda.



2. Connecting a hose bib to the potable water line at Highland Avenue and E Street.

VMF PROGRESS PHOTOS

1. Reinforcing steel being set for the new trash compactor pad west of the Maintenance Facility (Building A)



2. CIMG7828 = Testing of the Fleetwatch and GFI systems at the Temporary Fuel Island (Building D)

IPMO/sbX Project Cost Report
Period Ended 7/31/13

Description	Current Budget	Expenditures \$	%	Remaining Budget	Estimate to Complete	Estimate at Completion	Budget Forecast Variance
BRT Construction	84,637,000	50,271,880	59.4%	34,365,120	36,973,658	87,245,538	(2,608,538)
Vehicle Maintenance Facility (VMF) Construction	8,131,000	2,027,562		6,103,438	12,493,905	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	967,520	96.5%	35,480	138,597	1,106,117	(103,117)
BRT Design	17,849,400	16,841,566	94.4%	1,007,834	1,256,310	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	22,928,196	67.4%	11,091,804	13,973,702	36,901,898	(2,881,898)
SUB-TOTAL	173,633,000	119,528,405		54,104,595	67,867,553	187,395,958	(13,762,958)
Unallocated Contingency	18,073,000	-		18,073,000	4,310,042	4,310,042	13,762,958
TOTAL	191,706,000	119,528,405	62.3%	72,177,595	72,177,595	191,706,000	-

**IPMO/sbX Project
Through 7/31/13**

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	10,384,927	52.6%	\$ 9,340,073	\$ 7,989,581	\$ 18,374,508	\$ 1,350,492
	Guideway: At-grade semi-exclusive (allows cross-traffic)	\$ 18,353,000	8,916,355	48.6%	\$ 9,436,645	\$ 7,198,908	\$ 16,115,263	\$ 2,237,737
10.02								
10.03	Guideway: At-grade in mixed traffic	\$ 1,372,000	1,468,572	107.0%	\$ (96,572)	\$ 790,673	\$ 2,259,245	\$ (887,245)
20	STATIONS, STOPS, TERMINALS, INTERMODAL	14,917,000	7,483,530	50.2%	\$ 7,433,470	\$ 6,852,549	\$ 14,336,079	\$ 580,921
	At-grade station, stop, shelter, mall, terminal, platform	14,917,000	7,483,530	50.2%	\$ 7,433,470	\$ 6,852,549	\$ 14,336,079	\$ -
20.01								
30	SUPPORT FACILITIES: YARDS, SHOPS, ADMIN. BLDGS	\$ 8,131,000	2,027,562	24.9%	\$ 6,103,438	\$ 12,493,905	\$ 14,521,467	\$ (6,390,467)
	Light Maintenance Facility	\$ 4,265,000	1,575,416	36.9%	\$ 2,689,584	\$ 9,606,114	\$ 11,181,530	\$ (6,916,530)
30.02								
30.05	Yard and Yard Track	\$ 3,866,000	452,146	0.0%	\$ 3,413,854	\$ 2,887,791	\$ 3,339,937	\$ 526,063
40	SITework & SPECIAL CONDITIONS	34,271,000	19,984,166	58.3%	\$ 14,286,834	\$ 8,349,693	\$ 28,333,859	\$ 5,937,141
	Demolition, Clearing, Earthwork	\$ 4,741,000	281,559	5.9%	\$ 4,459,441	\$ 174,000	\$ 455,559	\$ 4,285,441
40.01								
40.02	Site Utilities, Utility Relocation	\$ 4,993,000	7,502,466	150.3%	\$ (2,509,466)	\$ 2,786,947	\$ 10,289,413	\$ (5,296,413)
	Site structures including retaining walls, sound walls	\$ 90,000	67,969	75.5%	\$ 22,031	\$ 98,283	\$ 166,252	\$ (76,252)
40.05								
40.06	Pedestrian / bike access and accommodation, landscaping	\$ 6,925,000	1,901,746	27.5%	\$ 5,023,254	\$ 2,279,370	\$ 4,181,116	\$ 2,743,884
	Automobile, bus, van accessways including roads, parking lots	\$ 3,601,000	3,286,560	91.3%	\$ 314,440	\$ 960,789	\$ 4,247,349	\$ (646,349)
40.07								
40.08	Temporary Facilities and other indirect costs during construction	\$ 13,921,000	6,943,866	49.9%	\$ 6,977,134	\$ 2,050,304	\$ 8,994,170	\$ 4,926,830
50	SYSTEMS	\$ 16,727,000	13,386,778	80.0%	\$ 3,340,222	\$ 6,977,899	\$ 20,364,677	\$ (3,637,677)
	Traffic signals and crossing protection	\$ 10,810,000	5,361,429	49.6%	\$ 5,448,571	\$ 1,109,248	\$ 6,470,677	\$ 4,339,323
50.02								
50.05	Communications	\$ 4,210,000	5,322,729	126.4%	\$ (1,112,729)	\$ 2,971,271	\$ 8,294,000	\$ (4,084,000)
50.06	Fare collection system and equipment	\$ 1,707,000	2,702,620	158.3%	\$ (995,620)	\$ 2,897,380	\$ 5,600,000	\$ (3,893,000)
	Pending Change Orders					\$ 5,259,231	\$ 5,259,231	\$ (5,259,231)
	Risk					\$ 1,683,300	\$ 1,683,300	\$ (1,683,300)
	Construction Subtotal (10-50)	93,771,000	53,266,963	56.8%	\$ 40,504,037	\$ 49,606,158	\$ 102,873,121	\$ (9,102,121)
60	ROW, LAND, EXISTING IMPROVEMENTS	\$ 6,532,000	\$ 5,847,342	89.5%	\$ 684,658	\$ 1,251,923	\$ 7,099,265	\$ (567,265)
	Purchase or lease of real estate	\$ 6,327,000	5,749,978	90.9%	\$ 577,022	\$ 1,144,287	\$ 6,894,265	\$ (567,265)
60.01								
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
	Bus	\$ 15,448,000	14,800,861	95.8%	\$ 647,139	\$ 630,821	\$ 15,431,682	\$ 16,318
70.04								
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	45,613,239	80.4%	\$ 11,088,761	\$ 15,471,603	\$ 61,084,842	\$ (4,382,842)
	Preliminary Engineering	\$ 12,921,000	12,876,525	99.7%	\$ 44,475	\$ 17,502	\$ 12,894,027	\$ 26,973
80.01								
80.02	Final Design	\$ 7,261,000	6,658,638	91.7%	\$ 602,362	\$ 1,480,278	\$ 8,138,916	\$ (877,916)
	Project Management for Design and Construction	\$ 15,997,000	9,472,278	59.2%	\$ 6,524,722	\$ 5,250,423	\$ 14,722,701	\$ 1,274,299
80.03								
80.04	Construction Administration & Management	\$ 6,632,000	5,713,251	86.1%	\$ 918,749	\$ 6,139,397	\$ 11,852,648	\$ (5,220,648)
	Professional Liability and other Non-Construction Insurance	\$ 1,112,000	-	0.0%	\$ 1,112,000	\$ 500,000	\$ 500,000	\$ 612,000
80.05								
80.06	Legal; Permits; Review Fees by other agencies, cities, etc.	\$ 10,596,000	10,892,547	102.8%	\$ (296,547)	\$ 1,338,003	\$ 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	\$ 119,528,405	68.8%	\$ 54,104,595	\$ 67,867,553	\$ 187,395,958	\$ (13,762,958)
90	UNALLOCATED CONTINGENCY	18,073,000	-	0.0%	\$ 18,073,000	\$ 4,310,042	\$ 4,310,042	\$ 13,762,958
	Subtotal (10-90)	191,706,000	119,528,405	62.3%	\$ 72,177,595	\$ 72,177,595	\$ 191,706,000	\$ -
100	FINANCE CHARGES	-	-	-	\$ -	\$ -	\$ -	\$ -
	TOTAL PROJECT COST (10-100)	191,706,000	119,528,405	62.3%	\$ 72,177,595	\$ 72,177,595	\$ 191,706,000	\$ -

ITEM # E5

DATE: October 2, 2013

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

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

FROM: Jennifer M. Sims, Director of Procurement

**SUBJECT: ADOPT REVISIONS TO OMNITRANS PROCUREMENT POLICY 4000,
SEALED BIDS AND PROCUREMENT PROCEDURE 4000-1, FORMAL
PROCUREMENT PROCEDURES**

FORM MOTION

Adopt the proposed changes to Procurement Policy 4000, Sealed Bids and 4000-1, Formal Procurement Procedures, to become effective October 2, 2013.

This item was reviewed by the Administrative and Finance Committee at its September 9, 2013 meeting and recommended to the Board of Directors for adoption.

BACKGROUND

The Common Grant Rule (49 C.F.R. § 18.36(b)(5), provides that “grantees and subgrantees are encouraged to enter into State and local intergovernmental agreements for procurements of common goods and services,” however, the Federal Transit Administration (FTA) no longer authorizes State and local intergovernmental agreements to be used by grantees. The FTA revised Circular 4220.1F on March 18, 2013, recognizing joint procurements and contract assignments as the only type of intergovernmental agreement suitable for use.

Accordingly, Omnitrans’ Procurement Policy 4000, Sealed Bids and Procurement Procedure 4000-1, Formal Procurement Procedures, have been updated to support the revised FTA C 4220.1F. Minor edits have also been made for consistency with the online bidding system and to eliminate duplication with Procurement Policy 2010 (Emergency & Non-Competitive Procurements), and Procurement Procedures 2060-1 (Emergency Procurements), and 4050-1(Non-Competitive & Sole Source Procurement). Upon approval by the Board of Directors, Omnitrans will have fully complied with the FTA’s recommendations as detailed in the Procurement System Review Final Report.

PSG:js



Procurement Policy Manual

Policy 4000

Page 1 of 8

FORMAL PROCUREMENT POLICY

Sealed Bids

Approved by Omnitrans Board of Directors

Date Approved: January 9, 2002

Revised Board Approval: ~~October 7, 2009~~ October 2, 2013

1. POLICY OVERVIEW

- 1.1. Procurements over \$100,000.00, as defined as in FTA C4220.1 ~~EF Paragraph 9.e.i.,~~ shall require a formal procurement process.
- 1.2. Requirements for goods or services with an aggregate value of \$100,000.00 per acquisition, or per contract period including option years shall be processed in the same fashion. These requirements include:
 - 1.2.1. Rental/lease payments;
 - 1.2.2. Maintenance service contracts including option years; and,
 - 1.2.3. Construction projects.
- 1.3. **NOTE:** Purchases in excess of \$25,000.00, but not greater than \$100,000.00 shall not require formal authorization for release from Omnitrans' Board of Directors. All purchases in excess of \$100,000.00, however, shall be processed formally including obtaining authorization for release of solicitation from Omnitrans' Board of Directors.
- 1.4. Tag-Ons. A tag-on is the adding on to the contracted quantities (base and option) as originally advertised, competed, and awarded. In accordance with federal regulations, the use of Tag-Ons is strictly prohibited.
- 1.5. Piggybacking (where the contract resulted from an open and competitive advertisement, evaluation, and award). Piggybacking is an assignment of existing contract rights to purchase supplies, equipment, or services. Omnitrans, where possible, will seek to take advantage of existing contracts awarded by other governmental entities for goods and services.
- 1.6. Federal Cost Principles: Costs or prices based on estimated costs for contracts funded through Federal grants will be allowable only to the extent that costs incurred or cost estimates included in negotiated prices are consistent with Federal Cost Principles. (Federal Acquisition Regulations, Part 31). Omnitrans may reference its own cost principles that comply with applicable Federal cost principles.

2. EXCEPTIONS

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

3. INVITATION FOR BIDS (IFB)

- 3.1. In support of certain formal procurement transactions, Omnitrans' staff will send out an



FORMAL PROCUREMENT POLICY

Sealed Bids

Approved by Omnitrans Board of Directors

Date Approved: January 9, 2002

Revised Board Approval: ~~October 7, 2009~~ October 2, 2013

Invitation for Bids (IFB) when seeking to procure supplies, equipment, materials, and construction projects. The existence of the following factors will determine whether Omnitrans should use the IFB method of awarding a contract:

- 3.1.1. A complete, adequate, and realistic specification or a clear scope of work (SOW) is available;
- 3.1.2. Two or more bidders are willing and able to compete effectively for the contract;
- 3.1.3. The procurement lends itself to a firm fixed price contract and the selection of the successful bidder can be made principally on the basis of price;
- 3.1.4. No discussion with bidders is needed after receipt of offers;
- 3.1.5. Award is made to the lowest, responsive, responsible bidder.

4. REQUEST FOR PROPOSALS (RFP)

4.1. Formal procurement transactions calling for a Request for Proposals (RFP) are normally conducted with more than one anticipated source submitting a proposal, and awards are generally made to the responsible firm whose proposal offers Omnitrans the most advantageous terms with price and other factors considered.

4.2. The competitive negotiations (RFP) process shall be used for:

- a. Professional Services
- b. Support Services
- c. Technical services
- d. Operational Services
- e. Maintenance Services
- f. Architectural and Engineering Services, or
- g. Specialized Transit Equipment as defined.

4.3. A request for proposals typically includes all of the elements of an invitation for bids and, in addition, usually contains clearly identified evaluation factors and their relative importance.

5. RFP AWARD PROCESS

5.1. Unless all ~~bids~~ proposals are rejected, contract award will be made to the responsive and responsible firm offering the most advantageous terms with price and other factors considered.

5.1.1. For projects less than \$25,000.00, award will be made with the authorization of the CEO/General Manager or his/her designee.



Procurement Policy Manual

Policy 4000

Page 3 of 8

FORMAL PROCUREMENT POLICY

Sealed Bids

Approved by Omnitrans Board of Directors

Date Approved: January 9, 2002

Revised Board Approval: ~~October 7, 2009~~ October 2, 2013

5.1.2. For projects of \$25,000.00 or more, award will be made with the authorization of the Board of Directors.

5.2. Public Award Announcement. Any award announcement issued by Omnitrans for goods and services (including construction services) having an aggregate value of \$500,000.00 or more shall specify the amount of the Federal funds as a percentage of the total costs of the award.

5.3. In all sealed ~~bid~~/proposal procurements, the award of contracts shall be to the responsive and responsible firm offering the most advantageous pricing terms.

5.4. If the award is to be made to other than the bidder offering the most advantageous pricing terms, a full justification memorandum should be prepared and put into the contract file.

5.5. In the unlikely event that identical bids are received, the successful bidder will be determined based upon the assessment and evaluation of the bids by Omnitrans' designated Evaluation Committee.

5.6. The Board of Directors is not bound by the recommendation of the Evaluation Committee or working staff when they believe their action will further Omnitrans' statutory functions.

5.6.1. However, the decision of the Board of Directors must be consistent with the solicitation's (~~IFB~~/RFP) written evaluation criteria and requirements, and must have a rational basis for the decision, which is fully documented for the procurement files.

—5.7—Sound and Complete Agreement

—5.7.1—All contracts shall include provisions to define a sound and complete agreement. In addition, contracts and subcontracts shall contain contractual provisions or conditions that allow for:

a.—Administrative, contractual, or legal remedies in instances where contractors violate or breach contract terms, including sanctions and penalties as may be appropriate. (All contracts in excess of the small purchase threshold.)

b.—Termination for cause and for convenience by the grantee or subgrantee including the manner by which it will be effected and the basis for settlement. (All contracts in excess of \$10,000.)



Procurement Policy Manual

Policy 4000

Page 4 of 8

FORMAL PROCUREMENT POLICY

Sealed Bids

Approved by Omnitrans Board of Directors

Date Approved: January 9, 2002

Revised Board Approval: ~~October 7, 2009~~ October 2, 2013

5.7.2 ~~—~~ Contracts shall be reviewed to ensure that each is a sound and complete agreement, as well as ~~for~~ compliance with FTA requirements under its Circular 4220.1F and Omnitrans' Policy and Procedures. The Contract and Procurement Review Worksheet (Attachment A) will be used to document the review.

6. ~~—~~ BONDING

~~36.13.1~~ ~~—~~ Bonds are required for all construction contracts valued at over ~~\$100,000.00~~ \$25,000

~~—~~ (see FTA Circular 4220.1F, Section IV.2. ~~hi~~ (1) for FTA requirements).

Bond or surety requirements will not be waived without the permission of the Board of Directors. The following minimum criteria apply:

- A bid guarantee equivalent to 5% of a proposers' bid price, consisting of a firm commitment such as a bid bond, certified check or other negotiable instrument submitted with a bid to ensure the bidder will honor its bid upon acceptance by Omnitrans.
- Performance bond equal to 100% of the contract price to ensure contractor completes its obligations under a contract.
- Payment bonds equal to the following to ensure a contractor will pay all who provide labor and materials for the completion of a contract:
 - a) For construction contracts priced at <\$1 million: a payment bond equal to 50% of the contract price;
 - ~~b)~~ b) For construction contracts over \$1 million but less than \$5 million: a payment bond equal to 40% of the contract price;
 - b)
 - c) For construction contracts over \$5 million: a payment bond of \$2.5 million.

7. AWARD OF THE CONTRACT

~~—~~ 7.1. ~~—~~ Upon award of the contract by the Omnitrans' Board of Directors, the Contracts staff will notify unsuccessful bidders in writing and, if applicable, return their bid bonds.

7.2. Bid bonds submitted by the successful bidder will be retained by Contracts staff.

~~—~~ 7.3. A preliminary notice of award shall be issued to the successful bidder notifying them that they have been selected for award and that an integrated bilateral contract document will be forthcoming. The ~~integrated~~ conformed contract shall include, but not be limited to, the final negotiated terms and conditions, including price, specifications,



FORMAL PROCUREMENT POLICY

Sealed Bids

Approved by Omnitrans Board of Directors

Date Approved: January 9, 2002

Revised Board Approval: ~~October 7, 2009~~ October 2, 2013

warranty provisions, etc.

8. ~~PROGRESS PAYMENTS~~

~~8.1~~ 8.1 Progress Payments. Omnitrans may use progress payments provided the following requirements are met:-

1) ~~(1)~~ Progress payments are considered to be to the best interest of the Agency.

~~(2)~~ Progress payments are only made to the contractor for costs incurred in the performance of the contract.

~~(3)~~ Omnitrans must obtain adequate security for progress payments. Adequate security may include taking title, letter of credit or equivalent means to protect the Omnitrans' interest in the progress payment.

8.2 ~~Formal Review of Progress Payments:~~

~~(1)~~ Requests for progress payments shall be formally reviewed with results documented and filed with each Contract.

9. ~~REQUIRED FEDERAL CLAUSES~~

9.1 ~~Contracts staff will review the contract to ensure that all the applicable Federal, State, and local clauses are included.~~

9.2 ~~These clauses would include, but not be limited to, the following provisions: Civil Rights, DBE, Buy America, Lobbying, Debarment, and Davis-Bacon Act. The Contracts staff will also ensure that, where required, the proper certifications are included with each proposal and signed by the appropriate individual.~~

9.3 ~~Procedure 4080-1 Table 1 summarizes the various federal clauses and/or certifications required for third party contracts utilizing federal funds.~~

10. ~~DEFINITIONS~~

~~10.1~~ Competitive Purchases \$100,000.01 and Over

Competitive Purchases are defined as any purchase with a value of \$100,000.01 and above. Purchases of this amount require full and open competition. Formal procurement methods (sealed bid/competitive proposals) must be utilized, and most procurements of this nature are subject to Federal/State requirements. Board approval



Procurement Policy Manual

Policy 4000

Page 6 of 8

FORMAL PROCUREMENT POLICY

Sealed Bids

Approved by Omnitrans Board of Directors

Date Approved: January 9, 2002

Revised Board Approval: ~~October 7, 2009~~ October 2, 2013

is required prior to the procurement process starting and then prior to contract award. Technical specifications/scope of work and/or any other specific requirements shall be prepared by the requesting department and submitted to the Procurement Department. The Procurement Department will prepare and publicly release an Invitation for Bids (IFB) or a Request for Proposals (RFP), as appropriate. (See Policy 4000.3 and 4000.4 for further discussion). IFBs/RFPs are publicly advertised in newspapers of general circulation, in addition to being emailed directly to the sources that are listed/registered in Omnitrans' online vendor database. Competitive procurements are also posted on Omnitrans' website.

The threshold requirements, as outlined above, apply to the aggregate purchase amount of the required goods or services. It is not Omnitrans' policy to separate related costs for the express purpose of avoiding the competitive bid process.

10.2 –Non-Competitive (Sole Source) Procurement

Under some circumstances, noncompetitive negotiations or “sole source” procurements may prove necessary to obtain goods or services without requiring formal procurement procedures. (See Policy 2010).

~~10.3 –Intergovernmental Procurement Agreements~~

~~To foster economy and efficiency, Omnitrans may enter into State and local intergovernmental or interagency agreements for procurement or use of common goods and services. Omnitrans may also plan procurements in advance with other governmental users and competitively award contracts in which several governmental entities may draw upon to meet their needs. This approach creates economies of scale, reduces procurement lead times, and reduces administrative effort and expense. The requirements and standards of this manual apply to these agreements.~~

~~10.4~~10.3 –Options

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

1. Evaluation of Options

- a. If required in the solicitation, the option quantities or periods contained in the contractor's bid or offer must be evaluated in order to determine contract award. When options have not been evaluated as part of the award, the exercise of such options shall be considered a sole source procurement.

2. Exercise of Options

- a. Omnitrans must ensure that the exercise of an option is in accordance with



Procurement Policy Manual

Policy 4000

Page 7 of 8

FORMAL PROCUREMENT POLICY

Sealed Bids

Approved by Omnitrans Board of Directors

Date Approved: January 9, 2002

Revised Board Approval: ~~October 7, 2009~~ October 2, 2013

the terms and conditions of the option provisions stated in the initial contract awarded.

- b. To the extent possible, the exercise of contract options shall be measured in terms of its ability to either enhance or positively influence staff's ability to fully support Omnitrans' strategic plan.
- c. An option may not be exercised unless Omnitrans has determined that the option price is better than prices available in the market or that the option is the more advantageous offer at the time the option is exercised.
- d. As of May 2002, the FTA has rescinded its five-year contract term limitation for some FTA-funded contracts, including "revenue contracts." Good procurement practice requires that Omnitrans enter into contract terms no longer than is minimally necessary to accomplish the purpose of the contract. Therefore, it remains the general practice of Omnitrans to contract for terms not exceeding a five (5) year period, inclusive of options. Procurements of rolling stock and replacement parts remain limited by law to five (5) years.

~~10.5~~ 10.4 ~~–Federal~~ General Service Administration (GSA) Schedules

Under certain circumstances, Omnitrans may be permitted to make purchases through Federal GSA supply schedules in accordance with GSA published procedures, as outlined in the Best Practices Procurement Manual. The Procurement Department will determine if the proposed procurement can utilize existing Federal GSA schedules and follow Procurement Procedure 4000-1.

~~10.6~~ 10.5 ~~–Procurement Department Files~~

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

~~10.7~~ 10.6 ~~–Geographic Restrictions~~

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



Procurement Policy Manual

Policy 4000

Page 8 of 8

FORMAL PROCUREMENT POLICY

Sealed Bids

Approved by Omnitrans Board of Directors

Date Approved: January 9, 2002

Revised Board Approval: ~~October 7, 2009~~ October 2, 2013

~~10.8~~ 10.7 -Progress Payment

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

~~10.9~~ 10.8 -Solicitation ~~Mailing~~ Bidders List

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

~~10.10~~ 10.9 -Pre-Bid and Pre-Proposal Conferences

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

~~10.11~~ 10.10 -Cost and Price Analysis

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



Procurement Procedures Manual

Procedure 4000-1

Page 1 of 6

FORMAL PROCUREMENT PROCEDURES

Overview

Approved by Omnitrans Board of Directors
Date Approved: ~~October 2, 2013~~ ~~January 9, 2002~~
~~Admin. & Finance Committee~~
~~Approval: May 8, 2006~~
~~Revised October 15, 2007~~
~~Revised: September 2009~~

Formatted: Strikethrough

Formatted: Strikethrough

1. OVERVIEW

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

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

1.1.1.1. Rental/lease payments;

1.1.1.2. Maintenance service contracts including option years; and,

1.1.1.3. Construction projects.

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

2. EXCEPTIONS

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

3. DEFINITION OF COMMON TERMS

3.1. Competitive Procurements exceeding \$100,000.00

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



Procurement Procedures Manual

Procedure 4000-1

Page 2 of 6

FORMAL PROCUREMENT PROCEDURES

Overview

Approved by Omnitrans Board of Directors
Date Approved: ~~October 2, 2013~~ January 9, 2002
~~Admin. & Finance Committee~~
Approval: May 8, 2006
Revised October 15, 2007
Revised: September 2009

Formatted: Strikethrough

Formatted: Strikethrough

~~websiteonline bidding system.~~

3.1.2. The threshold requirements, as outlined above, apply to the aggregate purchase amount of the required goods or services. It is not Omnitrans' policy to separate related costs for the express purpose of avoiding the competitive bid process.

3.2. Non-Competitive (Sole Source) Procurement

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

~~3.2.1 To allow Omnitrans to expediently and adequately respond to public emergencies. In such cases, the Board of Directors may approve the award of a contract or issuance of a purchase order to a single source. (See Policy 2010 and Procedures 2060-1 and 4050-1 for details on parameters and definitions.) Documents fully explaining the emergency will be filed.~~

~~3.2.1.1 The item is available only from a single source and no other supplies or services can satisfy the requirement~~


~~3.2.1.2 The FTA authorizes non-competitive negotiations.~~

~~3.2.1.3 Lack of adequate competition (see FTA Circular 4220.1F, Section VI.3.i.2.a, page VI-16)~~

3.3. Intergovernmental Procurement Agreements

~~3.3.1. To foster economy and efficiency, Omnitrans may enter into State and local intergovernmental or interagency agreements for procurement or use of common goods and services. FTA recognizes joint purchases to be the only type of intergovernmental agreement suitable for use by its grantees and subgrantees. Omnitrans may also plan procurements in advance with other governmental users, and competitively award contracts in which several governmental entities may draw upon to meet their needs. This approach creates economies of scale, reduces procurement lead times and reduces administrative effort and expense. The requirements and standards of this manual apply to these agreements.~~

~~3.3.2. All FTA and Federal Requirements apply. When obtaining property or services in this manner, Omnitrans must ensure all Federal requirements, required clauses, and certifications (including Buy America) are properly followed and included, whether in the master intergovernmental contract or in~~

 <p>Omnitrans Connecting Our Community</p> <p>Procurement Procedures Manual</p>	<p>Procedure 4000-1</p> <p>Page 3 of 6</p>
<p>FORMAL PROCUREMENT PROCEDURES</p> <p>Overview</p>	<p>Approved by Omnitrans Board of Directors</p> <p>Date Approved: October 2, 2013 January 9, 2002</p> <p>Admin. & Finance Committee</p> <p>Approval: May 8, 2006</p> <p>Revised October 15, 2007</p> <p>Revised: September 2009</p>
<p><u>Omnitrans' purchase document.</u></p> <p><u>3.3.1.3.3.3. When buying from these schedules, Omnitrans should obtain Buy America certification before entering into the purchase order.</u></p> <p>3.4. Options</p> <p>3.4.1. Option items may be included in contracts entered into by Omnitrans. An option is a unilateral right in a contract by which, for a specified time, Omnitrans may elect to purchase additional equipment, supplies, or services called for in the contract, or may elect to extend the term of the contract. If Omnitrans chooses to use options, the requirements below apply:</p> <p>3.4.1.1. Evaluation of options</p> <p>3.4.1.1.1. To all extent possible, Project Managers or owning departments will test how the exercise of contract options contribute to the fulfillment of Omnitrans' strategic plan. Further instructions are found in Procedure 6021 (see Attachment B).</p> <p>3.4.1.1.2. Option quantities or periods in a vendor's offer will be evaluated as part of the entire offer. When options are not reviewed as part of the original evaluation process, the exercise of such options will be considered a sole source procurement.</p> <p>3.4.1.2. Exercise of Options</p> <p>3.4.1.2.1. Options are to be included in the terms and conditions of the initial contract award document.</p> <p>3.4.1.2.2. Omnitrans must ensure that the exercise of an option is in accordance with the terms and conditions of the option provisions stated in the initial contract awarded.</p> <p>3.4.1.2.3. Options will not be exercised without the determination that the option price is better than current market offerings or without the determination that exercising the option is the most advantageous for the Agency at the time of its exercise.</p> <p>3.4.1.2.4. As of May 2002, the FTA has rescinded its five-year contract term limitation for some FTA-funded contracts, including "revenue contracts". Good procurement practice requires that Omnitrans enter into contract terms no longer than is minimally necessary to accomplish the</p>	

Formatted: Strikethrough

Formatted: Strikethrough



Procurement Procedures Manual

Procedure 4000-1

Page 4 of 6

FORMAL PROCUREMENT PROCEDURES

Overview

Approved by Omnitrans Board of Directors
Date Approved: ~~October 2, 2013~~ January 9, 2002
~~Admin. & Finance Committee~~
Approval: May 8, 2006
Revised October 15, 2007
Revised: September 2009

Formatted: Strikethrough

Formatted: Strikethrough

purpose of the contract. Therefore, it remains the general practice of Omnitrans to contract for terms not exceeding a five (5) year period, inclusive of options.

3.5. Federal General Service Administration (GSA) Schedules

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

~~3.5.1.~~ 3.5.2. Procurement will obtain the required offers from at least three sources, analyze the prices for reasonableness, and seek a lower than published price when necessary.

3.6. Procurement Department Files

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

3.7. Geographic Restrictions

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

3.8. Progress Payment

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



Procurement Procedures Manual

Procedure 4000-1

Page 5 of 6

FORMAL PROCUREMENT PROCEDURES

Overview

Approved by Omnitrans Board of Directors
Date Approved: ~~October 2, 2013~~ ~~January 9, 2002~~
~~Admin. & Finance Committee~~
~~Approval: May 8, 2006~~
~~Revised October 15, 2007~~
~~Revised: September 2009~~

Formatted: Strikethrough

Formatted: Strikethrough

3.9. Solicitation Mailing List

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

3.10. Pre-Bid and Pre-Proposal Conferences

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

3.11. Cost and Price Analysis

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

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

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

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

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



Procurement Procedures Manual

Procedure 4000-1

Page 6 of 6

FORMAL PROCUREMENT
PROCEDURES

Overview

Approved by Omnitrans Board of Directors
Date Approved: ~~October 2, 2013~~ ~~January 9, 2002~~
~~Admin. & Finance Committee~~
~~Approval: May 8, 2006~~
~~Revised October 15, 2007~~
~~Revised: September 2009~~

Formatted: Strikethrough

Formatted: Strikethrough

- A post delivery Buy America certification;
- A post-delivery purchasers certification;
- Where appropriate a manufacturer's Federal Motor Vehicle Safety Standard self certification information.
- Review actual component to ensure that the vehicle meets 60 percent Buy America domestic content requirement;
- Check that the final assembly location is in the United States and the manufacturer's final assembly activities meet the requirements outlined in regulations; and
- Have an on-site inspector for rail car procurements and bus procurements of greater than 10 vehicles.

3.13 Bonding and Sureties

3.13.1 Bonds are required for all construction contracts valued at over \$100,000.00 (see FTA Circular 4220.1F, Section IV.2.h for FTA requirements, and the California Contracts Code Section for State requirements). Bond or surety requirements will not be waived without the permission of the Board of Directors. The following minimum criteria apply:

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

ITEM # E6

DATE: October 2, 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 ISSUANCE OF PURCHASE ORDER FOR SERVER
HARDWARE**

FORM MOTION

Authorize the Interim CEO/General Manager to issue a Purchase Order to Context Solutions of Austin, TX, for the one-time purchase of server hardware in the amount of \$30,784.40 including sales tax, plus the 3.27% Cost Allocation Plan (CAP) of \$1,006.65, for a total not-to-exceed amount of \$31,791.05.

BACKGROUND

Staff is replacing the existing server hardware equipment which is 13 years old. The existing equipment consists of one blade server and five rack servers.

On June 20, 2013, staff released Request for Quotes (RFQ) No. IT14-11 for Server Hardware. The RFQ was posted on Omnitrans' online bidding system, and was distributed to thirty-one potential bidders. Award recommendation is being made to the lowest responsive and responsible bidder. Price is deemed fair and reasonable as the bid is \$37,215.60 less than the Independent Cost Estimate of \$68,000.

Five bids were received electronically by the deadline of July 17, 2013. All of the bids were found to be responsive.

Context Solutions	\$30,784.40
Systech Synergy, Inc.	\$35,001.56
Shade & Putnam Technology Solutions	\$61,047.59
IT TechPros, Inc.	\$62,957.51
Alinec Technologies	\$63,391.14

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

FUNDING SOURCE

Funding for this purchase order is budgeted as follows:

FUNDING	GRANT #	FISCAL YEAR	PROJECT NAME	AMOUNT
FTA	CA-90-Y681	2009	SERVER HARDWARE	\$25,432.84
STA	12-09-OMN-B	2012	SERVER HARDWARE	\$ 6,358.21
				\$31,791.05

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

CONCLUSION

Approval to issue purchase order will allow Omnitrans to replace outdated server hardware with updated equipment to ensure that operational needs are met without interruption of service.

PSG:JMS:aa

ITEM # E7

DATE: October 2, 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 MKT13-65
BUS STOP SHELTER ROOF REPLACEMENT PANELS**

FORM MOTION

Authorize the Interim CEO/General Manager to award Contract MKT13-65 to Graffiti Guards of Ontario, CA, for the provision of Bus Stop Shelter Roof Replacement Panels for a two-year period beginning October 21, 2013 and ending no later than October 21, 2015, in the amount of \$37,981.14 for 1,350 roof panels, and \$703.35 for up to 25 additional roof panels, plus the 3.27% Cost Allocation Plan (CAP) of \$1,264.98, for a total not-to-exceed amount of \$39,949.47.

BACKGROUND

Omnitrans maintains 366 bus shelters throughout the service area. The existing shelter roof panels are in need of replacement. This purchase is part of the Agency's bus stop shelter refurbishment project.

On August 6, 2013, staff released Request for Quotes RFQ-MKT13-65 for the provision of bus shelter roof replacement panels for shelters throughout Omnitrans' service area. Staff released the RFQ, notices were published in two local newspapers of general circulation and posted on Omnitrans' online bidding system which was distributed to twenty-two registered firms.

Three bids were received electronically by the deadline date of September 9, 2013, and all bids were found to be responsive. Listed below are the bid prices:

Company	Bid*
Graffiti Guards	\$38,684.49
Duo-Guard Industries	\$72,225.27
Tolar Manufacturing Company	\$73,559.02

**Bid pricing includes tax and delivery*

Award recommendation is being made to the lowest responsive and responsible bidder. Graffiti Guard is a local vendor and a certified Disadvantaged Business Enterprise. Client references of

three local transit agencies gave Graffiti Guard very high marks. Price is deemed fair and reasonable as the bid is \$50,691 less than the Independent Cost Estimate of \$89,375, which was based on previous purchases.

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

FUNDING SOURCE

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

FUNDING	GRANT #	FISCAL YEAR	PROJECT NAME	AMOUNT
FTA	CA-90-Z009	2013	Agency Rebranding	\$31,959.58
STA	13-04-OMNB	2013	Agency Rebranding	\$7,989.89
Total				\$39,949.47

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

CONCLUSION

Approval of this contract will maintain the appearance of passenger amenities in a positive image for the Agency, as well as the image of the jurisdiction where amenities are located.

PSG:JMS:CV



CONTRACT AGREEMENT

between

Graffiti Guards
1004 W. H Street
Ontario, CA 91762

(hereinafter "CONTRACTOR")

Telephone: 213-210-6022
Email: dan@graffitiguards.com

And

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

CONTRACT DOCUMENTS

**CONTRACT NO.
MKT13-65**

**Bus Stop Shelter Roof Replacement
Panels**

Contract Amount: \$37,981.14

Omnitrans Project Manager:

Name: Melvin Cabang
Title: Stops and Stations Supervisor
Telephone: (909) 379-7153
Email: melvin.cabang@omnitrans.org

Contract Administrator:

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



TABLE OF CONTENTS

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

21.	EQUAL OPPORTUNITY.....	12
23.	NOTIFICATION OF EMPLOYMENT OF OMNITRANS BOARD MEMBERS/ALTERNATES AND EMPLOYEES	13
24.	DISQUALIFYING POLITICAL CONTRIBUTIONS	13
25.	COMPLIANCE WITH LAW	13
26.	COMPLIANCE WITH LOBBYING POLICIES	14
27.	PUBLIC RECORDS ACT	14
28.	WAIVER/INVALIDITY	15
29.	FORCE MAJEURE.....	15
30.	CONFIDENTIALITY	15
31.	CONTRACTOR’S INTERACTION WITH THE MEDIA AND THE PUBLIC	15
32.	GOVERNING LAW	16
33.	MODIFICATIONS TO AGREEMENT	16
34.	PRECEDENCE	16
35.	ENTIRE AGREEMENT	16

EXHIBIT A – SCOPE OF WORK

ATTACHMENT A – REGULATORY REQUIREMENTS

This Agreement is made and entered into as of this ____ day of _____, 2013 by and between Omnitrans (hereinafter referred to as "OMNITRANS") and _____ (hereinafter referred to as "CONTRACTOR").

RECITALS

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

This Agreement shall commence on _____, and shall continue in full force and effect through _____ (base period), unless earlier terminated or extended as provided in this Agreement.

Omnitrans' election to extend the Agreement beyond the Initial Term shall not diminish its right to terminate the Agreement for Omnitrans' convenience or CONTRACTORS default as provided elsewhere in this Agreement.

3. **COMPENSATION**

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

1) Base Orders

1350 Roof Panels \$25.99 each

OMNITRANS' maximum payment obligation under this Agreement for 1350 roof panels shall not exceed Thirty-Seven Thousand Nine Hundred Eighty-One Dollars and fourteen cents (\$37,981.14).

2) Optional Subsequent Orders

25 Roof Panels \$25.99 each

OMNITRANS' maximum payment obligation under this Agreement for the the optional subsequent orders for up to 25 roof panels shall not exceed Seven Hundred Three Dollars and thirty-five cents (\$703.35).

OMNITRANS' maximum cumulative payment obligation under this Agreement shall not exceed Thirty-Eight Thousand Six Hundred Eighty-Four Dollars and forty-nine cents (\$38,684.49), 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, delivery, 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

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

- Contract number

- Invoice number
- Description of delivery
- Delivery Date
- Total quantity delivered
- Unit Price, extended price and applicable taxes
- 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:

To CONTRACTOR:

Omnitrans
1700 West Fifth Street
San Bernardino, CA 92411
Attn: Contract Administrator

Graffiti Guards
1004 W. H Street
Ontario, CA 91762
Attn: Dan Alvarez, Owner

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: Melvin Cabang.

- 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>
Dan Alvarez	Owner

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

NA

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.*

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

By written notice or order, OMNITRANS may, from time to time, order work suspension or make changes to this Agreement. Changes 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.

Price Adjustments:

- A. Any change in the contract that causes an increase or decrease in cost to Omnitrans, or the time required for the performance of the contract, must be approved as prescribed herein.
- B. An equitable adjustment in the compensation and schedule will be made upon an approved Change Order.
- C. Contractor shall be liable for all costs resulting from, or for satisfactorily correcting, any and all unauthorized specification changes not properly ordered by written modification to the contract.
- D. Except as otherwise expressly provided in the Contract, when costs are a factor in any determination of a contract price adjustment, such costs shall be in accordance with the applicable cost principles of Subpart 31.2 of the Federal Acquisition Regulations (*FAR*) in effect at the onset of the Contract.

16. RIGHTS IN TECHNICAL DATA

- A. No material or technical data prepared by 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, including Exhibit A, Scope of Work and Attachment A, Regulatory Requirements, (2) provisions of Solicitation No. RFQ-MKT13-65 and (3) CONTRACTOR's bid dated September 9, 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

GRAFFITI GUARD

P. Scott Graham
Interim CEO/General Manager

Dan Alvarez
Owner

Date

Date

Federal Tax I.D. No. 20-4059372

DP__

CM__

EXHIBIT “A” - SCOPE OF WORK

MKT13-65

BUS STOP SHELTER ROOF REPLACEMENT PANELS

Scope of Work Revised per Addendum No. 2

1. INTRODUCTION

Provide roof panels for Omnitrans' bus stop shelters. The roof panels will be replacement of existing roof panels at Omnitrans' bus stop shelters.

2. GENERAL

- a. All materials and parts furnished to Omnitrans in fulfillment of this order shall be new. No used, reconditioned or obsolete parts will be accepted.
- b. Any one unit furnished shall be an exact duplicate in manufacture, design and construction to all other units supplied as part of this order.
- c. All units or parts shall conform in material, design and workmanship to the best practice known in the industry.

3. SCOPE OF WORK

- a. Provide pricing for purchasing replacement roof panels for Omnitrans Bus Stop Shelters
- b. Pricing and delivery quote to be valid for one year.
- d. Quantities:
 - 1) 1350 panels. Omnitrans' typical order will be 450 in four-month intervals the first year of the contract.
 - 2) Option: 25 panels. Omnitrans may choose to exercise the option to order up to 25 additional panels during the contract term.
- d. Replacement Shelter Roof Panels
 - 1) Lexan Thermoclear Plus 2UV, Bronze panels or approved equals to fit domed bus shelter roofs manufactured by Tolar Manufacturing, shelter models 13ALDPM and 17ALDPM.
 - 2) Salient Characteristics:
 - a. Multi-walled polycarbonate, light weight, high impact strength sheeting
 - b. Dimensions: 56 inches by 48 inches
 - c. Color: Bronze
 - d. Gauge: 4.5 mm
 - e. Structure: twin wall 2/4.5-6mm
 - f. Area weight: 0.2 lbs/ft² or 1.0kg/m²
 - g. UV coating both sides of panel
 - h. UV Value: 3.7 (W/m² k)

5. DELIVERY

- a. The Contractor shall package the product(s) in such a manner as to prevent damage during shipment, receiving and storage. The Contractor shall also ensure that shipped product(s) are not damaged. Any damaged product(s) discovered upon receipt at FOB point will be returned for credit or replacement at no cost to Omnitrans.
- b. Panels to be delivered in bundles weighing no more than fifty (50) pounds.
- c. The agreed upon delivery date will be within forty-five (45) days of receipt of Omnitrans purchase order.
- d. Omnitrans will not pay any premium handling charges related to expedited shipping. Omnitrans shall pay for direct and actual freight charges. Omnitrans reserves the right to request proof of freight charges or validate referenced charges independently.
- e. A priced invoice or packing slip (with related P.O. number) shall accompany all deliveries.
- f. Deliveries shall be made to Omnitrans prepaid F.O.B. destination.
- g. Delivery Location:
Omnitrans
Attn: Stops & Stations Supervisor
Shipping & Receiving
1700 West 5th St.
San Bernardino, CA 92411

6. WARRANTY PROVISION

- a. **Coverage**
All products supplied are warranted to be free from defects in material, workmanship for two (2) years and ten (10) years limited warranty covering discoloration, loss of light transmission and loss of strength due to weathering beginning on the date of acceptance, except as specified below. The Contractor must submit their written standard limited warranty guarantee(s) to Omnitrans with their proposal.
 - 1) The warranty shall start from the date the product is delivered. Omnitrans' Warranty Coordinator shall show date of acceptance or proof of purchase receipt to qualify for warranty coverage.
 - 2) Any supplier or manufacturer's standard limited warranty coverage greater than that specified above must also be extended to Omnitrans.
 - 3) Contractor is responsible for correcting all defects upon notification, at no cost to Omnitrans.

b. Limitations

Warranty coverage shall not apply to failures that have been caused or contributed by the following:

- 3) Improper: use, servicing, maintenance, inspection and testing.
- 4) Failure to comply with the original equipment manufacturers (OEM) operating, maintenance, servicing, inspection and testing requirements.
- 5) Use of inadequate, improper or incompatible component(s).
- 6) Accident, negligence, abuse, not caused by Contractor or OEM.
- 7) Unauthorized modification of equipment affecting design or performance characteristics.
- 8) Use of non-approved products as specified by the OEM.

c. Repair Procedures

Omnitrans may require the Contractor to supply new products for warranty related repairs being performed by Omnitrans. These products shall be shipped prepaid to Omnitrans from any source selected by the contractor within three (3) working days of receipt of the request for said products. Products supplied by the Contractor shall be OEM or approved equal.

d. Servicing

The Contractor may be requested to provide field service support for the correction of warranty failures as required by Omnitrans.

e. Claims

All warranty defects and failures will be submitted to the Contractor as an Omnitrans warranty claim. The Contractor shall notify Omnitrans of receipt and/or status of the claim.

- 1) The Contractor must notify Omnitrans in writing the disposition of a warranty claim within 15 days of receipt.
- 2) The Contractor must resolve all open warranty claims within 60 days after receipt. If the warranty claim is not resolved within the stated time frame the Contractor will be informed of Omnitrans' intent to automatically credit Omnitrans' accounts payable for the Contractor with the amount of the open claim.
- 3) The Contractor is required to notify the Omnitrans' Warranty Coordinator on the disposition of products within five (5) days after Omnitrans' request for a Return Material Authorization (RMA).

f. Remedies

Contractor shall promptly repair, replace and/or pay for all warranty defects including products, labor, and shipping and handling. The Contractor shall also reimburse for any progressive, compensatory and consequential damages or fines due to product failures.

g. **Reimbursement**

Contractor is required to reimburse Omnitrans for cost associated with a warranty repair claim or service request.

- 1) The product costs shall be based on the most current supplier contract price or the invoiced price for replacement.
- 2) The labor repair times shall be fair and reasonable and based on current OEM or industry Standard Repair Time (SRT) guidelines or an agreed upon repair time standard.
- 3) The Contractor is required to reimburse Omnitrans at an hourly shop labor rate based on Omnitrans' current labor cost accounting system. This labor rate is \$30.00 per hour based on current hourly pay rates plus benefits. This rate is reviewed, and changed if necessary, in February or March of each year and the Vendors affected will be notified.
- 4) The Contractor shall be assessed the cost of shipping or a 15% handling charge for product returns.

h. **Systemic Defects**

During the warranty period, when repairs or modifications necessitated by defective design, material, or workmanship occur to an extent in excess of 20% of the product (used for the same function in the same system or subsystem), the Contractor shall promptly furnish all necessary labor and material to effect such repairs and modifications for every product delivered under the contract, according to the terms and conditions outlined, including systems or subsystems in which the product has not yet failed.

i. **Administration**

Warranty claims, and other warranty issues shall be administered, coordinated and resolved with the Omnitrans' Warranty Coordinator and a Contractor's assigned representative.

- 1) For warranty repair claims or service requests which are determined by the Contractor not to be under warranty, the Contractor must forward a written failure analysis report and an itemized quote to Omnitrans' Warranty Coordinator and obtain an authorizing purchase order before proceeding with the repair.
- 2) The Contractor shall be able to electronically communicate on warranty coverage, registrations, claims, service requests and bulletins/alerts.

BUS STOP SHELTER ROOF REPLACEMENT PANELS

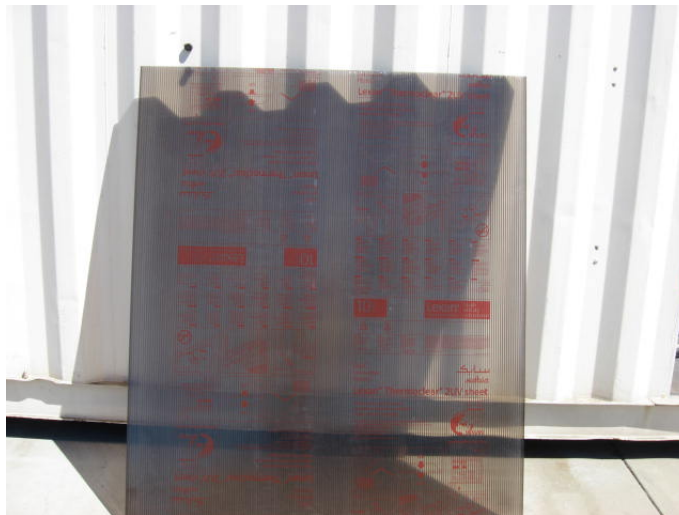
- 3) The Contractor is required to reference the Omnitrans warranty purchase order and warranty claim number when shipping warranty replacement products.
- 4) The Contractor is required to properly identify warranty returns or replacement products with a bill of lading.

7. PHOTOS OF ROOF PANELS

SHELTER ROOF PANELS



SINGLE PANEL



End of EXHIBIT "A" Scope of Work

ATTACHMENT A - REGULATORY REQUIREMENTS

RFQ-MKT13-65

BUS STOP SHELTER ROOF PANELS

Table of Contents

Complete copy of Regulatory Requirements
provided in online posting of agenda.

Contents

ADMINISTRATIVE CODE	2
DISCRIMINATION	3
WHISTLEBLOWER REQUIREMENTS	3
PUBLIC RECORDS ACT	3
ACCESS TO RECORDS.....	4
FEDERAL FUNDING, INCORPORATION OF FEDERAL TRANSIT ADMINISTRATION (FTA) TERMS, AND FEDERAL CHANGES.....	5
ENERGY CONSERVATION REQUIREMENTS	6
CIVIL RIGHTS REQUIREMENTS.....	6
NO GOVERNMENT OBLIGATION TO THIRD PARTIES	8
PROGRAM FRAUD AND FALSE OR FRAUDULENT STATEMENTS OR RELATED ACTS	8
SUSPENSION AND DEBARMENT	9
RECYCLED PRODUCTS	10
CLEAN WATER AND CLEAN AIR REQUIREMENTS	10
COMPLIANCE WITH FEDERAL LOBBYING POLICY	11
BUY AMERICA.....	11
CARGO PREFERENCE	12
FLY AMERICA.....	13
CONTRACT WORK HOURS AND SAFETY STANDARDS ACT	14
DISADVANTAGED BUSINESS ENTERPRISE (DBE) 49 CFR Part 26.....	15
ADA ACCESS.....	17
ALCOHOL AND DRUG-FREE WORKPLACE PROGRAM.....	19
TRANSIT EMPLOYEE PROTECTIVE ARRANGEMENTS	20
BONDING REQUIREMENTS	21
DAVIS-BACON AND COPELAND ANTI-KICKBACK ACTS	22
PRIVACY ACT - 5 U.S.C. 552.....	30
TERMINATION 49 U.S.C. Part 18 FTA Circular 4220.1F.....	31
SEISMIC SAFETY REQUIREMENTS 42 U.S.C. 7701 et seq. 49 CFR Part 41.....	33
BREACHES AND DISPUTE RESOLUTION 49 CFR Part 18 FTA Circular 4220.1E .	34

Yucaipa News-Mirror

Thursday, August 15, 2013

ITEM #E8



Attendance is down at YMRA — Len Tyler requests cooperation

Published: Thursday, August 15, 2013 11:05 PM PDT

RACHAEL GUSTUSON - Staff Reporter

The Yucaipa Mobile Home Residents Association meets the second Saturday of each month at the Yucaipa Womans Club - the Aug. 10 meeting had low attendance.

"We are down to 44 members," said Chairman Len Tyler who has been heading up the committee for the past 21 years. "To hire an attorney for a park who needs one, can cost a minimum of \$27,000 and no one park can raise that kind of money. All we can do is stick together," Tyler said membership and fundraisers are crucial to build up their legal fund.

"I'm working on another spaghetti dinner at the Kopper Kettle Kafe in October," said Tyler. "We need your help."

Tyler also talked about medical waste containers and said there will be an Emergency Preparedness event on Sept. 12 at 3 p.m. to 6 p.m. at the Community Center.

"We are going to need volunteers," he said. "We need vials, we're getting low."

Tyler said Rotary provided them with 10,000 stickers to help identify the contents.

Tyler also warned members about the importance of the rent control ordinance and its necessity to all mobile home residents.

He urged members to attend city council meetings and become familiar with the local government.

The city of Yucaipa Rent Stabilization Ordinance covers any mobile-home park space tenant on a month-to-month rental agreement. The ordinance does not apply to: (1) Newly constructed mobile-home spaces first held out for rent on or after Jan. 1, 1990; and (2) Any mobile-home park, which has signed and is in compliance with a mobile-home accord and agreement approved by resolution of the city council.

Yucaipa Councilman Dick Riddell is a regular at YMRA meetings. He spoke about his involvement with other organizations, Omnitrans and SANBAG.

"I'm still very active in the city — very, very busy," said Riddell. He said he has been on the Omnitrans board of directors for Public Transportation of San Bernardino County for 19 years (He is the longest standing member).

He is also the longest standing member of SANBAG at 17 years.

"I enjoy doing it and I'm able to do a lot for our city," said Riddell. "We are the only city to keep Dial-a-ride. I just enjoy serving people and public service."

Tyler ended the meeting early due to his poor health with another request for members to get involved with city council meetings and to know the rent control ordinance.

"Remember, we need help," he ended. "I can't continue. We need more active members."

For questions, contact YMRA at P.O. Box 1052, Yucaipa, CA 92399 or call 797-9732.



Motorcyclist collides into Omnigo bus

A motorcycle crashed into the back of an Omnigo bus on Aug. 27 when he sped through the intersection going north at Fifth Street at Yucaipa Boulevard. According to witnesses, the bus was almost through the intersection heading south on Yucaipa Boulevard when the motorcycle sped through the intersection trying to beat the yellow light and hit the tail-end of the bus. The motorcyclist was badly injured and transported for medical treatment.

Natalie Palmer/Rachael Gustuson/Kathy Shepard



The Press-Enterprise

TRANSIT: Governor's bill could avoid bus service cuts



/STAFF PHOTO

Passengers board a Omnitrans bus on Waterman Avenue near Ninth Street in San Bernardino in this photo from September 2012. A bill proposed by the governor could keep the agency from having to make a 40 percent cut in services, officials said.

BY IMRAN GHORI AND JIM MILLER

September 04, 2013; 06:26 PM

Bus transit agencies in Riverside and San Bernardino counties would be spared from making severe service cuts and layoffs under legislation that Gov. Jerry Brown announced Wednesday, Sept. 4, to avoid a cutoff of federal aid.

The legislation would exempt about 20,000 transit workers from the public-employee pension overhaul law that took effect Jan. 1. The U.S. Department of Labor had threatened to hold up millions of dollars in grant funding because of union objections to the law.

In a statement, Brown said the measure would preserve \$1.6 billion in federal grants for California transit agencies. The legislation also would set aside an additional \$26 million in state funds for any local transit agencies that lose federal funding.

Several transit agencies across the state, including the Riverside Transit Agency and Omnitrans, have begun preparing for service cuts they said would translate to reduced operating hours and longer waits for those riding the bus.

"This gives us hope that we can preserve our service for our growing numbers of customers," said Brad Weaver, spokesman for Riverside Transit Agency.

The agency faced a loss of \$31 million, more than a third of its combined \$79 million operating and capital budgets, if federal grants were withheld, he said.

Omnitrans could lose almost \$30 million, which would mean a 40 percent cut to service and the possible layoffs of 200 of its 650 employees, agency spokeswoman Wendy Williams said.

Both agencies had begun preparing contingency plans to make cuts and layoff employees if they lost funding from the Federal Transit Agency. They said they will continue drafting plans until the legislation is final.

At a Wednesday board meeting, Omnitrans scheduled public hearings for early October to discuss the possible service cuts. Williams said the hearings will be canceled if the issue is resolved before then.

"We'd certainly be delighted to have the impasse resolved," she said.

The Brown administration's announcement came several hours after the U.S. Department of Labor told the Sacramento Regional Transit District that it will lose millions of dollars in transit grants because the state law violated a 1964 federal labor law protecting transit workers' collective bargaining rights.

The Brown administration plans to go to court to overturn the Department of Labor decision.

Unions for mass-transit workers had argued that the California pension law was illegal because its terms should have been subject to the collective bargaining process.

The pension law raised retirement ages and rolled back pension formulas for public employees hired after Jan. 1, 2013. It also capped the amount of salary that can be used to calculate pensions.

In a statement Wednesday, the nation's largest transit workers union urged approval of the Brown-sponsored bill.

The Amalgamated Transit Union, whose local chapters represent Omnitrans and RTA employees, called the legislation "a measured approach to protect the rights of employees and to ensure that urgently needed transit funding to California continues to flow."

The amended measure is expected to clear the Legislature well before lawmakers adjourn for the year next week.

For months, Brown has criticized the prospect that the Obama administration would target the pension overhaul law crafted by union-friendly Democrats who control California government.

In a May 2013 letter to labor department officials, Brown compared the state's legislation to laws in Wisconsin, Indiana and other states that have sharply curtailed public employees' collective bargaining power.

September 5, 2013

PUBLIC PENSION DISPUTE

Feds to resume sending transit money

By Justin Pritchard
The Associated Press

LOS ANGELES » Under a carefully orchestrated deal, California would again receive billions of dollars of mass transit funds that the federal government was withholding amid a dispute over cuts to public employee pension benefits.

As a result, transporta-

tion systems across the state no longer face service cuts and the prospect of abandoning planned light rail, subway and other construction projects.

The deal, announced Wednesday by the state's top Democrats as part of new legislation, temporarily exempts workers at public transit agencies from a 2012 California law that required

public employees to contribute more to their retirement funds.

Unions objected in November, arguing that a 1964 federal law specifically protects public transit worker pensions against changes made outside of collective bargaining. The U.S. Department of Labor agreed, and refused to certify that California agencies were

complying with federal law. That effectively blocked the release of at least \$1.6 billion of U.S. Department of Transportation funds to California.

With dozens of mass transit projects affected from San Diego to the San Francisco Bay Area, and Democrats in control of the White House and California's Legislature and governorship,

it seemed likely the money would eventually flow again.

Federal and state officials negotiated for months, and the state's transit agencies lobbied hard. The solution Wednesday includes not just legislation, which still must be passed before the Legislature leaves at the end of next week, but also a legal challenge. The state and at least one transit agency — the

Sacramento Regional Transit District — plan to argue in a lawsuit against the Labor Department that California's pension reforms should apply to transit workers. If a judge sides with the Labor Department, the transit worker exemption would be permanent. Under Wednesday's legislation, it is scheduled to expire at the end of 2014.

"Given this contrast, I cannot help but be frustrated by your department's position that California's thoughtful pension reforms impermissibly failed to preserve bargaining rights within the meaning of the Urban Mass Transit Act of 1964," Brown wrote in May.

At the bottom of the letter, Brown handwrote, "This is very important for the people of California – both for jobs and pension reform!"

The Press-Enterprise

TRANSIT Legislature prevents aid cutoff

SEPTEMBER 11, 2013 BY [JIM MILLER](#)



*An Omnitrans bus picks up riders in downtown San Bernardino.
The agency had prepared a contingency plan with deep cuts.*

The Assembly gave final approval Wednesday to legislation that would prevent the cutoff of federal transit funding because of the state's 2012 pension overhaul.

Assembly Bill 1222, which took shape late last week, would exempt transit workers from the 2012 law. Meanwhile, the Brown administration will go to court to challenge federal labor officials' position that the roll-back of benefits for new hires violated transit workers' collective-bargaining rights.

The Riverside Transit Agency and Omnitrans in San Bernardino stood to lose millions from the standoff and had begun to make plans for cuts.

"Omnitrans has \$20 million of capital grants, including \$2.3 million for transportation in the downtown area, as well as \$12 million for a planned rail extension," Assemblywoman Cheryl Brown, D-San Bernardino, said.

, Brown handwrote, "This is very important for the people of California – both for jobs and pension reform!"

MASS TRANSIT

Friday, September 13, 2013

Mass Transit Magazine

Top 40 Under 40 2013: Anna Rahtz

CREATED: SEPTEMBER 13, 2013

Omnitrans Planning Project Manager Anna Rahtz.



Anna Rahtz has accomplished a lot in her career so far including working in partnership with the county transportation commission, San Bernardino Associated Governments (SANBAG), on the design of the new San Bernardino Transit Center project. She successfully obtained more than \$8 million in needed funding for the project.

She has also worked with Parsons Transportation Group and Omnitrans' member cities to produce the Omnitrans Transit Design Guidelines, which has earned the Focused Issue Planning Award from the American Planning Association — Inland Empire Section. The Omnitrans Transit Design Guidelines document is a lessons-learned guide based on Omnitrans' experience with developing its first bus rapid transit (BRT) corridor. It answers the questions cities have when trying to plan their future corridors or when building traditional bus stops.

Rahtz is currently working with consultants and five cities on an alternatives analysis for the West Valley Connector BRT corridor project. And she also obtained a grant for the Planning Internship program, which currently is employing two college interns.

She recently passed the American Institute of Certified Planners exam and was selected by Omnitrans as employee of the quarter for the period October - December 2012.

Rahtz is an enthusiastic transit rider and bicyclist. In her spare time, she serves as a volunteer member of the city of Redlands Traffic and Parking Commission.

"As a summer job during college, I worked in the pass sales office for SORTA (Metro) in Cincinnati. I started memorizing the schedules and I loved being able to help people navigate to where they needed to go on public transit.

"To get to work that summer I also found it was affordable and convenient to take an express bus downtown; I could relax and skip the parking hassle. This gave me a first impression of how efficient public transit could be and I was hooked."

"Two years later when I started in the Masters in community planning program at the University of Cincinnati I started riding the bus to work and school and I decided I wanted to go into transit planning. I became driven to find ways to provide high-quality, efficient public transit options for everyone. Six years later I'm as dedicated to that mission as ever.

"Someday I hope to see public transit fully integrated into American communities and widely accepted as a choice mode of transportation. I would like to see public transit agencies with stable funding, providing high-frequency express routes and strong local routes that compete with the automobile.

"I would like to see patterns of land development that are walkable and oriented toward transit access. These trends are already emerging in communities across the nation and I'm excited to see how things change over the coming years.

"I'm very fortunate to be working with communities in Southern California that started planning a decade ago to develop a system-wide bus rapid transit network with transit-oriented development at the stations. I'm glad to be working at such a forward-thinking agency as Omnitrans that is a leader in this industry."

A Better Inland Empire

Saturday, September 14, 2013



Who is responsible for the Omnitrans sbX fiscal mess-up?



An April audit by the Federal Transportation Administration potentially shows that significant portions of Omnitrans' \$191 million sbX bus rapid transit project may not be making it to the E Street corridor as it should. The audit which was made public last week accuses Omnitrans of violating more than 20 federal guidelines, more specifically, how construction contracts were awarded and managed. According to the press, violations

included a contract worth \$15 million without going through the bidding process. Another mess-up includes a 15% price hike on all change orders--the feds prohibit cost-plus percentage.

While Omnitrans and its new leadership are defending a few of the violations brought up, the agency has acknowledged responsibility of most of the accusations including the cost-plus percentage count. We predict that under the leadership of newly appointed Procurement Director Jennifer Sims, the transit agency will be able to resolve this matter by cooperating with the federal government. At this point, the agency has not reported whether or not all of this fiscal madness fell under the fault of former Omnitrans CEO Milo Victoria or whether the violations were intentional or done in error. What we do know is that Victoria resigned earlier this summer abruptly, yet at the same time, this is the first time Omnitrans has ever taken on a capital project of this scale.

What the public needs to find out is who exactly is responsible for the violations so that such a fiscal disgrace does not repeat itself for the proposed long term sbX extensions toward the west. Omnitrans has promised the feds to come up with a report by the start of next week and work is underway to update fiscal procedures, but more needs to be done. Officials also need to investigate the matter to determine if any crimes were committed with these transit funds. As mentioned, anybody found guilty of defrauding or embezzling our public funds should be put

away in jail with mandatory sentences.

Regarding the sbX project itself, this project is certainly no boondoggle; it will be a fast north/south transit alternative to slow local bus rides in the area. The limited stop BRT line promises to speed up public bus transit times for a transportation corridor linked by high-volume activity centers: Cal State San Bernardino, downtown San Bernardino, the Loma Linda University area, and points in between. sbX will connect to a future Metrolink station in the downtown area. The line will mimic LA Metro's Orange Line through downtown and LA Metro Rapid in other areas--both are productive means to move people. Currently, one of Omnitrans' busiest local bus routes--Route 2--serves the corridor and current end-to-end trip times can last in excess of an hour. If officials can clean up the line's fiscal mess, it will be okay.

We want sbX done right!

ITEM # F1

DATE: October 2, 2013

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

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

SUBJECT: CEO/GENERAL MANAGER'S REPORT

The final Operations & Management Plan for the sbX was submitted to the Federal Transit Administration! This document provides guidance for the Start Up & Commissioning Process of the sbX and will be updated, as necessary, throughout the process.

A FTA Transit & Paratransit Procurement Overview held at Omnitrans, Monday, September 16, was a success. The instructor engaged attendees in robust discussions centered around balancing departmental requirements and the fiduciary responsibility of the public acquisition process. He offered practical examples of how transit agencies are applying Best Practices and FTA Circular 4220.1F, including an exercise designed to highlight the benefits of performance based contracting over traditional scopes of work.

The adoption of the revisions to the Procurement Policy 4000, Sealed Bids, and Procurement Procedure 4000-1, Formal Procurement Procedures (Item #E5), and completion of the amendment to the contract with Griffith/Comet Joint Venture regarding the markup of Time & Material Change Orders, will close the remaining two items of the Procurement System Review and notification will be sent to the Federal Transit Administration.

MONTHLY STATISTICS

Ridership for August 2013 was 1,369,934 compared to 1,453,602 in August 2012. This is a percent 5.8 decrease from August of last year. Year-to-date ridership through August 2013 was 2,574,176, which is a decrease of 2.86 percent from last year-to-date. Fixed route ridership decreased by 76,579 passengers year-to-date. Ridership on Access increased by 976 passengers, and OmniLink decreased by 59 passengers. OmniGo ridership was 23,560 year-to-date, which is up 6.6 percent.

Year-to-date pass outlet sales through August 2013 decreased by 11,229 units with 7,761 sold compared to 18,990 last year. This represents a decrease of 59.1 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, increased 7.5 percent through August (\$791,812.80 vs. \$736,729.70 last year, an increase of \$55,083.10).

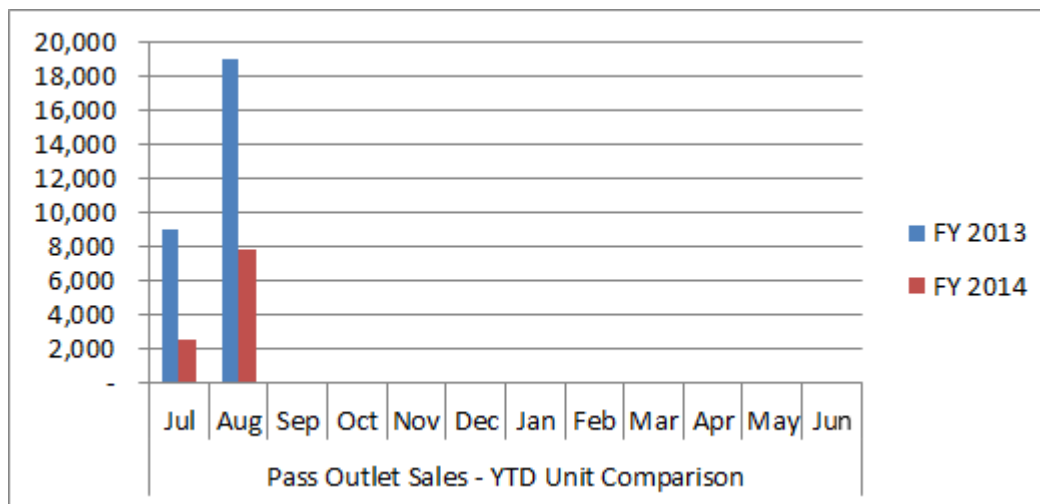
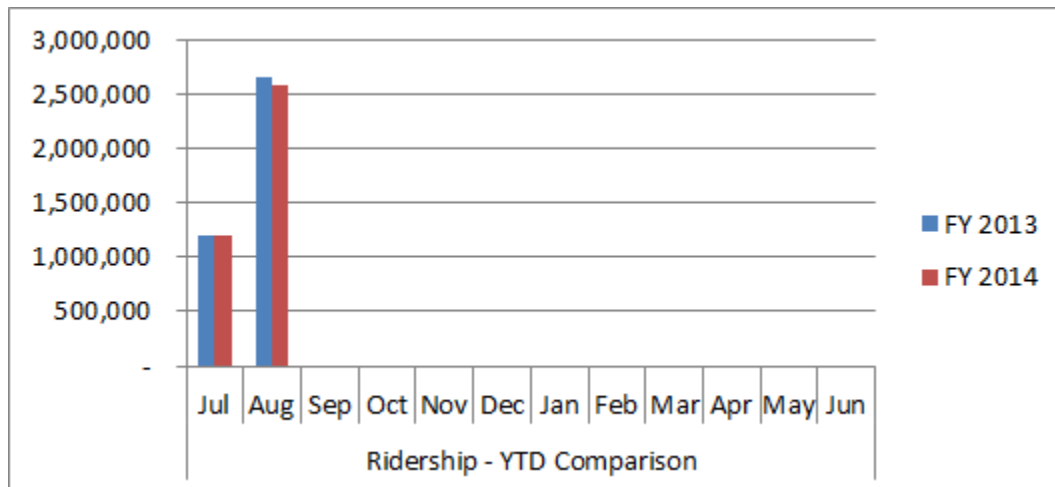
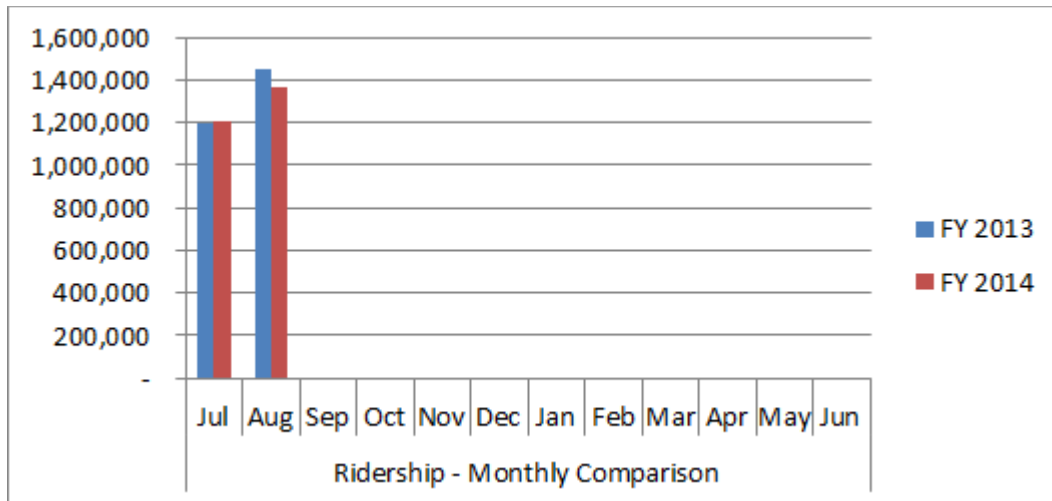
Year-to-date fixed route revenue through August 2013 was \$2,278,162 compared to \$2,110,849 last year, which is an increase of 7.93 percent.

On-time performance for August 2013 was 85.43 percent.

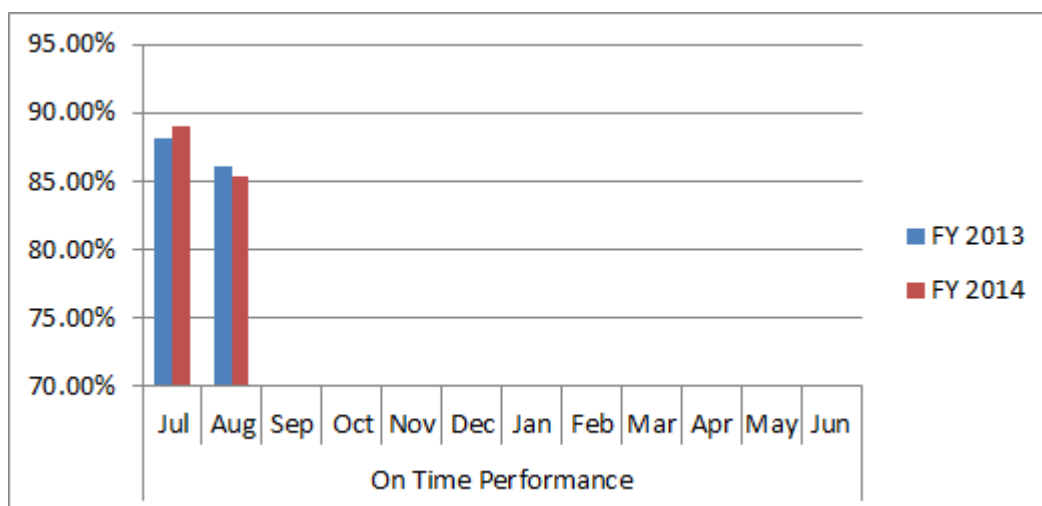
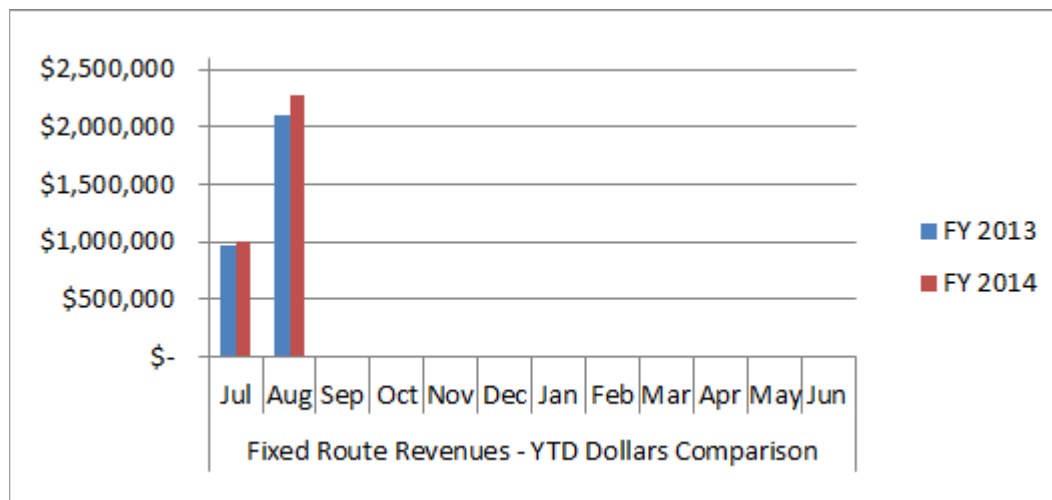
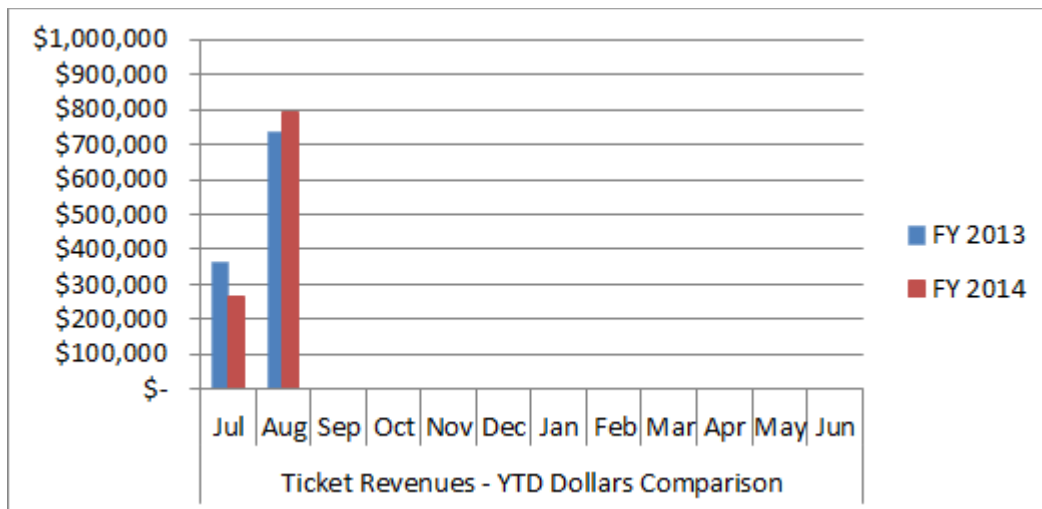
Omnitrans participated in four outreach events in August – Cajon High School Registration in San Bernardino, August 1; National Night Out in Rancho Cucamonga, August 6; Chino Hills Concert in the Park, August 7; and ARMC “Pink Glove” Breast Cancer Awareness Project Video in Colton, August 14.

PSG:CA

CEO/General Manager Report - August 2014



CEO/General Manager Report - August 2014



ITEM # F2

DATE: October 2, 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 ITS14-02
COPIER LEASE AND MAINTENANCE**

FORM MOTION

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.

BACKGROUND

On July 10, 2013, Omnitrans' Board of Directors approved release of Invitation for Bids IFB-ITS14-02 for the provision of Copier Lease and Maintenance to replace the Agency's existing copier equipment, which have reached the end of their useful life. Staff released the IFB, notices were published in two local newspapers of general circulation and posted on Omnitrans' online bidding system which was distributed to seventeen registered firms. Additional outreach included notifications to another three hundred and seventy-four firms.

Eight bids were received electronically by the deadline date of August 15, 2013. Two bids were found to be responsive. Listed below are the bid prices:

Company	Price*
SoCal Office Technologies	\$154,059.16
Reliable Office Solutions	\$243,713.40

**Price includes California Sales Tax at 8.25%*

Award recommendation is being made to the lowest responsive and responsible bidder. The Independent Cost Estimate of \$223,000 was based on previous purchases. Price is deemed fair

and reasonable as the bid is \$68,941 less than the Independent Cost Estimate and \$89,654.24 less than the next lowest responsive bidder.

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

FUNDING SOURCE

The cost associated with this procurement is budgeted in the Information Technology Department's Capital budget as follows:

FUNDING	GRANT #	FISCAL YEAR	PROJECT NAME	AMOUNT
FTA	CA-90-Z112	2014	Copiers	\$ 25,455.51
FTA	TBD	2015	Copiers	\$ 25,455.50
FTA	TBD	2016	Copiers	\$ 25,455.50
FTA	TBD	2017	Copiers	\$ 25,455.50
FTA	TBD	2018	Copiers	\$ 25,455.50
Subtotal				\$127,277.51
STA	TBD	2014	Copiers	\$ 6,363.86
STA	TBD	2015	Copiers	\$ 6,363.88
STA	TBD	2016	Copiers	\$ 6,363.88
STA	TBD	2017	Copiers	\$ 6,363.88
STA	TBD	2018	Copiers	\$ 6,363.88
Subtotal				\$ 31,819.38
Total				\$159,096.89

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

CONCLUSION

Approval of this contract will allow Omnitrans to maintain a fleet of reprographic equipment which enhances administrative functionality.

PSG:JMS:CV



CONTRACT AGREEMENT

between

SoCal Office Technologies, Inc.
5700 Warland Drive
Cypress, CA 90630

(hereinafter "CONTRACTOR")

Telephone: (562) 977-7464
Email: dmacphee@socal-xerox.com

And

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

CONTRACT DOCUMENTS

CONTRACT NO.
ITS14-02

Copier Lease & Maintenance

Contract Amount: \$154,059.16

Omnitrans Project Manager:

Name: Max Shen
Title: Web Designer
Telephone: (909) 379-7264
Email: max.shen@omnitrans.org

Contract Administrator:

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



TABLE OF CONTENTS

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

21.	EQUAL OPPORTUNITY.....	12
23.	NOTIFICATION OF EMPLOYMENT OF OMNITRANS BOARD MEMBERS/ALTERNATES AND EMPLOYEES	13
24.	DISQUALIFYING POLITICAL CONTRIBUTIONS	13
25.	COMPLIANCE WITH LAW	14
26.	COMPLIANCE WITH LOBBYING POLICIES	14
27.	PUBLIC RECORDS ACT.....	14
28.	WAIVER/INVALIDITY	15
29.	FORCE MAJEURE.....	15
30.	CONFIDENTIALITY	15
31.	CONTRACTOR’S INTERACTION WITH THE MEDIA AND THE PUBLIC	15
32.	GOVERNING LAW	16
33.	MODIFICATIONS TO AGREEMENT	16
34.	PRECEDENCE	16
35.	ENTIRE AGREEMENT	16

EXHIBIT A – SCOPE OF WORK

EXHIBIT D – REGULATORY REQUIREMENTS

This Agreement is made and entered into as of this _____ day of _____, 2013 by and between Omnitrans (hereinafter referred to as "OMNITRANS") and _____ (hereinafter referred to as "CONTRACTOR").

RECITALS

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

This Agreement shall commence on _____, and shall continue in full force and effect through _____ (base period), unless earlier terminated or extended as provided in this Agreement.

The term of this Agreement shall be from the date of execution of this Agreement and continue in effect through _____, unless terminated as specified in Paragraphs 8 and 9. All applicable indemnification provisions in this Agreement shall remain in effect following the termination of this Agreement.

Omnitrans' election to extend the Agreement beyond the Initial Term shall not diminish its right to terminate the Agreement for Omnitrans' convenience or CONTRACTORS default as provided elsewhere in this Agreement.

3. COMPENSATION

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

Section	Description	Unit of Measure	Quantity	SoCal Office
Copier Lease	Type 1 – WC5890APT	5 year lease	1	\$12,845.40
Copier Lease	Type 2 – WC5855APT	5 year lease	2	\$16,591.20
Copier Lease	Type 3 – WC5335PT	5 year lease	4	\$14,671.20
Copier Lease	Type 4 – WC5335PT	5 year lease	1	\$4,315.80
Copier Lease	Type 5 – W7835PT2	5 year lease	2	\$15,108.00
Copier Lease	Type 6 – W7835PT2	5 year lease	1	\$7,554.00
			Subtotal	\$71,085.60
Copier Maintenance*	Maintenance 11 Copiers	5 years not to exceed	1	\$77,109.00
Sales Tax	CA Sales Tax 8.25%		1	\$5,864.56
			Total	<u>\$154,059.16</u>

*Copier maintenance rates: \$0.0049 per copy for black and white and \$0.049 for color

OMNITRANS' maximum cumulative payment obligation under this Agreement shall not exceed One Hundred Fifty-Four Thousand Four Hundred Fifty-Nine Dollars and sixteen cents (\$154,059.16), 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

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

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

- 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: Christine Van Matre, Contract
Administrator

To CONTRACTOR:

SoCal Office Technologies, Inc.
5700 Warland Drive
Cypress, CA 90630
Attn: Doug MacPhee, Director of Sales –
Public Sector
dmacphee@socal-xerox.com
(562)977-7464

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: Max Shen.

- 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:

Doug MacPhee, Director of Sales – Public Sector

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

NA

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.*

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

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.

Price Adjustments:

- A. Any change in the contract that causes an increase or decrease in cost to Omnitrans, or the time required for the performance of the contract, must be approved as prescribed herein.
- B. An equitable adjustment in the compensation and schedule will be made upon an approved Change Order.
- C. Contractor shall be liable for all costs resulting from, or for satisfactorily correcting, any and all unauthorized specification changes not properly ordered by written modification to the contract.
- D. Except as otherwise expressly provided in the Contract, when costs are a factor in any determination of a contract price adjustment, such costs shall be in accordance with the applicable cost principles of Subpart 31.2 of the Federal Acquisition Regulations (*FAR*) in effect at the onset of the Contract.

16. RIGHTS IN TECHNICAL DATA

- A. No material or technical data prepared by 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, including Exhibit A, Scope of Work and Exhibit D, Regulatory Requirements, (2) provisions of IFB No. IFB-ITS14-02 and (3) CONTRACTOR's bid dated August 15, 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

SoCal Office Technologies

P. Scott Graham
Interim CEO/General Manager

Doug MacPhee
Director of Sales, Public Sector

Date

Date

Federal Tax I.D. No. 30-0533923

DP____

CM____

**EXHIBIT “A” - SCOPE OF WORK
CONTRACT ITS14-02
COPIER LEASE AND MAINTENANCE**

(Scope of Work has been updated to include revisions per Addendum No. 1)

1. INTRODUCTION AND PROJECT OVERVIEW

A. Introduction

- 1) Omnitrans is requesting bids from qualified firms to provide, install, and perform maintenance and repair services for multifunction printers (Lease and Maintenance Service) for a five-year period.
- 2) Omnitrans seeks bids to meet its requirements.
- 3) Omnitrans will not sign a third-party lease. The agreement will consist of the Contract terms and conditions as stated in Exhibit E, the Sample Contract, and will also include the Scope of Work in Exhibit A and the FTA Regulatory Requirements in Exhibit D.

2. STATEMENT OF WORK/PERFORMANCE SPECIFICATIONS

A. General Specifications

- 1) Background: Omnitrans is requesting bids for replacement of our current fleet of networked multifunction printers on a lease basis. Additionally, this bid is for full maintenance services of the equipment, including supplies (excluding paper and staples), toner, and drum replacement, training, peripheral equipment and software upgrades.
- 2) Objective: The objective of this IFB is to replace Omnitrans' current copier equipment with like equipment.
- 3) Purpose: To provide multifunction printers on a lease basis and provide maintenance for printers, to be furnished on contract throughout the Agency.
- 4) Contract Period: Omnitrans intends to award a contract to supply equipment, supplies and maintenance for a five-year base period.
- 5) Copy Volumes: Omnitrans is currently making approximately 1,974,000 copies per year. However, this is an historical figure and may not represent future usage and is not considered a guaranteed volume. Volumes may decrease or increase with curriculum requirements and changes.
- 6) Delivery Time: Contractor must make delivery for all products within thirty (30) days from receipt of order. Delivery in excess of thirty days does not meet Omnitrans' requirements and will not be considered.

- 7) **Set-Up:** The Contractor must deliver and set-up multifunction printers on site at the location specified by Omnitrans.
- 8) **Supplies:** The Contractor will make available with the order for equipment, a start-up kit of supplies, so when equipment is delivered the multifunction printers may be set up immediately.
- 9) **Training:** The Contractor will provide training as required.
- 10) Equipment shall be new and the most current models in production; no used or refurbished parts
- 11) **Product Obsolescence**
 - a) All equipment replaced under this IFB shall be the most current production units, 'new', with an available supply of replacement parts guaranteed through the duration of the contract.
 - b) If an awarded model is discontinued during the term of the contract, the Contractor must provide Omnitrans with a comparable substitute at the prices quoted for the original model and its accessories.
 - c) Omnitrans reserves the right to accept the substitute based on its determination of comparability.
- 12) **Loss/Damage.** The Contractor shall be responsible for the risk of loss and/or damage to equipment and accessories leased under this IFB, except in the case of negligence, misuse or abuse on the part of Omnitrans personnel.
- 13) **Training:** The following training shall be conducted and will include but not be limited to:
 - a. General training for copier feature and operation in each department that equipment is installed.
 - b. Advanced operations and troubleshooting training for applicable "key operators."
 - c. Online web-based training services such as video clips, quick reference guides, manuals, and question and answer sections are highly desirable.
 - d. Four (4) refresher training sessions to be scheduled by Omnitrans on an as-needed basis per each year of the awarded contract.
- 14) **Cost** - The total cost for each copier shall be submitted at Omnitrans' online bidding system at www.omnitrans.org. Include a specification sheet for each model as well.

- 15) **Existing Equipment:** Replacement multifunction printers must meet the minimum specifications of Omnitrans current equipment. Omnitrans current equipment is as follows:

Type #	Mfg	Model #	Department	Location	Features*	Print Speed	Monthly Volume
1	Konica Minolta	Bizhub Pro 920	Administration	East Valley (E.V) Copy Room	Auto Feed/Stapling 100-sheet minimum; Cover/Sheet Insertion	92 PPM	75,100
2	Konica Minolta	Bizhub 500	Maintenance	E.V. Maintenance Admin	Stapling FAX	50 PPM	10,468
2	Konica Minolta	Bizhub 500	Finance	E.V. Finance	Stapling FAX	50 PPM	12,271
3	Konica Minolta	Bizhub 350	Human Resources	E.V. Human Resources	FAX	35 PPM	11,579
4	Konica Minolta	Bizhub 350	Procurement	E.V. Procurement	Stapling FAX	35 PPM	4,737
3	Konica Minolta	Bizhub 350	Planning	E.V. Planning	FAX	35 PPM	2,901
3	Konica Minolta	Bizhub 350	Maintenance	West Valley (W.V) Maintenance	FAX	35 PPM	4,210
3	Konica Minolta	Bizhub 350	Operations	W.V. Operations	FAX	35 PPM	4,735
5	Konica Minolta	Bizhub C353	Operations	E.V. Operations Admin	Stapling FAX	35 PPM	15,087 B&W 4,653 Color
5	Konica Minolta	Bizhub C353	Marketing	E.V. Marketing	Stapling FAX	35 PPM	2,249 B&W 3,104 Color
6	Konica Minolta	Bizhub C360	IPMO	IPMO STE 202	Stapling FAX	36 PPM	10,359 B&W 3,101 Color

* Features not stated in Subsection 5, Equipment Standards, herein

- 16) The Contractor shall be responsible for removing data from multifunction printer hard drives at end-of-life or end-of-lease.

3. MULTIFUNCTION PRINTERS MAINTENANCE

- A. Service calls: Tools, equipment and skill used in the accomplishment of the needed service shall meet the manufacturer's specifications. The service representative shall have the training and experience level to perform prompt, efficient and accurate service on each type and model of equipment for which the Contractor is responsible. Service calls are not

limited and will be taken during normal business hours between Monday through Friday, during daytime operating hours 8:00 am to 5:00 pm.

- B. Preventative Maintenance: Contractor shall provide all material, equipment, parts, and labor necessary to perform scheduled preventative maintenance and on demand repair services as needed.
- C. Omnitrans Locations:
East Valley (E.V), 1700 W. 5th Street, San Bernardino, CA 92411
West Valley (W.V), 4748 Arrow Highway, Montclair, CA 91763
IPMO Office, 201 North E Street, #202, San Bernardino, CA 92401
- D. The Contractor shall provide maintenance and upgrades to all units on the equipment list. Maintenance shall include all parts including drums, labor and travel costs for unlimited onsite service.
- E. All multifunction printers within the Omnitrans facilities are currently intra-networked within the agency. The Contractor shall trouble shoot and resolve, with the help of Omnitrans' IT personnel, problems or situations pertaining to the networking of the multifunction printers or any of the peripheral equipment or software.
- F. Check in for Service Calls: Contractor shall check-in and check-out with the IT department when servicing equipment.
- G. Technician Certification: The Contractor shall provide a Technician Certified on all of proposed multifunction printers.
- H. Scheduling: The Contractor shall provide a listing of the designated Technician's Customer Commitment/Priority Schedule.
- I. Conduct of Technicians: When the contractor is on Omnitrans property they shall follow all Omnitrans rules and regulations.
- J. Warranty: The Contractor must provide warranty information for each model. Warranty shall include replacement of all parts including Drums under the service agreement and to include replacement of equipment if necessary.
- K. Other Services: The Contractor will provide and maintain a "History Record" for each machine. The record shall contain the following information: Model Number, Serial Number, Date and Description of each service call, date of inspection and initials of the Vendor's Service Technician. An inspection acknowledgement list will be furnished to Omnitrans for each visit, to be left with the using Department.
- L. Billing of Maintenance: Omnitrans will only pay maintenance and per copy charges in arrears.

- M. Exclusions: Any repairs, damage or loss caused by other than normal and reasonable use, that are not to be covered by this contract. Estimates for work required for the above reasons will be submitted in advance by the Contractor to the Information Technology Department prior to work being accomplished. Authorization for the work described above will be a separate Purchase Order Number issued by the Procurement Department.
- N. Additions/Deletions to Maintenance: Omnitrans reserves the right to add/delete equipment to/from the contract. The Contractor will provide additions/deletions to maintenance on a monthly basis, annually pro-rated.
- O. Parts: All parts will meet manufacturer's specifications. No used parts will be installed. Original equipment manufacturer (OEM) parts only.
- P. Response Time: Under normal circumstances, a response time shall not be longer than eight (8) business hours. Omnitrans expects service calls to be performed within 2 to 4 hours on the average. (For example: If a service call is placed in the A.M., Omnitrans will expect to see a service technician in the P.M. and the machine to be operational within 2 to 4 hours from the time the call was placed.
- Q. Any variance in excess of eight (8) hours will be coordinated at the time of the service request and a written report provided to Information Technology Services as to why the variance occurred.
- R. Loaner Machines:
- 1) If contract machine remains inoperable for more than forty-eight (48) hours, a loaner machine will be provided within eight (8) additional business hours until the inoperable equipment is repaired and returned to Omnitrans.
 - 2) If a loaner is not furnished and the equipment remains inoperable for more than forty-eight (48) hours, the Contractor will issue an invoice credit equal to that month's charges (lease, copies, etc.) for the inoperable equipment.
- S. Service level: Omnitrans shall have the right to terminate the lease agreement or demand a new replacement with similar specifications (or better) if the equipment
- 1) Has been deemed to be a problem by the Information Technology Department due to five (5) service calls within a month.
 - 2) If there are more than three (3) service calls within a week to repair the same recurring malfunction or problem.
 - 3) Terminate the lease agreement for cause as stated above with no early termination penalty charges or other financial obligations to the contractor and the lessor.

- T. The Information Technology Department Project Manager may, at his discretion, terminate the lease agreement if the service response times are not fulfilled by the contractor and if the equipment is deemed deficient and not performing according to specifications.

4. BACKGROUND AND EXPERIENCE

Contractor's bid shall provide documentation of the firm's background and specific expertise in providing sales, service and technical support for Photocopy Equipment.

A. Minimum Qualification of Bidders

All bidders must meet the following criteria:

- 1) Have at least three (3) years of experience in providing sales, service and technical support for multifunction printer Equipment;
- 2) Provide at least five (5) references for which like services have been performed within the past five (5) years;
- 3) Have no unsatisfactory record of performance with any public agency; and
- 4) Have the administrative and fiscal capability to provide and manage the proposed services.

5. EQUIPMENT STANDARDS

A. Functionality

- 1) Document feeders should handle at least 80 originals.
- 2) Multiple (preferably four) paper sources (not including bypass tray) for multiple product selections
- 3) User-adjustable trays to hold minimum of 500 sheets and support paper sizes up to 11"x17"
- 4) Should support paper weights up to 110 # card stock or 90 # index
- 5) All devices shall have an interrupt mode to accommodate walkup users
- 6) Job assembly function to scan a single copy job and make multiple sets
- 7) Minimum 512MB printer memory and 120 GB Hard Disk Drive
- 8) FAX function which is compatible with public telephone line

B. Network Printing

- 1) Integrated network interface to provide direct network connection
- 2) Network interface must simultaneously support multiple protocols
- 3) Support Printer Command Language (PCL), PostScript and XML Paper Specification (XPS) printing

- 4) Entire job queue to be accessible via the walkup user interface or from the user's PC
- 5) Product to have a minimum of 600 x 600 DPI printing and copying at rated speed.
- 6) Product to provide user with a menu on their computer to enable them to electronically select copying features and attributes.

C. Computer Capabilities

- 1) Supporting Software
 - a) Drivers for Windows XP Professional (x32, x64), Windows 7 (x32, x64), Window Server 2008 Standard/Enterprise (x32, x64), Window Server 2008 Standard/Enterprise R2 operating systems.
 - b) Administrator software to assist with the network installation
- 2) Network Support
 - a) Local analyst support to assist in pre-sales network recommendations for proposed solutions and post sale DPS network compliance issues.
 - b) Should provide a Hotline/Help Desk, staffed during all Omnitrans operation hours.
 - c) A network assurance checklist to be completed with the Omnitrans' network administrator and the company analyst before network unit would be installed.
- 3) Document Management
 - a) Scan to Email
 - b) Scan to PDF
 - c) Scan to imaging/document management system
- 4) Print Tracking Software
 - a) Connected digital equipment to have the ability to monitor the use of networked printers and digital copiers.
 - b) Reporting tool to track each usage depending on the site's specific requirements.

D. Records

- 1) Service Reports. Bids shall also include provisions for monthly service reports to be provided to the Procurement Department. Reports should include, at a minimum, the following information on each machine:
 - a) Usage volumes - monthly, average six month, and average twelve month

- b) Total downtime for each month
 - c) Actual response time for each service call
 - d) Complete service call record for the last six service calls.
 - e) Full service records and reports should also be available upon request to show the complete history of each machine. This will help document and troubleshoot chronic issues.
- 2) Meter Readings.
- a) Contractor shall obtain monthly meter readings using on-site visits by an authorized representative.
 - b) Contractor shall obtain readings on all machines at each site at one time during the month, using the same reporting method (readings which can be accessed electronically by the Contractor exempt from this provision) for all contract equipment.
 - c) Contractor shall create a back-up plan to ensure that meter readings are obtained on every machine each month at each location.
 - d) Invoicing. Invoices must be based on actual meter readings, not estimated volumes.

6. OMNITRANS' RESPONSIBILITIES

Omnitrans is responsible for the following services:

- A. Installing FAX line, Ethernet Network cable and Electrical power at each installation.
- B. Installing printer drivers on all the Omnitrans' Windows print servers, laptops, desktops and other mobile devices.

End of EXHIBIT "A" Scope of Work

ATTACHMENT D - REGULATORY REQUIREMENT
ITS14-02, Copier Lease and Maintenance
Table of Contents

Complete copy of Regulatory Requirements
provided in online posting of agenda.

Contents

ADMINISTRATIVE CODE	2
DISCRIMINATION	3
WHISTLEBLOWER REQUIREMENTS	3
PUBLIC RECORDS ACT	3
ACCESS TO RECORDS.....	4
FEDERAL FUNDING, INCORPORATION OF FEDERAL TRANSIT ADMINISTRATION (FTA) TERMS, AND FEDERAL CHANGES.....	5
ENERGY CONSERVATION REQUIREMENTS	6
CIVIL RIGHTS REQUIREMENTS.....	6
NO GOVERNMENT OBLIGATION TO THIRD PARTIES	8
PROGRAM FRAUD AND FALSE OR FRAUDULENT STATEMENTS OR RELATED ACTS	8
SUSPENSION AND DEBARMENT.....	9
RECYCLED PRODUCTS	10
CLEAN WATER AND CLEAN AIR REQUIREMENTS	10
COMPLIANCE WITH FEDERAL LOBBYING POLICY	11
BUY AMERICA.....	11
CARGO PREFERENCE	12
FLY AMERICA.....	13
CONTRACT WORK HOURS AND SAFETY STANDARDS ACT	14
DISADVANTAGED BUSINESS ENTERPRISE (DBE) 49 CFR Part 26.....	15
ADA ACCESS.....	17
ALCOHOL AND DRUG-FREE WORKPLACE PROGRAM.....	19
TRANSIT EMPLOYEE PROTECTIVE ARRANGEMENTS.....	20
BONDING REQUIREMENTS	21
DAVIS-BACON AND COPELAND ANTI-KICKBACK ACTS	22
PRIVACY ACT - 5 U.S.C. 552.....	30
TERMINATION 49 U.S.C. Part 18 FTA Circular 4220.1F.....	31
SEISMIC SAFETY REQUIREMENTS 42 U.S.C. 7701 et seq. 49 CFR Part 41	33
BREACHES AND DISPUTE RESOLUTION 49 CFR Part 18 FTA Circular 4220.1F..	34

ITEM # F3

DATE: October 2, 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 MNT14-04, STANDBY GENERATOR
AND AUTOMATIC TRANSFER SWITCH (ATS) SERVICE**

FORM MOTION

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.

BACKGROUND

Omnitrans requires maintenance to the Agency's standby generators and ATS, and related parts and repairs on an as-needed basis at Omnitrans' East Valley, West Valley and "I" Street facilities.

On June 5, 2013, Omnitrans' Board of Directors authorized the release of Invitation for Bids IFB-MNT14-04 for the provision of Standby Generator and Automatic Transfer Switch (ATS) Service and parts and repairs on an as-needed basis. Staff released the IFB, notices were published in two local newspapers of general circulation and posted on Omnitrans' online bidding system, which was distributed to six registered firms. Additional outreach included notifications to another five hundred firms.

Three bids were received electronically on August 20, 2013. One bidder withdrew his bid and two bids were deemed responsive.

Listed below are the bid prices for:

Company	Price*
Johnson Power Systems	\$87,795.00
Power Plus	\$102,249.37

**Pricing is for maintenance services only*

In addition to maintenance services, contract includes \$15,000 for incidental repairs.

Award is being made to the lowest responsive and responsible bidder. The Independent Cost Estimate of \$95,000 was based on previous purchases. Price is deemed fair and reasonable as the bid is within ten percent of the Independent Cost Estimate and \$14,454 less than the next lowest bidder.

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

FUNDING SOURCE

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

Department 1200
Expenditure Code 505060

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

CONCLUSION

Approving award of this contract will ensure optimal operation of Omnitrans' emergency power systems.

PSG:JMS:CV



CONTRACT AGREEMENT

between

Johnson Power Systems
PO Box 351
Riverside CA 92502

(hereinafter "CONTRACTOR")

Telephone: 909-683-5960 ext. 2307
Email: ryder_mitch@johnson-power.com

And

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

CONTRACT DOCUMENTS

**CONTRACT NO.
MNT14-04**

**Standby Generator and Automatic
Transfer Switch (ATS) Service**

Contract Amount: \$102,795

Omnitrans Project Manager:

Name: Mark Montgomery
Title: Facilities Manager
Telephone: (909) 379-7175
Email: mark.montgomery@omnitrans.org

Contract Administrator:

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



TABLE OF CONTENTS

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

21.	EQUAL OPPORTUNITY.....	13
22.	STANDARD OF PERFORMANCE	13
23.	NOTIFICATION OF EMPLOYMENT OF OMNITRANS BOARD MEMBERS/ALTERNATES AND EMPLOYEES	13
24.	DISQUALIFYING POLITICAL CONTRIBUTIONS	14
25.	COMPLIANCE WITH LAW	14
26.	COMPLIANCE WITH LOBBYING POLICIES.....	14
27.	PUBLIC RECORDS ACT.....	14
28.	WAIVER/INVALIDITY	15
29.	FORCE MAJEURE.....	15
30.	CONFIDENTIALITY	15
31.	CONTRACTOR'S INTERACTION WITH THE MEDIA AND THE PUBLIC	16
32.	GOVERNING LAW	16
33.	MODIFICATIONS TO AGREEMENT	16
34.	PRECEDENCE	16
35.	ENTIRE AGREEMENT.....	17

EXHIBIT A – SCOPE OF WORK

EXHIBIT D – REGULATORY REQUIREMENTS

This Agreement is made and entered into as of this _____ day of _____, 2013 by and between Omnitrans (hereinafter referred to as "OMNITRANS") and Johnson Power Systems (hereinafter referred to as "CONTRACTOR").

RECITALS

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

This Agreement shall commence on _____, and shall continue in full force and effect through _____ (base period), unless earlier terminated or extended as provided in this Agreement.

The term of this Agreement shall be from the date of execution of this Agreement and continue in effect through _____, unless terminated as specified in Paragraphs 8 and 9. 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.

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 _____ through _____, which period encompasses the Initial Term and Option Years.

3. COMPENSATION

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

*Pricing breakdown is as follows:

Year	Maintenance	Parts and Repair (estimated)
Base Year 1	\$12,520	\$3,000
Base Year 2	\$14,140	\$3,000
Option Year 1	\$19,295	\$3,000
Option Year 2	\$21,375	\$3,000
Option Year 3	\$20,465	\$3,000

OMNITRANS' maximum cumulative payment obligation under this Agreement shall not exceed One Hundred and Two Thousand, Seven Hundred and Ninety-Five Dollars (\$102,795), 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

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

- Contract number
- Invoice number
- Description of delivery
- Delivery Date
- Total quantity delivered
- Unit Price, extended price and applicable taxes
- 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:

To CONTRACTOR:

Omnitrans
1700 West Fifth Street
San Bernardino, CA 92411
Attn: Christine Van Matre, Contract
Administrator

Johnson Power Systems
PO Box 351
Riverside CA 92502
Attn: Mitch Ryder, Product Support
Representative

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: Mark Montgomery.

- 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>
Steve Barnes	Technician
Oscar Samano	Technician
Ed Gruse	Technician
Daniel Haug	Technician
Vance Lamont	Technician
Les Miller	Technician
Jeb McCarroll	PM Coordinator
Joe Maynard	Service Coordinator
Duane Valentine	Service Operations Manager
Mitch Ryder	Product Support Representative
Jon Console	Product Support Representative

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

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

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
NA	

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.*

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

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.

Price Adjustments:

- A. Any change in the contract that causes an increase or decrease in cost to Omnitrans, or the time required for the performance of the contract, must be approved as prescribed herein.
- B. An equitable adjustment in the compensation and schedule will be made upon an approved Change Order.
- C. Contractor shall be liable for all costs resulting from, or for satisfactorily correcting, any and all unauthorized specification changes not properly ordered by written modification to the contract.

- D. Except as otherwise expressly provided in the Contract, when costs are a factor in any determination of a contract price adjustment, such costs shall be in accordance with the applicable cost principles of Subpart 31.2 of the Federal Acquisition Regulations (*FAR*) in effect at the onset of the Contract.

16. RIGHTS IN TECHNICAL DATA

- A. No material or technical data prepared by 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, including Exhibit A, Scope of Work and Exhibit D, Regulatory Requirements, (2) provisions of IFB No. IFB-MNT14-04 and (3) CONTRACTOR's bid dated August 16, 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

JOHNSON POWER SYSTEMS

P. Scott Graham
Interim CEO/General Manager

Mitch Ryder
Product Support Representative

Date

Date

Federal Tax I.D. No. 95-0751700

DP__

CM__

EXHIBIT "A" - SCOPE OF WORK
CONTRACT MNT14-04
STANDBY GENERATOR AND ATS SERVICE

(Scope of Work has been updated to include revisions per Addenda No. 2 and 3)

1. INTRODUCTION

Omnitrans is seeking a firm to provide quarterly inspection and preventative maintenance service, including load testing on standby emergency generators and 24 hour emergency repair service to both the generators and ATS for two base years and three option years in strict accordance with the scope of work.

2. GENERAL

- A. All materials and parts furnished to Omnitrans shall be new. No used, reconditioned or obsolete parts will be accepted.
- B. All products shall be Original Equipment Manufacturer (OEM); no substitutions will be accepted. Parts shall carry a factory warranty of not less than 90 days.
- C. All units or parts shall conform in material, design and workmanship to the best practice known in the industry.

3. SERVICES

A. Scheduled Preventative Maintenance Services

- 1) Contractor shall perform generator and automatic transfer switch (ATS) preventative maintenance services and inspections to meet manufacturer specification/recommendations every ninety (90) days commencing **September 2013**.
- 2) Contractor shall perform annual generator and ATS preventive maintenance services and inspection every 365 days commencing September 2013.
- 3) The Contractor shall coordinate all preventative maintenance services through the Facility Manager or his designee no less than 48 hours in advance of all preventative maintenance visits.
- 4) Load Testing shall be done once per year and shall coincide with annual services.

B. Emergency Services

- 1) The Contractor shall provide 24-hour emergency repair service, 7 days a week.
- 2) The Contractor shall respond to an emergency service call, and be at the requesting location, within 2 hours from the original time of notification.

- C. Upon conclusion of all services, the contractor shall ensure generator is in standby mode, ready for operation and shall inform facility personnel of the status.

- D. Contractor shall advise in writing of any repairs that are necessary for the proper operation of the standby generators and ATS.

4. CONTRACTOR RESPONSIBILITIES

The basic requirements are defined as follows:

- A. Contractor shall provide all equipment, parts, and labor to complete all generator preventive maintenance, ATS preventative maintenance, annual service, annual load testing and emergency services.
- B. Contractor shall provide sufficient time to complete services in a manner consistent with that as directed by Omnitrans or detailed in the scope of work.
- C. Contractor shall coordinate services with the Facility Manager or his designee.
- D. Contractor shall check-in and checkout with the Facility Manager or his designee when servicing units.
- E. Contractor shall complete and provide a copy of vendor's service report for any visit, both scheduled and non-scheduled, and submit it to Omnitrans Facility Manager or his designee upon completion of work.
- F. Contractor and staff shall follow all Omnitrans rules and regulations when on Omnitrans' property.
- G. Contractor shall provide proper insurance coverage for the duration of the contract, naming Omnitrans as an additional insured.

5. MINIMUM QUALIFICATIONS

Include a statement with your quote describing your company's qualifications that meet the following minimum requirements:

- A. The Bidder shall have a minimum of five (5) years of experience performing preventative and emergency generator and associated automatic transfer switch maintenance and repair.
- B. The Bidder shall be certified to repair and maintain emergency generators by one or more emergency generator manufacturers such as Onan, Generac and Kohler.

6. EQUIPMENT/LOCATIONS

1) Generators:

East Valley Facility – 1700 W. Fifth Street, San Bernardino, CA 92411

- 1) Engine Make: Volvo Penta, Model TAD 1232GE, 533 HP, 1998 Vintage

West Valley Facility – 4748 Arrow Highway, Montclair, CA 91763

- 1) Engine Make: John Deere, Model 6081AF0011, 250HP, 2001 Vintage
- 2) Engine Make: John Deere, Model 4045HF275H, 157HP, 2006 Vintage

I-Street Facility – 234 South I-Street, San Bernardino, CA 92410

- 1) Engine Make*: TBD, Model TBD, KW 100, Volts 120/208, 3-Phase, Fuel - Diesel: (See Attachment 2; reference only to show type of generator that is being installed)

* New generator set to be installed in the 4th quarter of 2013. Initial maintenance will be provided at substantial completion and will be for a period of twelve (12) months at which time this piece of equipment will need to be included as part of this service contract. Warranty period for this unit will be five (5) years from date of final acceptance. Maintenance Service to begin March 2015.

B. Automatic Transfer Switches:

East Valley Facility – 1700 W. Fifth Street, San Bernardino, CA 92411

- 1) ATS Make: Kohler, Model K-166341-600, Volts 480, Amps 600.
- 2) ATS Make: ASCO, Model 940, Volts 480, Amps 70.

West Valley Facility – 4748 Arrow Highway, Montclair, CA 91763

- 1) ATS Make: Kohler, Model GLS-166343-0260, Volts 480, Amps 260.
- 2) ATS Make: ASCO, Model 940, Volts 480, Amps 150

I-Street Facility – 234 South I-Street, San Bernardino, CA 92410

- 1) ATS Make*: TBD, Model TBD, 800 Amps, 3-Pole. (See Attachment 4; reference only to show type of switch that is being installed)

* New ATS to be installed in the 4th quarter of 2013. Initial maintenance will be provided at substantial completion and will be for a period of twelve (12) months at which time this piece of equipment will need to be included as part of this service contract. Warranty period for this unit will be five (5) years from date of final acceptance.

7. MAINTENANCE SCHEDULE

A. Generators

- 1) Conduct quarterly preventive maintenance in the following months:
March
June
September
- 2) Conduct annual preventive maintenance in the following month:
December
- 3) Conduct annual load test in the following month:
December

A. Automatic Transfer Switches (ATS's)

A. Conduct quarterly load transfer test in the following months:

March
June
September

B. Conduct annual preventive maintenance in the following month:

December

8. SCOPE OF WORK FOR GENERATORS

All work must be performed to meet the specifications/recommendations of the manufacturer. The below items are examples of minimum tasks typically performed, but are not to be considered all inclusive.

A. Quarterly Service and Inspection

- 1) Inspect air cleaner elements, clean as required
- 2) Inspect hoses for brittleness, cracking, and weakness. Check all hose clamps and tighten as required
- 3) Inspect fan and alternator belts for proper tension and condition. Adjust as required
- 4) Inspect batteries, cables, and lugs for tightness. Clean battery connections. Tighten as required
- 5) Inspect water heater jacket for correct operation
- 6) Inspect for radiator leaks or clogged fins. Check cooling systems; test coolant for proper operating parameters and adjust as required for safe engine operation
- 7) Inspect generator brushes and clean slip rings
- 8) Clean generator excitor and regulator. Check for loose connections
- 9) Check fuel and engine oil levels. Add oil as necessary. (Omnitrans is responsible for maintaining proper fluid levels).
- 10) Check fuel day tank (if so equipped) for proper operation
- 11) Start engine; warm it up to proper temperature and record gauge readings. Adjust RPM and check for leaks

B. Annual Service

- 1) Conduct engine oil analysis annually by a certified analytical laboratory service.
- 2) Drain crankcase, remove and replace oil filter with manufacturers' approved replacement; refill engine with engine oil of the proper grade and weight to meet manufacturers' recommendations (mandatory replacement)
- 3) Replace fuel filters(mandatory replacement)

- 4) Replace air filters (mandatory replacement)
- 5) Conduct engine coolant analysis annually by a certified analytical laboratory service.
- 6) Engine coolant is to be tested annually and replaced every two (2) years

C. Load Testing

- 1) Load test generator with a load bank large enough to simulate 80% maximum load for one (1) hour
- 2) Record all maintenance and test results and provide a copy to Omnitrans' Facility Manager

9. SCOPE OF WORK (AUTOMATIC TRANSFER SWITCHES)

All work must be performed to meet the specifications/recommendations of the specific automatic transfer switch manufacturer. The below items are examples of minimum tasks typically performed, but are not to be considered as being all inclusive.

A. Quarterly Load Transfer Test

- 1) Conduct quarterly load transfer test using test switch provided on automatic transfer switches. Length of test shall be for thirty (30) minutes run time plus generator cool down. Alternate which automatic transfer switch is used to initiate test.
 - a. Test day(s) will be on Wednesdays starting at 5:00 a.m. and coordinated with Omnitrans' Facility Manager and the IT Department.
- 2) Record phase to phase voltage, amperage, hertz, oil pressure, water temperature, battery voltage, and any other pertinent operating conditions on generator.
- 3) Record any corrective actions taken or needed during the test.

B. Annual Service

- 1) Visually inspect all cable and wire connections for signs of tracking, over heating, and insulation deterioration.
- 2) Inspect/tighten all control wiring connections.
- 3) Inspect manual switches for free movement and continuity.
- 4) Record all time delay settings and verify that the delay matches the setting.
- 5) Inspect all voltage/frequency-sensing relays. Record "as found settings" as well "as corrected settings" that require calibration.
- 6) Record and test all control relays.
- 7) Perform localized infrared scan on all cable connections, bus bar, and main contacts.

- 8) Check and record amperage readings on both normal and emergency main contacts.
- 9) Check and record frequency and millivolt drop readings on both normal and emergency main contacts.
- 10) Check and record phase to phase and phase to ground voltages on both normal and emergency.
- 11) Record engine start battery voltage while engine is at rest and cranking.
- 12) Visually inspect main and arcing contacts and arc chutes.
- 13) Burnish all open style relay and auxiliary contacts due to oxidation if necessary.
- 14) Lubricate actuator shaft, heim joints, and transfer mechanisms if necessary.
- 15) Wipe down exterior of enclosure and clean interior of any dust or dirt accumulations.
- 16) Check switch for proper transfer operation and sequencing of time delays and controls.
- 17) Record any corrective actions taken during the maintenance.

10. HAZARDOUS MATERIALS

- 1) Contractor shall place all hazardous materials such as waste filters, waste oil, and waste coolant used in the preventative maintenance or emergency repairs of Omnitrans generator units in Omnitrans' designated containers only.
- 2) Omnitrans will be responsible for the proper disposal of all hazardous waste generated in the performance of the preventive maintenance tasks.
- 3) The content and nature of all hazardous materials shall be disclosed to the Omnitrans Facility Manager. Disposal of such hazardous material shall be coordinated with the Omnitrans Facility Manager or his designee.
- 4) MSDS Sheets shall be given to Omnitrans Facility Manager for any and all chemicals or potentially hazardous materials to be used, prior to their use.

11. WORKPLACE SAFETY

The contractor shall ensure that all of his operations strictly adhere to all Federal, State, and Local safety and environmental laws and regulations. Omnitrans, in accordance with the dual employer provision, reserves the right to correct unsafe practices by the contractor's employees, or to stop work until the contractor makes the necessary corrections. Reference: Attachment "B", Specifications for Safety. In addition:

A. Smoking

Omnitrans uses designated areas for smoking. Smoking is not allowed at any time in the bus yard, on or in any buildings, or by the entrances to any

buildings. Smoking by employees of the contractor, or his sub-contractors, shall not create a hazardous condition for themselves, co-workers, or employees and property of Omnitrans.

B. Eye Protection

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

C. Vests

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

12. ATTACHMENTS

Attachments 2 and 4 are for reference purposes only and their specifications are not a part of this scope. Their purpose is to provide more detail of the types of generators and automatic transfer switches that will be added to the East Valley and I-Street locations during the duration of this project. Once their initial maintenance periods are completed, the equipment will become part of this scope and the Contractor shall provide the services as outlined in this scope of work.

End of EXHIBIT "A" Scope of Work

EXHIBIT D - REGULATORY REQUIREMENTS

MNT14-04

STANDBY GENERATOR AND ATS SERVICE

Table of Contents

Complete copy of Regulatory Requirements
provided in online posting of agenda.

Contents

ADMINISTRATIVE CODE	2
DISCRIMINATION	3
WHISTLEBLOWER REQUIREMENTS	3
PUBLIC RECORDS ACT	3
ACCESS TO RECORDS.....	4
FEDERAL FUNDING, INCORPORATION OF FEDERAL TRANSIT ADMINISTRATION (FTA) TERMS, AND FEDERAL CHANGES.....	5
ENERGY CONSERVATION REQUIREMENTS	6
CIVIL RIGHTS REQUIREMENTS.....	6
NO GOVERNMENT OBLIGATION TO THIRD PARTIES	8
PROGRAM FRAUD AND FALSE OR FRAUDULENT STATEMENTS OR RELATED ACTS	8
SUSPENSION AND DEBARMENT.....	9
RECYCLED PRODUCTS	10
CLEAN WATER AND CLEAN AIR REQUIREMENTS	10
COMPLIANCE WITH FEDERAL LOBBYING POLICY	11
BUY AMERICA.....	11
CARGO PREFERENCE	12
FLY AMERICA.....	13
CONTRACT WORK HOURS AND SAFETY STANDARDS ACT	14
DISADVANTAGED BUSINESS ENTERPRISE (DBE) 49 CFR Part 26.....	15
ADA ACCESS.....	17
ALCOHOL AND DRUG-FREE WORKPLACE PROGRAM.....	19
TRANSIT EMPLOYEE PROTECTIVE ARRANGEMENTS	20
BONDING REQUIREMENTS	21
DAVIS-BACON AND COPELAND ANTI-KICKBACK ACTS	22
PRIVACY ACT - 5 U.S.C. 552.....	30
TERMINATION 49 U.S.C. Part 18 FTA Circular 4220.1F.....	31
SEISMIC SAFETY REQUIREMENTS 42 U.S.C. 7701 et seq. 49 CFR Part 41.....	33
BREACHES AND DISPUTE RESOLUTION 49 CFR Part 18 FTA Circular 4220.1F..	34

ITEM # F4

DATE: October 2, 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 SAS12-17R2
I STREET GENERATOR AND BLOCK WALL**

FORM MOTION

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.

BACKGROUND

On June 6, 2012, Board of Directors authorized the release of IFB-SAS12-17 for the provision of installing a diesel generator and the construction of a surrounding block wall at Omnitrans' I Street facility. Staff cancelled the solicitation on August 10, 2012, after it was discovered that the requested Class B Contractors License was incorrect for the work requested. Staff re-released the solicitation on January 11, 2013, which was cancelled a second time on March 28, 2013, when it was discovered by the project team that underground utility relocation, a cardinal change to the solicitation, should have been included in the Scope of Work. Staff released the IFB a third time on July 25, 2013, notices were published in two local newspapers of general circulation and posted on Omnitrans' online bidding which was distributed to one hundred sixty two potential bidders.

Six bids were received electronically by the deadline date of September 5, 2013. Two bids were found to be responsive.

Listed below are the bid prices:

Company	Base Bid
Hamel Contracting, Inc.	\$210,000.00
Humphrey Constructors	\$224,444.00

Award is being made to the lowest responsive and responsible bidder. The price is considered fair and reasonable as it is within ten percent of the Independent Cost Estimate of \$194,800.

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

FUNDING SOURCE

The cost associated with this procurement is as follows:

FUNDING	GRANT #	FISCAL YEAR	PROJECT NAME
Prop 1B	6061-0002	2008	Facilities Security Enhancements

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

CONCLUSION

Award of this contract will ensure security for Omnitrans' facilities are above standards, while eliminating the possibility of service interruptions in the event of a power outage.

PSG:JMS:AA



CONTRACT
CONTRACT AGREEMENT

between

CONTRACTOR

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

(hereinafter "CONTRACTOR")
Telephone: 951-600-2783
Email: grant@hamelinc.com

And

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

CONTRACT DOCUMENTS

CONTRACT NO.
SAS12-17R2

I STREET GENERATOR
AND BLOCK WALL

Contract Amount: \$ 210,000.00

Omnitrans Project Manager:

Name: Mark Montgomery
Title: Facilities Manager
Telephone: (909) 379-7175
Fax: (909) 885-2441
Email: mark.montgomery@omnitrans.org

Contract Administrator:

Name: Alesia Atkinson
Title: Contract Administrator
Telephone: (909) 379-7314
Fax: (909) 379-7107
Email: alesia.atkinson@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.....	9
13.	INSURANCE	9
14.	INDEMNITY.....	10
15.	REVISIONS IN SCOPE OF WORK.....	10
16.	RIGHTS IN TECHNICAL DATA	10
17.	OWNERSHIP OF REPORTS AND DOCUMENTS.....	11
18.	OWNERSHIP RIGHTS.....	11
19.	WORK FOR HIRE	12
20.	SUBMITTAL OF CLAIMS BY CONTRACTOR.....	12

21.	EQUAL OPPORTUNITY.....	12
22.	STANDARD OF PERFORMANCE	12
22.	NOTIFICATION OF EMPLOYMENT OF OMNITRANS BOARD MEMBERS/ALTERNATES AND EMPLOYEES	13
23.	DISQUALIFYING POLITICAL CONTRIBUTIONS	13
24.	COMPLIANCE WITH LAW	13
25.	COMPLIANCE WITH LOBBYING POLICIES.....	13
26.	PUBLIC RECORDS ACT.....	14
27.	WAIVER/INVALIDITY	14
28.	FORCE MAJEURE.....	15
29.	CONFIDENTIALITY	15
30.	CONTRACTOR'S INTERACTION WITH THE MEDIA AND THE PUBLIC	15
31.	GOVERNING LAW	16
32.	MODIFICATIONS TO AGREEMENT	16
33.	PRECEDENCE	16
34.	ENTIRE AGREEMENT.....	17

ATTACHMENT A – SCOPE OF WORK / DESCRIPTION OF SERVICES

ATTACHMENT B – GENERAL PROVISIONS

ATTACHMENT C – TECHNICAL SPECIFICATIONS

ATTACHMENT D - DRAWINGS

ATTACHMENT E – SAFETY AND SECURITY OFFICE SENSITIVE SECURITY
INFORMATION REQUIREMENTS

ATTACHMENT F – PREVAILING WAGES

This Agreement is made and entered into as of this _____ day of _____, 2013 by and between Omnitrans (hereinafter referred to as "OMNITRANS") and HAMEL CONTRACTING, INC. (hereinafter referred to as "CONTRACTOR").

RECITALS

WHEREAS, OMNITRANS is a joint powers authority organized under Sections 6500 et seq. of the California Government Code and Section 130255 of the California Public Utilities Code with power to contract for services described in 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, Attachment B, General Provisions, Attachment C, Technical Specifications, and Attachment D, Drawings 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 period of performance shall be beginning upon execution of final agreement for a period not to exceed nine months unless extended by agreement by both parties pursuant to the provisions of this Agreement, or unless earlier terminated pursuant to Section 8 or Section 9 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 F, Prevailing Wages, 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 Two Hundred Ten Thousand and 00/100 Dollars (\$ 210,000.00), including all amounts payable to CONTRACTOR for all costs, including but not limited to direct labor, other direct costs, subcontracts, indirect costs including, but not limited to, leases, materials, taxes, insurance, and profit.

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: Alesia Atkinson
Contract Administrator

To CONTRACTOR:

Hamel Contracting, Inc
26359 Jefferson Avenue, Suite H
Murrieta, CA 92562
Attn: Grant Hamel, 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: Mark Montgomery, Facilities Manager
Mark Crosby, Loss Prevention Supervisor

- 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>
Grant Hamel	President
_____	_____
_____	_____
_____	_____

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

OMNITRANS awarded this Agreement to CONTRACTOR based on OMNITRANS' confidence and reliance on the expertise of CONTRACTOR's key personnel described above. CONTRACTOR shall not reassign key personnel or assign other personnel to key personnel

roles until CONTRACTOR obtains prior written approval from OMNITRANS.

8. 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
Econo Fence 5261 Pedley Road Riverside, CA 92509	Fence and Misc. Metals
AEP Electric 43810 Cardinal Road Hemet, CA 92544	Electrical
ABBCO Services PO Box 8776 Redlands, CA 92375	Plumbing
Bay City Equipment Industries 13625 Danielson Street Poway, CA 92064	Generator

Kretschmar and Smith 6293 Pedley Road Riverside, CA 92509	Masonry
JBH Structural Concrete Inc PO Box 869 Murrieta, CA 92564	Concrete
Ben's Asphalt & Maintenance Company, Inc 2537 Rubidoux Blvd Riverside, CA 92509	Asphalt

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.

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, General Provisions, (4) Attachment C, Technical Specifications, (5) Attachment D, Drawings, (6) Attachment E, Safety and Security Office Sensitive Security Information Requirements, (7) Attachment F, Prevailing Wages, (8), Attachment G, Regulatory Requirements and (9) provisions of IFB No. SAS12-17R2 and (10) CONTRACTOR's proposal dated September 5, 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

CONTRACTOR
Name of Firm

P. SCOTT GRAHAM
INTERIM CEO/General Manager

Name
Title

Date

Date

Federal Tax I.D. No. _____

DP _____

CM _____

ATTACHMENT A – SCOPE OF WORK/DESCRIPTION OF SERVICES

The project scope of work shall be comprised of the installation of a new 100kW emergency diesel generator and masonry enclosure at the I-Street facility of Omnitrans in San Bernardino. The scope of work includes the rerouting of a gas line, water line and the re-routing of a sewer line clean out. The contractor will be responsible for obtaining the necessary permits. The work under this contract includes furnishing of all labor, materials, equipment, services, and transportation, except as specifically excluded, which is required for the completion of the project in accordance with the provisions of the contract documents.

ATTACHMENT B - GENERAL PROVISIONS
IFB-SAS12-17R2, I STREET GENERATOR & BLOCK WALL
TABLE OF CONTENTS

A.	SCHEDULE OF VALUES	1
B.	PROGRESS PAYMENTS	1
C.	FINAL INSPECTION AND ACCEPTANCE	2
D.	FINAL PAYMENT	3
E.	EXTRA WORK AND CHANGES	4
F.	CLAIMS	5
G.	ACCELERATION	9
H.	VALUE ENGINEERING	9
I.	STOP PAYMENT NOTICES	10
J.	ORDER OF WORK	10
K.	LABOR PROVISIONS	11
L.	TIME EXTENSION/DELAYS	18
M.	NONDISCRIMINATION	19
N.	TITLE VI OF THE CIVIL RIGHTS ACT OF 1964	20
O.	GOVERNMENT INSPECTIONS	20
P.	LICENSING, PERMITS AND INSPECTION COSTS	21
Q.	HAZARDOUS SUBSTANCES	21
R.	MEDIA AND THE PUBLIC	22
S.	COORDINATION AND ACCESS	22
T.	UTILITIES RELATED DELAYS	22
U.	UTILITIES AND SUBSURFACE STRUCTURES	23
V.	LOCATION OF UNDERGROUND FACILITIES (OFFSITE WORK ONLY)	24
W.	UNFORESEEN HAZARDOUS OR REGULATED MATERIALS	25
X.	CONTRACTOR'S OBLIGATIONS	25
Y.	CONTRACTOR'S REPRESENTATIONS, WARRANTIES AND COVENANTS	27
Z.	INDEPENDENT CONTRACTOR	30
AA.	COMPENSATION AND BENEFITS	30
BB.	WORKERS' COMPENSATION INSURANCE AND LIABILITY	30
CC.	DATA COLLECTION & REPORTING	31

ITEM # F5

DATE: October 2, 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-MNT14-01, INDUSTRIAL CHEMICALS

FORM MOTION

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.

BACKGROUND

Industrial chemicals are utilized for bus cleaning (interior & exterior), as well as for general cleaning purposes within the garage areas. Omnitrans utilizes bulk industrial chemicals and equipment services to include product, storage containers, dispensing equipment and delivery to replenish chemicals as needed. Due to the high volume of usage and to lock in pricing for five years, staff recommends contracting with a single vendor.

In accordance with the Procurement Policy 2000, Section 2.3.5.1.3 and FTA Circular 4220.1F, Board authorization and use of a formal procurement procedure is required to release Invitation for Bids for procurements for goods/services exceeding \$100,000. The Independent Cost Estimate (ICE) for this project is \$238,100.

FUNDING SOURCES

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

Department	1200
Expenditure Code	504200

_____ 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

By proceeding with this solicitation, Omnitrans will be assured of uninterrupted service and supply and the pricing will be locked in for up to five years.

PSG:JMS:CV

ITEM # F6

DATE: October 2, 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-OPS14-03, SUPERVISOR VEHICLE ON-BOARD VIDEO SURVEILLANCE SYSTEM (OBVSS)

FORM MOTION

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.

BACKGROUND

Omnitrans currently has on-board video surveillance systems installed on its fleet of buses and paratransit vehicles with wireless and network systems installed at the East Valley, West Valley, I Street and Rancho Cucamonga facilities.

The Supervisor Security vehicle video surveillance system is a cost-effective method to provide Omnitrans Supervisors and Security personnel with a passive means of monitoring incidents and events. This surveillance system will also be part of the surveillance package to provide evidence for criminal prosecution or civil claims. The surveillance system will include wireless transmitters and network interface at the East Valley and West Valley facilities.

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 \$141,000.

FUNDING SOURCES

The cost associated with this procurement is budgeted in the Safety & Security Department Capital Funds as follows:

<u>Source</u>	<u>Year</u>	<u>Description</u>
Prop 1B	FY09	Video Surveillance Equipment

_____ 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

By proceeding with this solicitation, Omnitrans stands to benefit both from increased passenger and employee protection, risk mitigation, and savings through increased evidence for support in criminal cases or civil claims.

PSG:JMS:CV

ITEM # F7

DATE: October 2, 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 AMENDMENT NO. 2, CONTRACT ADM09-8 STAFF
LEGAL SERVICES AND AUTHORIZE RELEASE OF REQUEST FOR
PROPOSALS RFP-ADM14-12, STAFF LEGAL SERVICES**

FORM MOTION

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.

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.

BACKGROUND

Omnitrans is seeking a firm to provide legal services to augment the services provided by the San Bernardino County's Office of County Counsel.

The need for legal services related to the sbX project will extend beyond the revenue start date of April 2013 and will continue through closeout. Staff recommends extension of the current agreement in order to ensure continuity of legal services for the sbX project.

In accordance with 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 goods/services exceeding \$100,000.

FUNDING SOURCE

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

Departments 1300
Expenditure Code 503060

Costs associated with the sbX E Street Corridor or other capital project will be charged to the appropriate capital project budget.


_____ 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

Approval of the extension of the existing contract will allow for the continuity of legal services for the sbX project and issuing a new solicitation will ensure that the Agency has staff legal services to complement services provided by County Counsel.

PSG:JMS:JC

 Omnitrans Omnitrans STANDARD CONTRACT	<input type="checkbox"/> New	Amendment 2						Contract Number ADM09-8
	<input checked="" type="checkbox"/> Change							
	<input type="checkbox"/> Cancel							
1700 West Fifth Street San Bernardino CA 92411	Omnitrans Department Administration				Dept. No. 1300		Project Staff Legal Services	
Contracts Manager	Omnitrans Procurement Representative Joanne Cook, Contract Administrator				Telephone 909-379-7198		Total Contract Amount is not to exceed budgeted amounts approved annually by the Board of Directors	
	Contract Type: Professional Services							
Director of Procurement		Contract Start Date 12/03/2013	Contract End Date Through sbX Project Closeout	Original Amount N/A	Amended Amount			

THIS CONTRACT is entered into in the State of California by and between Omnitrans, a Joint Powers Authority, hereinafter called Omnitrans, and

Name

Best Best & Krieger LLP

Address

3750 University Avenue, Suite 400

Riverside, CA 92502

Telephone

951-686-1450

Federal ID No.

95-2157337

hereinafter
called

"Attorneys"

WHEREAS:

- I. Omnitrans and Contractor have entered into Contract No. ADM09-8 on December 3, 2008.
- II. OMNITRANS hereby amends this contract under Amendment 2 to:

Extend the contract period of performance.

NOW THEREFORE, THE PARTIES AGREE AS FOLLOWS:

- III. This Amendment 2 extends the period of performance through contract and project close out of contracts IPMO11-5 and IPMO12-10.

All other terms and conditions remain unchanged.

IN WITNESS WHEREOF, Omnitrans and the Contractor have each caused this Amendment 2 to be subscribed by its respective duly authorized officers on its respective behalf.

OMNITRANS

BEST BEST & KRIEGER LLP

P. Scott Graham, CEO/General Manager

By _____
(Authorized signature – **sign in blue ink**)

Dated _____

Name _____
Richard T. Egger
(Print or type name of person signing contract)

Title _____
Partner
(Print or Type)

Dated _____

ITEM # F8

DATE: October 2, 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 OF RFP-OPS14-71, OPERATION OF BUS RAPID TRANSIT (BRT) BUS SERVICE

FORM MOTION

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.

BACKGROUND

Omnitrans will select a qualified transportation service contractor to operate the sbX Bus Rapid Transit (BRT) service. The BRT is the first of its kind service to be constructed in the Inland Empire. It will provide more frequent and direct transit service along major corridors in the Omnitrans service area. The BRT will provide a premium level of service that is more competitive with the automobile and designed to capture riders who are making medium to long distance trips. The first sbX route, known as the Green Line, is a 15.7 mile BRT corridor between northern San Bernardino and Loma Linda, primarily following Omnitrans' existing Route 2. The Green Line consists of dedicated lanes and mixed traffic routing, will be operated using custom designed 60-foot articulated, five-door buses.

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 RFP-OPS14-71 for Operation of bus rapid transit (BRT) bus service is \$1,359,165.

FUNDING SOURCE

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

Departments	1100
Expenditure Code	Various

_____ 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

By proceeding with this solicitation, Omnitrans ensures that the BRT Green Line will be staffed with qualified coach operators.

PSG:JMS:JC

ITEM # G1

DATE: October 2, 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: **CANCEL PUBLIC HEARINGS FOR POTENTIAL TEMPORARY SERVICE REDUCTIONS**

FORM MOTION

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.

BACKGROUND

On August 7, 2013, the Omnitrans Board of Directors authorized staff to develop a contingency plan to address the reduced funding due to a hold on Federal Transit Administration grant funding. On September 4, 2013, the Omnitrans Board of Directors authorized staff to open a public comment period that is scheduled to close on October 17, 2013. The contingency plan and public hearings are related to a potential temporary 40% service reduction that would take place in January 2014 due to the ATU's objection to the newly enacted California pension reform law, Public Employees' Pension Reform Act of 2013 (PEPRA). Because the dispute created conflict with federal labor laws, Omnitrans' federal grants are currently being withheld, necessitating the reduction of service.

On September 4, 2013, AB 1222 (Bloom) was amended to temporarily exempt transit workers from the tighter pension rules under the newly enacted California pension reform law, Public Employees' Pension Reform Act of 2013 (PEPRA), through December 31, 2014. On Wednesday, September 11, 2013, the State Assembly passed AB 1222 (with bipartisan support, 71-1) temporarily resolving the dispute between the U.S. DOL and the State of California's pension reform. The bill is now on the Governor's desk awaiting signature. The Governor has until October 14 to act on the bill; if no action is taken, the bill becomes law. Or, if he signs the bill, the bill becomes law immediately. Once it becomes law, grant funds will be released, thereby eliminating the need to conduct the public hearings regarding potential service reductions.

Although it is still anticipated that the bill will become law as of October 14, if no action is taken by the Governor prior to the scheduled hearings beginning Monday, October 7, we will proceed with hearings as scheduled due to Governor's ability to veto the bill within that time frame.

CONCLUSION

Authorizing the Interim CEO/General Manager to cancel the scheduled public hearings provides flexibility to cancel the hearings at a moment's notice should the Governor take action on the bill prior to October 14, 2013.

SG:AR