



**BOARD OF DIRECTORS MEETING**  
**WEDNESDAY, DECEMBER 3, 2014 – 8:00 A.M.**  
**OMNITRANS METRO FACILITY**  
**1700 WEST 5<sup>TH</sup> STREET**  
**SAN BERNARDINO, CA 92411**

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

**A. CALL TO ORDER**

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

**B. ANNOUNCEMENTS/PRESENTATIONS**

1. Next Board Meeting: Wednesday, January 14, 2015, at 8:00 a.m. (Second Wednesday)  
Omnitrans Metro Facility Board Room
2. Presentation to Departing Board Members

**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 #E15, Action on Consent Calendar.

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| 4. Receive and File Construction Progress Report #32 through October 28, 2014, sbX E Street Corridor BRT Project | 18 |
| 5. Receive and File, Omnitrans Transit Design Guidelines   | 29 |



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<b>E. CONSENT CALENDAR CONTINUED</b>	
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1. Conference with Labor Negotiator, P. Scott Graham, concerning labor negotiations with Amalgamated Transit Union Local No. 1704 regarding the Coach Operator Unit, pursuant to Government Code Section 54957.6	
<b>I. REMARKS AND ANNOUNCEMENTS</b>	
<b>J. ADJOURNMENT</b>	

ITEM #     D1    

**DATE:** December 3, 2014

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

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

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

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

**FORM MOTION**

Staff hereby provides a listing of principals and subcontractors associated with action items on the agenda for the Board of Director's Meeting scheduled December 3, 2014.

<b>Item</b>	<b>Contract</b>	<b>Principals &amp; Agents</b>	<b>Subcontractors</b>
E7	Authorize Award Contract ITS15-70 Multiprotocol Label Switching	<i>EarthLink Atlanta, GA Michael Ricca Account Director</i>	<i>none</i>
E8	Authorize Award Purchase Order ITS15-84 Storage Area Network Arrays	<i>Sterling Computers Corporation Dakota Dunes, SD Brad Moore, President</i>	<i>none</i>
E9	Authorize Award Contract MNT15-93 Coolant Supply Services	<i>Patten Energy Enterprises, Inc. Los Angeles, CA Ezekiel Patten, Jr. CEO/President</i>	<i>none</i>
F3	Authorize Award Purchase Orders ITS15-66 Computer Equipment	<i>VetSource Mobility, LLC Clarksville, TN Matthew Hinton Team Leader</i>  <i>CherryStoneIT, Inc. Huntington Beach, CA Mark Kerans Director, Special Projects</i>	<i>none</i>  <i>none</i>

<b>Item</b>	<b>Contract</b>	<b>Principals &amp; Agents</b>	<b>Subcontractors</b>
F4	Award Sole Source Purchase Order Ticket Vending Machines	<i>Genfare, A Division of SPX Corporation Elk Grove Village, IL Mark Mahon Director of Sales, Western Region</i>	<i>none</i>
F5	Authorize Award Contract ITS15-64R Microsoft Software Assurance	<i>PCMG, Inc. dba PCM Gov, Inc. El Segundo, CA Dave Wiltz VP Sales</i>	<i>none</i>

PSG/JMS

## CONFLICT OF INTEREST FORM

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

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

### BOARD MEMBER INFORMATION

BOARD MEMBER NAME	CITY/COUNTY NAME	MEETING DATE

### CAMPAIGN CONTRIBUTIONS

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

### FINANCIAL INTEREST

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

### SIGNATURE

\_\_\_\_\_  
Board Member Signature

\_\_\_\_\_  
Date

ITEM #           E1          

**BOARD OF DIRECTORS' MEETING  
MINUTES OF NOVEMBER 5, 2014**

**A. CALL TO ORDER**

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

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

**BOARD MEMBERS PRESENT**

Mayor Pro Tem Alan Wapner, City of Ontario – Chair  
Mayor Pro Tem Sam Spagnolo, City of Rancho Cucamonga  
Mayor Carey Davis, City of San Bernardino  
Mayor Paul Eaton, City of Montclair  
Supervisor Josie Gonzales, County of San Bernardino  
Mayor Ed Graham, City of Chino Hills  
Council Member Penny Lilburn, City of Highland  
Supervisor Robert Lovingood, County of San Bernardino  
Mayor Ray Musser, City of Upland  
Supervisor Gary Ovitt, County of San Bernardino  
Mayor Pro Tem Ed Palmer, City of Rialto  
Council Member 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**

Council Member Ron Dailey, City of Loma Linda  
Mayor Pro Tem Paul Foster, City of Redlands  
Council Member Frank Gonzales, City of Colton  
Supervisor James Ramos, County of San Bernardino

**OMNITRANS' ADMINISTRATIVE STAFF PRESENT**

P. Scott Graham, CEO/General Manager  
Diane Caldera, Director of Operations  
Jack Dooley, Director of Maintenance  
Marge Ewing, Director of Human Resources/Safety & Security  
Sam Gibbs, Director of Internal Audit  
Andres Ramirez, Program Manager  
Jennifer Sims, Director of Procurement  
Don Walker, Director of Finance  
Wendy Williams, Director of Marketing/Planning  
Jeremiah Bryant, Service Planning Manager  
Maurice Mansion, Treasury Manager  
Eugenia Pinheiro, Contracts Manager  
Christine Van Matre, Contracts Administrator  
Joanne Cook, Contracts Administrator  
Mark Crosby, Loss Prevention Supervisor  
Diane Bojorquez, Sales Supervisor  
Juno Carlson, Marketing Specialist  
Ross Hrinko, Safety & Regulatory Compliance Specialist  
Vicki Dennett, Executive Assistant to CEO/General Manager  
Tembi Tovar, Administrative Secretary

**LEGAL COUNSEL**

Carol Greene

**B. ANNOUNCEMENTS/PRESENTATIONS**

Next Board Meeting: Wednesday, December 3, 2014, 8:00 a.m.  
Omnitrans Metro Facility Board Room

Omnitrans' Employee of the Quarter recognition was presented by Chair Alan Wapner to Diane Bojorquez, Sales Supervisor of the Marketing/Planning Department.

**C. COMMUNICATIONS FROM THE PUBLIC**

- Opal Eshelman spoke on behalf of her disabled adult son who lives in the City of Highland. She voiced her objections and concerns regarding Omnitrans' removal of the bus stop from in front of the Arrowhead Vista apartments where he lives because it is a handicapped community, and it is a real hardship to force residents to walk two additional blocks to the nearest bus stop on Waterman Avenue. There is also the Center

for Individuals with Disabilities, Goodwill Industries and Andersen School in this area. She asked that Omnitrans please reconsider this decision.

- Mary Carter spoke on behalf of Charles Elleveny and other Arrowhead Vista residents as well as other special-needs individuals who live, work and go to school in the area immediately adjacent to the removed bus stop. Removing the bus stop from in front of Arrowhead Vista Apartments resulted in adding two blocks to the journey endured by the members of the community to reach the nearest bus stop. She also added that the Goodwill Industries facility employs about 150 people, many of whom also used the stop and requested Omnitrans to reinstate the stop
- Lanette Hollowell spoke on behalf of the handicapped community where she lives, where she is a member of the management team at Arrowhead Vista, emphasizing prior speakers' comments regarding the need for the bus stop that was removed in front of Arrowhead Vista.
- Fran Givens advocates for senior citizens and said that discontinuing the Route 9 stop at Lena and Mill Street near the County Department of Aging & Adult Services in San Bernardino has negatively affected the senior population by increasing the distance that must now be traveled from the nearest bus stop (one mile with no sidewalk).

Board Chair Wapner thanked the speakers for bringing these matters forward and explained that it is difficult to balance the needs of the community with the budget, and directed the CEO/General Manager to research the issues and report back to the Board with the findings.

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

There were no Conflict of Interest Issues identified.

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

1. Approve Board Minutes – October 1, 2014
2. Receive and File Administrative and Finance Committee Minutes – July 10, 2014
3. Receive and File Agency Management Report (AMR) – July – September 2014
4. Receive and File Construction Progress Report #31, July through September 22, 2014, sbX E Street Corridor BRT Project
5. Receive and File sbX E Street Corridor BRT Project Quarterly Report - September 2014
6. Receive and File Affirmative Action Status Report as of October 16, 2014
7. Receive and File Director of Finance's Forward Fuel Purchases Update – August 2014
8. Receive and File Director of Finance's Report on Forward Fuel Purchases – September 2014
9. Receive and File Key Performance Indicators – Fiscal Year 2015, 1st Quarter Report
10. Approve Disposal of Omnitrans' Capital Assets to JPA (Joint Powers Agreement) Member Entities, Other Governmental Entities and 501(c) (3) Organizations
11. Adopt Revisions to Omnitrans' Procurement Policy 1000, General Procurement Policy, 1010 Purpose, 1020 Responsibilities, and Procurement Procedure 4000-1 Formal Procurement Procedures
12. Adopt Resolution No. 276-14, Amending Omnitrans' Conflict of Interest Code



13. Authorize Disposal of Surplus Equipment to Auction
14. Authorize Award, Contract IPMO14-256, Design Services: Public Address System (Bus Stations & Park and Rides)
15. Authorize Award, Purchase Order, Shelter Advertising Panel Glass
16. Authorize Award, Purchase Order, VMWare License Renewal
17. Authorize Sole Source Purchase, Software Maintenance Services for Financial and Operational Reporting to San Bernardino Associated Governments
18. De-obligate and Re-obligate Federal Transit Administration and State Transit Assistance Funds and Authorize Award, Purchase Order, Refrigerant Recovery Machines
19. Authorize Release, Invitation for Bids IFB-ITS15-64, Microsoft Software Assurance
20. Authorize Release, Request for Qualifications RFQu-MNT15-04, Architectural and Engineering (A&E) Services
21. Authorize Release, Request for Proposals RFP-ITS15-59, IT Management Software
22. Press Articles and Letters of Interest to the Board

M/S (Graham/Musser) that approved the Consent Calendar. Member Dick Riddell abstained from Item E-1, and Member Carey Davis abstained from Item E-2. Motion was unanimous by remaining Members present.

## **F. DISCUSSION ITEMS**

### **1. CEO/General Manager's Report**

CEO/General Manager Scott Graham reviewed the CEO/General Manager's Report, reporting that sbX ridership has increased 102% since it first started in April 2014, growing from 1300 to just over 2600 riders per day. He also announced that the San Bernardino Joint Unified School District adopted a resolution on October 21 that encourages Omnitrans to continue efforts in identifying safe alternatives to its on-site storage of CNG fuel.

### **2. Authorize Award, Sole Source Contract MKT15-08, On-Board Audio Advertising**

M/S (Stanckiewicz/Roberts) that authorized the CEO/General Manager to award Contract MKT15-08 to Commuter Advertising for the provision of On-Board Audio Advertising for a three-year base period beginning November 5, 2014, with the authority to exercise two additional option years, in an amount of \$354,550. Motion was unanimous by Members present.

Board Member J. Gonzales arrived at 8:26 a.m.

### **3. Authorize Award, Annual Renewal of Basic Software License and Maintenance Services for Trapeze Fleet Operations System**

M/S (Musser/Eaton) that authorized the CEO/General Manager to award a sole source Purchase Order to Trapeze, Inc. for the annual renewal of user licenses and purchase of an annual software maintenance package for Omnitrans' Trapeze Fleet Operations System. Motion was unanimous by Members present.

**G. PUBLIC HEARING**

There was no public hearing scheduled.

**H. BOARD BUSINESS**

The Board adjourned to Closed Session at 8:30 a.m. and reconvened to Open Session at 8:53 a.m.

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

**I. REMARKS AND ANNOUNCEMENTS**

Retiring Fourth District Supervisor Gary Ovitt wished everyone well, stating that he has been happy to serve the past 16 years.

**J. ADJOURNMENT**

The Board adjourned at 8:55 a.m. The next regular meeting is scheduled Wednesday, December 3, 2014, at 8:00 a.m., with location posted on the Omnitrans website and at Omnitrans' San Bernardino Metro Facility.

Prepared by:

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Christine Vega, Administrative Secretary

ITEM # E2

**EXECUTIVE COMMITTEE MEETING  
MINUTES  
SEPTEMBER 10, 2014**

**A. CALL TO ORDER**

The Executive Committee Meeting was called to order by Chair Alan Wapner at 10:01 a.m., Wednesday, September 10, 2014.

**COMMITTEE MEMBERS ATTENDING**

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

**OMNITRANS STAFF ATTENDING**

P. Scott Graham, CEO/General Manager

**LEGAL COUNSEL**

Carol Greene (Closed Session only)

**B. ANNOUNCEMENTS/PRESENTATIONS**

1. Next Committee Meeting: Friday, October 3, 2014, 9:00 a.m.  
Omnitrans Metro Facility

**C. COMMUNICATIONS FROM THE PUBLIC**

There were no communications from the public.

**D. POSSIBLE CONFLICT OF INTEREST ISSUES**

There were no Conflict of Interest Issues.

## **E. DISCUSSION ITEMS**

1. Approve Executive Committee Minutes – August 8, 2014

M/S (Spagnolo/Lilburn) that approved the Executive Committee Minutes of August 8, 2014. Motion was unanimous by Members present.

2. Attending Board Committee Meetings by Teleconference

Board Chair Wapner proposed that an item be presented to the Board of Directors seeking approval to allow Board Policy Committee Members to attend Committee meetings by teleconference as this option would make it more convenient for Committee Members to attend a Committee meeting for which they would not be able to attend in person.

If approved, Board Committee agenda notices would be posted at Omnitrans to include each Committee Members City/County address and include a statement that each location is accessible to the public and members of the public may address the Committee from any teleconference location. Any Member that planned to attend by teleconference would also have to post the notice at its City/County office. Or, if the Member were planning to attend by teleconference from another location, the address must be provided to the CEO/General Manager's Office no later than one week prior to the meeting to ensure the address is included in the agenda posting and the location must be accessible to the public.

For purposes of determining a quorum of the Committee, as required by California Government Code 54953(b)(2)(3), at least a quorum of the members shall participate from locations within the boundaries of Omnitrans' jurisdiction, and all votes taken during a teleconferenced meeting shall be by roll call.

M/S (Graham/Spagnolo) that recommended that an item be prepared seeking approval of the Board of Directors to permit Board Policy Committee Members to attend by teleconference. Motion was unanimous by Members present.

## **F. BOARD BUSINESS**

The Committee adjourned to Closed Session at 10:09 a.m.

### **Closed Session**

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

The Committee reconvened to Open Session at 10:52 a.m., with Chair Wapner announcing there was no reportable action during Closed Session.

**G. REMARKS AND ANNOUNCEMENTS**

There were no remarks or announcements.

**H. ADJOURNMENT**

The Executive Committee adjourned at 10:52 a.m. The next Executive Committee Meeting is scheduled Friday, October 3, 2014, at 9:00 a.m., with location posted on the Omnitrans website and at the Omnitrans San Bernardino Metro Facility.

Prepared by:

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Vicki Dennett, Assistant to CEO/General Manager

ITEM # E3

**ADMINISTRATIVE & FINANCE COMMITTEE  
MINUTES, OCTOBER 9, 2014**

**A. CALL TO ORDER**

Committee Chair Ed Graham called the regular meeting of the Administrative and Finance Committee to order at 8:00 a.m., Thursday, October 9, 2014.

1. Pledge of Allegiance
2. Roll Call

**Committee Members Present**

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

**Committee Members Not Present**

Council Member Dick Riddell, City of Yucaipa

**OmniTrans Administrative Staff Present**

P. Scott Graham, CEO/General Manager  
Diane Caldera, Director of Operations  
Sam Gibbs, Director of Internal Audit Services  
Jacob Harms, Director of Information Technology  
Andres Ramirez, Program Manager  
Jennifer Sims, Director of Procurement  
Don Walker, Director of Finance  
Ray Maldonado, Employee Relations Manager  
Debra Nicastro, Senior Contract Administrator  
Eugenia Pinheiro, Contracts Manager  
Nicole Ramos, Marketing Manager  
Oscar Tostado, Maintenance Manager  
Mark Crosby, Loss Prevention Supervisor

**B. ANNOUNCEMENTS/PRESENTATIONS**

The next Committee Meeting is scheduled Thursday, November 13, 2014, at 8:00 a.m.

**C. COMMUNICATIONS FROM THE PUBLIC**

There were no comments from the public.

**D. POSSIBLE CONFLICT OF INTEREST ISSUES**

There were no conflict of interest issues identified.

**E. DISCUSSION ITEMS**

1. Approve Administrative & Finance Committee Minutes – July 10, 2014

M/S (Eaton/Musser) that approved the Committee Minutes of July 10, 2014. Motion was unanimous by remaining Members present.

2. Recommend to Board of Directors, Receive and File Construction Progress Report No. 31 through July, August and September 22, 2014 - sbX E Street Corridor BRT Project

sbX Program Manager Andres Ramirez presented the Construction Progress Report No. 31 for the period of July through September 22, 2014.

Expenditures to date total \$163.6M and the estimated cost at completion is \$187.9M from the budget of \$191.7M. Lost time injuries remain at zero with over 452,500 man hours completed.

The Vehicle Maintenance Facility (VMF) is 56% complete and is currently projected for completion in June 2015; however the schedule is currently being reviewed with the contractor and in an effort to reduce the timeline.

Building A – Maintenance Building – Battery Room panels and service equipment installed, start up and testing in progress, the concrete apron is complete and in use, punch list prepared and repairs in progress.

Building B – Bus Wash Building – Concrete stem walls for masonry poured and under-slab conduit and utilities installed.

Building C – Fuel Island – Buffer tanks have been relocated, over-excavation of foundation area completed, and foundation has been poured and structural steel is being erected. Buffer tanks can not be used for the pipeline gas.

The Green Line is in operation, and the JV contract is being closed out. Signal synchronization is complete.

Final closeout of the sbX construction contract is in process, the 10<sup>th</sup> Street to Highland Pavement Modification is out to bid and Omnitrans is in final negotiations with firm for the Public Address System along the corridor.

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

Board Chair Wapner arrived at 8:10 a.m.

3. Recommend to Board of Directors, Receive and File Omnitrans' Forward Fuel Purchases Update – August 2014

Director of Finance Donald Walker reported that Omnitrans entered into a new 12-month Fuel Hedge Agreement at \$0.91 per CNG Gallon, under the \$0.92 per gallon approved by the Board. The new contract expires in August 2015.

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

4. Recommend to Board of Directors, Receive and File Director of Finance Report on Forward Fuel Purchases for September 2014

Director of Finance Donald Walker reported that the first month of the new fuel hedge contract closed with a gain on the hedge position of \$555, with the expectation that the gain recognized in future months will be greater.

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

5. Recommend to Board of Directors, Approve Disposal of Capital Assets to JPA (Joint Powers Agreement) Members, Other Governmental Entities and 501(c)(3) Organizations

Director of Internal Audit Samuel Gibbs stated that Omnitrans was seeking approval to offer fully depreciated capital assets to JPA (Joint Powers Agreement) member entities, other governmental entities and 501(c)(3) organizations prior to sending to public auction. The assets would be offered on a first come, first served, basis.

M/S (Roberts/Stanckiewicz) to recommend the Board of Directors approve offering fully depreciated capital assets to JPA (Joint Powers Agreement) member entities or other governmental entities first, then to 501(c)(3) organizations in "As Is Condition" prior to sale at public auction. Motion was unanimous by Members present.



6. Recommend to Board of Directors, Adopt Revisions to Procurement Policies 1000 General Procurement Policy, 1010 Purpose, 1020 Responsibilities, and Procurement Procedure 4000-1 Formal Procurement Procedures.

Director of Procurement Jennifer Sims explained that a procedure change that was implemented as a result of the Procurement System Review (PSR) in 2008 needs to be further clarified to satisfy the Federal Transit Administration and other recommended changes are being recommended to ensure consistency between Procurement Policies and Procurement Procedures. Our worksheet was developed and put into practice, but was never referenced in the procedure; this will bring consistency to Procurement Procedures and would be consistent with the rest of the organization. The other changes are being recommended to ensure consistency between Procurement Policies and Procurement Procedures.

M/S (Stanckiewicz/Musser) to recommend the Board of Directors adopt revisions to Omnitrans' Procurement Policy 1000, General Procurement Policy, 1010 (Purpose), 1020 (Responsibilities), and Omnitrans' Procurement Procedure 4000-1, Formal Procurement Procedures, to become effective November 5, 2014. Motion was unanimous by remaining Members present.

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

There were no remarks or announcements.

#### **G. ADJOURNMENT**

The Administrative and Finance Committee meeting adjourned at 8:18 a.m. The next Administrative and Finance Committee Meeting is scheduled Thursday, November 13, 2014 at 8:00 a.m., with location posted on the Omnitrans website and at Omnitrans' San Bernardino Metro Facility.

Prepared by:

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Christine Vega, Administrative Secretary

ITEM #       E4      

**DATE:** December 3, 2014

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

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

**FROM:** Andres Ramirez, Program Manager

**SUBJECT: CONSTRUCTION PROGRESS REPORT NO. 32 THROUGH  
OCTOBER 28, 2014 - sbX E STREET CORRIDOR BRT PROJECT**

**FORM MOTION**

Receive and file Construction Progress Report No. 32 for the sbX E Street Corridor BRT Project through October 28, 2014.

*This item was reviewed by the Administrative and Finance Committee at its November 13, 2014, meeting, and recommended to the Board of Directors for receipt and file.*

**BACKGROUND**

This is Construction Progress Report No. 32 for the sbX E Street Corridor Project.

**CONCLUSION**

Receive and file Construction Progress Report No.32 for the sbX E Street Corridor BRT Project through October 28, 2014.

PSG:AR

Attachment



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

### **Construction Progress Report No. 32**

**October 28, 2014**

**Submitted By:**

**JACOBS**

Contractor: SBX Corridor - Griffith/Comet  
VMF – USS Cal Builders

Contractor Contract No.: IPMO11-5

Project Manager: Roger Hatton, P.E.

Omnitrans Program Manager: Andres Ramirez



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  - C. Upcoming Work
  - D. Concerns
- II. Project Schedule
  - A. Summary of Project Schedule – Vehicle Maintenance Facility (VMF)
- III. RFIs, Submittals, and Non-Conformance Reports
  - A. Vehicle Maintenance Facility (VMF)
- IV. Safety
- V. Project Budget and Cost
- VI. Change Orders and Claims
  - A. VMF Change Orders
- VII. Project Photographs
  - A. Vehicle Maintenance Facility (VMF) Photos

## **I. PROJECT STATUS SUMMARY**

### **A. Project Description**

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 project consists mainly of three components, the E Street Corridor, the purchase of 60' articulated buses, and the modifications to the Vehicle Maintenance Facility. While the buses have been procured and the E Street Corridor is in operation, work continues on the Vehicle Maintenance Facility.

### **B. Summary Status Update (Accomplishments)**

#### **E Street Corridor:**

- Continued Final acceptance process.
- Placed bid package out to bid for 10<sup>th</sup> to Highland.
- Selected a firm for the design of the PA System.
- Secured a supplier for the delineators along the dedicated bus lanes.

#### **Vehicle Maintenance Facility:**

##### Maintenance Building A

- Compressors are complete.
- Trash Compactor is complete.
- Booster pumps are complete.
- Buffer Tank relocation is complete as planned.
- Bays five through eight are complete.
- Signage and striping is complete.
- Eyewash shower is complete.
- Battery room is complete.
- All HVAC Ductwork is complete.
- PCC Pavement in front of Building A for Bays five through eight is complete.

##### Bus Wash Facility Building B

- Concrete foundations are complete.
- All underground utilities are complete.
- Slab-on-grade from Gridline D to B is complete.
- Reclamation Pit foundation and walls are complete.
- Sewer Injector foundation and walls are complete.

##### Vacuum and Fuel Facility Building C

- Foundations are complete.
- Structural Steel Framing is complete.
- Metal Steel Decking is complete.

##### Site Work

- Directors' Row – Remove and Replace the settling concrete pavement.

## C. Upcoming Work (November 2014)

### E Street Corridor:

- Achieve final acceptance of the project.
- Award agreement for and commence design of PA System.
- Receive bids for 10<sup>th</sup> through Highland.
- Install delineators.
- Commence design of settlement work at World Oil.

### Vehicle Maintenance Facility (VMF)

#### Maintenance Building A

- Beneficial Occupancy Building A – Paint Room.
- Beneficial Occupancy Building A – Dyno Room.
- Beneficial Occupancy Building A – Battery Room.

#### Bus Wash Facility Building B

- Finish Slab on grade for Gridline B thru A.
- Continue with CMU walls Gridline D thru A.
- Structural roof framing.

#### Vacuum and Fuel Facility Building C

- Complete all underground utilities work.
- Foundation work.
- Slab on Grade.
- CMU walls at Gridline E, B, and A.

#### Sitework

- Sewer and Manhole connection.

## II. PROJECT SCHEDULE

Over the last several months, the overall project schedule continued to slip due to the work at the Vehicle Maintenance Facility. However, it appears to have stabilized due to the concentrated efforts of the CM Services team and Omnitrans' staff. The corridor work is complete and revenue service achieved as planned. All changes and time extensions for the corridor negotiated and closed out. Following is the schedule status update as it pertains to the VMF:

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

The Contractor's latest monthly schedule update for October 2014 (UP11), with a data date of October 15, 2014, submitted on October 17, 2014. Although the schedule update shows the Project falling seven calendar days further behind schedule, (with Substantial and Final Completion dates of April 29, 2015, and June 27, 2015, respectively), significant progress has been made in stabilizing the project. In addition, schedule compression efforts continue with the intent of reducing the delays and achieving an earlier completion. There is expectation that the next schedule update will demonstrate some of the results.

Claims for Time Impact Evaluations (TIE) submitted and have the following status:

- Claim No. 1 – TIE No. 1 – RESOLVED. Impacts to Completion of Temporary Fuel Island (Building D) – COR 37 - Submitted on October 28, 2013, with Agency response issued January 29, 2014, granting an extension of 108-calendar days. 55-CD deemed concurrent (Excusable & Non-Compensable) and 53-CD deemed (Excusable & Compensable), resulting in revised Substantial and Final Completion dates of March 27, 2014 and May 26, 2014, respectively.
- Claim No. 2 – TIE No. 2 – RESOLVED. Backfill of UST's – COR 117, the Agency granted an extension of 50 calendar days: 11 calendar days (excusable and Non-compensable) and 39 calendar days (excusable and compensable), resulting in revised Substantial and Final Completion dates of May 16, 2014 and July 15, 2014.
- Claim No. 3 – TIE No. 3 – RESOLVED. Contaminated Soil At Bldg. B – COR 110, the Agency granted an extension of 43 calendar days of excusable and compensable, resulting in revised Substantial and Final Completion dates of June 28, 2014 and August 27, 2014.
- Claim No. 4 – TIE No. 4 – RESOLVED. Additional clarification and claim from TIE 1 unilateral. COR 37A – the Agency granted an extension of 36 calendar days: 6 calendar days (excusable and non-compensable) and 30 calendar days of (excusable and compensable), resulting in revised Substantial and Final Completion dates of August 8, 2014 and October 7, 2014.

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

#### Vehicle Maintenance Facility (VMF)

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

Total RFIs – 227  
Total Open – 2

Total Submittals – 149  
Total Open – 1

Total NCRs – 14  
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.

VMF - As of October 15, 2014 there have been 42,000 “no-lost time” hours.

**V. PROJECT BUDGET AND COST****TOTAL PROGRAM BUDGET  
BUDGET AS OF SEPTEMBER 30, 2014**

Approved Budget: \$191,706,000  
 Cost to Date: \$164,894,703  
 Estimate to Complete: \$ 23,010,556  
 Estimate at Completion: \$187,905,259

**VMF CORRIDOR PROJECT COSTS - AS OF SEPTEMBER 30, 2014**

	CURRENT AUTHORIZED	CURRENT INVOICES PAID	REMAINING CONTRACT BALANCE
<b>STV Inc.</b>	\$1,418,132	\$1,266,342	\$151,790
<b>USS Cal Builders</b>	\$14,498,152	\$6,901,277	\$7,596,875
<b>Total</b>	\$15,916,284	\$8,167,619	\$7,748,665

**VMF CONTRACT TIME**

Activity	Days	Date
Notice to Proceed		12/10/12
Calendar Days per Original Contract	425	02/08/14
CCO Time Extension to Date	237	
Total Revised Contractual Time	662	10/7/14
Calendar Days Completed as of October 15, 2014	673	
Required Completion Days as of October 15, 2014	255	10/8/14
Forecasted Final Completion as October 15, 2014		6/27/15
Percent Time Elapsed	102%	



**CHANGE ORDERS****VMF CONTRACT CHANGE ORDERS - As of October 15, 2014**

<b>Change Order Status</b>	<b>Amount</b>
Approved Change Orders	\$2,330,825
Pending Change Orders	\$339,303
Potential Change Orders	\$483,405
<b>Total</b>	<b>\$3,153,533</b>

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

## VI. Project Photographs

### VMF PROGRESS PHOTOS



**Building B - Installation of Drains at Bus Wash Bay**



**Building C - Receiving and Landing the Roof Decking**



**Building B - Bus Inspection Pit**



**Building C - Receiving and Landing the Roof Decking**

Budget By Contract Packages  
at September 30, 2014

	PCGA Budget	Approved Current Budget	Authorized for Expenditure	Expended to Date	% of Approved Current Budget	Contracts Awarded	Approved Changes	Committed	Expenditure Authorization Remaining	Remaining Contingency	Forecast Potential Uses of Contingency		
											Pending Commitments	Potential Changes	Estimate At Completion Trends/Risks
BRT Construction	90,780,000	84,637,000	87,780,263	79,567,623	94.0%	65,007,603	14,593,092	79,600,695	8,159,568	5,036,305	-	-	79,600,695
Griffith/Comet JV			68,000	68,000		68,000		68,000	-	(68,000)			68,000
Art			48,401	48,401		48,401		48,401	-	(48,401)	1,613,632		1,662,033
Other						-		-	-	-	3,335,885		3,335,885
10th-Highland						-		-	-	-	350,000		350,000
World Oil Gas Station						-		-	-	-	90,000		90,000
Gage Canal						-		-	-	-			
VMF Construction - USS Cal Builders	5,370,000	8,131,000	14,498,152	6,901,277	84.9%	10,672,049	2,022,749	12,694,798	1,803,354	(4,563,798)	671,978	1,789,855	15,158,631
Vehicles Design & Manufacturing-N.F.	16,628,000	16,628,000	15,978,093	14,949,266	89.9%	15,483,752	325,110	15,808,862	169,231	819,138			15,808,862
Other Vehicle Equipment			318,853	-		318,853		318,853	-	(318,853)	128,000		448,853
ROW Acquisition Services-SANBAG	6,532,000	10,357,000	11,738,400	11,177,606	107.9%	9,782,000	1,189,135	10,971,135	767,265	(614,135)	767,265		11,738,400
ROW Acquisition Services-10thHighland												151,570	151,570
3rd Party Utilities Design & Reloc.		1,003,000	1,157,223	1,039,914	103.7%	1,106,117		1,106,117	51,108	(103,117)			1,106,117
BRT Design-Parsons	19,193,400	17,849,400	18,097,876	16,920,284	94.8%	14,706,229	3,391,647	18,097,876	-	(248,476)	(688,379)		17,408,497
VMF Design													
STV	1,007,600	1,007,600	1,418,132	1,266,342	125.7%	951,029	1,048,830	1,999,859	(591,727)	(992,259)			1,999,859
Carlin Environmental			27,800	14,400		10,000	9,800	19,800	8,000	(19,800)		8,000	27,800
Project Admin. And Management													
Jacobs	6,638,000	6,632,000	11,852,647	11,620,384	175.2%	3,888,769	9,756,349	13,655,118	(1,802,471)	(7,023,118)			13,655,118
Other													
IPMO	17,624,000	15,012,450	14,722,701	12,547,827	83.6%	14,722,701	450,000	15,172,701		(160,251)	-		15,172,701
Insurance	1,113,000	1,112,000	500,000			500,000		500,000		612,000	(500,000)		
Legal-BB&K, County	2,525,450	1,000,000	1,000,000	372,131	37.2%	1,000,000		1,000,000		-			1,000,000
In Kind Contributions	8,080,550	8,080,550	8,080,550	8,401,239	104.0%	8,038,557		8,401,239		(320,689)			8,401,239
Survey	1,464,000	1,463,000	464,000			25,000		25,000	439,000	1,438,000			25,000
Start-Up	720,000	720,000	700,000			700,000		700,000		20,000			700,000
Sub-Total	177,676,000	173,633,000	189,431,091	164,894,703	95.0%	147,039,060	32,786,711	180,188,453	9,013,377	(6,555,953)	5,767,381	1,949,425	187,905,259
Unallocated Contingency								6,555,453		11,517,547			3,800,741
Total	191,706,000	191,706,000	189,431,091	164,778,302	86.0%					11,517,547			191,706,000

ITEM # E5

**DATE:** December 3, 2014

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

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

**FROM:** Wendy Williams, Director of Marketing and Planning

**SUBJECT: OMNITRANS TRANSIT DESIGN GUIDELINES**

**FORM MOTION**

Receive and file the final Omnitrans Transit Design Guidelines document and online toolkit.

*The Transit Design Guidelines are available online at <http://www.omnitrans.org/about/reports/> or at <http://design.omnitrans.org/>. Hard copies are available upon request.*

*This item was received by the Plans and Programs Committee at its October 22, 2014 meeting, and forwarded to the Board of Directors.*

**BACKGROUND**

On March 7, 2012, the Board of Directors approved a contract with Parsons Transportation Group, Inc., of Pasadena, CA, for the completion of a Transit Design Guidelines document, otherwise known as the sbX/BRT Design Guidelines, Operating and Maintenance Policy Manual.

The primary purpose of the Transit Design Guidelines was to document the lessons learned from the design of the E Street sbX bus rapid transit (BRT) corridor project, in order to prevent future duplication of effort and streamline the design process for future corridors and transit projects. The Transit Design Guidelines document also includes an update to Omnitrans' 2006 Bus Stop Design Guidelines, including graphics for design of local bus stops, as well as transit centers.

The purpose of the Transit Design Guidelines is to provide design criteria that should be considered for designing and building safe, comfortable, and convenient high-quality facilities at bus stop locations, while considering the operational needs of Omnitrans, the requirements of the Americans with Disabilities Act (ADA), other federal and state accessibility mandates, and public safety and security.

The Transit Design Guidelines are intended for use by city planners, designers, traffic engineers,



developers, and other public officials. The Guidelines do not constitute engineering standards on which to base a final design, but are rather recommended criteria and general guidance for the placement and safe design of transit facilities.

Omnitrans' JPA member agencies were closely involved in the development of the guidelines. Staff from departments such as Engineering, Public Works, Planning, Community Development, Community Services, and/or Parks and Recreation at the cities and County were invited to attend three rounds of stakeholder input sessions, held in June, September, and October of 2012.

The Guidelines were also consolidated into an interactive online toolkit, which is available at <http://design.omnitrans.org/>.

## **CONCLUSION**

Staff recommends that the Board of Directors receive and file the final Omnitrans Transit Design Guidelines document and online toolkit.

PSG:WW:AMJ

ITEM # E6

**DATE:** December 3, 2014

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

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

**SUBJECT: REAPPOINT MEMBER LILBURN TO SERVE THREE YEAR TERM  
CONSOLIDATED TRANSPORTATION SERVICES AGENCY**

**FORM MOTION**

Reappoint Board Member Penny Lilburn to serve a three-year term on the Consolidated Transportation Services Agency (CTSA) Board of Directors, beginning December 1, 2014 and continuing to December 1, 2017.

**BACKGROUND**

The CTSA is governed by a seven member Board of Directors, with three members appointed by the San Bernardino Associated Governments (SANBAG), two members appointed by the County of San Bernardino, and two members appointed by Omnitrans.

In November 2010, the Omnitrans Board of Directors appointed Board Members Penny Lilburn (Highland) and Lee Ann Garcia (Grand Terrace) to serve on the Consolidated Transportation Services Agency (Valley Transportation Services [VTrans]) Board of Directors for a three year term, December 1, 2010 through December 1, 2013. To maintain compliance with VTrans amended Bylaws, in April 2013, Member Lilburn's term was extended by one year, to December 1, 2014. Also at that time, Board Vice Chair Sam Spagnolo was appointed to fill the vacancy left by former Omnitrans Board Member Lee Ann Garcia, until December 1, 2013, and in November 2013, was reappointed to serve a three-year term to December 1, 2016.

On September 30, 2014, Omnitrans received correspondence from VTrans requesting Omnitrans to re-appoint Member Lilburn to a new three-year term, beginning December 1, 2014.

**CONCLUSION**

Reappointing Member Lilburn will ensure that Omnitrans' interests are represented at VTrans.

PSG:VD

ITEM # E7

**DATE:** December 3, 2014

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

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

**SUBJECT: ADOPT ROSENBERG'S RULES OF ORDER**

**FORM MOTION**

Adopt Rosenberg's Rules of Order as the official rules of procedure for conducting Board and Board Committee Meetings.

*This item was reviewed by the Administrative and Finance Committee at its November 13, 2014, meeting and recommended to the Board of Directors for adoption.*

**BACKGROUND**

As a matter of background, in June 1976, the Omnitrans Board of Directors adopted Robert's Rules of Order as the guiding parliamentary procedure to conduct Board Meetings, with the understanding that it could be amended at any time.

Although Robert's Rules of Order has its use in complex settings, the need for a simplified version of parliamentary procedure was evident. Out of this need, Rosenberg's Rules of Order, Simple Rules of Parliamentary Procedure for the 21<sup>st</sup> Century, Revised 2011, was developed by Judge Dave Rosenberg, based on decades of experience chairing meetings.

Rosenberg's Rules retain the basic principles of Robert's Rules and have been adopted by hundreds of cities, counties, special districts, committees, boards, commissions, neighborhood associations and private corporations.

**CONCLUSION**

Upon adoption, Rosenberg's Rules of Order will replace Robert's Rules of Order and become the guiding parliamentary procedure followed at Omnitrans Board and Board Committee Meetings.

PSG:VD





# Rosenberg's Rules of Order

REVISED 2011

*Simple Rules of Parliamentary Procedure for the 21st Century*

*By Judge Dave Rosenberg*



## MISSION AND CORE BELIEFS

To expand and protect local control for cities through education and advocacy to enhance the quality of life for all Californians.

## VISION

To be recognized and respected as the leading advocate for the common interests of California's cities.

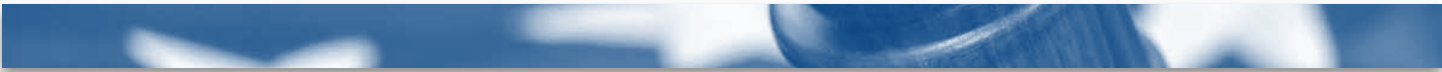
### About the League of California Cities

Established in 1898, the League of California Cities is a member organization that represents California's incorporated cities. The League strives to protect the local authority and autonomy of city government and help California's cities effectively serve their residents. In addition to advocating on cities' behalf at the state capitol, the League provides its members with professional development programs and information resources, conducts education conferences and research, and publishes Western City magazine.

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### ABOUT THE AUTHOR

Dave Rosenberg is a Superior Court Judge in Yolo County. He has served as presiding judge of his court, and as presiding judge of the Superior Court Appellate Division. He also has served as chair of the Trial Court Presiding Judges Advisory Committee (the committee composed of all 58 California presiding judges) and as an advisory member of the California Judicial Council. Prior to his appointment to the bench, Rosenberg was member of the Yolo County Board of Supervisors, where he served two terms as chair. Rosenberg also served on the Davis City Council, including two terms as mayor. He has served on the senior staff of two governors, and worked for 19 years in private law practice. Rosenberg has served as a member and chair of numerous state, regional and local boards. Rosenberg chaired the California State Lottery Commission, the California Victim Compensation and Government Claims Board, the Yolo-Solano Air Quality Management District, the Yolo County Economic Development Commission, and the Yolo County Criminal Justice Cabinet. For many years, he has taught classes on parliamentary procedure and has served as parliamentarian for large and small bodies.



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## INTRODUCTION

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The rules of procedure at meetings should be simple enough for most people to understand. Unfortunately, that has not always been the case. Virtually all clubs, associations, boards, councils and bodies follow a set of rules — *Robert's Rules of Order* — which are embodied in a small, but complex, book. Virtually no one I know has actually read this book cover to cover. Worse yet, the book was written for another time and for another purpose. If one is chairing or running a parliament, then *Robert's Rules of Order* is a dandy and quite useful handbook for procedure in that complex setting. On the other hand, if one is running a meeting of say, a five-member body with a few members of the public in attendance, a simplified version of the rules of parliamentary procedure is in order.

Hence, the birth of *Rosenberg's Rules of Order*.

What follows is my version of the rules of parliamentary procedure, based on my decades of experience chairing meetings in state and local government. These rules have been simplified for the smaller bodies we chair or in which we participate, slimmed down for the 21st Century, yet retaining the basic tenets of order to which we have grown accustomed. Interestingly enough, *Rosenberg's Rules* has found a welcoming audience. Hundreds of cities, counties, special districts, committees, boards, commissions, neighborhood associations and private corporations and companies have adopted *Rosenberg's Rules* in lieu of *Robert's Rules* because they have found them practical, logical, simple, easy to learn and user friendly.

This treatise on modern parliamentary procedure is built on a foundation supported by the following four pillars:

1. **Rules should establish order.** The first purpose of rules of parliamentary procedure is to establish a framework for the orderly conduct of meetings.
2. **Rules should be clear.** Simple rules lead to wider understanding and participation. Complex rules create two classes: those who understand and participate; and those who do not fully understand and do not fully participate.
3. **Rules should be user friendly.** That is, the rules must be simple enough that the public is invited into the body and feels that it has participated in the process.
4. **Rules should enforce the will of the majority while protecting the rights of the minority.** The ultimate purpose of rules of procedure is to encourage discussion and to facilitate decision making by the body. In a democracy, majority rules. The rules must enable the majority to express itself and fashion a result, while permitting the minority to also express itself, but not dominate, while fully participating in the process.

### Establishing a Quorum

The starting point for a meeting is the establishment of a quorum. A quorum is defined as the minimum number of members of the body who must be present at a meeting for business to be legally transacted. The default rule is that a quorum is one more than half the body. For example, in a five-member body a quorum is three. When the body has three members present, it can legally transact business. If the body has less than a quorum of members present, it cannot legally transact business. And even if the body has a quorum to begin the meeting, the body can lose the quorum during the meeting when a member departs (or even when a member leaves the dais). When that occurs the body loses its ability to transact business until and unless a quorum is reestablished.

The default rule, identified above, however, gives way to a specific rule of the body that establishes a quorum. For example, the rules of a particular five-member body may indicate that a quorum is four members for that particular body. The body must follow the rules it has established for its quorum. In the absence of such a specific rule, the quorum is one more than half the members of the body.


### The Role of the Chair

While all members of the body should know and understand the rules of parliamentary procedure, it is the chair of the body who is charged with applying the rules of conduct of the meeting. The chair should be well versed in those rules. For all intents and purposes, the chair makes the final ruling on the rules every time the chair states an action. In fact, all decisions by the chair are final unless overruled by the body itself.

Since the chair runs the conduct of the meeting, it is usual courtesy for the chair to play a less active role in the debate and discussion than other members of the body. This does not mean that the chair should not participate in the debate or discussion. To the contrary, as a member of the body, the chair has the full right to participate in the debate, discussion and decision-making of the body. What the chair should do, however, is strive to be the last to speak at the discussion and debate stage. The chair should not make or second a motion unless the chair is convinced that no other member of the body will do so at that point in time.

### The Basic Format for an Agenda Item Discussion

Formal meetings normally have a written, often published agenda. Informal meetings may have only an oral or understood agenda. In either case, the meeting is governed by the agenda and the agenda constitutes the body's agreed-upon roadmap for the meeting. Each agenda item can be handled by the chair in the following basic format:



**First**, the chair should clearly announce the agenda item number and should clearly state what the agenda item subject is. The chair should then announce the format (which follows) that will be followed in considering the agenda item.

**Second**, following that agenda format, the chair should invite the appropriate person or persons to report on the item, including any recommendation that they might have. The appropriate person or persons may be the chair, a member of the body, a staff person, or a committee chair charged with providing input on the agenda item.

**Third**, the chair should ask members of the body if they have any technical questions of clarification. At this point, members of the body may ask clarifying questions to the person or persons who reported on the item, and that person or persons should be given time to respond.

**Fourth**, the chair should invite public comments, or if appropriate at a formal meeting, should open the public meeting for public input. If numerous members of the public indicate a desire to speak to the subject, the chair may limit the time of public speakers. At the conclusion of the public comments, the chair should announce that public input has concluded (or the public hearing, as the case may be, is closed).

**Fifth**, the chair should invite a motion. The chair should announce the name of the member of the body who makes the motion.

**Sixth**, the chair should determine if any member of the body wishes to second the motion. The chair should announce the name of the member of the body who seconds the motion. It is normally good practice for a motion to require a second before proceeding to ensure that it is not just one member of the body who is interested in a particular approach. However, a second is not an absolute requirement, and the chair can proceed with consideration and vote on a motion even when there is no second. This is a matter left to the discretion of the chair.

**Seventh**, if the motion is made and seconded, the chair should make sure everyone understands the motion.

This is done in one of three ways:

1. The chair can ask the maker of the motion to repeat it;
2. The chair can repeat the motion; or
3. The chair can ask the secretary or the clerk of the body to repeat the motion.

**Eighth**, the chair should now invite discussion of the motion by the body. If there is no desired discussion, or after the discussion has ended, the chair should announce that the body will vote on the motion. If there has been no discussion or very brief discussion, then the vote on the motion should proceed immediately and there is no need to repeat the motion. If there has been substantial discussion, then it is normally best to make sure everyone understands the motion by repeating it.

**Ninth**, the chair takes a vote. Simply asking for the “ayes” and then asking for the “nays” normally does this. If members of the body do not vote, then they “abstain.” Unless the rules of the body provide otherwise (or unless a super majority is required as delineated later in these rules), then a simple majority (as defined in law or the rules of the body as delineated later in these rules) determines whether the motion passes or is defeated.

**Tenth**, the chair should announce the result of the vote and what action (if any) the body has taken. In announcing the result, the chair should indicate the names of the members of the body, if any, who voted in the minority on the motion. This announcement might take the following form: “The motion passes by a vote of 3-2, with Smith and Jones dissenting. We have passed the motion requiring a 10-day notice for all future meetings of this body.”

## Motions in General

Motions are the vehicles for decision making by a body. It is usually best to have a motion before the body prior to commencing discussion of an agenda item. This helps the body focus.

Motions are made in a simple two-step process. First, the chair should recognize the member of the body. Second, the member of the body makes a motion by preceding the member’s desired approach with the words “I move ...”

A typical motion might be: “I move that we give a 10-day notice in the future for all our meetings.”

The chair usually initiates the motion in one of three ways:


1. **Inviting the members of the body to make a motion**, for example, “A motion at this time would be in order.”
2. **Suggesting a motion to the members of the body**, “A motion would be in order that we give a 10-day notice in the future for all our meetings.”
3. **Making the motion**. As noted, the chair has every right as a member of the body to make a motion, but should normally do so only if the chair wishes to make a motion on an item but is convinced that no other member of the body is willing to step forward to do so at a particular time.

## The Three Basic Motions

There are three motions that are the most common and recur often at meetings:

**The basic motion.** The basic motion is the one that puts forward a decision for the body’s consideration. A basic motion might be: “I move that we create a five-member committee to plan and put on our annual fundraiser.”





**The motion to amend.** If a member wants to change a basic motion that is before the body, they would move to amend it. A motion to amend might be: “I move that we amend the motion to have a 10-member committee.” A motion to amend takes the basic motion that is before the body and seeks to change it in some way.

**The substitute motion.** If a member wants to completely do away with the basic motion that is before the body, and put a new motion before the body, they would move a substitute motion. A substitute motion might be: “I move a substitute motion that we cancel the annual fundraiser this year.”

“Motions to amend” and “substitute motions” are often confused, but they are quite different, and their effect (if passed) is quite different. A motion to amend seeks to retain the basic motion on the floor, but modify it in some way. A substitute motion seeks to throw out the basic motion on the floor, and substitute a new and different motion for it. The decision as to whether a motion is really a “motion to amend” or a “substitute motion” is left to the chair. So if a member makes what that member calls a “motion to amend,” but the chair determines that it is really a “substitute motion,” then the chair’s designation governs.

A “friendly amendment” is a practical parliamentary tool that is simple, informal, saves time and avoids bogging a meeting down with numerous formal motions. It works in the following way: In the discussion on a pending motion, it may appear that a change to the motion is desirable or may win support for the motion from some members. When that happens, a member who has the floor may simply say, “I want to suggest a friendly amendment to the motion.” The member suggests the friendly amendment, and if the maker and the person who seconded the motion pending on the floor accepts the friendly amendment, that now becomes the pending motion on the floor. If either the maker or the person who seconded rejects the proposed friendly amendment, then the proposer can formally move to amend.

## Multiple Motions Before the Body

There can be up to three motions on the floor at the same time. The chair can reject a fourth motion until the chair has dealt with the three that are on the floor and has resolved them. This rule has practical value. More than three motions on the floor at any given time is confusing and unwieldy for almost everyone, including the chair.

When there are two or three motions on the floor (after motions and seconds) at the same time, the vote should proceed *first* on the *last* motion that is made. For example, assume the first motion is a basic “motion to have a five-member committee to plan and put on our annual fundraiser.” During the discussion of this motion, a member might make a second motion to “amend the main motion to have a 10-member committee, not a five-member committee to plan and put on our annual fundraiser.” And perhaps, during that discussion, a member makes yet a third motion as a “substitute motion that we not have an annual fundraiser this year.” The proper procedure would be

as follows:

**First**, the chair would deal with the *third* (the last) motion on the floor, the substitute motion. After discussion and debate, a vote would be taken first on the third motion. If the substitute motion *passed*, it would be a substitute for the basic motion and would eliminate it. The first motion would be moot, as would the second motion (which sought to amend the first motion), and the action on the agenda item would be completed on the passage by the body of the third motion (the substitute motion). No vote would be taken on the first or second motions.

**Second**, if the substitute motion *failed*, the chair would then deal with the second (now the last) motion on the floor, the motion to amend. The discussion and debate would focus strictly on the amendment (should the committee be five or 10 members). If the motion to amend *passed*, the chair would then move to consider the main motion (the first motion) as *amended*. If the motion to amend *failed*, the chair would then move to consider the main motion (the first motion) in its original format, not amended.

**Third**, the chair would now deal with the first motion that was placed on the floor. The original motion would either be in its original format (five-member committee), or if *amended*, would be in its amended format (10-member committee). The question on the floor for discussion and decision would be whether a committee should plan and put on the annual fundraiser.

## To Debate or Not to Debate

The basic rule of motions is that they are subject to discussion and debate. Accordingly, basic motions, motions to amend, and substitute motions are all eligible, each in their turn, for full discussion before and by the body. The debate can continue as long as members of the body wish to discuss an item, subject to the decision of the chair that it is time to move on and take action.

There are exceptions to the general rule of free and open debate on motions. The exceptions all apply when there is a desire of the body to move on. The following motions are not debatable (that is, when the following motions are made and seconded, the chair must immediately call for a vote of the body without debate on the motion):

**Motion to adjourn.** This motion, if passed, requires the body to immediately adjourn to its next regularly scheduled meeting. It requires a simple majority vote.

**Motion to recess.** This motion, if passed, requires the body to immediately take a recess. Normally, the chair determines the length of the recess which may be a few minutes or an hour. It requires a simple majority vote.

**Motion to fix the time to adjourn.** This motion, if passed, requires the body to adjourn the meeting at the specific time set in the motion. For example, the motion might be: “I move we adjourn this meeting at midnight.” It requires a simple majority vote.

**Motion to table.** This motion, if passed, requires discussion of the agenda item to be halted and the agenda item to be placed on “hold.” The motion can contain a specific time in which the item can come back to the body. “I move we table this item until our regular meeting in October.” Or the motion can contain no specific time for the return of the item, in which case a motion to take the item off the table and bring it back to the body will have to be taken at a future meeting. A motion to table an item (or to bring it back to the body) requires a simple majority vote.

**Motion to limit debate.** The most common form of this motion is to say, “I move the previous question” or “I move the question” or “I call the question” or sometimes someone simply shouts out “question.” As a practical matter, when a member calls out one of these phrases, the chair can expedite matters by treating it as a “request” rather than as a formal motion. The chair can simply inquire of the body, “any further discussion?” If no one wishes to have further discussion, then the chair can go right to the pending motion that is on the floor. However, if even one person wishes to discuss the pending motion further, then at that point, the chair should treat the call for the “question” as a formal motion, and proceed to it.

When a member of the body makes such a motion (“I move the previous question”), the member is really saying: “I’ve had enough debate. Let’s get on with the vote.” When such a motion is made, the chair should ask for a second, stop debate, and vote on the motion to limit debate. The motion to limit debate requires a two-thirds vote of the body.

**NOTE:** A motion to limit debate could include a time limit. For example: “I move we limit debate on this agenda item to 15 minutes.” Even in this format, the motion to limit debate requires a two-thirds vote of the body. A similar motion is a *motion to object to consideration of an item*. This motion is not debatable, and if passed, precludes the body from even considering an item on the agenda. It also requires a two-thirds vote.

## Majority and Super Majority Votes

In a democracy, a simple majority vote determines a question. A tie vote means the motion fails. So in a seven-member body, a vote of 4-3 passes the motion. A vote of 3-3 with one abstention means the motion fails. If one member is absent and the vote is 3-3, the motion still fails.

All motions require a simple majority, but there are a few exceptions. The exceptions come up when the body is taking an action which effectively cuts off the ability of a minority of the body to take an action or discuss an item. These extraordinary motions require a two-thirds majority (a super majority) to pass:

**Motion to limit debate.** Whether a member says, “I move the previous question,” or “I move the question,” or “I call the question,” or “I move to limit debate,” it all amounts to an attempt to cut off the ability of the minority to discuss an item, and it requires a two-thirds vote to pass.

**Motion to close nominations.** When choosing officers of the body (such as the chair), nominations are in order either from a nominating committee or from the floor of the body. A motion to close nominations effectively cuts off the right of the minority to nominate officers and it requires a two-thirds vote to pass.

**Motion to object to the consideration of a question.** Normally, such a motion is unnecessary since the objectionable item can be tabled or defeated straight up. However, when members of a body do not even want an item on the agenda to be considered, then such a motion is in order. It is not debatable, and it requires a two-thirds vote to pass.

**Motion to suspend the rules.** This motion is debatable, but requires a two-thirds vote to pass. If the body has its own rules of order, conduct or procedure, this motion allows the body to suspend the rules for a particular purpose. For example, the body (a private club) might have a rule prohibiting the attendance at meetings by non-club members. A motion to suspend the rules would be in order to allow a non-club member to attend a meeting of the club on a particular date or on a particular agenda item.

## Counting Votes

The matter of counting votes starts simple, but can become complicated.


Usually, it’s pretty easy to determine whether a particular motion passed or whether it was defeated. If a simple majority vote is needed to pass a motion, then one vote more than 50 percent of the body is required. For example, in a five-member body, if the vote is three in favor and two opposed, the motion passes. If it is two in favor and three opposed, the motion is defeated.

If a two-thirds majority vote is needed to pass a motion, then how many affirmative votes are required? The simple rule of thumb is to count the “no” votes and double that count to determine how many “yes” votes are needed to pass a particular motion. For example, in a seven-member body, if two members vote “no” then the “yes” vote of at least four members is required to achieve a two-thirds majority vote to pass the motion.

What about tie votes? In the event of a tie, the motion always fails since an affirmative vote is required to pass any motion. For example, in a five-member body, if the vote is two in favor and two opposed, with one member absent, the motion is defeated.

Vote counting starts to become complicated when members vote “abstain” or in the case of a written ballot, cast a blank (or unreadable) ballot. Do these votes count, and if so, how does one count them? The starting point is always to check the statutes.

In California, for example, for an action of a board of supervisors to be valid and binding, the action must be approved by a majority of the board. (California Government Code Section 25005.) Typically, this means three of the five members of the board must vote affirmatively in favor of the action. A vote of 2-1 would not be sufficient. A vote of 3-0 with two abstentions would be sufficient. In general law cities in



California, as another example, resolutions or orders for the payment of money and all ordinances require a recorded vote of the total members of the city council. (California Government Code Section 36936.) Cities with charters may prescribe their own vote requirements. Local elected officials are always well-advised to consult with their local agency counsel on how state law may affect the vote count.

After consulting state statutes, step number two is to check the rules of the body. If the rules of the body say that you count votes of “those present” then you treat abstentions one way. However, if the rules of the body say that you count the votes of those “present and voting,” then you treat abstentions a different way. And if the rules of the body are silent on the subject, then the general rule of thumb (and default rule) is that you count all votes that are “present and voting.”

Accordingly, under the “present and voting” system, you would **NOT** count abstention votes on the motion. Members who abstain are counted for purposes of determining quorum (they are “present”), but you treat the abstention votes on the motion as if they did not exist (they are not “voting”). On the other hand, if the rules of the body specifically say that you count votes of those “present” then you **DO** count abstention votes both in establishing the quorum and on the motion. In this event, the abstention votes act just like “no” votes.

*How does this work in practice?*

*Here are a few examples.*

Assume that a five-member city council is voting on a motion that requires a simple majority vote to pass, and assume further that the body has no specific rule on counting votes. Accordingly, the default rule kicks in and we count all votes of members that are “present and voting.” If the vote on the motion is 3-2, the motion passes. If the motion is 2-2 with one abstention, the motion fails.

Assume a five-member city council voting on a motion that requires a two-thirds majority vote to pass, and further assume that the body has no specific rule on counting votes. Again, the default rule applies. If the vote is 3-2, the motion fails for lack of a two-thirds majority. If the vote is 4-1, the motion passes with a clear two-thirds majority. A vote of three “yes,” one “no” and one “abstain” also results in passage of the motion. Once again, the abstention is counted only for the purpose of determining quorum, but on the actual vote on the motion, it is as if the abstention vote never existed — so an effective 3-1 vote is clearly a two-thirds majority vote.

Now, change the scenario slightly. Assume the same five-member city council voting on a motion that requires a two-thirds majority vote to pass, but now assume that the body **DOES** have a specific rule requiring a two-thirds vote of members “present.” Under this specific rule, we must count the members present not only for quorum but also for the motion. In this scenario, any abstention has the same force and effect as if it were a “no” vote. Accordingly, if the votes were three “yes,” one “no” and one “abstain,” then the motion fails. The abstention in this case is treated like a “no” vote and effective vote of 3-2 is not enough to pass two-thirds majority muster.

Now, exactly how does a member cast an “abstention” vote?

Any time a member votes “abstain” or says, “I abstain,” that is an abstention. However, if a member votes “present” that is also treated as an abstention (the member is essentially saying, “Count me for purposes of a quorum, but my vote on the issue is abstain.”) In fact, any manifestation of intention to vote either “yes” or “no” on the pending motion may be treated by the chair as an abstention. If written ballots are cast, a blank or unreadable ballot is counted as an abstention as well.

Can a member vote “absent” or “count me as absent?” Interesting question. The ruling on this is up to the chair. The better approach is for the chair to count this as if the member had left his/her chair and is actually “absent.” That, of course, affects the quorum. However, the chair may also treat this as a vote to abstain, particularly if the person does not actually leave the dais.

## The Motion to Reconsider

There is a special and unique motion that requires a bit of explanation all by itself; the motion to reconsider. A tenet of parliamentary procedure is finality. After vigorous discussion, debate and a vote, there must be some closure to the issue. And so, after a vote is taken, the matter is deemed closed, subject only to reopening if a proper motion to consider is made and passed.

A motion to reconsider requires a majority vote to pass like other garden-variety motions, but there are two special rules that apply only to the motion to reconsider.

First, is the matter of timing. A motion to reconsider must be made at the meeting where the item was first voted upon. A motion to reconsider made at a later time is untimely. (The body, however, can always vote to suspend the rules and, by a two-thirds majority, allow a motion to reconsider to be made at another time.)

Second, a motion to reconsider may be made only by certain members of the body. Accordingly, a motion to reconsider may be made only by a member who voted in the majority on the original motion. If such a member has a change of heart, he or she may make the motion to reconsider (any other member of the body — including a member who voted in the minority on the original motion — may second the motion). If a member who voted in the minority seeks to make the motion to reconsider, it must be ruled out of order. The purpose of this rule is finality. If a member of minority could make a motion to reconsider, then the item could be brought back to the body again and again, which would defeat the purpose of finality.

If the motion to reconsider passes, then the original matter is back before the body, and a new original motion is in order. The matter may be discussed and debated as if it were on the floor for the first time.





## Courtesy and Decorum

The rules of order are meant to create an atmosphere where the members of the body and the members of the public can attend to business efficiently, fairly and with full participation. At the same time, it is up to the chair and the members of the body to maintain common courtesy and decorum. Unless the setting is very informal, it is always best for only one person at a time to have the floor, and it is always best for every speaker to be first recognized by the chair before proceeding to speak.

The chair should always ensure that debate and discussion of an agenda item focuses on the item and the policy in question, not the personalities of the members of the body. Debate on policy is healthy, debate on personalities is not. The chair has the right to cut off discussion that is too personal, is too loud, or is too crude.

Debate and discussion should be focused, but free and open. In the interest of time, the chair may, however, limit the time allotted to speakers, including members of the body.

Can a member of the body interrupt the speaker? The general rule is “no.” There are, however, exceptions. A speaker may be interrupted for the following reasons:

**Privilege.** The proper interruption would be, “point of privilege.” The chair would then ask the interrupter to “state your point.” Appropriate points of privilege relate to anything that would interfere with the normal comfort of the meeting. For example, the room may be too hot or too cold, or a blowing fan might interfere with a person’s ability to hear.

**Order.** The proper interruption would be, “point of order.” Again, the chair would ask the interrupter to “state your point.” Appropriate points of order relate to anything that would not be considered appropriate conduct of the meeting. For example, if the chair moved on to a vote on a motion that permits debate without allowing that discussion or debate.

**Appeal.** If the chair makes a ruling that a member of the body disagrees with, that member may appeal the ruling of the chair. If the motion is seconded, and after debate, if it passes by a simple majority vote, then the ruling of the chair is deemed reversed.

**Call for orders of the day.** This is simply another way of saying, “return to the agenda.” If a member believes that the body has drifted from the agreed-upon agenda, such a call may be made. It does not require a vote, and when the chair discovers that the agenda has not been followed, the chair simply reminds the body to return to the agenda item properly before them. If the chair fails to do so, the chair’s determination may be appealed.

**Withdraw a motion.** During debate and discussion of a motion, the maker of the motion on the floor, at any time, may interrupt a speaker to withdraw his or her motion from the floor. The motion is immediately deemed withdrawn, although the chair may ask the person who seconded the motion if he or she wishes to make the motion, and any other member may make the motion if properly recognized.

## Special Notes About Public Input

The rules outlined above will help make meetings very public-friendly. But in addition, and particularly for the chair, it is wise to remember three special rules that apply to each agenda item:

**Rule One:** Tell the public what the body will be doing.

**Rule Two:** Keep the public informed while the body is doing it.

**Rule Three:** When the body has acted, tell the public what the body did.



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ITEM # E8

**DATE:** December 3, 2014

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

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

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

**SUBJECT: AUTHORIZE AWARD - CONTRACT ITS15-70  
MULTIPROTOCOL LABEL SWITCHING**

**FORM MOTION**

Authorize the CEO/General Manager to award Contract ITS15-70 to EarthLink of Atlanta, GA, for the provision of Multiprotocol Label Switching for Omnitrans' four facilities beginning January 1, 2015 and ending no later than December 31, 2017, in the amount of \$73,908, plus \$9,000 for state and federal taxes and fees, for a not-to-exceed contract total amount of \$82,908.

**BACKGROUND**

Multiprotocol Label Switching (MPLS) allows for network communications between locations. Omnitrans' MPLS for East Valley, West Valley and I Street facilities is currently provided by En Pointe Technologies and the contract is due to expire December 31, 2014. Omnitrans requires a service provider to provide MPLS services to all four of Omnitrans' locations, including the Rancho Cucamonga facility.

On October 14, 2014, staff released Request for Quotes RFQ-ITS15-70 for the provision of MPLS services. The solicitation was posted on Omnitrans' online bidding system. Six bids were received electronically prior to the November 4, 2014, deadline. Two bids were deemed responsive.

Listed below are the bid prices:

Company	Bid*
EarthLink	\$73,908
OnPoint Business Strategies	\$82,728

\*Federal and State Taxes/Fees not included

Award is recommended to the lowest responsive and responsible bidder. Price is deemed fair and reasonable as the bid of \$73,907 is \$4,412 less than the Independent Cost Estimate of \$78,320.

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

### **FUNDING SOURCE**

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

Department	1630
Expenditure Code	505170

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

### **CONCLUSION**

Approving award of this contract will allow communications to continue between its locations.

PSG:JMS:CVM



## CONTRACT AGREEMENT

between

CONTRACTOR

EarthLink

1170 Peachtree Street, NE, Suite 900

Atlanta, GA 30309

(hereinafter "CONTRACTOR")

Telephone: 256-382-3957

Email: [mracca@corp.earthlink.com](mailto:mracca@corp.earthlink.com)

And

Omnitrans

1700 West Fifth Street

San Bernardino, CA 92411

(hereinafter "OMNITRANS")

**CONTRACT DOCUMENTS**

**CONTRACT NO. ITS15-70**

**Multiprotocol Label Switching**  
**(MPLS)**

Contract Amount: \$82,908

Omnitrans Project Manager:

Name: Harry Morck

Title: Network Administrator

Telephone: (909) 379-7286

Email: [harry.morck@omnitrans.org](mailto:harry.morck@omnitrans.org)

Contract Administrator:

Name: Christine Van Matre

Title: Contract Administrator

Telephone: (909) 379-7122

Email: [christine.vanmatre@omnitrans.org](mailto:christine.vanmatre@omnitrans.org)



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ATTACHMENT A – SCOPE OF WORK

ATTACHMENT B – EARTHLINK COMPLETE DATA MPLS SERVICE LEVEL AGREEMENT

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

## **RECITALS**

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

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

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

### **1. SCOPE OF WORK**

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

### **2. PERIOD OF PERFORMANCE**

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

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



### 3. COMPENSATION

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

Monthly Rates	
East Valley - 10 Mbps	\$ 553
West Valley – 10 Mbps	\$ 505
I Street – 4.5 Mbps	\$ 632
Rancho Cucamonga - 3 Mbps	\$ 363

Three-year Monthly Rate total.....\$73,908

State and Federal Taxes/Fees not to exceed.....\$9,000

OMNITRANS' maximum cumulative payment obligation under this Agreement shall not exceed Eighty-Two Thousand Nine Hundred and Eight Dollars (\$82,908), 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 15<sup>th</sup> 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/services
- Delivery Date
- Total quantity delivered
- Information as requested by OMNITRANS

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

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

## **5. CONTRACT OPTION YEARS AND ADDITIONAL SERVICES**

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

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

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

## 7. NOTIFICATION

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

To OMNITRANS:

Omnitrans  
1700 West Fifth Street  
San Bernardino, CA 92411  
Attn: Christine Van Matre, Contract  
Administrator  
Phone: 909-379-7122  
Email:  
christine.vanmatre@omnitrans.org

To CONTRACTOR:

EarthLink  
770 The City Drive S, Suite 5100  
Orange, CA 92868  
Attn: Mike Ricca, Account Director  
Phone: 626-296-5114  
Email: mricca@corp.earthlink.com

## 8. OMNITRANS' AND CONTRACTOR'S REPRESENTATIVES

### A. OMNITRANS' Project Manager

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

Project Manager: Harry Morck.

- 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>
Mike Ricca	Account Director
Eric Morressey	Solutions Engineer
Anthony Johnson	Branch Manager
To Be Determined	Project Manager - Implementation
To Be Determined	Customer Relations Manager

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

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

**9. DISPUTE RESOLUTION**

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

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

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

#### **10. TERMINATION FOR CONVENIENCE**

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

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

- A. If CONTRACTOR fails to perform any of the provisions of this Agreement or so fails to make progress as to endanger timely performance of this Agreement, OMNITRANS may give CONTRACTOR written notice of such default. If CONTRACTOR does not cure such default or provide a plan to cure such default which is acceptable to OMNITRANS within the time permitted by OMNITRANS, then OMNITRANS may terminate this Agreement due to CONTRACTOR's breach of this Agreement.
- B. If a federal or state proceeding for relief of debtors is undertaken by or against CONTRACTOR, or if CONTRACTOR makes an assignment for the benefit of creditors, then OMNITRANS may immediately terminate this Agreement.
- C. If CONTRACTOR violates Section 26, Compliance with Lobbying Policies, of this Agreement, then OMNITRANS may immediately terminate this Agreement.

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

## 12. ASSIGNMENT

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

## 13. SUBCONTRACTING

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

**Subcontractor's Name and Address**

**Work to Be Performed**

N/A

#### 14. INDEPENDENT CONTRACTOR

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

#### 15. INSURANCE

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

- A. **Commercial General Liability including Products/Completed Operations:** \$1,000,000 per occurrence for bodily and property damage liability and \$2,000,000 aggregate; *Endorsement naming Omnitrans as Additional Insured.*
- B. **Automobile Liability:** \$1,000,000 combined single limit bodily and property damage liability per accident; *Endorsement naming Omnitrans as Additional Insured.*
- C. **Workers' Compensation:** statutory limits including employers liability, \$1,000,000 per occurrence 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.

#### 16. INDEMNITY

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

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

## **17. REVISIONS IN SCOPE OF WORK**

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

## **18. RIGHTS IN TECHNICAL DATA**

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

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

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

## **20. OWNERSHIP RIGHTS**

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



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

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

## **21. WORK FOR HIRE**

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

## **22. SUBMITTAL OF CLAIMS BY CONTRACTOR**

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

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

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

## **23. EQUAL OPPORTUNITY**

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

## **24. STANDARD OF PERFORMANCE**

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

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

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

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

## **26. DISQUALIFYING POLITICAL CONTRIBUTIONS**

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

## **27. COMPLIANCE WITH LAW**

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

## **28. COMPLIANCE WITH LOBBYING POLICIES**

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

## **29. PUBLIC RECORDS ACT**

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

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

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

### **30. WAIVER/INVALIDITY**

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

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

### **31. FORCE MAJEURE**

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

### **32. CONFIDENTIALITY**

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

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

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

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

### **34. GOVERNING LAW**

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

### **35. MODIFICATIONS TO AGREEMENT**

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

### **36. RIGHTS AND REMEDIES OF OMNITRANS FOR DEFAULT**

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

### **37. LICENSING, PERMITS AND INSPECTION COSTS**

- A. The Contractor warrants that it has all necessary licenses and permits required by the laws of the United States, State of California, and the County of San Bernardino, the Local Jurisdictions, and all other appropriate governmental agencies, and agrees to maintain these licenses and permits in effect for the duration of the Agreement. Further, Contractor warrants that its employees, agents, and contractors and subcontractors shall conduct themselves in compliance with such laws and licensure requirements including, without limitation, compliance with laws applicable to nondiscrimination, sexual harassment and ethical behavior throughout the duration of this Agreement. Contractor further warrants that it shall not retain or employ an unlicensed subcontractor to perform work on this Project. Contractor shall notify OMNITRANS immediately and in writing of its employees', agents', contractors' or subcontractors' inability to obtain or maintain, irrespective of the pendency of any appeal, any such licenses, permits, approvals, certificates, waivers, exemptions. Such inability shall be cause for termination of this Agreement.

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

### **38. PRECEDENCE**

Conflicting provisions hereof, if any, shall prevail in the following descending order of precedence: (1) the provisions of this Agreement, including Attachment A, Scope of Work, (2) provisions of Solicitation RFQ-ITS15-70 and (3) CONTRACTOR's bid dated November 4, 2014, including Attachment B, EarthLink Complete Data MPLS Service Level Agreement.

### **39. 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

EARTHLINK

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

\_\_\_\_\_  
Name, Title

\_\_\_\_\_  
DATE

\_\_\_\_\_  
DATE

Federal Tax I.D. No: 46-4228084

DP\_\_\_\_

CM\_\_\_\_

**ATTACHMENT A - SCOPE OF WORK**  
**ITS15-70**  
**MULTIPROTOCOL LABEL SWITCHING**

**1. INTRODUCTION**

Omnitrans operates from four facilities: East Valley, West Valley, I Street and Rancho and currently utilizes Multiprotocol Label Switching (MPLS) at three of its facilities.

**2. PURPOSE**

Contractor shall provide Multiprotocol Label Switching (MPLS) between Omnitrans' four (4) facilities.

**3. PROJECT SCHEDULE**

Contractor shall have the service in production within 60 days of award.

**4. CURRENT SERVICES / LOCATIONS**

Each location currently has the following:

	Current	Projected
East Valley 1700 West 5 <sup>th</sup> Street San Bernardino, CA 92411	3Mb MPLS	10Mb MPLS
West Valley 4748 Arrow Highway Montclair, CA 91768	3Mb MPLS	3Mb MPLS
I Street 234 South I Street San Bernardino, CA 92410	4.5Mb MPLS	4.5Mb MPLS
Rancho 9421 Feron Boulevard Rancho Cucamonga, CA	No MPLS	3Mb MPLS

**5. INSTALLATION**

- A. Contractor will provision all the necessary circuits from the local carrier.
- B. Schedule installation and turn up of any gateway devices with Omnitrans' point of contact.
- C. A gateway device (router) shall be configured and monitored by the Contractor.
- D. Contractor shall provide a network diagram of the MPLS and indicate any and all single points of failure.



E. Data Center is located at Omnitrans' East Valley facility and shall serve as the main hub.

F. MPLS shall be any-to-any network topology.

**6. TERMS**

A. Omnitrans must be able to request network changes to the routers used for the MPLS connections.

B. MPLS routers shall be managed and maintained by the Contractor and the routers shall have the capability to multicast between Omnitrans' locations.”

\*End Scope of Work\*

## Description and Objectives

EarthLink Complete™ MPLS Service will be measured on the basis of Network availability, mean time to repair (MTTR), Latency, delivery ratio, jitter and install interval. EarthLink Business provides coverage of its Service 24/7/365. The MPLS Service Level Agreement Objectives ("SLA Objectives") and related service credits for EarthLink MPLS Service are as follows:

	SLA	Credit
Network Availability	99.999%	Up to 15% MRC
Latency	45 ms	Up to 15% MRC
Delivery Ratio (Real Time traffic)	99.9%	Up to 15% MRC
Jitter (Real Time Traffic)	1ms	Up to 15% MRC

	Ethernet Access	DS3 Access	DS1 Access	ADSL Access	Credit
MTTR	4 hours	4 hours	4 Hours	18 hours	Up to 15% MRC
Install Interval (business days)	90 days	60 days	45 days	30 days	Up to 15% MRC

	CPE	Credit
MTTR	Next Business Day	Up to 5% MRC

## Methodology

All SLA Objectives apply only to the MPLS Service segment between the point where traffic enters EarthLink Business' core MPLS switching equipment, and the point where it leaves EarthLink Business' core MPLS switching equipment.

### Network Availability

Network Availability will be an average of actual minutes of availability of all Customer IP logical connections as a percentage of the total IP logical connection available minutes as measured over a calendar month and shall be calculated as follows:

$$\text{Network Availability} = ((\text{Calendar Month Minutes} - \text{Excluded Outage Time Minutes} - \text{Outage Time Minutes}) / (\text{Calendar Month Minutes} - \text{Excluded Outage Time Minutes})) \times 100$$

Network Availability will be measured using the EarthLink Business Network Management System upon receipt of Customer's trouble ticket reporting the Service Outage.

### Mean Time to Repair ("MTTR")

MTTR shall be calculated as follows:

$$\text{MTTR} = (\text{Service Outage Time Hours} - \text{Excluded Outage Time Hours}) / \text{Outage Count}, \text{ provided that Service Outage Time, Excluded Outage Time and Outage Count are measured over a single calendar month.}$$

### EarthLink Business Deployed Equipment Mean Time to Repair

Replacement equipment provided by EarthLink Business will be shipped for next business day delivery for Customer self installation so long as (i) the trouble is isolated to the EarthLink Business provided and managed equipment, and (ii) the root cause of the failure is determined by EarthLink Business by 1PM Pacific Time on a business day.

"Business Day" means Monday through Friday, 8AM to 5PM, excluding Federal holidays.

### Latency

Latency is a monthly measure of the EarthLink Business network-wide delay within the region or between regions, which is the average interval of time it takes during the applicable calendar month for test packets of data to travel between all selected pairs of EarthLink Business Network Backbone Nodes in the region(s). Specifically, the time it takes test packets to travel from one EarthLink Business Network Backbone Node in a pair to another and back is measured for all selected pairs of EarthLink

Business Network Backbone Nodes in the region(s) over the month. Latency for the month is the average of all of these measurements.

"EarthLink Business Network Backbone Nodes" are the core MPLS routing nodes in the EarthLink Business Network consisting of Cisco GSR Switches.

#### ***Delivery Ratio***

The "Delivery Ratio Percentage" for a region or between regions is the average Data Delivery percentage for that month for all selected pairs of EarthLink Business IP Backbone Nodes in the region(s) calculated by dividing Data Received by Data Delivered and multiplying by 100.

"Data Delivered" is the number of test packets of data delivered in a month by EarthLink Business to an ingress router at an EarthLink Business Network Backbone Node for delivery to an egress router at the other specific EarthLink Business Network Backbone Node in the selected pair.

"Data Received" is the number of such test packets of data that are actually received by the egress router at the other EarthLink Business Network Backbone Node.

The packets offered variable in Delivery Ratio calculations will exclude Packets lost due to: erroneous transmissions, unknown causes, lost or dropped as a result of service outages, lost due to CPE induced causes, lost as a result of oversubscription on the egress user to network interface, offered in excess of SCR/CIR, and dropped due to preemptive congestion alleviation techniques employed at ingress to the network.

#### ***Install Interval***

Install Interval is defined as the number of business days beginning when EarthLink Business accepts, and has confirmed for provisioning with Customer, a complete order package for Service and ending when the circuit is activated and available to transport data. Install Interval applies to each service location individually. Install intervals excludes any service location where facilities are determined to be unavailable or impaired by the underlying local access provider.

#### ***MPLS Jitter***

"MPLS Jitter" is a monthly measure of the EarthLink Business Network-wide IP packet delay variation within or between the applicable region(s), which is the average difference in the interval of time it takes during the applicable calendar month for selected pairs of test packets of data in data streams to travel between selected pairs of EarthLink Business Network Backbone Nodes in the region(s). Specifically, the difference in time it takes a selected pair of test packets in a data stream to travel from one EarthLink Business Network Backbone Node in a pair to another is measured for all selected pairs of EarthLink Business Network Backbone Nodes in the region(s) over the month. One of the test packets in the selected pair will always be a packet in the data stream that takes the least time to travel from one EarthLink Business Network Backbone Node in the pair to another. MPLS Jitter within or between regions for the month is the average of all of these measurements in the region(s).

## **Service Credits**

If EarthLink Business does not meet its SLA Objectives, Customer may receive a service credit ("**Service Credit**") for the Service impairment proportional to the SLA Objectives non-conformance, up to the percentage identified in the table above, multiplied by the base monthly recurring charge, excluding taxes, surcharges and other similar charges, ("**MRC**") for the particular Service element(s) responsible for the non-conformance.

To be eligible for a Service Credit, Customer must: (i) request EarthLink Business to open a trouble ticket documenting the SLA Objective non-conformance and (ii) timely request the applicable Service Credit by emailing [customercare@earthlinkbusiness.com](mailto:customercare@earthlinkbusiness.com), with "Service Credit Request" in the subject header, within thirty (30) days after the trouble ticket is closed by EarthLink Business. Each Service Credit request must reference the applicable trouble ticket number(s) and circuit identifier(s) for the circuit elements associated with the non-conforming event.

Service Credit requests will be evaluated in relation to the relevant accumulated statistics in the month during which the SLA Objectives non-conforming event is alleged to have occurred. Service Credit requests encompassing multiple months will be prorated in accordance with the statistical accumulations for the month in which the non-conformance occurred. EarthLink Business shall have thirty (30) business days to respond from the end of the month in which the Service Credit request is submitted. Service Credit requests approved by EarthLink Business will be credited to the Customer's account on the next billing cycle that begins no less than ten (10) business days after the Service Credit approval.

Service Credit requests will not be accepted for open trouble tickets. Customer may not receive more than one Service Credit per month for any SLA Objective non-conformance involving a specific Service element. Multiple instances of non-conformance affecting one circuit element during a particular month will not be eligible for multiple SLA credits, however, if approved they will be applied toward the accumulated monthly statistics. For Ethernet Access, Customer will receive one credit per circuit for failure to meet the install interval defined above. Service Credits will not be available for any Service terminated by Customer for cause pursuant to the terms of the Agreement.

### Chronic Outage

In the event of a Chronic Service Outage (as defined below), Customer may request an escalation of repair in writing to [customer@earthlinkbusiness.com](mailto:customer@earthlinkbusiness.com). "Chronic Service Outage" shall be defined as a specific circuit element at a particular Service location (i) that experiences three or more occurrences of repairs in any given month not resulting from a Customer caused impairment, or (ii) that is in violation of the SLA Objectives more than three times within any given month ("Affected Service"). EarthLink Business will have ten (10) business days following its receipt of a Customer's notification to evaluate and prescribe resolution, including a timeline to complete the prescribed repairs ("Cure Period"). If EarthLink Business is unable to resolve the Chronic Service Outage within the Cure Period, Customer shall have the right to terminate the Affected Service without incurring any Early Termination Fee ("ETF"), however, Customer shall remain obligated to pay EarthLink Business for all Services rendered through the effective date of termination.

### Specific Exclusions

SLA Objectives and Service Credits do not include periods of Service Outages or other service level deficits in whole or in part due to the following causes and exclusions:

- Customer fails to report the issue or request a trouble ticket;
- Service interruptions or delays arising out of or in connection with but not limited to (i) any act or omission on the part of Customer or a third party, including without limitation local access providers, (ii) interruption occurring in whole or in part because Customer elects not to release the Service for testing and repair by EarthLink Business, but continues to use it on an impaired basis, (iii) failing to provide access to Customer premises as reasonably requested by EarthLink Business or its agents to enable EarthLink Business to comply with its obligation, (iv) Customer's Software, equipment or facilities, or that of any third party, including without limitation local access providers;
- EarthLink Business or Customer's scheduled network maintenance or emergency maintenance;
- Any force majeure event beyond the reasonable control of EarthLink Business including, but not limited to cable cuts;
- Any failure, issue or delay associated in whole or in part with Customer's provided connection to the EarthLink Business Network, including but not limited to local access, and cross-connect, Customer premise equipment, applications, facilities or internal network;
- Any event or occurrence that results in "no trouble found" by EarthLink Business customer support;
- New Service that has not been accepted by Customer or that occurs within the first 30 days of Service for the affected Service element;
- MPLS Service (i) modified on an Individual Case Basis (ICB), (ii) based on classes of service other than Committed Information Rate (CIR) or Variable Bit Rate (VBR), (iii) where the CPE is not configured to Traffic Shape the packets offered to less than or equal to the Sustained Cell Rate (SCR) or Committed Information Rate (CIR), and/or (iv) delivered to the Customer using EVDO/Wireless Data;
- Service that does not directly interface a port on the EarthLink Business network via physical or logical connection; or
- During emergency network conditions where dynamic rerouting is required, EarthLink Business will not commit to its Latency, Jitter or Delivery Ratio measurements. Latency, Jitter or Delivery Ratio measurements for the network models exclude circuits that have SCR/CIR subscription rates beyond 100% of the Customer port speed.

EarthLink Business, in its sole discretion, may change, amend or revise this SLA at any time. Such changes or revisions shall be deemed effective upon posting of an updated SLA to the EarthLink Business website.

ITEM # E9

**DATE:** December 3, 2014

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

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

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

**SUBJECT: AUTHORIZE AWARD - PURCHASE ORDER ITS15-84  
STORAGE AREA NETWORK ARRAYS**

### **FORM MOTION**

Authorize the CEO/General Manager to award a Purchase Order to Sterling Computers Corporation of Dakota Dunes, SD, for the provision of two (2) Storage Area Network Arrays, in the amount of \$54,233, including sales tax.

### **BACKGROUND**

Storage area network arrays are used to present shared pools of storage devices to multiple servers. The storage area network arrays are necessary for surveillance systems and expanding system requirements.

On October 21, 2014, Omnitrans' staff released Request for Quotes RFQ-ITS15-84, which was posted on Omnitrans' online bidding system. Three bids were received by the November 6, 2014, deadline. All bids were deemed responsive.

Listed below are the bid prices:

<b>COMPANY NAME</b>	<b>TOTAL BID AMOUNT*</b>
Sterling Computers Corporation	\$54,233
CherryStoneIT, Inc.	\$101,377
SIGMAnet, Inc.	\$109,008

\*Sales tax and delivery included

Award is recommended to the lowest, responsive, responsible bidder. Price is deemed fair and reasonable as the bid is within ten percent of the Independent Cost Estimate of \$54,342.

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

### **FUNDING SOURCE**

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

<b>FUNDING</b>	<b>YEAR</b>	<b>PROJECT NAME</b>	<b>INTERNAL ORDER</b>	<b>AMOUNT</b>
Prop 1B	2009	Storage Area Network Arrays	K091B102P	\$54,233
<b>Total</b>				<b>\$54,233</b>

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

### **CONCLUSION**

Approval of this purchase order will allow Omnitrans to store video surveillance data.

PSG:JMS:KT

ITEM # E10

**DATE:** December 3, 2014

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

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

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

**SUBJECT: AUTHORIZE AWARD - CONTRACT MNT15-93  
COOLANT SUPPLY SERVICES**

**FORM MOTION**

Authorize the CEO/General Manager to award Contract MNT15-93 to Patten Energy Enterprises, Inc., of Los Angeles, CA, for the provision of Coolant Supply Services for a three (3) year period beginning January 1, 2015, and ending no later than December 31, 2018, in the amount of \$81,593, plus a ten percent (10%) contingency of \$8,159, for a total not-to-exceed amount of \$89,752.

**BACKGROUND**

Omnitrans' Maintenance Department requires coolant to perform preventive maintenance on Omnitrans' fleet of revenue and non-revenue vehicles. The purpose of coolant is to provide corrosion protection to engine components, freeze protection when subject to subzero temperature, boil protection, heat transfer to the passenger compartment of vehicles, lubrication to the water pump and general chemical and oxidative stability to ensure efficient functioning of the cooling system.

On November 4, 2014, Omnitrans' staff released Request for Quotes RFQ-MNT15-93, which was posted on Omnitrans' online bidding system. Three bids were received by the November 13, 2014 deadline. Two bids were deemed responsive.

Listed below are the bid prices:

COMPANY NAME	TOTAL BID AMOUNT*
Patten Energy Enterprises, Inc.	\$81,593
Thermo Fluids	\$87,033

\*Sales tax and delivery included

Award is recommended to the lowest, responsive, responsible bidder. Price is deemed fair and reasonable as the bid is within ten percent of the Independent Cost Estimate of \$73,793.49.

This procurement meets the requirements of Omnitrans' 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	504130

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

### **CONCLUSION**

Approval of this contract will allow Omnitrans to perform preventive maintenance as needed on its fleet of revenue and non-revenue vehicles to protect engine corrosion.

PSG:JMS:KT





## CONTRACT AGREEMENT

between

CONTRACTOR  
Patten Energy Enterprises, Inc.  
3437 South Main Street  
Los Angeles, CA 90007

(hereinafter "CONTRACTOR")  
Telephone: 323-235-3500  
Fax: 323-235-3400

And

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

### CONTRACT DOCUMENTS

**CONTRACT NO. MNT15-93**

**Coolant Supply Services**

Contract Amount: \$81,593.44

### Omnitrans Project Manager:

Name: Frank Flores  
Title: Warranty Coordinator  
Telephone: (909) 379-7204  
Fax: (909) 379-7404  
Email: [frank.flores@omnitrans.org](mailto:frank.flores@omnitrans.org)

### Contract Administrator:

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



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ATTACHMENT A – SCOPE OF WORK

ATTACHMENT B – REGULATORY REQUIREMENTS

ATTACHMENT C – PRICING SCHEDULE

This Agreement is made and entered into as of this 1st day of January, 2015 by and between Omnitrans (hereinafter referred to as "OMNITRANS") and Patten Energy Enterprises, Inc. (hereinafter referred to as "CONTRACTOR").

## **RECITALS**

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

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

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

### **1. SCOPE OF WORK**

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

### **2. PERIOD OF PERFORMANCE**

The term of this Agreement shall be from the date of execution of this Agreement and continue in effect through December 31, 2018, unless terminated as specified in Section 8 and 9 of this Agreement. Omnitrans has no obligation to purchase any specified amount of products/services. All applicable indemnification provisions in this Agreement shall remain in effect following the termination of this Agreement.

Omnitrans' election to extend the Agreement beyond the 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 from January 1, 2015 Through December 31, 2018, which period encompasses the Initial Term.

### **3. COMPENSATION**

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

OMNITRANS' maximum cumulative payment obligation under this Agreement shall not exceed Eighty One Thousand Five Hundred Ninety Three Dollars and Forty Four Cents (\$81,593.44), 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 15<sup>th</sup> of each month. CONTRACTOR shall furnish information as may be requested by OMNITRANS to substantiate the validity of an invoice.

CONTRACTOR shall submit invoices in duplicate to:

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

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

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

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

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

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

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

## **6. NOTIFICATION**

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

To OMNITRANS:

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

To CONTRACTOR:

Patten Energy Enterprises, Inc.  
3437 South Main Street  
Los Angeles, CA 90007  
Attn: Ezekiel Patten, Jr.

## **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: Frank Flores, Warranty Coordinator

- a. Except as expressly specified in this Agreement, the Contracting Officer may exercise any powers, rights and/or privileges that have been lawfully delegated by OMNITRANS. Nothing in this Agreement should be construed to bind OMNITRANS for acts of its officers, employees, and/or agents that exceed the delegation of authority specified herein.
- b. The Contracting Officer has delegated to the Project Manager certain powers and duties in connection with this Agreement. The Project Manager is the authorized representative of the Contracting Officer for matters related to this Agreement. The Project Manager or his/her designee is empowered to:
  1. Have general oversight of the Work and this Agreement, including the power to enforce compliance with this Agreement.
  2. Reserve the right to remove any portion of the Work from CONTRACTOR which have not been performed to OMNITRANS' satisfaction.
  3. Subject to the review and acceptance by OMNITRANS, negotiate with CONTRACTOR all adjustments pertaining to this Agreement for revision.
- c. In addition to the foregoing, the Project Manager shall have those rights and powers expressly set forth in other sections of this Agreement.

## **B. Contractor's Key Personnel**

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

<u>Name</u>	<u>Role</u>
Ezekiel Patten Jr.	President
Jennifer Patten-Archie	Human Resources
Sheri Woodside	Business Development

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

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

## **8. DISPUTE RESOLUTION**

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

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



- D. Pending final resolution of a dispute under this section, proposer shall proceed diligently with performance in accordance with the Contract and Omnitrans' CEO/General Manager's recommended decision.

## **9. TERMINATION FOR CONVENIENCE**

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

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

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

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

## **11. ASSIGNMENT**

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

## **12. SUBCONTRACTING**

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

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

N/A	N/A
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## **13. INDEPENDENT CONTRACTOR**

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

## 14. INSURANCE

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

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

Additional Insured:

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

## 15. INDEMNITY

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

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

## **16. REVISIONS IN SCOPE OF WORK**

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

## **17. RIGHTS IN TECHNICAL DATA**

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

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

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

## **19. OWNERSHIP RIGHTS**

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

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

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

## **20. WORK FOR HIRE**

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

## **21. SUBMITTAL OF CLAIMS BY CONTRACTOR**

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

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

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

## **22. EQUAL OPPORTUNITY**

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

## **23. STANDARD OF PERFORMANCE**

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

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

To ensure compliance with OMNITRANS' Ethics Policy, CONTRACTOR shall provide written notice to OMNITRANS disclosing the identity of any individual

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

## **25. DISQUALIFYING POLITICAL CONTRIBUTIONS**

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

## **26. COMPLIANCE WITH LAW**

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

## **27. COMPLIANCE WITH LOBBYING POLICIES**

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

## **28. PUBLIC RECORDS ACT**

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

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

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

## **29. WAIVER/INVALIDITY**

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

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

## **30. FORCE MAJEURE**

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

## **31. CONFIDENTIALITY**

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



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

### **32. CONTRACTOR'S INTERACTION WITH THE MEDIA AND THE PUBLIC**

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

### **33. GOVERNING LAW**

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

### **34. MODIFICATIONS TO AGREEMENT**

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

### **35. LICENSING, PERMITS AND INSPECTION COSTS**

- A. The FIRM warrants that it has all necessary licenses and permits required by the laws of the United States, State of California, and the County of San Bernardino, the Local Jurisdictions, and all other appropriate governmental agencies, and agrees to maintain these licenses and permits in effect for the duration of the Agreement. Further, FIRM warrants that its employees, agents, and contractors and subcontractors shall conduct themselves in compliance with such laws and licensure requirements including, without limitation, compliance with laws applicable to nondiscrimination, sexual harassment and ethical behavior throughout the duration of this Agreement. FIRM further warrants that it shall not retain or employ an unlicensed subcontractor to perform work on this Project. FIRM shall notify OMNITRANS immediately and in writing of its employees', agents', contractors' or subcontractors' inability to obtain or maintain, irrespective of the pendency of any appeal, any such licenses, permits, approvals, certificates, waivers, exemptions. Such inability shall be cause for termination of this Agreement.
- B. Contractor shall procure all permits and licenses; pay all charges, assessments and fees, as may be required by the ordinances and regulations of the public agencies having jurisdiction over the areas in which the work is located, and shall comply with all the terms and conditions thereof and with all lawful orders and regulations of each such public agency relating to construction operations under the jurisdiction of such agency.

### **36. PRECEDENCE**

Conflicting provisions hereof, if any, shall prevail in the following descending order of precedence: (1) the provisions of this Agreement, (2) Attachment B, Regulatory Requirements, (3) Attachment A, Scope of Work, (3) provisions of RFQ-MNT15-93 and (4) CONTRACTOR's proposal dated November 13, 2014.

### **37. ENTIRE AGREEMENT**

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

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

OMNITRANS

PATTEN ENERGY ENTERPRISES,  
INC.

---

P. SCOTT GRAHAM  
CEO/General Manager

---

EZEKIEL PATTEN, JR.  
CEO/President

---

DATE

---

DATE

Federal Tax I.D. No. 95-4590312

ATTACHMENT A – SCOPE OF WORK  
MNT15-93  
COOLANT SUPPLY SERVICES

**I. PURPOSE:**

Contractor shall provide coolant on an as-needed basis, no guarantee of usage, in bulk, with periodic deliveries in 55-gallon drums, and the pick-up and recycling of waste coolant from Omnitrans' facilities.

**II. SPECIFICATIONS:**

This specification covers Omnitrans' requirements for recycled prediluted ethylene glycol engine coolant. Recycled prediluted ethylene glycol engine coolant, when installed in accordance with the vehicle manufacturer's recommendation and those on the product label, shall be suitable for use in a properly maintained cooling system (heavy duty transit vehicle type engines) for a minimum of one year without adversely affecting fluid flow and heat transfer, and shall prevent liner pitting.

1. Requirements:

- i. Ethylene glycol based engine coolant shall consist of ethylene glycol containing less than 7.5% other glycols, appropriate proportions of suitable corrosion/erosion inhibitor, scale suppressant and foam suppressant.
- ii. Recycled ethylene glycol based engine coolant must meet manufacturer's specifications as stated in Exhibits 1 and 2.
- iii. Omnitrans requires a mixture of 50% ethylene glycol and 50% deionized or distilled water red in color.
- iv. The recycled prediluted engine coolant, when delivered, shall require no precharge of additional supplemental coolant additives and as is, shall provide protection against freezing, boiling, corrosion/erosion/pitting of aluminum, copper, brass, solder, and ferrous metals in the cooling system components; at a minimum, meet engine manufacturer's ASTM minimal standard for product specifications that will maintain engine manufacturer's warranties.
- v. Historical data indicates that Omnitrans' 24-month consumption of recycled prediluted engine coolant is estimated at approximately 15,881 gallons. These quantities are provided for informational purposes only and shall not obligate Omnitrans to purchasing such quantities.
- vi. Coolant is considered hazardous, only qualified Contractors or their fully licensed, permitted, and insured subcontractors are to transport coolant and meet federal, state and local requirements..
- vii. The Contractor shall be required to furnish proof of license, permits and certificate of insurance no later than seven working days after contract award.

ATTACHMENT A – SCOPE OF WORK  
MNT15-93  
COOLANT SUPPLY SERVICES

- viii. Coolant delivery quantity shall be based on each location's requirements. See locations listed in Section III. Delivery, below.
- ix. Recycled prediluted ethylene glycol based engine coolant is intended for direct addition to an engine cooling system with no further on-site dilution. Coolant shall conform to physical and chemical properties and shall meet or exceed all performance standards for the current ASTM D 6210 specifications with the exception of the 33% concentration.
- x. The recycled prediluted fully formulated engine coolant as delivered shall meet or exceed all performance standards for the current ASTM D6210 specifications.
- xi. Recycled prediluted engine coolant shall prevent formation of scale or sludge deposits in cooling systems and storage tanks.

**III. DELIVERY:**

1. Deliveries by Contractor shall be made in bulk to the following locations with storage capacity of:
  - i. 1700 West Fifth Street, San Bernardino, CA 92411
    - a. Shop:  
Lube Cube AST "New/ Recycled Coolant" = 1,000 gallons (Above ground storage tank and can be filled to 90%)  
Plastic Storage Tank "Used Coolant" = 105 gallons
    - b. Fuel Island:  
Lube Cube AST "New/ Recycled Coolant" = 1,000 gallons (This is an above ground storage tank and can be filled to 90%. This tank is scheduled to be in place/service in 2015.)
  - ii. 4748 Arrow Hwy, Montclair, CA 91763
    - a. Shop:  
"New/ Recycled Coolant" = 1,000 gallons (Underground storage tank and may be filled to 90%)
    - b. Fuel Island:  
"Used Coolant" = 500 gallons (Underground storage tank may be filled to 90%). "Used Coolant" may be processed and sold as recycled coolant.
2. The Contractor may also be required to deliver 55-gallon drums when the tanks are not available in such circumstances as the tanks are being serviced or under repair.  
The Contractor shall ensure that individual 55-gallon drums are clearly labeled indicating content of the drums. Drums shall clearly state the coolant is pre-diluted and does not require the addition of water.

ATTACHMENT A – SCOPE OF WORK  
MNT15-93  
COOLANT SUPPLY SERVICES

**IV. INSPECTION AND REJECTION:**

1. Omnitrans reserves the right to take samples of coolant from incoming shipments at random and check for compliance to this specification. However, the Contractor shall accept full responsibility for all shipments meeting this specification without dependence upon the Omnitrans' inspection.
2. In the event the coolant supplied failed to meet this specification, the Contractor shall, at the sole election of the Omnitrans, be required to remove and replace the coolant at his/her own expense. Repeated delivery of noncompliant coolant will be grounds for contract termination.
3. An inspection of the refining facility used to supply the coolant may be conducted at the sole discretion of Omnitrans' staff. The inspection shall be to determine a Contractor's capacity and capability to process and supply coolant meeting the specification requirements.

**V. CONTRACTOR RESPONSIBILITY:**

1. Upon request and prior to contract award, the successful Contractor shall submit a 16-ounce sample of the proposed product for Omnitrans' analysis and approval.
2. The successful Contractor shall submit with the bid, certification that the product meets the chemical, physical and performance requirements as outlined in the current ASTM D6210 specifications with the exception of the 33% concentration.
3. All coolant supplied by the Contractor shall be equal in every respect to the sample approved by Omnitrans.
4. The Contractor shall submit with the bid, certification that no engine warranties shall be voided by use of the awarded coolants.

**VI. OMNITRANS RESPONSIBILITY:**

1. Omnitrans will be responsible for maintaining the existing coolant storage tanks.
2. Omnitrans will test coolant inventory monthly via an outside laboratory.

**VII. SPECIFICATIONS FOR WASTE COOLANT RECYCLING SERVICES:**

The following represents the Omnitrans specification for the pick-up, transporting, and proper recycling of waste coolant from Omnitrans' facilities.

1. Requirements:
  - i. Waste coolant is considered hazardous waste. Only qualified Contractors or their fully licensed, permitted, and insured sub-contractors may transport waste coolant. The successful Contractor shall provide proof of licenses, recycling facility permits, recycling facility locations, recycling methods and certificate of insurance.

## ATTACHMENT A – SCOPE OF WORK

MNT15-93

### COOLANT SUPPLY SERVICES

- ii. Pick-up of waste coolant shall be performed at the Omnitrans facilities listed in Section VII. Specifications for Waste Coolant Recycling. The service schedule and quantity of waste coolant shall be based on each facility's requirement and coordinated with the Omnitrans' Project Manager.
  - iii. Contractor's trucks shall be equipped with the appropriate equipment for the removal of waste. Trucks used in the transport of such waste coolant will comply with all Federal and State laws and regulations regarding the transportation of Hazardous Waste, and will have all current and required permits, licensing and registration.
  - iv. Contractor shall pick-up the waste coolant from Omnitrans facilities in accordance with all federal, state and local regulations.
  - v. Contractor shall provide to Omnitrans a State of California Environmental Protection Agency Uniform Hazardous Waste Manifest for every waste coolant pick-up to ensure the hazardous waste generator (Omnitrans) is in full compliance with all regulations.
  - vi. Contractor shall provide to Omnitrans a written certificate stating that the waste coolant shall be sent to a facility that the facility is fully permitted and authorized to operate within the state and local regulatory district for which it is located.
  - vii. Pick-up of waste coolant shall be performed Monday through Friday during the hours of 7:00 a.m. and 4:00 p.m., or as requested by the Omnitrans Project Manager.
  - viii. Pick up of waste coolant shall be scheduled with a four business-day lead time by the Omnitrans' Project Manager. Unscheduled pick-ups shall be performed within 48-hours of notification.
  - ix. UNDER NO CIRCUMSTANCE SHALL THE CONTRACTOR SIGN A MANIFEST ON OMNITRANS' BEHALF AND LIST ITSELF AS GENERATOR.
  - x. Contractor trucks shall be equipped with necessary material to clean up a waste coolant release. Truck operators shall be properly trained on hazardous material handling and response procedures
  - xi. Once the pick-up of waste coolant has been completed, the Contactor shall obtain the Generator Certification signature from an Omnitrans representative and provide such representative with Generator's copy of the signed Uniform Hazardous Waste Manifest prior to leaving Omnitrans facility.
2. Storage Tanks:

ATTACHMENT A – SCOPE OF WORK  
MNT15-93  
COOLANT SUPPLY SERVICES

- i. Omnitrans shall provide for the storage of waste coolant in 125-gallon vessels.
  - ii. Omnitrans shall be responsible for maintaining storage vessels.
3. Omnitrans Addresses for Waste Coolant Pick-up
  - i. Contractor shall pick-up waste coolant from the following Omnitrans facilities:
    - a. 1700 West Fifth Street, San Bernardino, CA 92411
    - b. 4748 Arrow Hwy, Montclair, CA 91763

**VIII. WARRANTY:**

1. All products supplied are warranted to be free from defects and related defects for a minimum of one (1) year under normal use and when properly installed. The Contractor shall provide exchange replacements AT NO COST to Omnitrans for products failing within one (1) year term. Any supplier or manufacturer's standard limited warranty coverage greater than that specified above must also be extended to Omnitrans.
2. In addition to meeting ASTM D6210 Specification for Fully Formulated Glycol Base Engine Coolant for Heavy Duty Engines, product shall meet or exceed Cummins, Detroit Diesel, and John Deere engine manufacturer's specifications for coolant.
3. Manufacturer's standard warranty shall commence the date the part is placed in service, not the delivery date, unless product has a previously specified shelf life. Contractor shall state warranty offered on bid form or attach warranty offered. All items purchased under this Contract shall be guaranteed for a minimum of one (1) year against any defects by the transmission part manufacturer with full credit given. Consequential damages shall be included in warranty.
4. In the event of an engine failure a sample shall be pulled to ascertain if the coolant was within compliance of ASTM D6210 Specification for Fully Formulated Glycol Base Engine Coolant for Heavy Duty Engines, Contractor shall describe the required process for a warranty claim for a possible coolant failure, causing engine components to prematurely fail.
5. Contractor shall attach an explanation of the Warranty Claim procedure for exchange, replacement, and/or reimbursement of repair costs. Warranty claims will be submitted by Omnitrans within twenty-one working days of failure. Adjustments, credits, or refunds shall be completed by the Contractor within thirty (30) days of notification of the transmission part failure. Refunds shall be made by check or account credit, payable to Omnitrans, 1700 W. Fifth Street, San Bernardino, CA 92411-2401.



ATTACHMENT A – SCOPE OF WORK

MNT15-93

COOLANT SUPPLY SERVICES

6. In the event that warranty adjustments for a part failure cannot be resolved by mutual agreement between the successful Contractor and Omnitrans' Warranty Coordinator, a meeting will be set up with the Contractor, Omnitrans' Maintenance Manager, Contract Administrator, Warranty Coordinator, and Director of Maintenance to resolve the warranty issue.

\*\*\*End of Attachment A – Scope of Work\*\*\*

# **Attachment B**

## **REGULATORY REQUIREMENT**

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## **REGULATORY REQUIREMENTS**

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

### **RR-01**

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

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

This Article applies to all contracts.

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

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

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

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

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

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

**A. Applicability**

This Article applies to all contracts.

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

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

**A. Applicability**

This Article applies to all contracts.

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

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

**A. Applicability**

This Article applies to all contracts.

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

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

## **RR-05**

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

#### **A. Applicability**

This Article applies to all federally funded contracts.

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

## **RR-06**

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

#### **A. Applicability**

This Article applies to all federally funded contracts.

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

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

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

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

#### **RR-07**

#### **ENERGY CONSERVATION REQUIREMENTS**

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

This Article applies to all federally funded contracts.

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

#### **RR-08**

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

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

This Article applies to all federally funded contracts.

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

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

C. Equal Employment Opportunity

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

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

This Article applies to all federally funded contracts.

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

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

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

This Article applies to all federally funded contracts.

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



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

## **RR-11**

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

#### **A. Applicability**

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

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

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

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

## **RR-12**

### **RECYCLED PRODUCTS**

#### **A. Applicability**

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

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

## **RR-13**

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

#### **A. Applicability**

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

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

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

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

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

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

## **RR-14**

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

#### **A. Applicability**

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

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

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

## **RR-15**

### **BUY AMERICA \***

#### **A. Applicability**

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

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

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

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

## **RR-16**

### **CARGO PREFERENCE\***

#### **A. Applicability**

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

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

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

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

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

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

## **RR-17 FLY AMERICA**

### **A. Applicability**

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

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

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

### **A. Applicability**

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

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

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

## **RR-19**

### **DISADVANTAGED BUSINESS ENTERPRISE (DBE) 49 CFR Part 26**

#### **Disadvantaged Business Enterprises**

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

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

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

- D. Contractor is required to pay its subcontractors performing work related to this contract for satisfactory performance of that work no later than 7 days after the contractor's receipt of payment for that work from the Omnitrans. In addition, Contractor is required to return any retainage payments to those subcontractors within 30 days after the subcontractor's work related to his contract is satisfactorily completed.
- E. Contractor must promptly notify Omnitrans whenever a DBE subcontractor performing work related to this contract is terminated or fails to complete its work, and must make good faith efforts to engage another DBE subcontractor to perform at least the same amount of work. Contractor may not terminate any DBE subcontractor and perform that work through its own forces or those of an affiliate without prior written consent of Omnitrans.

## **RR-20**

### **ADA ACCESS**

#### **A. Applicability**

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

#### **B. Access Requirements for Persons with Disabilities**

Contractor shall comply with:

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

5. All applicable requirements of the following regulations and any subsequent amendments thereto:
- (1) U.S. DOT regulations, "Transportation Services for Individuals with Disabilities (ADA)," 49 C.F.R. Part 37;
  - (2) U.S. DOT regulations, "Nondiscrimination on the Basis of Handicap in Programs and Activities Receiving or Benefiting from Federal Financial Assistance," 49 C.F.R. Part 27;
  - (3) Joint U.S. Architectural and Transportation Barriers Compliance Board (U.S. ATBCB)/U.S. DOT regulations, "Americans With Disabilities (ADA) Accessibility Specifications for Transportation Vehicles," 36 C.F.R. Part 1192 and 49 C.F.R. Part 38;
  - (4) U.S. DOJ regulations, "Nondiscrimination on the Basis of Disability in State and Local Government Services," 28 C.F.R. Part 35;
  - (5) U.S. DOJ regulations, "Nondiscrimination on the Basis of Disability by Public Accommodations and in Commercial Facilities," 28 C.F.R. Part 36;
  - (6) U.S. General Services Administration (U.S. GSA) regulations, "Accommodations for the Physically Handicapped," 41 C.F.R. Subpart 101-19;
  - (7) U.S. Equal Employment Opportunity Commission, "Regulations to Implement the Equal Employment Provisions of the Americans with Disabilities Act," 29 C.F.R. Part 1630;
  - (8) U.S. Federal Communications Commission regulations, "Telecommunications Relay Services and Related Customer Premises Equipment for the Hearing and Speech Disabled," 47 C.F.R. Part 64, Subpart F; and
  - (9) U.S. ATBCB regulations, "Electronic and Information Technology Accessibility Standards," 36 C.F.R. Part 1194; and
  - (10) FTA regulations, "Transportation for Elderly and Handicapped Persons," 49 C.F.R. Part 609;
  - (11) Any implementing requirements FTA may issue.



## **RR-21**

### **ALCOHOL AND DRUG-FREE WORKPLACE PROGRAM \***

#### **A. Applicability**

This Article applies to federally funded contracts for transit operations.

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

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

#### **C. Certificate of Compliance**

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

#### **D. Drug and Alcohol Testing Program**

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

#### **E. Alcohol and Drug Free Workplace Program**

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

## **RR-22**

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

#### **A. Applicability**

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

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

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

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

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

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

If FTA has determined that this Contract involves transit operations financed in whole or in part with Federal assistance authorized by 49 U.S.C. § 5311, Contractor shall comply

with the terms and conditions of the Special Warranty for the Nonurbanized Area Program agreed to by the U.S. Secretaries of Transportation and Labor, dated May 31, 1979, and the procedures implemented by U.S. DOL or any revision thereto.

**E. Indemnity**

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

**RR-23  
BONDING REQUIREMENTS**

Applicability to Contracts

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

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

**RR-24  
DAVIS-BACON AND COPELAND ANTI-KICKBACK ACTS**

Background and Application

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

repair, including painting and decorating.” 29 CFR 5.5(a). The requirements of both Acts are incorporated into a single clause (*see* 29 CFR 3.11) enumerated at 29 CFR 5.5(a) and reproduced below.

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

### **Clause Language**

#### **Davis-Bacon and Copeland Anti-Kickback Acts**

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

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

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

(1) Except with respect to helpers as defined as 29 CFR 5.2(n)(4), the work to be performed by the classification requested is not performed by a classification in the wage determination; and  
(2) The classification is utilized in the area by the construction industry; and

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(2) **Withholding** - Omnitrans shall upon its own action or upon written request of an authorized representative of the Department of Labor withhold or cause to be withheld from the contractor under this contract or any other Federal contract with the same prime contractor, or any other federally-assisted contract subject to Davis-Bacon prevailing wage requirements, which is held by the same prime contractor, so much of the accrued payments or advances as may be considered necessary to pay laborers and mechanics, including apprentices, trainees, and helpers, employed by the contractor or any subcontractor the full amount of wages required by the contract. In the event of failure to pay any laborer or mechanic, including any apprentice,

trainee, or helper, employed or working on the site of the work (or under the United States Housing Act of 1937 or under the Housing Act of 1949 in the construction or development of the project), all or part of the wages required by the contract, Omnitrans may, after written notice to the contractor, sponsor, applicant, or owner, take such action as may be necessary to cause the suspension of any further payment, advance, or guarantee of funds until such violations have ceased.

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

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

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

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

(2) That each laborer or mechanic (including each helper, apprentice, and trainee) employed on the contract during the payroll period has been paid the full weekly wages earned, without

rebate, either directly or indirectly, and that no deductions have been made either directly or indirectly from the full wages earned, other than permissible deductions as set forth in Regulations, 29 CFR part 3;

(3) That each laborer or mechanic has been paid not less than the applicable wage rates and fringe benefits or cash equivalents for the classification of work performed, as specified in the applicable wage determination incorporated into the contract.

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

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

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

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



specified in the registered program for the apprentice's level of progress, expressed as a percentage of the journeymen hourly rate specified in the applicable wage determination. Apprentices shall be paid fringe benefits in accordance with the provisions of the apprenticeship program. If the apprenticeship program does not specify fringe benefits, apprentices must be paid the full amount of fringe benefits listed on the wage determination for the applicable classification. If the Administrator of the Wage and Hour Division of the U.S. Department of Labor determines that a different practice prevails for the applicable apprentice classification, fringes shall be paid in accordance with that determination. In the event the Bureau of Apprenticeship and Training, or a State Apprenticeship Agency recognized by the Bureau, withdraws approval of an apprenticeship program, the contractor will no longer be permitted to utilize apprentices at less than the applicable predetermined rate for the work performed until an acceptable program is approved.

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

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

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

(6) **Subcontracts** - The contractor or subcontractor shall insert in any subcontracts the clauses contained in 29 CFR 5.5(a)(1) through (10) and such other clauses as the Federal Transit Administration may by appropriate instructions require, and also a clause requiring the

subcontractors to include these clauses in any lower tier subcontracts. The prime contractor shall be responsible for the compliance by any subcontractor or lower tier subcontractor with all the contract clauses in 29 CFR 5.5.

(7) **Contract termination: debarment** - A breach of the contract clauses in 29 CFR 5.5 may be grounds for termination of the contract, and for debarment as a contractor and a subcontractor as provided in 29 CFR 5.12.

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

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

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

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

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

## **RR-25**

### **PRIVACY ACT - 5 U.S.C. 552**

#### **Applicability to Contracts**

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

#### **Flow Down**

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

#### **Model Clause/Language**

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

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

- (1) The Contractor agrees to comply with, and assures the compliance of its employees with, the information restrictions and other applicable requirements of the Privacy Act of 1974, 5 U.S.C. § 552a. Among other things, the Contractor agrees to obtain the express consent of the Federal Government before the Contractor or its employees operate a system of records on behalf of the Federal Government. The Contractor understands that the requirements of the Privacy Act, including the civil and criminal penalties for violation of that Act, apply to those individuals involved, and that failure to comply with the terms of the Privacy Act may result in termination of the underlying contract.
- (2) The Contractor also agrees to include these requirements in each subcontract to administer any system of records on behalf of the Federal Government financed in whole or in part with Federal assistance provided by FTA.

## **RR- 26**

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

#### **Applicability to Contracts**

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

#### **Flow Down**

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

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

appropriately short period of time in which to cure the defect. In such case, the notice of termination will state the time period in which cure is permitted and other appropriate conditions

If Contractor fails to remedy to Omnitrans' satisfaction the breach or default of any of the terms, covenants, or conditions of this Contract within ten (10) days after receipt by Contractor of written notice from Omnitrans setting forth the nature of said breach or default, Omnitrans shall have the right to terminate the Contract without any further obligation to Contractor. Any such termination for default shall not in any way operate to preclude Omnitrans from also pursuing all available remedies against Contractor and its sureties for said breach or default.

- c. **Waiver of Remedies for any Breach** In the event that Omnitrans elects to waive its remedies for any breach by Contractor of any covenant, term or condition of this Contract, such waiver by Omnitrans shall not limit Omnitrans remedies for any succeeding breach of that or of any other term, covenant, or condition of this Contract.
- d. **Termination for Default (Construction)** If the Contractor refuses or fails to prosecute the work or any separable part, with the diligence that will insure its completion within the time specified in this contract or any extension or fails to complete the work within this time, or if the Contractor fails to comply with any other provisions of this contract, Omnitrans may terminate this contract for default. Omnitrans shall terminate by delivering to the Contractor a Notice of Termination specifying the nature of the default. In this event, Omnitrans may take over the work and complete it by contract or otherwise, and may take possession of and use any materials, appliances, and plant on the work site necessary for completing the work. The Contractor and its sureties shall be liable for any damage to Omnitrans resulting from the Contractor's refusal or failure to complete the work within specified time, whether or not the Contractor's right to proceed with the work is terminated. This liability includes any increased costs incurred by the Omnitrans in completing the work.

The Contractor's right to proceed shall not be terminated nor the Contractor charged with damages under this clause if-

1. The delay in completing the work arises from unforeseeable causes beyond the control and without the fault or negligence of the Contractor. Examples of such causes include: acts of God, acts of the Recipient, acts of another Contractor in the performance of a contract with the Recipient, epidemics, quarantine restrictions, strikes, freight embargoes; and
2. The contractor, within [10] days from the beginning of any delay, notifies Omnitrans in writing of the causes of delay. If in the judgment of Omnitrans, the delay is excusable, the time for completing the work shall be extended. The

judgment of Omnitrans shall be final and conclusive on the parties, but subject to appeal under the Disputes clauses.

If, after termination of the Contractor's right to proceed, it is determined that the Contractor was not in default, or that the delay was excusable, the rights and obligations of the parties will be the same as if the termination had been issued for the convenience of Omnitrans.

## **RR – 27**

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

#### **Applicability to Contracts**

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

#### **Flow Down**

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

#### **Model Clauses/Language**

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

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

## **RR-28**

### **BREACHES AND DISPUTE RESOLUTION 49 CFR Part 18 FTA Circular 4220.1F**

#### **Applicability to Contracts**

All contracts in excess of \$100,000 shall contain provisions or conditions which will allow for administrative, contractual, or legal remedies in instances where contractors violate or breach contract terms, and provide for such sanctions and penalties as may be appropriate. This may include provisions for bonding, penalties for late or inadequate performance, retained earnings, liquidated damages or other appropriate measures.

#### **Flow Down**

The Breaches and Dispute Resolutions requirements flow down to all tiers.

**Disputes** - Disputes arising in the performance of this Contract which are not resolved by agreement of the parties shall be decided in writing by the Omnitrans. This decision shall be final and conclusive unless within ten (10) days from the date of receipt of its copy, the Contractor mails or otherwise furnishes a written appeal to Omnitrans Construction Manager. In connection with any such appeal, the Contractor shall be afforded an opportunity to be heard and to offer evidence in support of its position. The decision of Omnitrans Project Manager shall be binding upon the Contractor and the Contractor shall abide by the decision.

**Performance During Dispute** - Unless otherwise directed by Omnitrans, Contractor shall continue performance under this Contract while matters in dispute are being resolved.

**Claims for Damages** - Should either party to the Contract suffer injury or damage to person or property because of any act or omission of the party or of any of his employees, agents or others for whose acts he is legally liable, a claim for damages therefore shall be made in writing to such other party within a reasonable time after the first observance of such injury or damage.

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

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

## **RR-29**

### **VETERANS PREFERENCE**

Veterans Employment. Contractors working on a capital project funded using FTA assistance shall give a hiring preference, to the extent practicable, to veterans (as defined in section 2108 of title 5) who have the requisite skills and abilities to perform the construction work required under the contract. This subsection shall not be understood, construed or enforced in any manner that would require an employer to give preference to any veteran over any equally qualified applicant who is a member of any racial or ethnic minority, female, an individual with a disability, or former employee.

## **END OF REGULATORY REQUIREMENTS**

ATTACHMENT C - PRICING SCHEDULE					
MNT15-93					
COOLANT SUPPLY SERVICES					
Line Totals (Unit Price * Quantity)					
Item Num	Section	Description	Unit of Measure	Quantity	Patten Energy Enterprises, Inc
1	New Engine Coolant	New Coolant - Base Year One	GAL	6700	\$22,780.00
2	New Engine Coolant	New Coolant - Base Year Two	GAL	6700	\$25,058.00
3	New Engine Coolant	New Coolant - Base Year Three	GAL	6700	\$27,537.00
4	New Engine Coolant	Sales Tax @ 8.25%	LOT	1	\$6,218.44
5	New Engine Coolant	Delivery Fees (if applicable)	LOT	1	\$0
				Subtotal	<b>\$81,593.44</b>
Unit Price					
Item Num	Section	Description	Unit of Measure	Quantity	Patten Energy Enterprises, Inc
1	New Engine Coolant	New Coolant - Base Year One	GAL	6700	\$3.40
2	New Engine Coolant	New Coolant - Base Year Two	GAL	6700	\$3.74
3	New Engine Coolant	New Coolant - Base Year Three	GAL	6700	\$4.11
4	New Engine Coolant	Sales Tax @ 8.25%	LOT	1	\$6,218.44
5	New Engine Coolant	Delivery Fees (if applicable)	LOT	1	\$0

ITEM # E11

**DATE:** December 3, 2014

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

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

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

**SUBJECT: AUTHORIZE RELEASE – RFP-MNT15-52  
MAINTENANCE, REPAIR AND OPERATIONS (MRO) SUPPLIES**

**FORM MOTION**

Authorize the CEO/General Manager to release Request for Proposals RFP-MNT15-52 for the provision of Maintenance, Repair and Operations (MRO) Supplies with the option to implement Automated Dispensing Equipment beginning January 2015 for three base years and two single option years, ending no later than January 2020.

**BACKGROUND**

Omnitrans requires a supplier or suppliers to provide MRO products (facilities maintenance, paint and accessories, cleaning, lighting products, industrial supplies, tools, safety products, etc.) to ensure the safety of our facilities and maintain our fleet in working condition. This procurement may result in more than one award based on a supplier's ability to provide products in multiple categories.

Thousands of MRO products are expensed upon receipt and maintained outside of SAP inventory. Recent trends in the industry to contain costs include the use of automated dispensing equipment for higher use items. Multiple companies now offer vending machine type technology for MRO products. Staff will solicit bids with and without the use of the vending machine technology and prepare a cost analysis and recommendation for award accordingly.

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 \$985,000.



**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 Source and Availability of Funds  
(Verified and initialed by Finance)

**CONCLUSION**

By proceeding with this solicitation to purchase MRO Supplies, Omnitrans will benefit from economies of scale, as well as automated efficiencies.

PSG:JMS:CVM

ITEM # E12

**DATE:** December 3, 2014

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

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

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

**SUBJECT: AUTHORIZE RELEASE – RFP-MNT15-99  
JANITORIAL SERVICES**

**FORM MOTION**

Authorize the CEO/General Manager to release Request for Proposals RFP-MNT15-99 for the provision of Janitorial Services for a three year base period with two single option years beginning on March 5, 2015, and ending no later than March 4, 2020.

**BACKGROUND**

Omnitrans requires the services of a firm to provide all equipment, labor and materials to perform janitorial services at its East Valley Administration, Operations and Maintenance Buildings, West Valley Operations and Maintenance buildings, and San Bernardino Transit Center.

Required services include monthly and quarterly floor service (strip, clean, wax and power buff vinyl and tile floor surfaces), quarterly carpet cleaning and vacuuming of upholstered furniture, and semiannual cleaning of interior and exterior building windows.

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 \$577,500.00.

**FUNDING SOURCE**

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

Department	1200
Expenditure Code	503160

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

**CONCLUSION**

By proceeding with this solicitation, Omnitrans will not experience a lapse in janitorial services.

PSG:JMS:AA

ITEM # E13

**DATE:** December 3, 2014

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

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

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

**SUBJECT: MEMORANDUM OF UNDERSTANDING BETWEEN OMNITRANS AND CALIFORNIA STATE UNIVERSITY SAN BERNARDINO**

**FORM MOTION**

Authorize the CEO/General Manager to execute a Memorandum of Understanding (MOU) between Omnitrans and California State University San Bernardino (CSUSB) for a Coach Operator Simulator for an amount not to exceed \$70,000.00.

**BACKGROUND**

Omnitrans was successful in receiving a Workforce Development Grant in the amount of \$340,000 from the Federal Transit Administration. Proceeds from this grant are being used to develop individuals who apply and are accepted into the training program, targeted toward developing skills of individuals throughout the region for the Coach Operator position. One of the grant requirements is to provide each student the opportunity to use a driving simulator during the course of training.

To that end, Omnitrans has been working with CSUSB in the development of the simulator for Coach Operators. The simulator will not only be used for students participating in the Workforce Development Program, but also for Coach Operators employed by Omnitrans.

Upon approval of the Memorandum of Understanding, CSUSB will work with Omnitrans to develop the Coach Operator Driving Simulator. As part of the agreement, CSUSB shall also provide software and equipment updates to maintain the simulator to current training needs and Omnitrans will provide access to the data generated from the simulator to CSUSB staff.

**FUNDING SOURCE**

<b>FUNDING</b>	<b>YEAR</b>	<b>PROJECT NAME</b>	<b>INTERNAL ORDER</b>	<b>AMOUNT</b>
CA-26-7301	2013	FTA- Workforce Development Simulator	T1355006F	\$70,000
<b>Total</b>				<b>\$70,000</b>

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

**CONCLUSION**

Approval of this MOU would allow for the use of the Coach Operator Driving Simulator to train students in the Workforce Development Program, and current Omnitrans' coach operators.

PSG:SG

**MEMORANDUM OF UNDERSTANDING**

**by and between**

**OMNITRANS**

**And**

**CALIFORNIA STATE UNIVERSITY, SAN BERNARDINO**

**for**

**COACH OPERATOR DRIVING SIMULATOR**

This Memorandum of Understanding (MOU) is entered into between the Omnitrans, a joint powers authority, acting as project manager for a Federal Transit Administration (FTA) funded regional workforce development grant, and the California State University, San Bernardino (CSUSB) transportation research project. This MOU is for the development of a Coach Operator Driving Simulator, demographic data, software, and related support products.

**WHEREAS**, the development of a simulator and related software interfaces is a vital data source used for a wide range of local, sub-regional and regional applications including; transportation infrastructure planning, facilities planning and timing, general planning and other applications; and the introduction of individuals to a transit experience.

**WHEREAS**, a number of primary users of data in San Bernardino County have recognized the benefit of having local area expertise in developing demographic projections and associated products; and evaluating recommendations from various driving conditions in a controlled environment; and

**WHEREAS**, the parties also desire to establish a long-term process which allows each individual participation in the development and review of demographic products; and data generated from the use of driving simulation; and

**NOW, THEREFORE BE IT RESOLVED** that **OMNITTRANS and CSUSB** agree as follows:

I. Omnitrans will provide funding of not-to-exceed amount of \$70,000.00 for the creation of a simulator, which will be located at Omnitrans' location, 1700 West Fifth Street, San Bernardino, California. In exchange, CSUSB will have access to the data generated by the bus simulator.

II. Process and Structure

A. Management Oversight

The oversight requirements will be the same as required on any federal grant. This will be provided by the Internal Audit Department of Omnitrans. The simulator at

Omnitrans will be used to train coach operators without having them physically getting into an actual coach. The simulator will also be used as part of a workforce development training grant provided by the Federal Transit Administration (FTA). The data from the activities of the simulator will be available to CSUSB staff upon request.

**B. Technical Oversight:**

CSUSB staff will provide technical guidance and input into the development of the simulator produced under this MOU before it is put into operation by Omnitrans' staff.

**OMNITRANS agrees:**

- To provide access to the data from the installed simulator by CSUSB on Omnitrans' site at no cost to the CSUSB staff.
- To allow CSUSB staff access to the simulator for the purpose of updating and maintenance on an ongoing basis. CSUSB staff will warranty the parts and operation of the simulator for the period of one year from date of installation.

**CSUSB agrees:**

- To provide a completed and installed simulator for the price of not to exceed \$70,000.00, installed on the Omnitrans site.
- CSUSB staff agrees to provide updates in software and equipment as needed to keep the simulator current.
- To hold harmless, defend and indemnify OMNITRANS, and OMNITRANS' employees, agents and volunteers (collectively referred to as "OMNITRANS") from any liability, costs, actions or damages related to the production of the simulator referred to in this Agreement.

**TERM:**

The term of this Agreement shall begin upon full execution and shall remain in effect until terminated by a thirty (30) day written notice signed by the CEO/General Manager of OMNITRANS or the Executive Director or agent of CSUSB.

This Agreement may be amended or modified at any time by mutual written agreement of both parties.

The undersigned do agree to the terms and conditions set forth in this document.

**OMNITRANS****CSUSB**

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P. Scott Graham  
CEO/General Manager

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Gaylon Thornton  
Director, Leonard Transportation Center  
College of Business

Approved as to form:

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Carol Greene, Legal Counsel



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TRANSPORTATION

## SB County to receive \$9 million for projects

**By Joe Nelson**

*joe.nelson@langnews.com  
@SBCountyNow on Twitter*

San Bernardino County will receive \$9 million for active transportation projects, a chunk of \$78.2 million the state has awarded for such projects statewide.

The funding will provide a boost to local bicycle and pedestrian safety pro-

grams, according to a news release Friday by San Bernardino Associated Governments, or SanBAG, the county's transportation planning agency.

"Active transportation provides long-lasting benefits in terms of health, safety and the sustainability of our communities, and is an essential element of our region's long-term mobility plans," said

Hasan Ikhata, executive director of Southern California Associated Governments, or SCAG.

"Providing safe, non-motorized transportation alternatives is a growing priority for communities throughout our six counties, and we applaud the Transportation Commission and local transportation authorities for helping to make these proj-

ects a reality."

County Supervisor Gary Ovitt called the funding announcement a "major step forward for the county."

"Active transportation planning is about much more than mobility. It's about the safety of everyone who shares our roads, and quality of life of our communities," Ovitt said in a statement Friday.

THE SUN  
November 11, 2014

VETERANS AFFAIRS

# IMPROVEMENTS ARE ON THE WAY

CHIEF VOWS RENEWED FOCUS ON SERVING VETERANS



PHOTOS BY JENNIFER CAPPUCCIO MAHER — STAFF PHOTOGRAPHER

Vietnam veteran Charles Salazar of Yucaipa boards a bus outside the VA Loma Linda Healthcare System in Loma Linda on Monday. Omnitrans will be offering reduced fares for veterans in January. Four other Inland Empire transit agencies are already offering reduced fares to veterans in the area. Veterans with ID can ride Omnitrans buses free today.





Veterans specialist Osvaldo Maysonet at 2-1-1 VetLink in Rancho Cucamonga has worked on reduced bus fares for veterans in Victorville, Mountain Transit, Riverside, Beaumont and beginning in January, Omnitrans as well.



**Inside:** Look inside for a list of Veterans Day events and closures. **PAGE A6**

## Buses: Affordable transportation for area veterans is comrade's mission

By Michel Nolan  
*michel.nolan@langnews.com*  
*@MichelNolan on Twitter*

Helping veterans access affordable transportation has been one man's mission since 2012.

Veterans Specialist and Marine veteran Osvaldo Maysonet brought together United Way 2-1-1 VetLink San Bernardino County with other nonprofits in the San Bernardino-Riverside county area to make veterans' transportation more accessible — and affordable.

"We wanted to connect veterans to healthcare but also other public places so they can enjoy life and have a richness of life," said Maysonet, 33, of Pomona.

**BUSES » PAGE 6**

him to walk long distances.

"I still get to go to the store and do what I need to do — I'm blessed, I've got peace," he said.

Maysonet is making a difference in veterans lives throughout the Inland Empire and will continue to do so.

"A mission has a beginning and an end and this mission is far from over," he said.

Williams praises Maysonet for his work on behalf of veterans.

"He has pretty much single-handedly gotten transit agencies in the Inland Empire to provide discount

fare to veterans," she said. "He is undeterred by small setbacks."

Access to transportation is the key to the quality of life, Williams said, "If you don't have transportation, you can be held hostage in your own home."

In honor of Veterans Day today, all veterans with ID, can ride Omnitrans free — free rides are for Tuesday only.

Information is available at [www.rivsbvetlink.org](http://www.rivsbvetlink.org); on Facebook at [www.facebook.com/211VetLink](http://www.facebook.com/211VetLink) or Twitter @211VetLink. Information on free Veterans Day rides: [www.omnitrans.org](http://www.omnitrans.org).

## Buses

FROM PAGE 1

"To enjoy the community, you have to access the community, and it's not possible without transportation."

A former Marine sergeant, who served in Iraqi Freedom, Maysonet, who is also an employee of United Way 2-1-1 VetLink, said he would hear from veterans calling in to say they couldn't even afford bus fare.

Maysonet said he developed the reduced fares program to look out for his brothers and sisters.

The program is under way with four agencies in

the two-county area — Victor Valley Transit Authority, Mountain Transit, Riverside Transit Agency and Beaumont Pass Transit.

Reduced fares for Omnitrans serving the San Bernardino area go into effect Jan. 5, said Wendy Williams, Omnitrans spokeswoman.

The delay is caused by scheduling of fare changes, according to Williams.

Maysonet said he was happy to get the other nonprofit agencies to call attention to veterans needs in both counties.

"In the nation, this is the largest concentration of public transportation agencies recognizing veterans — Omnitrans, Vic-

tor Valley Transit Authority, Mountain Transit, Riverside Transit Agency, and Beaumont Pass Transit — five of them joined together in a program of this magnitude leads the country," Maysonet said.

He calls it "Inland Empire Pride" and says that veterans are really big on pride, "We don't like handouts, but appreciate a hand-up."

The fare program aims to help veterans like Charles Salazar.

Salazar, a 63-year-old veteran of Vietnam, is looking forward to the reduced Omnitrans fares coming in

January.

"Any help is needed and if it comes, it's a blessing," said Salazar, who was waiting for a bus Monday following his doctor's appointment at the Veterans Medical Center in Loma Linda.

He said he'd waited about 30 minutes at the bus stop on Barton Road near Benton Street for westbound Omnitrans No. 19 to take him to his home in Yucaipa. Salazar said he's been making the trek this way for two years.

Salazar suffered a head injury in Vietnam and also had "trouble" with his legs, which made it difficult for

November 18, 2014

TRANSPORTATION

# Newest SoCal transit center opens next month

## Eco-friendly building aims to ease traffic from IE to Orange County

By Steve Scauzillo

steve.scauzillo@langnews.com  
@stevscaz on Twitter

**ANAHEIM »** While standing inside the soon-to-open ARTIC, a journalist on the tour said to no one in particular: "I'm expecting penguins."

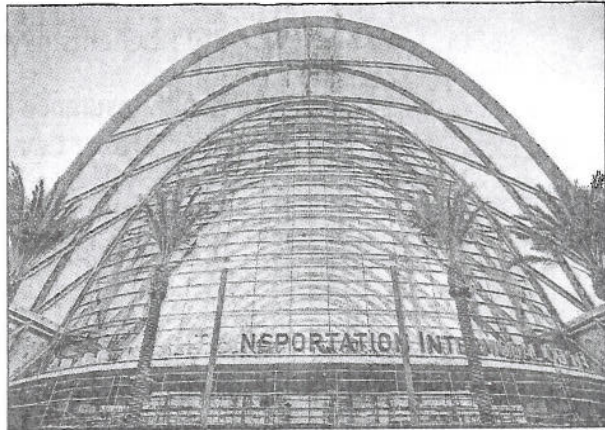
The Anaheim Regional Transportation Intermodal Center, the full name of this igloo-looking mega-structure set to open Dec. 6, was designed to attract millennials and hipsters alike who've ditched their

cars for a bus pass or a steel-framed "fixie" bicycle.

It's a \$184 million gamble, a kind of mission impossible to take commuters from the Inland Empire or eastern Los Angeles County driving to workplaces in Orange County, or vice versa.

With concrete platforms stretching above tracks carrying Amtrak's Surfliner as well as north-south Metrolink trains, ARTIC hopes to carve out a piece of the destination

**TRANSIT » PAGE 4**



LEO JARZOMB — STAFF PHOTOGRAPHER

The Anaheim Regional Transportation Intermodal Center brings together transit providers, allowing passengers to arrive by train, bus, bike or car and connect to Honda Center, Angel Stadium of Anaheim, Disneyland and destinations beyond Orange County.



## Transit

FROM PAGE 1

market by attracting families headed for Hollywood, Disneyland or even Sea World in San Diego.

Also, alternative-powered commuters can plug in at 11 electric-vehicle charging stations or enter via bicycle from one of the two exits off the Santa Ana River Bikeway.

"This is Orange County's Union Station," proclaimed Natalie Meeks, director of public works for the city of Anaheim.

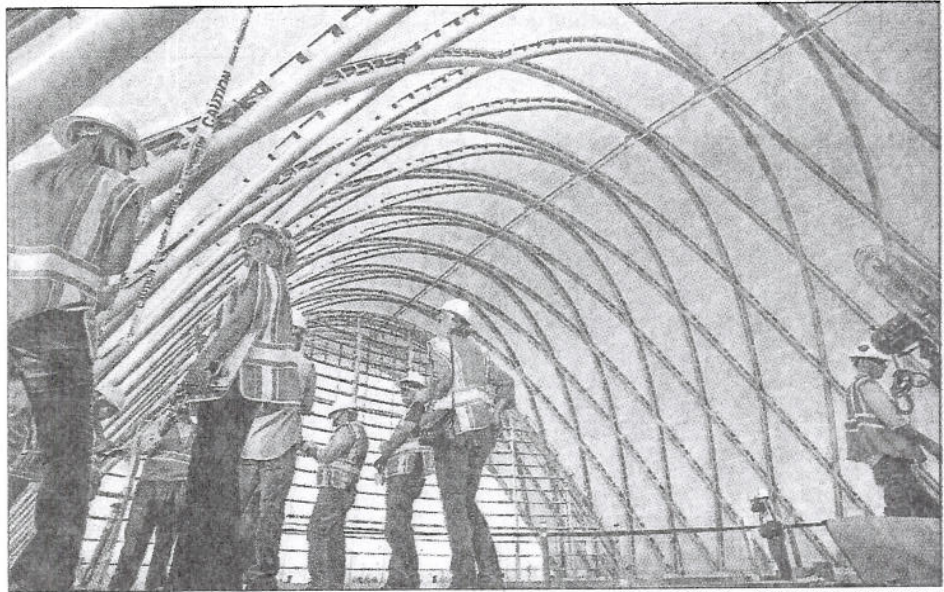
Meeks said the transit station's design mimics the high ceilings of Union Station, as well as other great train stations in New York, Chicago and Philadelphia. But the O.C. version adds a modern twist on those Art Deco and Beaux-Arts style stations.

"This whole facility is a new concept for Southern California and a new way to look at transit — it puts a new face on mass transit," Meeks said.

The ARTIC, no, not Arctic, as in the polar region, nonetheless banks on the cool factor to get people into Greyhound buses, city shuttles, commuter trains and Orange County Transportation Authority buses by combining 10 different modes of transit inside a space-age designed green building equipped with Wi-Fi, coffee bars and Vegas-style eateries.

"It will be a cool place to go. I think it will attract a lot of younger people," says Linh Nguyen, director of operations for Ritter's Steam Kettle Cooking. He and his partner, Mike Ritter, who run a restaurant in Las Vegas' Palace Station Casino, are opening a Cajun-and-Creole-style restaurant and oyster bar within ARTIC's 12,000 square feet of rentable retail and restaurant space in early 2015.

This will not be your fa-



LEO JARZOMB — STAFF PHOTOGRAPHER

The steel-framed tubular building features 67,000 square feet of space for ticket counters, lounges for riders to plug in laptops and iPhones, eateries and shops.

ther's train station food court.

For example, no Starbucks allowed, Nguyen said. Instead, The Lost Bean will sell only "environmentally conscious coffee and tea," meaning 100 percent fair-trade certified coffee beans go into each brew. Orange County chef Leonard Chan will open three food concepts in one space: the Hive Bar for cocktails, the R.A.D. Nano Brewery and SILO, with vegetarian, meat pies and Hawaiian poke bowls.

The steel-framed tubular building features 67,000 square feet of space for ticket counters, lounges for riders to plug in laptops and iPhones, eateries, shops, plus a railroad bridge, train platforms, bus bays and bicycle lockers.

The emphasis on socially conscious foods pairs with the building's green design. The roof is covered in ethylene tetrafluoroethylene or ETFE, a fluorine-based plastic that puffs up when filled with air. It's the building with the biggest use of ETFE in the United States — about 200,000 square feet — and compares with modern architectural landmarks in France, Singapore, Germany and especially China, which

featured The Water Cube building for swimming during the Beijing Olympics in 2008.

As a LEED-Platinum designed building, it will use 35-50 percent less energy by using cooling and heating elements in the floors, while photovoltaic arrays on parking structures supply 20 percent of the building's power, said Rudy Emami, Anaheim city engineer. The ETFE roof membrane reflects heat and the 600 colored LED lights lining the half-dome roof save energy, he added.

While ARTIC connects to one Metrolink line which runs from L.A.'s Union Station to Norwalk/Santa Fe Springs and points south and east, ARTIC doesn't connect to the increasingly popular Inland Empire-to-O.C. line that stops at the Orange Station a few miles away.

Also, the station does not connect to light-rail systems. Meeks said Anaheim is working on the environmental documents for a three-mile trolley to Disneyland. Also, the station has space for the High Speed Rail, a project that is 15 years away from reaching Southern California at best.

On Dec. 6, Metrolink will close its Anaheim Station at

Angel Stadium of Anaheim and route trains to ARTIC. The commuter rail agency runs about 12,000 boardings a day on its L.A. to O.C. line and hopes any new riders enticed by ARTIC will stick around.

"Our job, if more people do become interested (in taking the train), is that they stay interested," said Jeff Lustgarten, Metrolink's director of public affairs.

Whether the ARTIC moves single-occupancy vehicles — about 20,100 cars every hour pass by the Kattella Avenue overpass — off the traffic-choked 57 Freeway that connects Orange and Los Angeles counties remains to be seen.

"This will be a transformative move for Southern Californians to embrace public transportation. We need to grow train use in order to reduce the traffic on our freeways," Meeks said.

Either way, the plastic-steel-and-glass building, which can be seen for miles, is destined to change the skyline, like the Crystal Cathedral, Disneyland's Matterhorn or the L.A. City Hall obelisk, Lustgarten said.

"It will be one of those very noticeable and well-known landmarks," he said. 41



ITEM # F1

**DATE:** December 3, 2014

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

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

**SUBJECT: CEO/GENERAL MANAGER'S REPORT**

sbX ridership was 58,864 riders in October 2014, an increase of 25.1% compared to September 2014. Ridership on the corridor for October was 134,285, an increase of 18.5% compared to September and an increase of 18.9% compared to the same month a year ago.

Following comments received at the November Board Meeting regarding the removal of the Route 5 bus stop in front of Arrowhead Vista Apartments, Omnitrans evaluated the path of travel from Arrowhead Vista Apartments to the nearest bus stop 0.2 miles away on Waterman. While there are sidewalks that connect the area, the direct path of travel does not have the curb cuts at the intersection of Waterman and 4<sup>th</sup>. Although Omnitrans is not responsible for curb cuts in the area, staff will seek to partner with the City of San Bernardino to seek grant funding to improve the area when the next call for TDA Article 3 grant funding is released. As an interim solution, beginning December 1, 2014, the Route 5 stop was reinstated at the Arrowhead Vista Apartments. A Field Supervisor has notified the manager of the complex and has also provided information on the use of NexTrip for the convenience of the residents.

Staff also researched the issue raised at the November Board Meeting on the elimination of Route 9 that provided service to the Department of Aging and Adult Services (DAAS) to downtown San Bernardino. Route 9, which formerly served the sections of Mill Street, Lena Road, and Rialto Avenue, to downtown San Bernardino, where the DAAS is located, served only 4-6 passengers per weekday. Route 9 was eliminated due to multiple service duplications and resources from the route were reallocated to improve service frequency on Routes 3, 4, 5 and 8 and to extend Route 19 farther east for improved services frequency in Mentone and Yucaipa. These changes mean that riders that used the DAAS stop would need to walk 0.4 miles from the next nearest stop, which is within Omnitrans' 0.5 mile walking standard. As a solution, Omnitrans will offer to partner with the DAAS by offering a retired vehicle that could be used as a feeder shuttle to connect to downtown San Bernardino.

Punch list walk through of the sbX Corridor was held in the field on November 19 with the Griffith/Comet Construction Team, Griffith Construction Project Team, representatives from the City of San Bernardino, and the Omnitrans Project Team. The meeting was very productive and the punch list items were addressed in detail. Griffith-Comet will immediately commence with addressing punch list and warranty findings. Retention is being held until all items have been satisfactorily completed.

Notification was received from the FTA Regional Director that Omnitrans satisfactorily addressed all findings from the FY2013 Federal Transit Administration Procurement System Review. A major accomplishment and credit to the staff's effort to ensure complete compliance with FTA Regulations; special recognition to the Procurement Department for their pursuit of excellence.

Outreach events in October included: Colton Senior Health Fair, CSUSB Go Smart/sbX Outreach, Moreno School Resource Fair, San Bernardino Farmer's Market, Highland Senior Center Health Fair, CSUSB Go Smart/sbX Outreach, San Bernardino County Community Vital Signs, Disability Sports Festival, TAD TC Visits, Loma Linda Senior Health & Fitness Fair, Disabilities Awareness Fair, 55+ Club Presentation, and the Inland Regional Center Harvest Festival.

Omnitrans was honored to receive multiple 2014 AdWheel Awards from the American Public Transportation Association. Director of Marketing-Planning will share the details of the awards at the meeting.

PSG:VD

## sbX Key Performance Indicators (October FY2015)

Topic	Measure	Target	Actual	Status
<b>Ridership</b>	Average Daily Ridership (sbX)	5,607	2,559 2,134	October FY2015 YTD FY2015
	Average Daily Ridership (Corridor)	7,049	5,132 4,616	October FY2015 YTD FY2015
<b>Productivity</b>	Passengers per Hour	Green: 40; Yellow: 35; Red: 30	17.7 16.1	October FY2015 YTD FY2015
<b>Cost Efficiency</b>	Farebox Recovery Ratio	Green: 30%; Yellow: 25%; Red: 20%	10.59% 9.17%	October FY2015 YTD FY2015
<b>Reliability</b>	Headway Adherence	90% of trips spaced ±3 minutes of scheduled headway	63.5%	YTD FY2015
<b>Runtime</b>	Median One-Way Runtime	47 minutes	55	YTD FY2015
<b>Customer Satisfaction</b>	Complaints per 100,000 boardings	<10 complaints per 100,000 boardings	17.8 (33 com./ 185,688 brds)	YTD FY2015
	Compliments per 100,00 boardings	>1 compliments per 100,000 boardings	1 commendations / 185,688 boardings	YTD FY2015
<b>Safety</b>	Preventable Accidents per 100,000 miles	<1 per 100,000 miles	0	Since Inception
<b>Attendance</b>	Driver Attendance	<6 absences per year per operator	0	Since Inception



ITEM #       F2      

**DATE:** December 3, 2014

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

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

**SUBJECT: PROPOSED BOARD MEETING SCHEDULE FOR 2015**

**FORM MOTION**

Adopt the proposed Board Meeting schedule for 2015, set for 8:00 a.m., the first Wednesday of each month, unless otherwise noted.

January 14, 2015 (Second Wednesday)

February 4, 2015

March 4 2015

April 1, 2015

May 6, 2015

June 3, 2015

July 1, 2015

August 5, 2015

September 2, 2015

October 7, 2015

November 4, 2015

December 2, 2015

Please note that all dates coincide with SANBAG's adopted Board Meeting schedule for 2015, with the exception of January and August.

PSG:vd

ITEM #       F3      

**DATE:** December 3, 2014

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

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

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

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

**FORM MOTION**

Authorize the CEO/General Manager to de-obligate \$377,904.13 of Federal Transit Administration (FTA) funds and \$94,476.06 of Prop 1B funds as shown in the Funding Source section, and re-obligate these funds to the Computer Equipment project.

Authorize the CEO/General Manager to award purchase orders to VetSource Mobility of Clarksville, TN, for the provision of one hundred (100) laptops and two hundred (200) 22” LED Lit LCD Monitors in the amount of \$331,185.46, and to CherryStoneIT, Inc., of Huntington Beach, CA, for the provision of Tower Desktops in the amount of \$126,237. The total amount of both purchase orders is \$457,422.46, plus a 3.27% Capital Allocation Plan (CAP) of \$14,957.71 for a total not-to-exceed amount of \$472,380.17.

**BACKGROUND**

On October 1, 2014, Omnitrans’ Board of Directors authorized release of IFB-ITS15-66 for computer equipment. The solicitation included ruggedized laptops, vehicle mounts, laptops, desktops and LED monitors. Notices were published in two local newspapers of general circulation and posted on Omnitrans’ online bidding system. Five bids were received by the October 30, 2014, deadline.

Of the five bids received, three bids were deemed responsive for the laptops, desktops and LED monitors and only one bid met the technical specifications for the ruggedized laptops and vehicle mounts. Staff surveyed potential bidders and determined that competition does exist for the ruggedized laptops and vehicle mounts and therefore has removed them from the award and will reissue an IFB for award in January.

Listed below are the prices for responsive and responsible bids:

Company	Laptops	Desktops	LED Monitors
VetSource Mobility	\$301,091.96	n/a	\$30,093.50
CherryStoneIT, Inc.	\$315,074.94	\$126,237.94	\$31,827.72
Frontier Technology	\$309,707.58	\$139,427.08	\$45,003.86

Sales tax, delivery and 3 year warranty included.

Award is recommended to the lowest, responsive, responsible bidder in each category. Price is deemed fair and reasonable based on competition. The Independent Cost Estimate of \$490,000 was based on market research. The award represents a cost savings of \$17,619.

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

### **FUNDING SOURCES**

FUNDING	GRANT	YEAR	PROJECT NAME	INTERNAL ORDER	AMOUNT
Deobligate					
FTA	CA-90-Z112	2014	CCTV	D1422003F	\$377,904.13
Prop 1B		2014	CCTV	D1422000B	\$94,476.04
Reobligate					
FTA	CA-90-Z112	2014	Computer Equipment	TBD	\$377,904.13
Prop 1B		2014	Computer Equipment	D1422023B	\$94,476.03
Total					\$472,380.17

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

### **CONCLUSION**

Approval of these purchase orders will allow Omnitrans to replace outdated or damaged equipment.

PSG:JMS:AA

ITEM # F4

**DATE:** December 3, 2014

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

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

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

**SUBJECT: AWARD SOLE SOURCE PURCHASE ORDER  
TICKET VENDING MACHINES**

### **FORM MOTION**

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

### **BACKGROUND**

Omnitrans currently utilizes GFI Vendstar-3 Ticket Vending Machines (TVM) at the sbX stations along the E-Street Corridor. The TVMs provide self-service ticket vending. One TVM will be utilized as a spare for parts repair testing or as a replacement in the event a TVM is removed from service. For continuity of service, up to two TVMs will be utilized at the San Bernardino Transit Center.

The Independent Cost Estimate anticipated a cost of \$45,900 per unit for the purchase of four TVMs exclusive of installation, tax and freight, which was based on Omnitrans' previous purchase in 2012 of 25 TVMs. Omnitrans is requesting two TVMs. Genfare is offering a \$10,000 discount for two TVMs at \$46,231 per unit, and absent a multi-purchase discount, \$51,231 for the optional TVM. Price is deemed fair and reasonable.

In accordance with FTA Circular 4220.1F, section VI-17, procurement by noncompetitive proposals may be used when the manufacturer is the sole provider of the items compatible with existing equipment/systems and when the equipment/systems are not interchangeable with similar parts and equipment from other manufacturers.

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

### **FUNDING SOURCE**

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

<b>FUNDING</b>	<b>GRANT</b>	<b>YEAR</b>	<b>PROJECT NAME</b>	<b>INTERNAL ORDER</b>	<b>AMOUNT</b>
FTA	CA-90-Y939	2012	TVM	TBD	\$ 88,719
STA	13-10-OMN-B	2012	TVM	TBD	\$ 22,180
Prop1B	TBD	2013	TVM	TBD	\$49,956
Total					\$160,855

CAP is based on two TVMs that use \$107,387 of FTA funding and does not include the TVM to be purchased with Prop1B funding.

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

### **CONCLUSION**

Approval of this purchase will provide a spare TVM to replace inoperative equipment and allow passengers the ability to purchase fare media from vending machines at the San Bernardino Transit Center.

PSG:JMS:CVM

ITEM # F5

**DATE:** December 3, 2014

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

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

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

**SUBJECT: AUTHORIZE AWARD - CONTRACT ITS15-64R  
MICROSOFT SOFTWARE ASSURANCE**

**FORM MOTION**

Authorize the CEO/General Manager to award Contract ITS15-64R to PCMG, Inc. dba PCM Gov, Inc. of El Segundo, CA, for the provision of Microsoft Software Assurance for a three-year period beginning December 2014 and ending December 2017, in the amount of \$202,438.41.

**BACKGROUND**

Omnitrans' Enterprise Agreement (EA) for support and maintenance of its Microsoft licensed software products has expired and must be renewed. Bids must be provided by or in partnership with a licensed EA Microsoft provider and will include maintenance, upgrade rights, deployment planning, product support, training, as well as rights to Microsoft products needed by both users and administrators.

On November 5, 2014, Board approved release of IFB-ITS15-64. The solicitation was posted on Omnitrans' online bidding system. Only one bid was received electronically on November 25, 2014. However, the bid did not meet the minimum requirements and was, therefore, deemed not responsible. In accordance with FTA Circular 4220.1F, Chapter VI, subsection 3.i.3(a), Omnitrans is to "solicit offers from as many potential sources as is practicable under the circumstances." Staff solicited offers from all six (6) sources authorized by Microsoft to provide enterprise level licensing solutions. As a result, four bids were received electronically and three were deemed responsive.

Listed below are the bid prices:

Company	Bid
PCM Gov, Inc.	202,438.41
SIGMAnet	211,061.00
En Pointe Technologies, Inc.	368,008.29

Award is recommended to the lowest responsive and responsible bidder. Price is deemed fair and reasonable as the bid of \$202,438.41 is \$52,561.59 less than the Independent Cost Estimate of \$255,000. This represents a savings of \$121,561.59 over the previous provider, En Pointe Technologies, Inc.

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

### **FUNDING SOURCE**

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

Department	1320
Expenditure Code	505170

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

### **CONCLUSION**

Approving award of this contract allows Omnitrans effective management of its license and software maintenance agreements.

PSG:JMS:CVM

ITEM # G1

**DATE:** December 3, 2014

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

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

**FROM:** Maurice A. Mansion, Treasury Manager

**SUBJECT: CALL FOR PUBLIC HEARING - FEDERAL TRANSIT  
ADMINISTRATION SECTION 5310 CAPITAL ASSISTANCE**

### **FORM MOTION**

Call for a public hearing concerning the Federal Transit Administration (FTA), Section 5310 Capital Assistance for Fiscal Year 2014, to be held at 8:00 a.m. January 7, 2015 at the Omnitrans Metro Facility, 1700 West Fifth Street, San Bernardino, CA 92411.

### **SUMMARY**

- The date and time will be set for the federally required public hearing allowing comments on projects involving Federal assistance for purchase of ten (10) Replacement Access Vehicles and an Enhanced Access Customer Communication Booking and Notification System.
- A public hearing affords the opportunity to obtain views of officials and citizens regarding the proposed use of Federal assistance and community support for the amended program of projects.
- This public hearing allows public non-profit transportation providers to come forward if they are readily able to carry out the proposed services.

### **BACKGROUND**

In order to qualify for federal assistance through the Federal Transit Administration (FTA), Omnitrans is required to hold a public hearing on the proposed use of federal funds. FTA also requires that Omnitrans give the public sufficient notice so that if a public non-profit is able to provide the same service, the funds will not be sought. In the absence of substantive comments, federal assistance will then be sought.

Omnitrans is requesting \$1,550,000 in FTA Section 5310 capital funding to purchase ten (10) replacement vehicles and an Enhanced Access Customer Communication Booking and Notification System. This funding source is made available for the special transit needs of



elderly persons and persons with disabilities. Funds are allocated based on a statewide competitive basis.

<b>Project Description</b>	<b>Total Cost</b>	<b>Federal Share</b>
10 Access Replacement Vehicles	\$1,000,000	\$1,000,000
Enhanced Access Customer Communication Booking and Notification System	\$ 550,000	\$ 550,000
<b>TOTAL</b>	<b>\$1,550,000</b>	<b>\$1,550,000</b>

Notification of award will occur by April 2015. If Omnitrans receives funding through Section 5310, monies will be used to replace vehicles for Omnitrans' Access service and to add a new Enhanced Access Customer Communication Booking and Notification System.

### **ANALYSIS**

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

PSG:MM

ITEM # F6

**DATE:** December 3, 2014

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

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

**SUBJECT: PROPOSED EMERGENCY ITEM  
AMALGAMATED TRANSIT UNION LOCAL #1704**

**FORM MOTION**

1. Approve addition of emergency item for action by the Board of Directors pursuant to Government Code Section 54954.2(b)(2) regarding labor negotiations between Omnitrans and the Amalgamated Transit Union (ATU) Local #1704 for the Coach Operator Unit.
2. Authorize the CEO/General Manager to pay a \$900 stipend before December 25, 2014, and approve a 2.75% increase effective December 9, 2014, the first full payroll period after ratification by the ATU. Final approval of the Memorandum of Understanding shall be brought back to the Board of Directors in January 2015.

**BACKGROUND**

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

On November 25, 2014, the Union agreed to present Omnitrans' contingent offer to its membership on Tuesday, December 2, 2014, which was not in time to include the item at the time the agenda was posted. Therefore, a two-thirds vote (14 of 20 members) must be approved to add this item to the agenda for action by the Board of Directors.

As the contingent offer was ratified by the ATU membership with a vote of 265 to 38, the CEO/General Manager is seeking authorization to proceed with paying the \$900 stipend to the Coach Operators and to process the 2.75% pay increase effective December 9, 2014, which is the first full payroll period after ratification of the Union. The full Memorandum of Understanding will be brought back to the Board for adoption at the regular January Board meeting.

**FUNDING SOURCE**

The cost associated with this action is included in salary and benefit budget line items of the affected departments.

Departments	1100
Expenditure Code	Various

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

### **CONCLUSION**

Upon approval, the \$900 stipend will be paid to each member of the Coach Operator Unit before Christmas and the 2.75% wage increase will go into effect the first full pay period after ratification, which is December 9, 2014.

PSG:vd