



**BOARD OF DIRECTORS  
MAY 3, 2017  
CONTRACTS SUPPLEMENTAL INFORMATION**

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|-----------------|--|
| <b>ITEM #F5</b> | <b>THIRD PARTY CONSULTANT TO PROVIDE NATURAL GAS<br/>AND MANAGEMENT OF THE LOW CARBON FUEL<br/>STANDARD (LCFS) CREDIT PROGRAM UNDER<br/>CALIFORNIA AB 32</b> |
| <b>ITEM #F6</b> | <b>EMPLOYEE RECOGNITION AWARDS</b>   |
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**ITEM #F5**

**THIRD PARTY CONSULTANT TO PROVIDE  
NATURAL GAS AND MANAGEMENT OF THE  
LOW CARBON FUEL STANDARD (LCFS)  
CREDIT PROGRAM UNDER CALIFORNIA  
AB 32**



## CONTRACT AGREEMENT

between

CONTRACTOR  
GHI Energy, LLC  
800 Bering Drive, Suite 301  
Houston, TX 77057

(hereinafter "CONTRACTOR")  
Contact: John Greene, President  
Telephone: (281) 761-7835  
Email: jmgreene@ghienergy.com

And

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

### CONTRACT DOCUMENTS

CONTRACT NO. FIN17-13

Third Party Contract for the Purchase  
of Natural Gas and Management of a  
Low Carbon Fuel Standard (LCFS)  
Credit Program under California  
AB32

Maximum Cumulative Payment  
Obligation: \$5,561,578.63

Omnitrans Project Manager:  
Name: Donald Walker  
Title: Director of Finance  
Telephone: (909) 379-7131  
Email: donald.walker@omnitrans.org

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



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ATTACHMENT A – SCOPE OF WORK

ATTACHMENT B - PRICING

ATTACHMENT C- NAESB TERMS

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

## **RECITALS**

WHEREAS, OMNITRANS is a joint powers authority organized under Sections 6500 et seq. of the California Government Code 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;

WHEREAS, the parties have agreed to incorporate the North American Energy Standards Board ("NAESB") Base Contract, including the General Terms and Conditions for Retail Sale and Purchase of Natural Gas or Electricity published by the NAESB; Addendum 1 – Amendments to NAESB Base Retail Contract General Terms and Conditions; and the related transaction confirmation #: SCG0019-001 ("Transaction Confirmation") as part of this Agreement, as further specified herein. The NAESB Base Contract, Addendum 1, and the Transaction Confirmation are sometimes referred to herein, collectively, as the "NAESB Terms".

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, and in accordance with the NAESB Terms. The NAESB Terms are attached hereto as Attachment C, and incorporated herein by reference.

In the case of any conflict between the terms of this Agreement, and the NAESB Terms, and notwithstanding any boxes checked on the Base Contract form, the terms of this Agreement shall govern.

- 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 as specified in the Transaction Confirmation unless earlier 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.

## **3. [RESERVED]**

## **4. COMPENSATION**

- A. For CONTRACTOR's full and complete performance of its obligations under this Agreement, OMNITRANS shall pay CONTRACTOR in accordance with the terms set forth in the Transaction Confirmation.
- B. The total funding authorized by OMNITRANS under this Agreement is Five Million Five Hundred Sixty-One Thousand Five Hundred Seventy-Eight Dollars and sixty-three cents (\$5,561,578.63) ("Maximum Cumulative Payment Obligation"). The parties agree that delivery of natural gas under the Transaction Confirmation shall cease, without liability to either party, if the cost of such delivery will exceed the Maximum Cumulative Payment Obligation, unless otherwise approved in writing by the Chief Executive Officer of OMNITRANS.
- C. In the event of any extension of this contract beyond the term set forth in the Transaction Confirmation, OMNITRANS reserves the right to either accept or reject any price adjustments submitted in writing ninety (90) days prior to the end of the current contract period as part of OMNITRANS' consideration for the contract extension.
- D. This Agreement provides for purchase by OMNITRANS of fixed unit price natural gas based on a monthly recognized California natural gas commodity index ("Index Price"). OMNITRANS reserves the right to convert this Agreement to provide for fixed price purchase of natural gas ("Fixed Price"). Any such change shall be pursuant to a written amendment to this Agreement. OMNITRANS may also elect to purchase gas under a "Fixed Price Tranche", in accordance with the terms of the Transaction Confirmation, provided that such election must be made in writing.

## **5. INVOICING AND PAYMENT**

- A. CONTRACTOR shall invoice OMNITRANS in accordance with the NAESB Terms. CONTRACTOR shall furnish information as may be requested by OMNITRANS to substantiate the validity of an invoice.

CONTRACTOR shall submit invoices in duplicate to:

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

Accountspayable@omnitrans.org

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

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

- B. Unless OMNITRANS disputes an invoice, or any part thereof, in writing, OMNITRANS shall remit payment within the timeframe set forth in the Transaction Confirmation. Any written notice of a disputed invoice shall set forth in detail the basis for such dispute, and shall be submitted before the deadline for payment set forth in the Transaction Confirmation.

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.

C. TITLE

a. Title shall pass to Omnitrans at the time of payment.

b. The title transferred as above shall in each case be good, and free and clear from any and all security interests, liens, and/or other encumbrances.

c. The transfer of title as specified above shall not imply Acceptance by Omnitrans, nor relieve the Contractor from the responsibility for strict compliance with the Contract, including warranty as specified in the Article entitled Warranty of Work, and for any loss of or damage to the Work.

d. The Contractor at its own expense shall promptly execute, acknowledge, and deliver to the Omnitrans proper bills of sale or other written instruments of title in a form as required by Omnitrans; said instruments shall convey to the Omnitrans' title free and clear of debts, claims, liens, mortgages, taxes, and/or encumbrances.

e. Contractor shall have title to and bear the risk of any loss of or damage to Work purchased hereunder until they are delivered, unloaded, and received by Omnitrans at the FOB Destination specified herein. Contractor's responsibility for loss or damage except for loss or damage resulting from Contractor's negligence, shall cease when title passes to Omnitrans.

## **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

To CONTRACTOR:

GHI Energy, LLC  
800 Bering Drive, Suite 301  
Houston, TX 77057  
Attn: John Greene  
President

## **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: Donald Walker, Director of Finance.

- 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>
John Greene jmgreene@ghienergy.com	Main contact
Clarke Anderson canderson@ghienergy.com	Secondary contact

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. This section shall provide the sole terms for resolution of disputes under this Agreement, and any provisions in the NAESB Terms related to resolution of disputes shall not be applicable.

- 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.
- E. The parties expressly agree that the following NAESB Terms shall not apply to this Agreement: (i) any provisions requiring submission of disputes between the parties to arbitration; (ii) any waiver of the right to a jury trial; and (iii) any provision providing for venue in Los Angeles County. As set forth in this Agreement, venue shall be in San Bernardino County.

## **10. TERMINATION FOR CONVENIENCE**

Notwithstanding any provision in the NAESB Terms, OMNITRANS may terminate this Agreement in whole or in part for OMNITRANS' convenience, and without liability, with fifteen (15) days prior notice to CONTRACTOR. The parties expressly agree that early termination damages/cancellation fees, and other agreement setoffs, as set forth in the NAESB Terms, shall not apply to any termination for convenience by OMNITRANS under this provision. 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 only be liable for fuel actually received prior to the date of termination.

The parties agree that if OMNITRANS elects to purchase natural gas on a Fixed Price basis, pursuant to an amendment to this Agreement, the early termination damages provisions in the NAESB Terms will apply (except as set forth below as relates to termination for cause by OMNITRANS), and, in such case, any termination for convenience by OMNITRANS will require ninety (90) days prior notice.

If OMNITRANS elects, in writing, to purchase natural gas pursuant to a "Fixed Price Tranche", as described in the Transaction Confirmation, the early termination damages provisions set forth in the NAESB Terms shall govern as relates to such Fixed Price Tranche only, except as to any termination for cause by Omnitrans, in which case the provisions of Section 11 below shall govern.

## **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 28, 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 10, 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.
- H. The parties expressly agree that, notwithstanding any provision in the NAESB Terms, OMNITRANS shall not be liable to CONTRACTOR for early termination damages/cancellation fees or for any other agreement setoffs, for any termination by OMNITRANS for cause under this section.

## **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.

<b>Subcontractor's Name and Address</b>	<b>Work to Be Performed</b>
Devlar Energy Marketing, LLC 384 Inverness Pkwy, Suite 150 <u>Englewood, CO 80112</u> Ruel Cooper, VP (303) 683-4242 ruel@devlar.com	Wholesale natural gas marketing and scheduling
EcoEngineers 300 E Locust Street <u>Des Moines, IA 50309</u> Jim Ramm, President (515) 309-1260 jramm@ecoengineers.us	Environmental compliance services

### 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

#### A. INSURANCE REQUIREMENTS

##### 1) General Requirements for Contractor

- a. Without limiting or diminishing the Contractor's obligation to indemnify or hold Omnitrans harmless, Contractor shall procure, prior to commencement of the services required under this contract

and maintain for the duration of the contract at its own expense, insurance of the kinds and in the amounts as indicated below;

- b. Provide Omnitrans with valid original certificates of insurance and endorsements showing Omnitrans as an additional insured.

## **2) Deductibles or Self-Insured Retention (SIR)**

SIR must be declared to and approved by Omnitrans. At the option of Omnitrans, either: the insurer shall reduce or eliminate such deductibles or SIR or Contractor shall procure a bond guaranteeing payment of losses and related investigations, claim administration and defense expenses.

## **3) Other Insurance Provisions**

### **a. Commercial General Liability and Automobile Liability**

Commercial General Liability insurance coverage, including but not limited to, premises liability, contractual liability, products and completed operations liability, personal and advertising injury covering claims which may arise from or out of Contractor's performance of its obligations hereunder and if Contractor's vehicles or mobile equipment are used in the performance of the obligations under this Agreement, then Contractor shall maintain liability insurance for all owned, non-owned or hired vehicles so used. Policy shall name Omnitrans, its officers, officials, employees, agents and volunteers as additional insured as respects: liability arising out of activities performed by or on behalf of Contractor; products and completed operations of Contractor; premises owned, occupied or used by Contractor; or automobiles owned, leased, hired or borrowed by Contractor. The coverage shall contain no special limitations of the scope of protection afforded Omnitrans, its officers, officials, employees, agents, and volunteers.

1. For any claims related to this project, Contractor's insurance coverage shall be primary insurance as respects Omnitrans, its officers, officials, employees, agents, and volunteers. Any insurance and/or deductibles and/or self-insured retentions or self-insured programs maintained by Omnitrans, its officers, officials, employees, agents, and volunteers shall be excess of Contractor's insurance and shall not be construed as contributory.
2. Contractor's insurance shall apply separately to each insured against whom claim is made or suit is brought, except with respect to the limits of the insurer's liability.
3. Each insurance policy required by this clause shall be endorsed to state that coverage shall not be suspended, voided, cancelled

by either party, reduced in coverage or in limits except after thirty (30) days prior written notice has been given to Omnitrans.

**b. Workers' Compensation**

If the Contractor has employees as defined by the State of California, the Contractor shall maintain statutory Workers' compensation Insurance (Coverage A) as prescribed by the laws of the State of California. Policy shall include Employers' Liability (Coverage B) including Occupational Disease with limits not less than \$1,000,000 per person per accident. The policy shall be endorsed to waive subrogation in favor of Omnitrans and, if applicable, to provide a Borrowed Servant/Alternate Employer Endorsement.

**c. Care, Custody, and Control**

Contractor shall insure any Omnitrans property while under its Care, Custody, and Control according to the requirements listed in the insurance coverage required.

**4) Acceptability of Insurers**

Insurance companies shall be State of California admitted or approved and have a current **A.M. Best's** rating of no less than **A:VIII**.

**5) Verification of Coverage**

- a. Contractor shall furnish Omnitrans with original endorsements affecting coverage required by this clause. The endorsements are to be signed by a person authorized by that insurer to bind coverage on its behalf. All insurance certificates and endorsements are to be received and approved by Omnitrans before work commences.
- b. As an alternative, Contractor's insurer may provide complete, certified copies of all required insurance policies, including endorsements affecting the coverage required by these specifications.
- c. In lieu of purchasing insurance and providing original endorsements and or certificates of insurance, the Contractor may provide proof of self-insurance; such proof must be to the satisfaction of Omnitrans.

**6) Subcontractors**

Contractor shall include all subcontractors as insureds under its policies or shall furnish separate certificates and endorsements for each subcontractor. All coverage for subcontractors shall be subject to all of the requirements stated herein.

## 7) Notification of Terminated Insurance

Insurance shall not be terminated or expire without thirty (30) days written notice, and are required to be maintained in force until completion of the contract.

## B. MINIMUM INSURANCE COVERAGE

If the Contractor maintains broader coverage and/or higher limits than the minimum requirements shown below, Omnitrans requires and shall be entitled to the broader coverage and/or higher limits maintained by the Contractor.

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

## **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.

OMNITRANS shall not indemnify CONTRACTOR. The parties agree that any provision in the NAESB Terms which provides for OMNITRANS to indemnify CONTRACTOR is expressly rejected and shall not be applicable to this Agreement.

## **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**

- A. 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.
- B. Government regulations that directly affect the CONTRACTOR'S performance of this contract and unforeseen impacts, which neither party could have contemplated at the onset of the contract and have an unconscionable impact on the CONTRACTOR may be given special pricing

consideration. The parties, in good faith, shall review established rates and may adopt any mutually agreed new rates, which shall only be effective as agreed upon by the parties. Thorough documentation including all cost elements is required to support the Contractor's claim to any relief under this clause.

## **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.

This section shall provide the sole terms governing force majeure under this Agreement, and Section 8 of the NAESB standard terms or any other provisions in the NAESB Terms related to force majeure shall not be applicable to this Agreement. This provision is not intended to alter or effect the force majeure provisions related to the Renewable Natural Gas (RNG) "Share%" set forth in Section 10.3.2 and 13.3.1 of the Transaction Confirmation.

### **32. CONFIDENTIALITY**

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

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

- A. OMNITRANS shall review and approve in writing all OMNITRANS related copy proposed to be used by CONTRACTOR for advertising or public relations purposes prior to publication. CONTRACTOR shall not allow OMNITRANS related copy to be published in its advertisements and

public relations programs prior to receiving such approval. CONTRACTOR shall ensure that all published information is factual and that it does not in any way imply that OMNITRANS endorses CONTRACTOR's firm, service, and/or product.

- B. CONTRACTOR shall refer all inquiries from the news media to OMNITRANS, and shall comply with the procedures of OMNITRANS' Public Affairs staff regarding statements to the media relating to this Agreement or the Work.
- C. If CONTRACTOR receives a complaint from a citizen or the community, CONTRACTOR shall inform OMNITRANS as soon as possible and inform OMNITRANS of any action taken to alleviate the situation.
- D. The provisions of this Article shall survive the termination or expiration of this Agreement.

#### **34. GOVERNING LAW**

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

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

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

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

- A. The 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, 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. 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.

### **37. PRECEDENCE**

Conflicting provisions hereof, if any, shall prevail in the following descending order of precedence: (1) the provisions of this Agreement, and Attachments A and B; (2) provisions of RFP-FIN17-13 and any and all of its Addenda, Appendices, Exhibits and Attachments; (3) Attachment C - NAESB Terms; and (4) CONTRACTOR's proposal dated October 24, 2016 and Best & Final Offer dated April 12, 2017.

### **38. ENTIRE AGREEMENT**

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

**SIGNATURE PAGE  
TO  
CONTRACT DOCUMENTS**

**CONTRACT NO. FIN17-13**

**Third Party Contract for the Purchase of Natural Gas and Management of a Low  
Carbon Fuel Standard (LCFS) Credit Program under California AB32**

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

GHI ENERGY, LLC

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

\_\_\_\_\_  
John Greene  
President

\_\_\_\_\_  
Date

\_\_\_\_\_  
Date

Federal Tax I.D. No. 90-0888513

DP\_\_\_\_

CM\_\_\_\_

**EXHIBIT A**  
**SCOPE OF WORK**

**1. INTRODUCTION**

A. Contractor shall:

1. Supply 100 percent of Omnitrans' natural gas requirements in the form of a guaranteed supply of natural gas to Omnitrans' two facilities on a non-interruptible basis; and
2. Develop and manage its Low Carbon Fuel Standard (LCFS) program as outlined in California Assembly Bill AB32. Contractor shall compensate Omnitrans for providing the proper rights for its LCFS credits created under LCFS Regulations.

B. The term of the contract will be for five years.

C. Contractor shall provide a detailed description of their business model, including whether they will be acting as an Energy Service Provider (ESP) or broker on behalf of Omnitrans.

D. Contractor shall offer its available alternatives and best approach in terms of providing both natural gas pricing and LCFS & Renewable Identification Number (RIN) management services for a total requirements "package" that ensures the reliable delivery of Omnitrans' natural gas requirements, at a competitive price, and guarantees top market value for Omnitrans' LCFS credits.

**2. BACKGROUND**

A. Omnitrans directly operates a fleet of 118 compressed natural gas (CNG) buses from its East Valley (EV) facility located at 1700 W. 5th Street, San Bernardino, CA. A fleet of sixty-three (63) CNG buses are operated from the West Valley (WV) facility located at 4748 Arrow Highway, Montclair, CA. In addition to CNG buses, there are currently twenty-six (26) wheelchair equipped CNG paratransit vehicles providing origin-to-destination transportation services. Thirteen (13) CNG paratransit vehicles are scheduled to replace unleaded para-transit vehicles annually until the fleet is 100% CNG.

B. The liquefied compressed natural gas (LCNG) fueling process at both the EV and WV facilities are to be converted to a pipeline fueling infrastructure. Once completed, the twenty-six (26) CNG paratransit vehicles will fuel at the EV or WV facilities.

- C. Omnitrans' goal is to reduce its fuel costs while maintaining the highest possible degree of reliability in its natural gas supply to ensure that buses can be fueled and operated every day of the year. Additionally, Omnitrans desires to operate in the most environmentally responsible manner, limiting greenhouse gas generation, within the aforementioned parameters.

### **3. CNG/SERVICE REQUIREMENTS**

Omnitrans currently uses an estimated 4,000,000 gallons of LCNG annually to fuel its fleet of natural gas vehicles. Approximately 2,700,000 gallons and 1,300,000 gallons are used at EV and WV respectively. The required Therms based on these estimates are 2.2M Therms and 1.1M Therms at EV and WV respectively (see table below).

#### **ANNUAL LNG USAGE**

	<b><u>LNG</u></b>	<b><u>1.5 GGE</u></b>	<b><u>0.82 Therms</u></b>
East Valley (EV)	2,700,000	1,800,000	2,214,000
West Valley (WV)	1,300,000	866,667	1,066,000
Totals	4,000,000	2,666,667	3,280,000

### **4. SCOPE OF SERVICES**

#### **A. Supply of Compressed Natural Gas**

- 1) Contractor shall:
  - a. Supply 100 percent of Omnitrans natural gas requirements in the form of a guaranteed supply of natural gas to Omnitrans' CNG Fueling facilities on a non-interruptible basis.
  - b. Determine if green gas, such as biogas, is a cost-effective option for Omnitrans, and either supply or procure the supply of green gas.
  - c. Manage Omnitrans' LCFS program as outlined in California Assembly Bill AB32.
  - d. Manage additional LCFS and Renewable Identification Number (RIN) credits generated through the use of green gas.
- 2) During the term of this agreement, Omnitrans reserves the right to purchase natural gas based on a current index (e.g. SoCal Gas), plus or



minus fees, or convert such agreement into a fixed price, longer term agreement or such other terms as may be in the best interest of Omnitrans.

- a. Index pricing shall mean the price posting relative to that as first published each month for SoCal Gas.
- b. Fixed pricing shall mean a constant price for all natural gas requirements during the contract term.

3) Contractor shall provide the following services::

- a. Daily monitoring of natural gas usage
- b. Daily balancing as required by natural gas supplier
- c. Billing services
- d. Natural gas information and consulting services
- e. Handle all gas supply and delivery arrangements
- f. Monitor gas infrastructure issues (gas supply, reliability) and strategies for curtailment protection
- g. Maintain an auditable “paper trail”
- h. Act as an advocate on relevant issues before the Public Utilities Commission

B. California’s Cap and Trade Program

- 1) The California Global Warming Solutions Act of 2006 (Assembly Bill AB 32) is a cap-and-trade program that places a limit on various pollution generators but allows that cap to be exceeded through the purchase of credits from businesses that fall below their cap. The program requires California to reduce greenhouse gas emissions to 1990 levels by 2020. Under cap-and-trade, an overall limit on greenhouse gas emissions from capped sectors will be established by the cap-and-trade program and facilities subject to the cap will be able to trade permits (allowances) to emit greenhouse gas emissions.
- 2) As part of the cap-and-trade program, the California Air Resources Board (CARB) will hold allowance auctions to enable market participants to acquire allowances directly from CARB. Under the ARB Regulations, Omnitrans, as the owner of the CNG fueling stations, will receive credits (allowances) for CNG therm usage which may be sold through the auctions held by CARB to other entities.

- 3) Omnitrans will, for the term of the agreement and in return for compensation, provide the Contractor with rights to all LCFS credits generated as a result of CNG being dispensed from Omnitrans' CNG fueling station.
- 4) The LCFS services shall include, but not be limited to:
  - a. Manage all regulatory requirements including regulatory filings
  - b. Reporting requirements
  - c. Adherence to market rules
  - d. Verification of actual emissions to regulatory agencies
  - e. All compliance obligations promulgated under AB32 or subsequent legislation
  - f. Keep Omnitrans informed of LCFS market conditions on a monthly basis to include written monthly reports on LCFS market conditions. Reports can be transmitted electronically.
  - g. Provide quarterly and annual cumulative accounting of Omnitrans' LCFS credit balance

\*End Scope of Work\*

**EXHIBIT B**  
**PRICING**

**FIVE YEAR PRICING**

<b>Year</b>	<b>% of Discount SoCal Gas</b>	<b>% of Discount NGI SoCal Citygate</b>	<b>% Discount to Socal Gas Procurement Rate</b>	<b>% LCFS Credit to Omnitrans</b>	<b>% RIN to Omnitrans</b>
Year 1	0% + 0.35	1%	10%	100% Fossil Eq + 27% Incremental RNG	12%
Year 2	0% + 0.35	1%	10%		12%
Year 3	0% + 0.35	1%	10%		12%
Year 4	0% + 0.35	1%	10%		12%
Year 5	0% + 0.35	1%	10%		12%

**EXHIBIT C**  
**NAESB TERMS**

The following documents are attached behind this page, and constitute the NAESB Terms:

1. NAESB Base Contract, including the General Terms and Conditions for Retail Sale and Purchase of Natural Gas or Electricity published by the North American Energy Standards Board;
2. Addendum 1 – Amendments to NAESB Base Retail Contract General Terms and Conditions;
3. Transaction Confirmation #: SCG0019-001

[attached behind this page]

## Base Contract for Retail Sale and Purchase of Natural Gas

This Base Contract is entered into as of the following date: \_\_\_\_\_, 2017, and such additional terms and conditions as agreed to by Supplier and Customer and set forth in an Addendum hereto. The parties to this Base Contract are:

Supplier: GHI Energy, LLC  
800 Bering Dr, #301, Houston, TX 77057  
D-U-N-S® Number: 078523794 CPUC Registration #: CTA0017  
Contract Number: SCG0019  
U.S. Federal Tax ID Number: 90-0888513

and Customer: Omnitrans  
1700 West Fifth Street, San Bernardino, CA 92411  
D-U-N-S® Number:  
Contract Number:  
U.S. Federal Tax ID Number: \_\_\_\_\_

### Notices:

Attn: John Greene  
Phone: 281-761-7835 Fax: 832-415-9724

Attn: Donald Walker  
Phone: (909) 379-7131 Fax: (909) 889-5779

### Confirmations:

Attn: John Greene  
Phone: 281-761-7835 Fax: 832-415-9724

Attn: Donald Walker  
Phone: (909) 379-7131 Fax: (909) 889-5779

### Invoices and Payments:

Attn: John Greene  
Phone: \_\_\_\_\_ Fax: \_\_\_\_\_

Attn: Donald Walker  
Phone: (909) 379-7131 Fax: (909) 889-5779

### Wire Transfer or ACH Numbers (if applicable):

BANK: SEE INVOICE  
ABA:  
ACCT:  
Other Details: \_\_\_\_\_

BANK: SEE INVOICE  
ABA:  
ACCT:  
Other Details: \_\_\_\_\_

This Base Contract incorporates by reference for all purposes the General Terms and Conditions for Retail Sale and Purchase of Natural Gas or Electricity published by the North American Energy Standards Board. The parties hereby agree to the following provisions offered in said General Terms and Conditions. In the event the parties fail to check a box, the specified default provision shall apply. Select only one box from each section:

<b>Section 1.2</b> Transaction Procedure	<input checked="" type="checkbox"/> Written (default) <input type="checkbox"/> Oral	<b>Section 7.3</b> Other agreement set-offs	<input checked="" type="checkbox"/> Other agreement setoffs apply (default) <input type="checkbox"/> Other agreement setoffs do not apply
<b>Section 2.6</b> Confirm Deadline	<input checked="" type="checkbox"/> 2 Business Days after receipt (default) <input type="checkbox"/> _____ Business Days after receipt	<b>Section 9</b> Taxes	<input checked="" type="checkbox"/> Customer Pays At and After Delivery Point (default) <input type="checkbox"/> Supplier Pays Before and At Delivery Point
<b>Section 2.7</b> Confirming Party	<input checked="" type="checkbox"/> Supplier (default) <input type="checkbox"/> Customer <input type="checkbox"/> _____	<b>Section 12.2</b> Confidentiality	<input type="checkbox"/> Confidentiality applies (default) <input checked="" type="checkbox"/> Confidentiality does not apply
<b>Section 3.2</b> Performance Obligation  Spot Price Publication	<input checked="" type="checkbox"/> Cover Standard (default) <input type="checkbox"/> Spot Price Standard <b>Note: The following Spot Price Publication applies to both of the immediately preceding.</b> _____  <input type="checkbox"/> _____	<b>Section 12.4</b> Alternate Dispute Resolution	<input checked="" type="checkbox"/> Alternate Dispute Resolution <input type="checkbox"/> No Alternate Dispute Resolution (default)
<b>Section 7.1</b> Early Termination Damages	<input checked="" type="checkbox"/> Early Termination Damages Apply (default) <input type="checkbox"/> Early Termination Damages Do Not Apply	<b>Section 12.6</b> Choice of Law	California
<input type="checkbox"/> <b>Special Provisions</b> Number of sheets attached: <input checked="" type="checkbox"/> <b>Addendum(a):</b> Addendum 1: Amendment to Base Contract (3 pages)			

## GENERAL TERMS AND CONDITIONS

### SECTION 1. PURPOSE AND PROCEDURES

- 1.1 These General Terms and Conditions are intended to facilitate retail purchase and sale transactions of either Gas or Electricity that will result in physical delivery thereof. The entire agreement between the parties shall be the Contract as defined in Section 2.8.

**The parties have selected either the “Written Transaction Procedure” or the “Oral Transaction Procedure” as indicated on the Base Contract.**

**Written Transaction Procedure:**

- 1.2. The parties will use the following Transaction Confirmation procedure. Should the parties come to an agreement regarding a purchase and sale transaction for a particular Delivery Period, the Confirming Party shall, and the other party may, record that agreement on a Transaction Confirmation and communicate such Transaction Confirmation by facsimile, UET or mutually agreeable electronic means, to the other party by the close of the second Business Day following the date of agreement. The parties acknowledge that their agreement will not be binding until the exchange of non-conflicting Transaction Confirmations or the passage of the Confirm Deadline without objection from the receiving party, as provided in Section 1.3.

**Oral Transaction Procedure:**

- 1.2. The parties will use the following Transaction Confirmation procedure. Any purchase and sale transaction may be effectuated in a UET transmission or telephone conversation. The parties agree that Confirming Party shall, and the other party may, confirm a telephonic transaction by sending the other party a Transaction Confirmation by facsimile, UET or mutually agreeable electronic means within three Business Days of a transaction covered by this Section 1.2 (Oral Transaction Procedure). Confirming Party adopts its confirming letterhead, or the like, as its signature on any Transaction Confirmation as the identification and authentication of Confirming Party. If the Transaction Confirmation contains any provisions other than those relating to the commercial terms of the transaction (i.e., price, quantity, performance obligation, Delivery Point, period of delivery and/or transportation/transmission conditions), which modify or supplement the Base Contract or General Terms and Conditions of this Contract (e.g., arbitration or additional representations and warranties), such provisions shall not be deemed to be accepted pursuant to Section 1.3 but must be expressly agreed to by both parties; provided that the foregoing shall not invalidate any transaction agreed to by the parties.

- 1.3 If a sending party's Transaction Confirmation is materially different from the receiving party's understanding of the agreement referred to in Section 1.2, such receiving party shall notify the sending party via facsimile, UET or mutually agreeable electronic means by the Confirm Deadline, unless such receiving party has previously sent a Transaction Confirmation to the sending party. The failure of the receiving party to so notify the sending party in writing by the Confirm Deadline constitutes the receiving party's agreement to the terms of the transaction described in the sending party's Transaction Confirmation. If there are any material differences between timely sent Transaction Confirmations governing the same transaction, then neither Transaction Confirmation shall be binding until or unless such differences are resolved including the use of any evidence that clearly resolves the differences in the Transaction Confirmations. In the event of a conflict among the terms of (i) a binding Transaction Confirmation pursuant to Section 1.2, (ii) the oral agreement of the parties which may be evidenced by a recorded conversation, where the parties have selected the Oral Transaction Procedure of the Base Contract, (iii) the Base Contract, and (iv) these General Terms and Conditions, the terms of the documents shall govern in the priority listed in this sentence.
- 1.4 The parties agree that each party may electronically record all telephone conversations with respect to this Contract between their respective employees, without any special or further notice to the other party. Each party shall obtain any necessary consent of its agents and employees to such recording. Where the parties have selected the Oral Transaction Procedure in Section 1.2 of the Base Contract, the parties agree not to contest the validity or enforceability of telephonic recordings entered into in accordance with the requirements of this Base Contract.

## SECTION 2. DEFINITIONS

The terms set forth below shall have the meanings ascribed to them below. Other terms are also defined elsewhere in the Contract and shall have the meanings ascribed to them herein.

- 2.1 **"Account"** means, for each Facility, each account at such Facility to be included in a Transaction Confirmation and identified by a specific account designation number.
- 2.2 **"Addendum"** means each supplement to this Contract mutually agreed in writing by the parties.
- 2.3 **"Affiliate"** means, in relation to any person, any entity controlled, directly or indirectly, by the person, any entity that controls, directly or indirectly, the person or any entity directly or indirectly under common control with the person. For this purpose, "control" of any entity or person means ownership of at least 50 percent of the voting power of the entity or person.
- 2.4 **"Base Contract"** means a contract executed by the parties that incorporates these General Terms and Conditions by reference; that specifies the agreed selections of provisions contained herein; and that sets forth other information required on the Base Contract and includes Special Provisions and Addendum(s), if any, as identified on the Base Contract..
- 2.5 **"Business Day"** is as defined in the Governing Documents.
- 2.6 **"Confirm Deadline"** means 5:00 p.m. in the receiving party's time zone on the second Business Day following the Day a Transaction Confirmation is received or, if applicable, on the Business Day agreed to by the parties in the Base Contract; provided, if the Transaction Confirmation is time stamped after 5:00 p.m. in the receiving party's time zone, it shall be deemed received at the opening of the next Business Day.
- 2.7 **"Confirming Party"** means the party designated in the Base Contract to prepare and forward Transaction Confirmations to the other party.
- 2.8 **"Contract"** means the legally-binding relationship established by the Base Contract and (i) any and all binding Transaction Confirmations or (ii) the Oral Transaction Procedure in Section 1.2 of the Base Contract, all of which shall form a single integrated agreement between the parties.
- 2.9 **"Contract Quantity"** means the quantity of Gas or Electricity estimated to be delivered and taken as agreed to by the parties in a transaction.
- 2.10 **"Coordination Services"** means services that permit the interface and coordination between Electricity generation or Gas Suppliers and Distribution Companies in connection with the delivery of Electricity or Gas to serve Customers located within the Distribution Company's service or control area, including certain scheduling-related functions and reconciliation.
- 2.11 **"Cover Standard"**, as referred to in Section 3.2, means that if there is an unexcused failure to take or deliver any of the Contract Quantity pursuant to this Contract, then the performing party shall use commercially reasonable efforts to (i) if Customer is the performing party, obtain Gas or Electricity, (or an alternate energy source if elected by Customer and replacement Gas or Electricity is not available) or (ii) if Supplier is the performing party, sell Gas or Electricity, in either case, at a price reasonable for the delivery or production area, as applicable, consistent with: the amount of notice provided by the nonperforming party; the immediacy of the Customer's Gas or Electricity consumption needs or Supplier's Gas or Electricity sales requirements, as applicable; the quantities involved; and the anticipated length of failure by the nonperforming party.
- 2.12 **"Credit Support Obligation(s)"** shall mean any obligation(s) to provide or establish credit support for, or on behalf of, a party to this Contract such as cash, an irrevocable standby letter of credit, a margin agreement, a prepayment, a security interest in an asset, guaranty, or other good and sufficient security of a continuing nature.
- 2.13 **"Customer"** means any entity that takes gas and/or electric service for its own consumption.
- 2.14 **"Day"** means a period of 24 consecutive hours, coextensive with a "day" as defined by the Receiving Distribution Company or Distribution Company in a particular transaction.
- 2.15 **"Delivery Period"** shall be the period from the service start month/year to the service end month/year during which deliveries are to be made as agreed to by the parties in a Transaction Confirmation, consistent with Section 4.2.
- 2.16 **"Delivery Point(s)"** shall mean such point(s) as are agreed to by the parties in a Transaction Confirmation.

## Base Contract for Retail Sale and Purchase of Natural Gas

- 2.17 “Distribution Company”** means a regulated entity which provides distribution services and may provide energy and/or transmission/transportation services in a given area.
- 2.18 “Distribution Company Charges”** means all appropriate regulated Distribution Company costs, charges, and fees for Coordination Services, as defined by the applicable Distribution Company's Tariff, billed by the Distribution Company to the Account(s).
- 2.19 “Distribution Company Operational Manuals”** means documents prepared and published by Distribution Companies that describe, in detail, the operating processes/procedures used to perform retail access functions.
- 2.20 “Distribution Company Tariff”** means the applicable state retail Gas or Electricity tariff setting forth the basic requirements for interactions and coordination between Distribution Companies and retail Suppliers necessary for ensuring the delivery of competitive Gas or Electricity from such Suppliers to their retail Customers.
- 2.21 “Electricity”** means electric energy and the related products and services that are identified in Transaction Confirmations.
- 2.22 “Event of Default”** shall be a material breach of this Contract and as otherwise defined in Special Provisions to this Contract.
- 2.23 “Facility(ies)”** means Customer's physical properties or other business assets, including for example stores, restaurants, offices or other places of business, that will be the consumers of Gas or Electricity as specified in Transaction Confirmations under this Contract.
- 2.24 “Firm”** means that either party may interrupt its performance without liability only to the extent that such performance is prevented by Force Majeure (as defined in Section 8) or any type of curtailment ordered by the Distribution Company or ISO.
- 2.25 “Floating Price”** means the price or a factor of the price agreed to in the transaction as being based upon a specified index. For the purposes of the calculation of a replacement price for the Floating Price, all numbers shall be rounded to three decimal places. If the fourth decimal number is five or greater, then the third decimal number shall be increased by one, and if the fourth decimal number is less than five, then the third decimal number shall remain unchanged.
- 2.26 “Gas”** means any combination of hydrocarbons and noncombustible gases in a gaseous state, primarily consisting of methane, and the related products and services that are identified in Transaction Confirmations.
- 2.27 “Governing Documents”** means documents that determine the interactions among parties, including but not limited to: regulatory documents (e.g., tariffs, rules, regulations), contractual agreements, and Distribution Company Operational Manuals.
- 2.28 “Governmental Authority”** means any federal, state, local, municipal or other government, any governmental, regulatory or administrative agency, commission or other authority lawfully exercising or entitled to exercise jurisdiction over the parties or any transaction contemplated herein.
- 2.29 “Imbalance Charges”** means any fees, penalties, costs or charges (in cash or in kind) assessed by the Distribution Company or the ISO for failure to satisfy balancing or nominations requirements at any Delivery Point.
- 2.30 “Interruptible”** means that either party may interrupt its performance at any time for any reason, whether or not caused by an event of Force Majeure (as defined in Section 8), with no liability.
- 2.31 “ISO”** means any independent system operator, regional transmission operator, "transco," power pool or grid or control area operator established and providing services to the Accounts or other similar entity providing the same basic services as such entities and any successor thereto.
- 2.32 “Kilowatt”** means 1000 watts of Electricity.
- 2.33 “kWh” (kilowatt-hour)** means 1000 watt-hours of Electricity.
- 2.34 “Market Disruption Event”** means, with respect to an index specified for a transaction, any of the following events: (a) the failure of the index to announce or publish information necessary for determining the Floating Price; (b) the failure of trading to commence or the permanent discontinuation or material suspension of trading on the exchange or market acting as the index; (c) the temporary or permanent discontinuance or unavailability of the index; (d) the



## Base Contract for Retail Sale and Purchase of Natural Gas

temporary or permanent closing of any exchange acting as the index; or (e) both parties agree that a material change in the formula for or the method of determining the Floating Price has occurred.

- 2.35 “MMBtu”** means one million British thermal units, which is equivalent to one dekatherm.
- 2.36 “Month”** means the period beginning on the first Day of the calendar month and ending immediately prior to the commencement of the first Day of the next calendar month.
- 2.37 “Off-Peak Hours”** means those hours or other periods defined by contract or other agreements or guides as periods of lower electrical demand.
- 2.38 “On-Peak Hours”** means those hours or other periods defined by contract or other agreements or guides as periods of higher electrical demand.
- 2.39 “Receiving Distribution Company”** means the Distribution Company receiving Gas or Electricity at a Delivery Point, or absent such receiving Distribution Company, the Distribution Company delivering Gas or Electricity at a Delivery Point.
- 2.40 “Spot Price”**, as referred to in Section 3.2, means the price agreed upon by the parties in the Base Contract or in a Transaction Confirmation.
- 2.41 “Supplier”** means persons engaged in the competitive sale of energy to end-users.
- 2.42 “Transaction Confirmation”** means a document, similar to the form of Exhibit A, setting forth the terms of a transaction formed pursuant to Section 1 for a particular Delivery Period.
- 2.43 “UET”** (Uniform Electronic Transaction) means standard data arrangements for trading information, making business requests and exchanging other information, encompassing a number of electronic media and utilizing specified transport protocols.

**Principles of Interpretation.** Unless the context requires otherwise, any reference herein to any document means such document and all schedules, exhibits, and attachments thereto as amended and in effect from time to time. Unless otherwise stated, any reference herein to any person shall include its permitted successors and assigns and, in the case of any Governmental Authority, any person succeeding to its functions and capacities. The words "hereof," "herein" and "hereunder" and words of similar import when used herein shall, unless otherwise expressly specified, refer hereto as a whole and not to any particular provision hereof. The singular shall include the plural and the masculine shall include the feminine and neuter. Whenever the term "including" is used herein in connection with a listing of items included within a prior reference, such listing shall be interpreted to be illustrative only, and shall not be interpreted as a limitation on or exclusive listing of the items included within the prior reference.

## SECTION 3. PERFORMANCE OBLIGATION

- 3.1** In each Month, Supplier agrees to sell and deliver or cause to be delivered, and Customer agrees to take delivery of and purchase, the quantity for a particular transaction for the Facility(ies) as specified in each Transaction Confirmation in accordance with the terms of this Contract. Sales and purchases will be on a Firm or Interruptible basis, as agreed by the parties in a Transaction Confirmation.
- 3.2** To the extent the Contract Quantity is not supplied by Supplier or delivery not taken by Customer, the non-performing party shall satisfy the terms of this Contract financially in accordance with the following options. Customer shall continue to receive and pay for Distribution Company delivery service.

<b>The parties have selected either the “Cover Standard” or the “Spot Price Standard” as indicated on the Base Contract.</b>
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<b>Cover Standard:</b>
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The sole and exclusive remedy of the parties in the event of a breach of a Firm obligation to deliver or receive Gas or Electricity shall be recovery of the following: (i) in the event of a breach by Supplier on any Day(s), payment by Supplier to Customer in an amount equal to the positive difference, if any, between the purchase price paid by Customer utilizing the Cover Standard and the Contract Price, multiplied by the difference between the Contract Quantity and the quantity actually delivered by Supplier for such Day(s) excluding any quantity for which no replacement is available; or (ii) in the event of a breach by Customer on any Day(s), payment by Customer to Supplier in the amount equal to the positive difference, if any, between the Contract Price and the
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## Base Contract for Retail Sale and Purchase of Natural Gas

price received by Supplier utilizing the Cover Standard for the resale of such Gas or Electricity, adjusted for commercially reasonable differences in transmission or transportation costs to or from the Delivery Point(s), multiplied by the difference between the Contract Quantity and the quantity actually taken by Customer for such Day(s) excluding any quantity for which no sale is available; and (iii) in the event that Customer has used commercially reasonable efforts to replace the Gas or Electricity or Supplier has used commercially reasonable efforts to sell the Gas or Electricity to a third party, and no such replacement or sale is available for all or any portion of the Contract Quantity, then in addition to (i) or (ii) above, as applicable, the sole and exclusive remedy of the performing party with respect to the Gas or Electricity not replaced or sold shall be an amount equal to any unfavorable difference between the Contract Price and the Spot Price, adjusted for such transmission or transportation to the applicable Delivery Point, multiplied by the quantity of such Gas or Electricity not replaced or sold. Imbalance Charges shall not be recovered under this Section, but Supplier and/or Customer shall be responsible for Imbalance Charges, if any, as provided in Section 4.4. The amount of such unfavorable difference shall be payable five Business Days after presentation of the performing party's invoice, which shall set forth the basis upon which such amount was calculated.

### **Spot Price Standard:**

The sole and exclusive remedy of the parties in the event of a breach of a Firm obligation to deliver or receive Gas or Electricity shall be recovery of the following: (i) in the event of a breach by Supplier on any Day(s), payment by Supplier to Customer in an amount equal to the difference between the Contract Quantity and the actual quantity delivered by Supplier and received by Customer for such Day(s), multiplied by the positive difference, if any, obtained by subtracting the Contract Price from the Spot Price; or (ii) in the event of a breach by Customer on any Day(s), payment by Customer to Supplier in an amount equal to the difference between the Contract Quantity and the actual quantity delivered by Supplier and received by Customer for such Day(s), multiplied by the positive difference, if any, obtained by subtracting the applicable Spot Price from the Contract Price. Imbalance Charges shall not be recovered under this Section, but Supplier and/or Customer shall be responsible for Imbalance Charges, if any, as provided in Section 4.4. The amount of such unfavorable difference shall be payable five Business Days after presentation of the performing party's invoice, which shall set forth the basis upon which such amount was calculated.

## **SECTION 4. PARTICULARS OF SERVICE**

- 4.1** Each transaction shall be effectuated in accordance with the procedures specified in Section 1 of the Base Contract. The terms of a transaction shall be as agreed to by the parties in a Transaction Confirmation and include the type of services to be supplied and the basis for those services, whether Firm or Interruptible. Each Transaction Confirmation shall also include (i) identification of Customer Accounts, Facilities and meters, (ii) term, (iii) Contract Price and related provisions, and (iv) other special terms and conditions, if any.
- 4.2** The parties agree that the Distribution Company determines when the Customer will be switched to Supplier for its Gas or Electricity supply, and that such switch will occur in accordance with the Distribution Company's rules and practices regarding the switching of Customers to Suppliers. Therefore, Supplier shall begin delivery of Gas or Electricity to Customer on the date the Distribution Company switches the Customer to Supplier. With respect to each transaction, Supplier will use commercially reasonable efforts to cause each Distribution Company to take whatever steps are necessary to allow Supplier to begin providing service hereunder at the beginning of each transaction.
- 4.3** The parties acknowledge and agree that this Contract contemplates the purchase and sale of Gas or Electricity to meet Customer's consumption attributable to Customer's Accounts specified in the Transaction Confirmation. The parties shall agree to use commercially reasonable efforts to avoid imposition of any Imbalance Charges.
- 4.4** Customer shall promptly notify Supplier of, and fully comply with, all Distribution Company curtailment or interruption orders or similar notices received by Customer from Distribution Company requiring the interruption or curtailment of Customer's Gas or Electricity usage at any Account and pay any and all Imbalance Charges imposed upon or incurred by either party as a result of Customer's failure to so comply.
- 4.5** Subject to Section 8, Supplier will be responsible for all services necessary for the procurement and delivery of Gas or Electricity to the Delivery Point; including transportation; nomination; confirmations; scheduling; transmission and ancillary services; imbalance services, and; arrangement of billing services for all charges and notices related to

## Base Contract for Retail Sale and Purchase of Natural Gas

Customer's usage of Gas or Electricity consistent with options agreed to by the parties in the Base Contract and in the Transaction Confirmation. Customer acknowledges that Supplier is not responsible for delivery by Distribution Company from the Delivery Point to Facilities. In addition, Supplier must satisfy all obligations imposed by the Distribution Company for the Gas or Electricity at and before the Delivery Point.

- 4.6 If Supplier lacks adequate information to perform its duties under this Contract, Supplier shall immediately provide Customer with formal notice of such information that it deems necessary to enable Supplier to perform such duties, and Customer shall supply such reasonably requested information.

### SECTION 5. AUDIT

A party shall have the right, at its own expense, upon reasonable notice and at reasonable times, to examine and audit and to obtain copies of the relevant portion of the books, records, and telephone recordings of the other party only to the extent reasonably necessary to verify the accuracy of any statement, charge, payment, or computation made under the Contract. This right to examine, audit, and to obtain copies shall not be available with respect to proprietary information not directly relevant to transactions under this Contract. All invoices and billings shall be conclusively presumed final and accurate and all associated claims for under- or overpayments shall be deemed waived unless such invoices or billings are objected to in writing, with adequate explanation and/or documentation, within two years after the Month of Gas or Electricity delivery. All retroactive adjustments shall be paid in full by the party owing payment within 30 Days after Notice and substantiation of such inaccuracy.

### SECTION 6. WARRANTY AND INDEMNITY

- 6.1 All Gas delivered by Supplier shall meet the pressure, quality and heat content requirements of the Receiving Distribution Company at and before the Delivery Point. All Electricity delivered by Supplier shall meet the applicable quality requirements of the Distribution Company and ISO at and before the Delivery Point.
- 6.2 EXCEPT AS PROVIDED IN HEREIN, ALL OTHER WARRANTIES, EXPRESS OR IMPLIED, INCLUDING ANY WARRANTY OF MERCHANTABILITY OR OF FITNESS FOR ANY PARTICULAR PURPOSE, ARE DISCLAIMED.
- 6.3 Supplier agrees to indemnify Customer and save it harmless from all losses, liabilities or claims including reasonable attorneys' fees and costs of court ("Claims"), from any and all persons, arising from or out of claims of title, personal injury (including death) or property damage from said Gas or Electricity or other charges thereon that attach at or before Delivery Point. Customer agrees to indemnify Supplier and save it harmless from all Claims, from any and all persons, arising from or out of claims regarding payment, personal injury (including death) or property damage from said Gas or Electricity or other charges thereon that attach after Delivery Point.

### SECTION 7. DEFAULTS AND REMEDIES

- 7.1 If an Event of Default has occurred and is continuing, the non-defaulting party shall have the right, by Notice to the defaulting party, to designate a Day, no earlier than the Day such Notice is given and no later than 20 Days after such Notice is given, as an early termination date, in accordance with the Distribution Company's rules and practices (the "Early Termination Date") for the liquidation and termination of all transactions under the Contract, each a "Terminated Transaction". On the Early Termination Date, all transactions will terminate, other than those transactions, if any, that may not be liquidated and terminated under applicable law ("Excluded Transactions"), which Excluded Transactions must be liquidated and terminated as soon thereafter as is legally permissible, and upon termination shall be a Terminated Transaction and damages shall be calculated consistent with Section 7.2 below. With respect to each Excluded Transaction, its termination date shall be deemed to be the Early Termination Date for purposes of Section 7.

<b>The parties have selected either "Early Termination Damages Apply" or "Early Termination Damages Do Not Apply" as indicated on the Base Contract.</b>
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<b>Early Termination Damages Apply:</b>
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As of the Early Termination Date, the non-defaulting party shall determine, in good faith and in a commercially reasonable manner, (i) the amount owed (whether or not then due) by each party under the Contract (including without limitation any amounts owed under Section 3.2), for which payment has not yet been made by the party that owes such payment under this Contract and (ii) the Market Value, as defined below, of each Terminated Transaction. The non-
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## Base Contract for Retail Sale and Purchase of Natural Gas

defaulting party shall (x) liquidate and accelerate each Terminated Transaction at its Market Value, so that each amount equal to the difference between such Market Value and the Contract Value, as defined below, of such Terminated Transaction(s) shall be due to the Customer under the Terminated Transaction(s) if such Market Value exceeds the Contract Value and to the Supplier if the opposite is the case; and (y) where appropriate, discount each amount then due under clause (x) above to present value in a commercially reasonable manner as of the Early Termination Date (to take account of the period between the date of liquidation and the date on which such amount would have otherwise been due pursuant to the relevant Terminated Transactions).

For purposes of this Section, "Contract Value" means the amount of Gas or Electricity remaining to be delivered or purchased under a transaction multiplied by the Contract Price, and "Market Value" means the amount of Gas or Electricity remaining to be delivered or purchased under a transaction multiplied by the market price for a similar transaction at the Delivery Point determined by the non-defaulting party in a commercially reasonable manner. To ascertain the Market Value, the non-defaulting party may consider, among other valuations, any or all of the settlement prices of NYMEX Gas or Electricity futures contracts, quotations from leading dealers in energy swap contracts or physical Gas or Electricity trading markets, similar sales or purchases and any other bona fide third-party offers, all adjusted for the length of the term and differences in transmission costs and volume transportation costs. A party shall not be required to enter into a replacement transaction(s) in order to determine the Market Value. Any extension(s) of the term of a transaction to which parties are not bound as of the Early Termination Date (including but not limited to "evergreen provisions") shall not be considered in determining Contract Values and Market Values. For the avoidance of doubt, any option pursuant to which one party has the right to extend the term of a transaction shall be considered in determining Contract Values and Market Values. The rate of interest used in calculating net present value shall be determined by the non-defaulting party in a commercially reasonable manner.

### **Early Termination Damages Do Not Apply:**

As of the Early Termination Date, the non-defaulting party shall determine, in good faith and in a commercially reasonable manner, the amount owed (whether or not then due) by each party under the Contract for all Gas or Electricity delivered and received between the parties under Terminated Transactions and Excluded Transactions on and before the Early Termination Date and all other applicable charges related to such delivery and receipt (including without limitation any amounts owed under Section 3.2), for which payment has not yet been made by the party that owes such payment under this Contract.

- 7.2** The parties agree that each transaction hereunder constitutes a "forward contract" within the meaning of the United States Bankruptcy Code and that Customer and Supplier are each "forward contract merchants" within the meaning of the United States Bankruptcy Code.

**The parties have selected either "Other Agreement Setoffs Apply" or "Other Agreement Setoffs Do Not Apply" as indicated on the Base Contract.**

### **Other Agreement Setoffs Apply:**

- 7.3** The non-defaulting party shall net or aggregate, as appropriate, any and all amounts owing between the parties under Section 7.1, so that all such amounts are netted or aggregated to a single liquidated amount payable by one party to the other (the "Net Settlement Amount"). At its sole option and without prior Notice to the defaulting party, the non-defaulting party is hereby authorized to setoff any Net Settlement Amount against (i) any margin or other collateral held by a party in connection with any Credit Support Obligation relating to the Contract; and (ii) any amount(s) (including any excess cash margin or excess cash collateral) owed or held by the party that is entitled to the Net Settlement Amount under any other agreement or arrangement between the parties.

### **Other Agreement Setoffs Do Not Apply:**

- 7.3** The non-defaulting party shall net or aggregate, as appropriate, any and all amounts owing between the parties under Section 7.1, so that all such amounts are netted or aggregated to a single liquidated amount payable by one party to the other (the "Net Settlement Amount"). At its sole option and without prior Notice to the defaulting party, the non-defaulting party may setoff any Net Settlement Amount against any margin or other collateral held by it in connection with any Credit Support Obligation relating to the Contract.

- 7.4** If any obligation that is to be included in any netting, aggregation or setoff pursuant to Section 7.3 is unascertained, the non-defaulting party may in good faith estimate that obligation and net, aggregate or setoff, as applicable, in respect of the estimate, subject to the non-defaulting party accounting to the defaulting party when the obligation is ascertained. Any amount not then due which is included in any netting, aggregation or setoff pursuant to Section



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7.3 shall be discounted to net present value in a commercially reasonable manner determined by the non-defaulting party.

**7.5** As soon as practicable after a liquidation, notice shall be given by the non-defaulting party to the defaulting party of the Net Settlement Amount and whether the Net Settlement Amount is due to or due from the non-defaulting party. The notice shall include a written statement explaining in reasonable detail the calculation of the Net Settlement Amount, provided that failure to give such notice shall not affect the validity or enforceability of the liquidation or give rise to any claim by the defaulting party against the non-defaulting party. The Net Settlement Amount, as well as any setoffs applied against such amount pursuant to Section 7.3, shall be paid by the close of business on the second Business Day following such notice, which date shall not be earlier than the Early Termination Date. Interest on any unpaid portion of the Net Settlement Amount shall accrue from the date due until the date of payment at a rate equal to the lower of (i) unless otherwise agreed, the then-effective prime rate of interest published under "Money Rates" by The Wall Street Journal, plus two percent per annum; or (ii) the maximum applicable lawful interest rate.

**7.6** With respect to this Section 7, if the parties have executed a separate netting agreement with close-out netting provisions, the terms and conditions therein shall prevail to the extent inconsistent herewith.

## SECTION 8. FORCE MAJEURE

**8.1** Except with regard to a party's obligation to make payment(s) due hereunder, neither party shall be liable to the other for failure to perform a Firm obligation, to the extent such failure was caused by Force Majeure. The term "Force Majeure" as employed herein means any cause not reasonably within the control of the party claiming suspension and that could not have been prevented by the exercise of reasonable diligence, as further defined below.

**8.2** Force Majeure shall include, but not be limited to, the following: (i) physical events such as acts of God, landslides, lightning, earthquakes, fires, storms or storm warnings (such as hurricanes) which result in evacuation of the affected area, floods, washouts, explosions, breakage or accident or necessity of repairs to machinery or equipment or lines of pipe; (ii) weather related events affecting an entire geographic region, such as low temperatures which cause freezing or failure of wells or lines of pipe; (iii) interruption and/or curtailment of Firm transmission, transportation and/or storage; (iv) acts of others such as strikes, lockouts or other industrial disturbances, riots, sabotage, insurrections, wars, or acts of terror; and (v) governmental actions such as necessity for compliance with any court order, law, statute, ordinance, regulation, or policy having the effect of law promulgated by a Governmental Authority. Supplier and Customer shall make reasonable efforts to avoid the adverse impacts of a Force Majeure and to resolve the event or occurrence once it has occurred in order to resume performance.

**8.3** Neither party shall be entitled to the benefit of the provisions of Force Majeure to the extent performance is affected by any or all of the following circumstances: (i) the curtailment of Interruptible or secondary Firm transportation or transmission unless primary, in-path, Firm transmission or transportation is also curtailed; (ii) the party claiming excuse failed to remedy the condition and to resume the performance of such covenants or obligations with reasonable dispatch; or (iii) economic hardship, to include, without limitation, Supplier's ability to sell Gas or Electricity at a higher or more advantageous price than the Contract Price, Customer's ability to purchase Gas or Electricity at a lower or more advantageous price than the Contract Price, or a Governmental Authority disallowing, in whole or in part, the pass through of costs resulting from this Contract; (iv) Customer's inability to use Gas or Electricity purchased hereunder, except, in either case, as provided in Section 8; or (v) the loss or failure of Supplier's Gas or Electricity supply or depletion of reserves, except, in either case, as provided in Section 8. The party claiming Force Majeure shall not be excused from its responsibility for Imbalance Charges.

**8.4** Notwithstanding anything to the contrary herein, the parties agree that the settlement of strikes, lockouts or other industrial disturbances shall be within the sole discretion of the party experiencing such disturbance.

**8.5** The party whose performance is prevented by Force Majeure must provide Notice (as defined in Section 11.1) to the other party. Initial Notice may be given orally; however, written Notice with reasonably full particulars of the event or occurrence is required as soon as reasonably possible. Upon providing written Notice of Force Majeure to the other party, the affected party will be relieved of its obligation, from the onset of the Force Majeure event, to make or accept delivery of Gas or Electricity, as applicable, to the extent and for the duration of Force Majeure, and neither party shall be deemed to have failed in such obligations to the other during such occurrence or event.

**8.6** Notwithstanding this Section, the parties may agree to alternative Force Majeure provisions in a Transaction Confirmation executed in writing by both parties.

## SECTION 9. TAXES

The parties have selected either “Customer Pays At and After Delivery Point” or “Supplier Pays Before and At Delivery Point” as indicated on the Base Contract. The parties agree to take all lawful actions to minimize taxes imposed on transactions hereunder.

### **Customer Pays At and After Delivery Point:**

**9.1** Supplier shall pay or cause to be paid all taxes, fees, levies, penalties, licenses or charges imposed by any Government Authority (“Taxes”) on or with respect to the Gas or Electricity prior to the Delivery Point(s) and excluding those Taxes that may not be legally passed through. Customer shall pay or cause to be paid all Taxes on or with respect to the Gas or Electricity at and after the Delivery Point(s).

### **Supplier Pays Before and At Delivery Point:**

**9.1** Supplier shall pay or cause to be paid all taxes, fees, levies, penalties, licenses or charges imposed by any Government Authority (“Taxes”) on or with respect to the Gas or Electricity prior to and at the Delivery Point(s) and excluding those Taxes that may not be legally passed through. Customer shall pay or cause to be paid all Taxes on or with respect to the Gas or Electricity after the Delivery Point(s).

**9.2** If a party is required to remit or pay Taxes that are the other party’s responsibility hereunder, the party responsible for such Taxes shall promptly reimburse the other party for such Taxes. Customer shall pay or cause to be paid any increase in applicable Taxes occurring after the commencement of deliveries under transactions between the Parties. Any party entitled to an exemption from any such Taxes or charges shall furnish the other party any necessary documentation thereof. Customer shall be liable for Taxes and associated interest or penalties assessed against Supplier due to Customer’s failure to provide or to complete any such certificate or other necessary documentation in a timely and proper fashion.

## SECTION 10. LIMITATIONS OF REMEDIES, LIABILITY AND DAMAGES

FOR BREACH OF ANY PROVISION FOR WHICH AN EXPRESS REMEDY OR MEASURE OF DAMAGES IS PROVIDED, SUCH EXPRESS REMEDY OR MEASURE OF DAMAGES SHALL BE THE SOLE AND EXCLUSIVE REMEDY. A PARTY’S LIABILITY HEREUNDER SHALL BE LIMITED AS SET FORTH IN SUCH PROVISION, AND ALL OTHER REMEDIES OR DAMAGES AT LAW OR IN EQUITY ARE WAIVED. IF NO REMEDY OR MEASURE OF DAMAGES IS EXPRESSLY PROVIDED HEREIN OR IN A TRANSACTION, A PARTY’S LIABILITY SHALL BE LIMITED TO DIRECT ACTUAL DAMAGES ONLY. SUCH DIRECT ACTUAL DAMAGES SHALL BE THE SOLE AND EXCLUSIVE REMEDY, AND ALL OTHER REMEDIES OR DAMAGES AT LAW OR IN EQUITY ARE WAIVED. UNLESS EXPRESSLY HEREIN PROVIDED, NEITHER PARTY SHALL BE LIABLE FOR CONSEQUENTIAL, INCIDENTAL, PUNITIVE, EXEMPLARY OR INDIRECT DAMAGES, LOST PROFITS OR OTHER BUSINESS INTERRUPTION DAMAGES, BY STATUTE, IN TORT OR CONTRACT, UNDER ANY INDEMNITY PROVISION OR OTHERWISE. IT IS THE INTENT OF THE PARTIES THAT THE LIMITATIONS HEREIN IMPOSED ON REMEDIES AND THE MEASURE OF DAMAGES BE WITHOUT REGARD TO THE CAUSE OR CAUSES RELATED THERETO, INCLUDING THE NEGLIGENCE OF ANY PARTY, WHETHER SUCH NEGLIGENCE BE SOLE, JOINT OR CONCURRENT, OR ACTIVE OR PASSIVE. TO THE EXTENT ANY DAMAGES REQUIRED TO BE PAID HEREUNDER ARE LIQUIDATED, THE PARTIES ACKNOWLEDGE THAT THE DAMAGES ARE DIFFICULT OR IMPOSSIBLE TO DETERMINE, OR OTHERWISE OBTAINING AN ADEQUATE REMEDY IS INCONVENIENT AND THE DAMAGES CALCULATED HEREUNDER CONSTITUTE A REASONABLE APPROXIMATION OF THE HARM OR LOSS. NEITHER PARTY IS LIABLE OR RESPONSIBLE FOR ANY INJURY, LOSS, CLAIM, EXPENSE, LIABILITY OR DAMAGE RESULTING FROM ANY INTERRUPTION, SHORTAGE, INSUFFICIENCY OF OR FAILURE OF THE DISTRIBUTION COMPANY TO DELIVER GAS OR ELECTRICITY SCHEDULED BY SUPPLIER.

## SECTION 11. NOTICES

**11.1** All Transaction Confirmations, invoices, payment instructions and other communications made pursuant to the Base Contract (“Notices”) shall be made to the addresses specified in writing by the respective parties from time to time.

**11.2** All Notices required hereunder shall be in writing and may be sent by facsimile or mutually acceptable electronic means, a nationally recognized overnight courier service, first class mail or hand delivered.

## **Base Contract for Retail Sale and Purchase of Natural Gas**

- 11.3** Notice shall be given when received on a Business Day by the addressee. In the absence of proof of the actual receipt date, the following presumptions will apply. Notices sent by facsimile shall be deemed to have been received upon the sending party's receipt of its facsimile machine's confirmation of successful communication. If the Day on which such facsimile is received is not a Business Day or is after five p.m. on a Business Day, then such facsimile shall be deemed to have been received on the next following Business Day. Notice by overnight mail or courier shall be deemed to have been received on the next Business Day after it was sent or such earlier time as is confirmed by the receiving party. Notice via first class mail shall be considered delivered five Business Days after mailing.
- 11.4** The party receiving a commercially acceptable Notice of change in payment instructions or other payment information shall not be obligated to implement such change until ten Business Days after receipt of such Notice.

## **SECTION 12. MISCELLANEOUS**

- 12.1** Each party to this Contract represents and warrants that it has full and complete authority to enter into and perform this Contract. Each person who executes this Contract on behalf of either party represents and warrants that it has full and complete authority to do so and that such party will be bound thereby.
- 12.2** Unless the parties have elected on the Base Contract not to make this Section applicable to this Contract, neither party shall disclose directly or indirectly without the prior written consent of the other party the terms of any transaction to a third party (other than the employees, lenders, royalty owners, counsel, accountants and other agents of the party, or prospective purchasers of all or substantially all of a party's assets or of any rights under this Contract, provided such persons shall have agreed to keep such terms confidential) except (i) in order to comply with any applicable law, order, regulation, or exchange rule, (ii) to the extent necessary for the enforcement of this Contract, (iii) to the extent necessary to implement any transaction, or (iv) to the extent necessary to comply with a Governmental Authority's reporting requirements including but not limited to Gas or Electricity cost recovery proceedings; or (v) to the extent such information is delivered to such third party for the sole purpose of calculating a published index. Each party shall notify the other party of any proceeding of which it is aware which may result in disclosure of the terms of any transaction (other than as permitted hereunder) and use reasonable efforts to prevent or limit the disclosure. The existence of this Contract is not subject to this confidentiality obligation. Notwithstanding Section 10, the parties shall be entitled to all remedies available at law or in equity to enforce, or seek relief in connection with this confidentiality obligation. The terms of any transaction hereunder shall be kept confidential by the parties hereto for one year from the expiration of the transaction.
- 12.3** In the event disclosure is required by a Governmental Authority or applicable law, the party subject to such requirement shall use commercially reasonable efforts to obtain protective orders or similar restraints with respect to such disclosure at the expense of the other party and subject to such efforts may disclose the material terms of this Contract to the extent so required, but shall promptly notify the other party, prior to disclosure, and shall cooperate (consistent with the disclosing party's legal obligations) with the other party.
- 12.4** The parties may agree to dispute resolution procedures in Special Provisions attached to the Base Contract or in a Transaction Confirmation executed in writing by both parties.
- 12.5** No assignment of this Contract, in whole or in part, will be made without the prior written consent of the non-assigning party (and shall not relieve the assigning party from liability hereunder), which consent will not be unreasonably withheld or delayed; provided, either party may, without the prior approval of the other party, (i) transfer, sell, pledge, encumber, or assign this Contract or the accounts, revenues, or proceeds hereof in connection with any financing or other financial arrangements, or (ii) transfer its interest to any Affiliate by assignment, merger or otherwise so long as the Affiliate meets any creditworthiness requirements under this Contract. Upon any such assignment, transfer and assumption, the assigning party or transferor, as applicable, shall remain principally liable for and shall not be relieved of or discharged from any obligations hereunder.
- 12.6** The interpretation and performance of this Contract shall be governed by the laws of the jurisdiction as indicated on the Base Contract, excluding, however, any conflict of laws rule which would apply the law of another jurisdiction.
- 12.7** No waiver of any breach of this Contract shall be held to be a waiver of any other or subsequent breach.
- 12.8** The requirements and provisions of this Contract shall not be construed as creating an association, trust, partnership, or joint venture, or as imposing a trust or partnership duty, obligation, or liability on either party, or as

## Base Contract for Retail Sale and Purchase of Natural Gas

creating any relationship between the parties other than that of independent contractors for the sale and purchase of Gas or Electricity.

- 12.9** This Contract sets forth all understandings between the parties respecting each transaction subject hereto, and any prior contracts, understandings and representations, whether oral or written, relating to such transactions are merged into and superseded by this Contract and any effective transaction(s). This Contract may be amended only by a writing executed by both parties.
- 12.10** If any provision in this Contract is determined to be invalid, void or unenforceable by any court having jurisdiction, such determination shall not invalidate, void, or make unenforceable any other provision, agreement or covenant of this Contract, and the parties agree to attempt to implement an equitable adjustment in the provisions of this Contract with a view toward effecting the purposes of this Contract by replacing the provision that is invalid, void or unenforceable with a valid provision the economic effect of which comes as close as possible to that of the provision that has been found to be invalid, void or unenforceable.
- 12.11** The headings and subheadings contained in this Contract are used solely for convenience and do not constitute a part of this Contract between the parties and shall not be used to construe or interpret the provisions of this Contract.
- 12.12** The confidentiality provisions, indemnities, releases from liability, limitations on liability or damages and dispute resolution provisions expressed in this Contract shall, unless otherwise provided herein, survive without limitation the termination, cancellation or expiration of this Contract, and shall apply whether in contract, equity, tort or otherwise.
- 12.13** Any original executed Base Contract, Transaction Confirmation or other related document may be digitally copied, photocopied, or stored on computer tapes and disks (the "Imaged Agreement"). The Imaged Agreement, if introduced as evidence on paper, the Transaction Confirmation, if introduced as evidence in automated facsimile form, the recording, if introduced as evidence in its original form, and all computer records of the foregoing, if introduced as evidence in printed format, in any judicial, arbitration, mediation or administrative proceedings will be admissible as between the parties to the same extent and under the same conditions as other business records originated and maintained in documentary form. Neither Party shall object to the admissibility of the recording, the Transaction Confirmation, or the Imaged Agreement on the basis that such were not originated or maintained in documentary form. However, nothing herein shall be construed as a waiver of any other objection to the admissibility of such evidence.
- 12.14** If a Market Disruption Event has occurred then the parties shall negotiate in good faith to agree on a replacement price for the Floating Price (or on a method for determining a replacement price for the Floating Price) for the affected Day, and if the parties have not so agreed on or before the second Business Day following the affected Day then the replacement price for the Floating Price shall be determined within the next two following Business Days with each party obtaining, in good faith and from non-affiliated market participants in the relevant market, two quotes for prices of Gas or Electricity, as applicable, for the affected Day of a similar quality and quantity in the geographical location closest in proximity to the Delivery Point and averaging the four quotes. If either party fails to provide two quotes then the average of the other party's two quotes shall determine the replacement price for the Floating Price.
- 12.15** This contract may be terminated upon 30 Days written Notice, but shall remain in effect until the expiration of the latest Delivery Period of any Transaction Confirmation(s).

**DISCLAIMER:** The purposes of this Contract are to facilitate trade, avoid misunderstandings and make more definite the terms of contracts of purchase and sale of natural gas. Further, NAESB does not mandate the use of this Contract by any party. **NAESB DISCLAIMS AND EXCLUDES, AND ANY USER OF THIS CONTRACT ACKNOWLEDGES AND AGREES TO NAESB'S DISCLAIMER OF, ANY AND ALL WARRANTIES, CONDITIONS OR REPRESENTATIONS, EXPRESS OR IMPLIED, ORAL OR WRITTEN, WITH RESPECT TO THIS CONTRACT OR ANY PART THEREOF, INCLUDING ANY AND ALL IMPLIED WARRANTIES OR CONDITIONS OF TITLE, NON-INFRINGEMENT, MERCHANTABILITY, OR FITNESS OR SUITABILITY FOR ANY PARTICULAR PURPOSE (WHETHER OR NOT NAESB KNOWS, HAS REASON TO KNOW, HAS BEEN ADVISED, OR IS OTHERWISE IN FACT AWARE OF ANY SUCH PURPOSE), WHETHER ALLEGED TO ARISE BY LAW, BY REASON OF CUSTOM OR USAGE IN THE TRADE, OR BY COURSE OF DEALING. EACH USER OF THIS CONTRACT ALSO AGREES THAT UNDER NO CIRCUMSTANCES WILL NAESB BE LIABLE FOR ANY DIRECT, SPECIAL, INCIDENTAL, EXEMPLARY, PUNITIVE OR CONSEQUENTIAL DAMAGES ARISING OUT OF ANY USE OF THIS CONTRACT.**

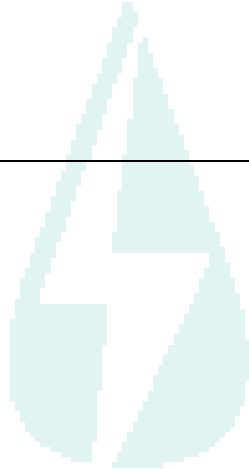


**EXHIBIT A  
TRANSACTION CONFIRMATION  
FOR IMMEDIATE DELIVERY**

Letterhead/Logo	Date: _____ Transaction Confirmation #: _____
<p>This Transaction Confirmation is subject to the Base Contract between Supplier and Customer dated _____. The terms of this Transaction Confirmation are binding unless disputed in writing within two Business Days after receipt, unless otherwise specified in the Base Contract or herein.</p>	
<b>SUPPLIER:</b>  _____ _____ _____ Attn: _____ Phone: _____ Fax: _____ Base Contract No.: _____ Distribution Company: _____ Distribution Company Contract Number: _____	<b>CUSTOMER:</b>  _____ _____ _____ Attn: _____ Phone: _____ Fax: _____ Base Contract No.: _____ Distribution Company: _____ Distribution Company Contract Number: _____
Commodity: Electricity <input type="checkbox"/> Natural Gas <input type="checkbox"/>	
<b>Contract Price:</b>  _____	
<b>Billing and Payment Information:</b>  _____	
<b>Delivery Period:</b>  _____	
<b>Performance Obligation and Contract Quantity:</b>  _____	
<b>Delivery Point:</b>  _____	

**Facility/Account Information:**

**Special Conditions:**



**NEESB®**

## **ADDENDUM 1**

### **AMENDMENTS TO NAESB BASE RETAIL CONTRACT GENERAL TERMS AND CONDITIONS**

The following amendments (the “Amendments”) are made to the Base Retail Contract for the Purchase of Natural Gas, dated \_\_\_\_\_, 2017 and incorporated by reference therein.

#### **Amendments to Section 2: Definitions**

Section 2 is amended by adding the following new Section 2.43:

“2.43 “Commercially Reasonable” means any standard or prevalent practice or procedure frequently practiced among counterparties transacting under similar circumstances for the wholesale or retail purchase and sale of natural gas in the United States.”

#### **Amendments to Section 3: Performance Obligation**

Section 3.2 is amended by deleting the sentence, “Customer shall continue to receive and pay for Distribution Company delivery service.” and replacing it with the following:

“Notwithstanding any financial settlement contemplated herein, Customer may, at its own discretion and expense, choose to receive replacement natural gas and delivery services from the Distribution Company.”

#### **Amendments to Section 4: Particulars of Service**

Section 4.5 is amended by adding the following language at the end:

“So long as the Gas procured and delivered by Supplier meets the quality specification requirements outlined within the current Receiving Distribution Company tariff, the source and delivery path of the Gas to the Receiving Distribution Company system shall be at Supplier’s sole discretion.”

#### **Amendments to Section 5: Audit**

Section 6 is amended by adding following language at the end:

“For the purposes of this section, “Relevant Transactions” do not include any transactions for LCFS Credits or RIN Credits, or any other transaction for any other good, service, or commodity, other than transactions directly related to the procurement of natural gas for supply to Customer.”

#### Amendments to Section 6: Warranty and Indemnity

Section 6 is amended by adding the following new Sections 6.4, 6.5, 6.6, and 6.7:

“6.4 Supplier warrants its title and right to sell the Gas delivered hereunder and warrants that the Gas shall be free and clear from liens and adverse claims and is in conformity with all valid laws, order, rules and regulations of duly constituted authorities having jurisdiction. **EXCEPT TO THE EXTENT SET FORTH IN THIS CONTRACT, SUPPLIER MAKES NO WARRANTIES OR REPRESENTATIONS, WHETHER EXPRESS OR IMPLIED, REGARDING THE GAS, OR THE SUPPLY THEREOF, AND SUPPLIER DISCLAIMS SAME.**”

“6.5 Customer acknowledges and agrees that all charges for Gas billed under this Contract shall be based on monthly metering and measurement data provided to Supplier by Receiving Distribution Company, and that those amounts shall be deemed agreed and definitive for all purposes.”

“6.6 Customer acknowledges and agrees that Supplier shall procure Gas on a day-to-day basis and that the quality of all Gas delivered, regardless of its original source, shall be governed by the relevant provisions within the current Receiving Distribution Company tariff.

“6.7 Customer acknowledges and agrees that because of the commingled and blended nature of natural gas pipeline transportation, the quality of the Gas ultimately delivered to Customer shall be the responsibility of Receiving Distribution Company. Any and all claims of Customer relating to the quality of the Gas shall be directed toward Receiving Distribution Company and Receiving Distribution Company’s overall gas distribution system, except where otherwise governed by the current Receiving Distribution Company tariff. Customer waives any and all claims against Supplier for damages arising from the quality of the Gas delivered, except where such damages can be proven to be due to the quality of Gas originally delivered by Supplier to Receiving Distribution Company.

#### Amendments to Section 7: Defaults and Remedies

Section 7.1 is amended by adding the following language to the definition of “Market Value” following the words “in a commercially reasonable manner.”:

“For the purposes of this Section, “Market Value” may also include the value of any biomethane or renewable natural gas that Supplier may have contracted for delivery to Customer under this Contract and/or the value of any emissions credits, including, but not limited to, LCFS Credits or Renewable Identification Numbers, created therefrom.”

Section 7 is amended by adding the following new Section 7.7:

“7.7 In addition to Early Termination Damages contemplated in this Section, the parties shall also be bound by the additional Termination provisions listed in Section 14 of the Transaction Confirmation.”

Amendments to Section 12: Miscellaneous

Section 12.2 is amended by adding the term, “duly filed public information request,” to subsection (i) immediately after the word, “regulation,” and before the words, “or exchange rule.”

TRANSACTION CONFIRMATION  
FOR IMMEDIATE DELIVERY

Letterhead/Logo



Date: \_\_\_\_\_, 2017  
Transaction Confirmation #: SCG0019-001

This Transaction Confirmation is subject to Omnitrans' Contract Agreement No. FIN17-13 dated \_\_\_\_\_, 2017 ("Omnitrans Contract Agreement"), and the NAESB Base Contract and Addendum between Supplier and Customer dated \_\_\_\_\_, 2017. The terms of this Transaction Confirmation are binding unless disputed in writing within two Business Days after receipt, unless otherwise specified in the Omnitrans Contract Agreement, Base Contract or herein. In the case of any conflict between this Transaction Confirmation and the Omnitrans Contract Agreement, the Omnitrans Contract Agreement shall govern.

**SUPPLIER:**

GHI Energy, LLC  
800 Bering Dr, Suite 301  
Houston, TX 77057

Attn: John Greene  
Phone: 281-761-7835  
Fax: 832-415-9724  
Base Contract No.: SDG0001

CPUC Registration #: CTA0017

**CUSTOMER:**

Omnitrans  
1700 W. Fifth Street  
San Bernardino, CA 92411

Attn: Donald Walker  
Phone: 909-379-7131  
Fax: 909-889-5779  
Base Contract No.: \_\_\_\_\_

Distribution Company:  
As listed in Appendix A

Distribution Company Contract Number:  
As listed in Appendix A

Commodity: Electricity ☐ Natural Gas ☒

**Contract Price:**

**INDEX PRICING:**

For CNG Fueling Stations:

\_\_\_\_\_, 2017 through \_\_\_\_\_, 2022: Customer's choice of 90% of the monthly Procurement Price published by Southern California Gas Company (10% discount) or 99% of the monthly Southern California Gas Citygate price published by Natural Gas Intelligence (1% discount)

Customer must make all pricing decisions prior to the first day of a respective delivery period and such election thereafter shall be in effect through the entire delivery period.

TRANSACTION CONFIRMATION  
FOR IMMEDIATE DELIVERY

**FIXED PRICING:**

As defined below.

**Billing and Payment Information:**

As defined below.

**Delivery Period:**

On or around \_\_\_\_\_ 2017 through \_\_\_\_\_, 2022.

Supplier and Customer agree that the timing of the exact start date is ultimately dependent on the actions of the Distributing Company.

**Performance Obligation and Contract Quantity:**

As defined below.

**Delivery Point:**

Downstream of Utility's meter at the Fueling Station(s) listed in Appendix A to this Transaction Confirmation.

**Facility/Account Information:**

Customer's Compressed Natural Gas Fueling Stations and other locations listed in Appendix A to this Transaction Confirmation (respectively, the "Fueling Station(s)" and the "Other Locations"). Parties may add additional Fueling Stations and Other Locations at any time pursuant to an amendment to Appendix A (which shall also be "Fueling Station(s)").

**Special Conditions:**

**1. ADDITIONAL DEFINITIONS**

- 1.1. "Balancing Requirements" means steps required by the Receiving Distribution Company to insure that Receipts of Gas into its transmission system are equal to Deliveries out of its transmission system over a defined period of time.
- 1.2. "Base Contract" means the Base Contract defined on the cover page of this Transaction Confirmation.
- 1.3. "CARB" means California Air Resources Board.
- 1.4. "CNG" means Compressed Natural Gas
- 1.5. "Compressed Natural Gas" means Gas that has been compressed to a standard pressure for the purpose of fueling a motor vehicle.
- 1.6. "Contract" means collectively this Transaction Confirmation, the Omnitrans Contract Agreement and the Base

TRANSACTION CONFIRMATION  
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Contract and Addendum referenced on the cover page thereof.

- 1.7. "Cover Standard", as defined in the Base Contract, is expanded to also include the value of any payments for LCFS credits, as stipulated below.
- 1.8. "Effective Date" means the first date that this Agreement becomes effective, as specified in Section 3 below.
- 1.9. "Gas Discount" means the difference between the Monthly Amount Owed for Delivered Gas and the Nominal Undiscounted Cost of Gas.
- 1.10. "Fueling Stations" means locations owned by Customer where Customer fuels vehicles with Compressed Natural Gas and designated to receive Gas under this Contract.
- 1.11. "LCFS" means Low Carbon Fuel Standard.
- 1.12. "LCFS Credits" means emissions credits created under the LCFS Regulation and marketable according to rules set by CARB.
- 1.13. "LCFS Regulation" means the regulations defined under title 17, California Code of Regulations (CCR), sections 95480-95490, or any additions thereto, collectively with other referenced material therein.
- 1.14. "Market Index Price" means an index price for wholesale Gas delivered at certain location for an applicable period published by a major natural gas price reporting publication or exchange, such as Platts Gas Daily, Natural Gas Intelligence, Intercontinental Exchange, or any other comparable publication.
- 1.15. "Monthly Amount Owed for Gas" means the product of the quantity of therms of natural gas delivered in a given month multiplied by the respective monthly contract price for natural gas.
- 1.16. "MMBtu" means one million British thermal units as defined in the Receiving Distribution Company's Tariff and used as a unit of measurement of quantities of natural gas.
- 1.17. "Nominal Volume" means Customer's typical (or average) consumption of Gas on a regular basis, whether daily, monthly, or annually.
- 1.18. "Nominal Undiscounted Cost of Gas" means Customer's actual monthly consumption of gas, multiplied by the monthly Procurement Price, without any discount.
- 1.19. "Other Locations" means any other facility owned by Customer that consumes natural gas but is not a Fueling Station.
- 1.20. "Procurement Price" means the regulated price for Gas, not including transmission services that the Distribution Company may charge to customers, published monthly and approved by the California Public Utilities Commission.
- 1.21. "Receipt" means Gas that enters the Receiving Distribution Company's transmission system.
- 1.22. "Receiving Distribution Company" means the Distribution Company defined on the cover page of this Transaction Confirmation.
- 1.23. "Renewable Natural Gas" means natural gas from a renewable or biogenic resource that is identical to conventional fossil natural gas and has been injected into a common carrier pipeline for delivery to end-users.
- 1.24. "RNG" means Renewable Natural Gas
- 1.25. "Shrinkage" means losses of quantities of Gas due to pipeline leakage, compression use, line fill, or other causes.



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- 1.26. "Tariff" means the regulatory documents filed by the Receiving Distribution Company with applicable regulatory bodies and governing its transmission system.
- 1.27. "Therm" means 0.1 MMBtu of energy, or approximately 100 scf of Gas, as defined in the Receiving Distribution Company's Tariff.

**2. NATURE OF SERVICE**

- 2.1. Supplier agrees to sell and Customer agrees to purchase and receive Gas to serve one hundred percent (100%) of Customer's natural gas fueling requirements in the form of guaranteed supply for Customer's Fueling Stations and Other Locations listed in Appendix A to this Transaction Confirmation and utilizing the natural gas delivery system of the respective Receiving Distribution Company for each Fueling Station. Parties may add additional Fueling Station locations at any time pursuant to an amendment to Appendix A.
- 2.2. Under this Contract, Supplier shall provide Customer with Gas, in return for payments addressed herein, and Customer shall provide Supplier with rights to LCFS Credits created under the LCFS Regulation. In accordance with the terms of Section 8 of this Transaction Confirmation, all LCFS Credits created at the Fueling Station(s) shall be the sole property of Supplier, and Supplier shall compensate Customer for the value of those credits, but at no time shall this Contract be construed as a purchase or sale of LCFS Credits from Fueling Station(s).
- 2.2.1. Supplier shall make best efforts to meet Customer's natural gas requirements using Renewable Natural Gas. Should renewable natural gas be unavailable during any part of any particular Delivery Period, Supplier shall instead meet Customer's natural gas requirements using conventional fossil natural gas instead. At no time shall the provision of fossil natural gas affect the calculation of the LCFS payments outlined in Section 10 below, except where otherwise allowed by the terms outlined elsewhere in this Transaction Confirmation.
- 2.3. Supplier and Customer agree that Gas delivered to the Fueling Station(s) will be for use as CNG as a vehicular transportation fuel only and will be used for no other purposes.
- 2.4. Customer agrees and acknowledges that Supplier shall deliver Gas to the Fueling Stations and that the source of such Gas may occasionally from time to time be from biogenic sources ("biogas"). Any such biogas delivered to Customer shall be chemically identical to, and indistinguishable from, natural gas and shall at all times meet the quality specifications of the local distribution company system as discussed in Section 6 of the NAESB Base Contract.
- 2.5. Customer acknowledges that this Contract covers only the natural gas commodity delivered to Customer and consumed thereby and that Customer shall continue to be responsible for any and all metering and transmission charges and fees charged and billed separately by Receiving Distribution Company. Customer further acknowledges that this Contract may be suspended or terminated by Supplier at any time upon written notice to Customer if Customer fails to maintain its responsibility to and pay all charges and fees owing to Receiving Distribution Company.

**3. TERM OF AGREEMENT**

- 3.1. This Transaction Confirmation shall commence and become effective as of the dates of the signatures below and continue thereafter through the end of the Delivery Period, as defined on the cover page to this Transaction Confirmation.

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**4. QUANTITY**

- 4.1. Supplier shall deliver or cause to be delivered to Customer all natural gas requirements each month during the term of this Contract including applicable Receiving Distribution Company Shrinkage and Balancing Requirements. Parties agree that the initial Nominal Volume provided under this Contract shall be approximately equal to 3,300,000 Therms per year and that Parties will work together to regularly reevaluate the Nominal Volume as Customer's circumstances and gas usage changes.
- 4.2. Notwithstanding the Early Termination Damages defined in the Base Contract, Customer shall be financially responsible for deliveries of Gas as follows:
  - 4.2.1. For all variable priced Gas consumed by Customer in a particular delivery month, Customer shall be responsible to pay Supplier the price for the quantity of Gas that is consumed at a variable price.
  - 4.2.2. Should Customer choose to convert any portion of the Gas supplied under this Contract to a fixed price structure in accordance with Section 6 below, Customer shall be responsible to pay Supplier the following:
    - 4.2.2.1. The price for the quantity of all Gas which Customer has agreed to purchase at a fixed price, on a "take or pay" basis, even if Customer's actual monthly use of Gas is less than the total quantity of Gas which Customer agreed to purchase at a fixed price; plus
    - 4.2.2.2. The price for all Gas consumed by Customer that exceeds the quantity of Gas which Customer agreed to purchase at a fixed price, which quantity of Gas shall be considered to be variable price Gas subject to the terms of subsection 4.2.1 above.

**5. PRICE**

- 5.1. The sales price for any quantity of Gas in excess of the volumes within a Fixed Price Tranche (as hereinafter defined), if any, shall be equal to the designated index price for that facility as defined above.
- 5.2. The sales price for the Gas within a Fixed Price Tranche shall be an agreed upon fixed price per Therm of Gas delivered to Customer (as hereinafter defined) in dollars and rounded to 3 decimal points. A listing of all Fixed Price Tranches with respective quantities and volumes, if any, are listed in Appendix B to this Transaction Confirmation. Pursuant to Section 6 below, Parties may add additional Fixed Price Tranches as an amendment to Appendix B.

**6. CONVERSION OF CONTRACT**

- 6.1. Customer reserves the right, from time to time, pursuant to a written election to convert all or a portion of the Gas to be delivered under this Contract from a variable price structure to a fixed price structure. Such conversions, if any, may occur once per calendar quarter, for a minimum term of three months, will be effective on the first day of a particular delivery month, as set forth in the Conversion Notice (as hereinafter defined) and shall be in tranches of 1000 Therms per day, excluding the final conversion, which shall include 100% of the remaining unconverted Nominal Volume (defined below) under contract (each, a "Fixed Price Tranche").
- 6.2. Supplier and Customer agree to work together from time to time to monitor and evaluate market prices for Gas delivered in future periods for the purpose of converting volumes of Gas to a fixed price structure. Should Supplier and Customer agree upon a fixed price for a specific volume of Gas over a defined term, Parties shall transact for such fixed price Gas pursuant to a written agreement.
- 6.3. Customer agrees to notify Supplier in writing of its intent to convert all or a portion of the Gas to be delivered under this Contract from a variable price structure to a fixed price structure at least 10 business days prior to

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the beginning of any particular month in which Customer wishes to convert (the "Conversion Notice").

- 6.4. Upon the conversion of a quantity of Gas to a Fixed Price Tranche, the transacted fixed price for that particular Fixed Price Tranche shall be confirmed in writing and included as an amendment to Appendix B to this Transaction Confirmation.
- 6.5. Customer acknowledges that due to the inherent quick-changing nature of the natural gas market, Supplier cannot guarantee a particular price in advance and that the actual fixed price for any particular Fixed Tranche may not be known with certainty until the actual day or moment of conversion. Parties agree that, upon the provision of the requisite written notice, a conversion shall actually take place upon the verbal acquiescence of a duly authorized representative of Customer in response to a verbal price quoted by Supplier, as thereafter confirmed in writing by Supplier.
- 6.6. Customer agrees that once converted, the quantity and/or volume of a Fixed Price Tranche may not be changed and the obligations associated with such Fixed Price Tranche shall be binding in perpetuity through the last day of a tranche's respective term.

**7. BILLING AND PAYMENT FOR GAS**

- 7.1. Within 10 days of the last day of each delivery month, Supplier shall bill Customer for all Gas delivered to Customer during the preceding month based on the aggregate LDC gas meter readings at the Fueling Stations and the Other Locations. Bills shall be rounded to two decimal points and will include the charges for Gas delivered to Customer, based on Customer's measured monthly usage of Gas and the respective split between fixed and variable price tranches as described in Section 4.2 above, plus all applicable taxes and other governmental fees and assessments that may be associated therewith, if any, that Supplier may be required to collect. Customer shall be solely responsible for all such additional taxes and governmental fees and assessments.
- 7.2. Supplier and Customer agree to work together to minimize and simplify the billing process to the extent feasible and, if applicable, to implement an electronic billing and payment arrangement, if possible.
- 7.3. Bills for service are due and payable upon presentation and will be considered past due if payment is not received within 15 days after the bill is issued by Supplier. If Customer fails to pay any amounts within thirty (30) days after payment is due, unless Customer has timely submitted a written dispute of an invoice or portion thereof, as further detailed in the Omnitrans Contract Agreement, Supplier, in addition to any other remedy it may have under this Contract or at law, may suspend further delivery of Gas until such amount is paid in full.
- 7.4. Payments shall be made by Customer to Supplier by wire transfer or ACH transfer, payable to the account listed in the invoice.

**8. DELEGATION OF REGULATORY STATUS**

- 8.1. As required under the LCFS Regulation, Customer agrees and attests to the following:
  - 8.1.1. Customer owns free and clear the CNG fueling equipment at the Fueling Station(s) and meter(s) listed in Appendix A (under the heading "Customer Owned Stations") or is otherwise responsible for procuring natural gas for the Fueling Station(s) listed in Appendix A (under the heading "Other Fueling Stations for Which Customer is Responsible for Procuring Natural Gas") and as such has the capacity to contract for 3<sup>rd</sup> party of supply of natural gas; and
  - 8.1.2. No other party has an ownership interest in Customer's CNG fueling equipment at the Fueling Station(s) listed in Appendix A (under the heading "Customer Owned Stations") or otherwise has a claim to the regulated party status for the Fueling Station(s) in Appendix A (under the heading "Other

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Fueling Stations for Which Customer is Responsible for Procuring Natural Gas”) as defined in the LCFS Regulation; and

- 8.1.3. Customer shall continue to own for the term of this transaction confirmation free and clear any and all present and future CNG fueling equipment for which Supplier is providing Gas under this Contract; and
- 8.1.4. Supplier is designated as the “natural gas provider” of Customer, as described by the LCFS Regulation, and Supplier is therefore eligible to assume Customer’s LCFS compliance obligation, thus becoming the officially recognized Regulated Party (as hereinafter defined) for the Fueling Station(s) and the fueling equipment located therein, and may exercise any and all rights of the Regulated Party; and
- 8.1.5. Customer falls within the provisions of section 95484(a)(5)(A)1.a. or (5)(A)2 of the LCFS Regulation and understands that it has the ability to opt into the LCFS program as a regulated party under section 95480.2(a)(the “Regulated Party”); and
- 8.1.6. Customer agrees that Supplier shall register Customer’s Fueling Stations for participation in the federal Renewable Fuel Standard (40 CFR Part 80 Subpart M) (“RFS2”) at no further cost or obligation to Customer; and
- 8.1.7. Customer has affirmatively elected to discontinue its participation as a Regulated Party in the LCFS program and Customer is currently not participating in the federal RFS, nor is otherwise generating renewable identification numbers (“RIN’s”) thereunder through its Fueling Station(s), and Customer has affirmatively elected not to so in the future except in connection with the activities contemplated herein with Supplier; and
- 8.1.8. Customer understands and agrees that the elections in Section 8.1.7 are irrevocable for the duration of this Contract; and
- 8.1.9. As a consequence of the election in subparagraph 8.1.7, Customer understands and agrees that all LCFS Credits and RIN’s (if any) generated from the sale of CNG dispensed through Customer’s natural gas vehicle fueling equipment while this Contract is in effect shall be the sole property of Supplier as of the date of creation, and that Customer shall have no right to these credits or any compensation therefor except as otherwise specified in this Contract.

**9. ALLOCATION OF HEAVY DUTY AND LIGHT DUTY VEHICLE USE**

- 9.1. At the Effective Date, and on the last day of each calendar quarter following the Effective Date, in accordance with the requirements of Section 95484(c)(3)(B) of the LCFS Regulation, Customer may, at customers sole option report to Supplier the of its gas consumption allocated to light duty vehicles (14,000 pounds or less gross vehicle weight)(referred to herein as “Therms<sub>LD</sub>”) that utilized the Fueling Station(s) during the period (respectively, the “LD Consumption”), whether by the use of designated separate meters for each vehicle class or through some other method designed to calculate such an allocation, and this information will be used to calculate the number of LCFS Credits earned at the Fueling Station(s) and the payment for such LCFS Credits owed to Customer. Should Customer choose not to report LD Consumption, all therms consumed at the fueling station shall be assumed to be Heavy Duty only (referred to herein as “Therms<sub>HD</sub>”).

**10. CALCULATION OF LCFS CREDITS EARNED EACH MONTH**

- 10.1. In accordance with Section 12.1 of this Contract, Supplier shall compensate Customer for a fossil-equivalent volume of credits created at the Fueling Station(s) each month, using the guidance provided in Sections 95485 and 95486 for credits created from the latest *Natural Gas Produced from North American Sources* pathway, first published by CARB in 2009 and included within the LCFS Regulation by reference, and summarized in the Table 1 below.

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- 10.2. Customer shall provide to Supplier (or to Supplier's designee), via email or facsimile, at the close of business on the last business day of each week in which CNG was consumed, with a written record of its weekly natural gas consumption (a "meter reading") from each gas metering or other measurement device used to dispense natural gas for CNG fueling purposes at the Fueling Stations.
- 10.2.1. At Customer's request, Supplier may provide meter reading services to Customer at Customer's expense, to be billed as an additional charge on Customer's monthly invoice;
- 10.2.2. Should any of Customer's metering devices be self-reporting "smart meters" or otherwise able to automatically provide remote metering data without a physical manual reading, Customer shall be exempt from this requirement so long as Supplier (or Supplier's designee) is able to receive and use such consumption data for reporting purposes.
- 10.3. For all monthly billing periods in each year in Table 1, the formula for determining the LCFS Credits created at the Fueling Station(s) shall be as follows, rounded to 6 decimal points, where "FRate" refers to fossil-equivalent natural gas credits having a CI of 74.8 and "RRate" refers to renewable natural gas credits having a CI of 42.:

$$\text{Credits}_{\text{LCFS}} = 100\% \times [ (\text{FRate}_{\text{HD}} \times \text{Therms}_{\text{HD}}) + (\text{FRate}_{\text{LD}} \times \text{Therms}_{\text{LD}}) ] + \text{Share\%} \\ \times [ ((\text{RRate}_{\text{HD}} - \text{FRate}_{\text{HD}}) \times \text{Therms}_{\text{HD}}) + ((\text{RRate}_{\text{LD}} - \text{FRate}_{\text{LD}}) \times \text{Therms}_{\text{LD}}) ]$$

**TABLE 1:**

**Baseline "Fossil Equivalent" LCFS Credit Rates**

**per Therm of gas delivered based on a Carbon Intensity of 78.4 gCO<sub>2</sub>e/MJ**

Year	FRate <sub>HD</sub>	FRate <sub>LD</sub>
2016	0.000661	0.001675
2017	0.000531	0.001529
2018	0.000401	0.001384
2019	0.000272	0.001238
2020	0.000099	0.001045
2021	TBD	TBD
2022	TBD	TBD

**\*TBD – To be determined at the time CARB finalizes these targets**

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**TABLE 2:**

**RNG LCFS Credit Rates**

**per Therm of gas delivered based on a Carbon Intensity of 42.0 gCO<sub>2</sub>e/MJ**

<b>Year</b>	<b>RRate<sub>HD</sub></b>	<b>RRate<sub>LD</sub></b>
2016	0.004228	0.005242
2017	0.004098	0.005096
2018	0.003968	0.004951
2019	0.003839	0.004805
2020	0.003666	0.004612
2021	TBD	TBD
2022	TBD	TBD

**\*TBD – To be determined at the time CARB finalizes these targets**

10.3.1. Except for those circumstances outlined in Section 10.3.2 below, Share% shall be equal to 27%.

10.3.2. If during any portion of any respective delivery period Supplier is notified by its own suppliers of RNG that a *force majeure* situation is in effect that affects the availability of RNG, Share% shall be equal to 27% times the actual percentage of gas delivered to Customer that was RNG during the time when the *force majeure* was in effect.

**11. DETERMINATION OF LCFS CREDIT PRICE**

11.1. In accordance with Section 12 of this Transaction Confirmation, the monthly price for LCFS Credits shall be determined according to one of the following methods (ranked in order of preference and/or data availability):

11.1.1. A published monthly index, designated as such, for “spot” or “current year” California LCFS Credits,

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denominated in \$/MTCO<sub>2</sub>e, published by a major national energy publication or exchange mutually agreeable to Supplier and Customer; then

- 11.1.2. A simple average, calculated across the entire month, of a daily published index or market assessment for "spot" or "current year" California LCFS Credits, denominated in \$/MTCO<sub>2</sub>e, published by a major national energy publication or exchange mutually agreeable to Supplier and Customer; then
- 11.1.3. A simple average, calculated across the entire month, of regular daily price assessments for "spot" or "current year" California LCFS Credits, denominated in \$/MTCO<sub>2</sub>e, provided by one or more reputable over-the-counter energy brokers mutually agreeable to Supplier and Customer; then
- 11.1.4. Any other methodology or pricing source that is mutually agreeable to Supplier and to Customer and based on publicly available market information for the explicit or implicit value of LCFS Credits.

**12. QUARTERLY PAYMENTS FOR LCFS CREDITS**

- 12.1. Using the results of the calculations in Sections 10 and 11 above, for each respective month, Supplier shall pay to Customer an amount equal to the monthly quantity of LCFS Credits multiplied by 100% of the average monthly market LCFS credit price (the "LCFS Calculation"), rounded to two decimal points.
- 12.2. The LCFS Calculation shall be performed on a monthly basis using monthly data and paid within 90 days following the end of the subsequent calendar quarter, following Supplier's quarterly LCFS regulatory filing.
- 12.3. Parties agree that:
  - 12.3.1. Supplier's payment for LCFS Credits shall be separate and distinct from Customer's payment for Gas; and
  - 12.3.2. Supplier shall not be required to make any payments for LCFS Credits unless and until Customer's account is current and Customer has paid Supplier for all Gas delivered during the quarter for which payment for the LCFS Credits is due plus all prior Delivery Months preceding that quarter.
  - 12.3.3. The payments made under this Section, the credits created in Section 10, and the price determined in Section 11, are purely formulaic and have no connection whatsoever to any specific or actual quantity of credits created, any specific or actual transaction for LCFS credits, or any other tangible or recordable data or thing aside from the number of therms consumed and the formulas listed in this Transaction Confirmation.
  - 12.3.4. Customer shall have no interest whatsoever, whether economic or otherwise, in any actual or tangible LCFS transaction executed by Supplier or in any credits owned by Supplier as the result of this Transaction Confirmation. All LCFS credits created by Supplier using gas provided to Customer shall remain the sole property of Supplier and shall not in any way be attached to the quarterly LCFS payments owed to Customer under this Transaction Confirmation. Accordingly, Customer shall have no rights to audit or inspect Supplier's underlying LCFS credit transactions aside from the calculations specified in this Transaction Confirmation for the formulaic payment owed herein.
- 12.4. Payments shall be made by Supplier to Customer by wire transfer, payable to the following account:

Per invoice \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

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**13. MONTHLY PAYMENTS FOR RIN'S**

- 13.1. Within 30 days following the end of each month, Supplier shall compensate Customer in an amount equal to a percentage share of the value of a theoretical quantity of RIN's (the "RIN Sharing Percentage") based on the volumes of fuel dispensed at the Fueling Station(s) according to the following formula:

$$PAYMENT_{RIN's} = THERMS_{MONTH} \times 1.298 \times PRICE_{MONTH} \times RIN\ SHARING\%$$

Where

THERMS<sub>MONTH</sub> = The total number of therms consumed in a month

1.298 = the number of RIN's per therm of gas consumed

PRICE<sub>MONTH</sub> = The monthly average RIN price

RIN SHARING% = The RIN Sharing Percentage

- 13.2. The RIN price in Section 13.1 shall be the greater of the daily published price for "D3 Cellulosic Biofuel" RIN's or "D5 Advanced Biofuel" RIN's, denominated in \$/RIN, determined using a similar hierarchy of sources to that specified in Section 11 above.

13.2.1. Except for those circumstances outlined in Section 13.2.2 below, RIN SHARING% shall be equal to 12%.

13.2.2. If during any portion of any respective delivery period Supplier is notified by its own suppliers of RNG that a *force majeure* situation is in effect that affects the availability of RNG, RIN SHARING% shall be equal to 12% times the actual percentage of gas delivered to Customer that was RNG during the time when the *force majeure* was in effect.

- 13.3. Regardless of the source of Gas provided in any given month, Seller shall be obligated to make this payment each month. Supplier may cease making this payment only in the case of termination of the federal Renewable Fuel Standard or a material modification therein to the treatment of biogas used as CNG.

13.3.1. If during any portion of any respective delivery period Supplier is notified by its own suppliers of RNG that a *force majeure* situation is in effect that affects the availability of RNG, Share% shall be equal to 25% times the actual percentage of gas delivered to Customer that was RNG during the time when the *force majeure* was in effect.

- 13.4. Customer shall have no interest whatsoever, whether economic or otherwise, in any actual or tangible RIN transaction executed by Supplier or in any credits owned by Supplier as the result of this Transaction Confirmation. All RIN credits created by Supplier using gas provided to Customer shall remain the sole property of Supplier and shall not in any way be attached to the monthly RIN payments owed to Customer under this Transaction Confirmation. Accordingly, Customer shall have no rights to audit or inspect Supplier's underlying RIN credit transactions aside from the calculations specified in this Transaction Confirmation for the formulaic payment owed herein.

- 13.5. Payments shall be made by Supplier to Customer by wire transfer, payable to the following account:

Per invoice

**14. TERMINATION**

- 14.1. If, at any time during the term of this Transaction Confirmation, Supplier, in its sole discretion, determines that there is no longer a market for LCFS Credits or that the LCFS Regulation is no longer a viable or functioning regulation, or that, for any other reason, the regulatory environment surrounding the subject matter of this



**TRANSACTION CONFIRMATION  
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Transaction Confirmation has changed, Supplier may terminate this Transaction Confirmation upon 90 days prior written notice to Customer, subject to the termination payment addressed in Section 14.2 below.

- 14.1.1. If Supplier elects to terminate under the provisions in Section 14.1 above during the time period that Customer is ineligible to return to utility natural gas service (i.e. within the first 12 months of the third party procurement on Socal Gas), Supplier shall remain as Customer's natural gas supplier until such time that customer is eligible to return to utility service or otherwise has commenced receiving natural gas service from a new third party supplier and Customer price paid for such natural gas shall revert to 100% of the local utility Procurement Price.
- 14.1.2. In the event Supplier elects to terminate this Transaction Confirmation in accordance with Section 14.1, the Early Termination Payment referenced in the Base Contract shall be waived and Customer shall instead be entitled to a cancelation fee equal to the product of Customer's total natural gas usage for the preceding 12 months multiplied by the difference between Customer's weighted average fixed price under contract (if any) and the published forward market price at each Fueling Station for the succeeding 12 months, proportionally allocated and averaged among multiple Fueling Stations, if any, beginning with the first month after the date of termination. Should the published 12 month average forward market price be less than the weighted average fixed price under contract, or should Customer have no fixed price gas under contract, the cancelation fee shall be zero.
- 14.2. If at any time in the Delivery Period, Customer receives written notice from the Distribution Company that Customer's use of Supplier's gas (and/or gas from any other 3rd party provider) will financially hinder or harm any planned capital project of Customer, unless Customer once again procures gas directly from the Distribution Company, Customer shall have the unilateral right of termination with 60 day notice to Supplier.

**15. AMENDMENT**

- 15.1. This Transaction Confirmation may be amended upon the mutual written agreement of both Parties and any such written amendment agreement shall be incorporated herein by reference.

Supplier: GHI Energy, LLC

By: \_\_\_\_\_

John M Greene

Title: President

Date: \_\_\_\_\_, 2017

Customer:

By: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_, 2017

TRANSACTION CONFIRMATION  
FOR IMMEDIATE DELIVERY

**APPENDIX A**

**CUSTOMER OWNED FUELING STATIONS**

<b>Station ID</b>	<b>Distribution Company</b>	<b>Applicable Market Index</b>	<b>Location Description</b>	<b>Approximate Daily Gas Consumption</b>	<b>Date Added to Base Contract</b>
TBD	SOCAL GAS	SOCAL CITYGATE	East Valley: 1700 W. Fifth Street, San Bernardino CA	600 Dkth/d	_____,2017
TBD	SOCAL GAS	SOCAL CITYGATE	West Valley: 4748 Arrow Highway, Montclair CA	300 Dkth/d	_____, 2017

**OTHER FUELING STATIONS FOR WHICH CUSTOMER IS RESPONSIBLE  
FOR FUEL PROCUREMENT**

<b>Station ID</b>	<b>Distribution Company</b>	<b>Applicable Market Index</b>	<b>Location Description</b>	<b>Approximate Daily Gas Consumption</b>	<b>Date Added to Base Contract</b>

**CUSTOMER OTHER LOCATIONS**

<b>Meter Number</b>	<b>Distribution Company</b>	<b>Applicable Market Index</b>	<b>Location Description</b>	<b>Approximate Daily Gas Consumption</b>	<b>Date Added to Base Contract</b>

TRANSACTION CONFIRMATION  
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In witness whereof, this Appendix is agreed to and incorporated into the Contract as of the dates below:

Supplier: GHI Energy, LCC	Customer: Omnitrans
By: _____ John M Greene	By: _____ P. Scott Graham
Title: President	Title: CEO/General Manager
Date: _____	Date: _____

TRANSACTION CONFIRMATION  
FOR IMMEDIATE DELIVERY

APPENDIX B

FIXED PRICE TRANCHES

Date Executed	Volume	Term	Price

In witness whereof, this Appendix is agreed to and incorporated into the Contract as of the dates below:

Supplier:  
GHI Energy, LLC

Customer:  
Omnitrans

\_\_\_\_\_

\_\_\_\_\_

By: \_\_\_\_\_

By: \_\_\_\_\_

Title: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

Date: \_\_\_\_\_



**ITEM #F6**  
**EMPLOYEE RECOGNITION AWARDS**



## CONTRACT AGREEMENT

between

**CONTRACTOR**

Michael C. Fina Recognition  
33-01 Hunters Point Avenue  
Long Island City, NY 11101

(hereinafter "CONTRACTOR")

Telephone: (800) 999-3462

Email: salesinfo@mcfina.com

And

Omnitrans

1700 West Fifth Street

San Bernardino, CA 92411

(hereinafter "OMNITRANS")

**CONTRACT DOCUMENTS**

**CONTRACT NO. HRS17-68**

**EMPLOYEE RECOGNITION AWARDS**

Contract Amount: \$76,423

Omnitrans Project Manager:

Name: Melissa Saenz

Title: Human Resources Assistant

Telephone: (909) 379-7271

Email: [melissa.saenz@omnitrans.org](mailto:melissa.saenz@omnitrans.org)

Contract Administrator:

Name: Krystal Turner

Title: Contract Administrator

Telephone: (909) 379-7202

Email: [krystal.turner@omnitrans.org](mailto:krystal.turner@omnitrans.org)



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ATTACHMENT A – SCOPE OF WORK

ATTACHMENT B - PRICING

ATTACHMENT C - FORMS



This Agreement is made and entered into as of this 1st day of August, 2017, by and between Omnitrans (hereinafter referred to as "OMNITRANS") and Michael C. Fina Corporation (hereinafter referred to as "CONTRACTOR").

## **RECITALS**

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

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

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

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

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

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

The term of this Agreement shall be from the date of execution of this Agreement and continue in effect through July 31, 2020, unless terminated as specified in Section 10 and 11 of this Agreement. Omnitrans has no obligation to purchase any specified amount of products/services. All applicable indemnification provisions in this Agreement shall remain in effect following the termination of this Agreement.

Omnitrans' election to extend the Agreement beyond the Initial Term shall not diminish its right to terminate the Agreement for Omnitrans' convenience or CONTRACTORS default as provided elsewhere in this Agreement. The "maximum term" of this Agreement shall be the period extended from August 1, 2020 through July 31, 2022, which period encompasses the Initial Term and the Option Year One and Option Year Two.

### **3. CONTRACT OPTIONS**

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

### **4. COMPENSATION**

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

OMNITRANS' maximum cumulative payment obligation under this Agreement shall not exceed Seventy Six Thousand Four Hundred and Twenty Three Dollars (\$76,423), including all amounts payable to CONTRACTOR for all costs, including but not limited to direct labor, other direct costs, subcontracts, indirect costs including, but not limited to, leases, materials, taxes, insurance, and profit.

## 5. INVOICING AND PAYMENT

- A. CONTRACTOR shall invoice OMNITRANS on a monthly basis no later than the 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

[Accountspayable@omnitrans.org](mailto:Accountspayable@omnitrans.org)

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

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

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

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

## **C. TITLE**

- a. Title shall pass to Omnitrans at the time of payment.
- b. The title transferred as above shall in each case be good, and free and clear from any and all security interests, liens, and/or other encumbrances.
- c. The transfer of title as specified above shall not imply Acceptance by Omnitrans, nor relieve the Contractor from the responsibility for strict compliance with the Contract, including warranty as specified in the Article entitled Warranty of Work, and for any loss of or damage to the Work.
- d. The Contractor at its own expense shall promptly execute, acknowledge, and deliver to the Omnitrans proper bills of sale or other written instruments of title in a form as required by Omnitrans; said instruments shall convey to the Omnitrans' title free and clear of debts, claims, liens, mortgages, taxes, and/or encumbrances.
- e. Contractor shall have title to and bear the risk of any loss of or damage to Work purchased hereunder until they are delivered, unloaded, and received by Omnitrans at the FOB Destination specified herein. Contractor's responsibility for loss or damage except for loss or damage resulting from Contractor's negligence, shall cease when title passes to Omnitrans.

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

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

## **7. NOTIFICATION**

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

To OMNITRANS:

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

To CONTRACTOR:

Michael C. Fina Recognition  
33-01 Hunters Point Avenue  
Long Island, NY 11101  
Attn: Clay Brown  
Director of Business Development

## **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: Melissa Saenz, Human Resources Assistant.

- 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>
Clay Brown	Director of Business Development
Jeffrey Fina	Chief Customer Officer

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 28, 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 10, 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.

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

### **A. INSURANCE REQUIREMENTS**

#### **1) General Requirements for Contractor**

- a. Without limiting or diminishing the Contractor's obligation to indemnify or hold Omnitrans harmless, Contractor shall procure, prior to commencement of the services required under this contract and maintain for the duration of the contract at its own expense, insurance of the kinds and in the amounts as indicated below;
- b. Provide Omnitrans with valid original certificates of insurance and endorsements showing Omnitrans as an additional insured.

#### **2) Deductibles or Self-Insured Retention (SIR)**

SIR must be declared to and approved by Omnitrans. At the option of Omnitrans, either: the insurer shall reduce or eliminate such deductibles or SIR or Contractor shall procure a bond guaranteeing payment of losses and related investigations, claim administration and defense expenses.

#### **3) Other Insurance Provisions**

##### **a. Commercial General Liability and Automobile Liability**

Commercial General Liability insurance coverage, including but not limited to, premises liability, contractual liability, products and completed operations liability, personal and advertising injury covering claims which may arise from or out of Contractor's performance of its obligations hereunder and if Contractor's vehicles or mobile equipment are used in the performance of the obligations under this Agreement, then Contractor shall maintain liability insurance for all owned, non-owned or hired vehicles so used. Policy shall name Omnitrans, its officers, officials, employees, agents and volunteers as additional insured as respects: liability arising out of activities performed by or on behalf of Contractor; products and completed operations of Contractor; premises owned, occupied or used by Contractor; or automobiles owned, leased, hired or borrowed by Contractor. The coverage shall contain no special limitations of the scope of protection afforded Omnitrans, its officers, officials, employees, agents, and volunteers.

1. For any claims related to this project, Contractor's insurance coverage shall be primary insurance as respects Omnitrans, its officers, officials, employees, agents, and volunteers. Any

insurance and/or deductibles and/or self-insured retentions or self-insured programs maintained by Omnitrans, its officers, officials, employees, agents, and volunteers shall be excess of Contractor's insurance and shall not be construed as contributory.

2. Contractor's insurance shall apply separately to each insured against whom claim is made or suit is brought, except with respect to the limits of the insurer's liability.
3. Each insurance policy required by this clause shall be endorsed to state that coverage shall not be suspended, voided, cancelled by either party, reduced in coverage or in limits except after thirty (30) days prior written notice has been given to Omnitrans.

**b. Workers' Compensation**

If the Contractor has employees as defined by the State of California, the Contractor shall maintain statutory Workers' compensation Insurance (Coverage A) as prescribed by the laws of the State of California. Policy shall include Employers' Liability (Coverage B) including Occupational Disease with limits not less than \$1,000,000 per person per accident. The policy shall be endorsed to waive subrogation in favor of Omnitrans and, if applicable, to provide a Borrowed Servant/Alternate Employer Endorsement.

**c. Care, Custody, and Control**

Contractor shall insure any Omnitrans property while under its Care, Custody, and Control according to the requirements listed in the insurance coverage required.

**4) Acceptability of Insurers**

Insurance companies shall be State of California admitted or approved and have a current **A.M. Best's** rating of no less than **A:VIII**.

**5) Verification of Coverage**

- a. Contractor shall furnish Omnitrans with original endorsements affecting coverage required by this clause. The endorsements are to be signed by a person authorized by that insurer to bind coverage on its behalf. All insurance certificates and endorsements are to be received and approved by Omnitrans before work commences.
- b. As an alternative, Contractor's insurer may provide complete, certified copies of all required insurance policies, including endorsements affecting the coverage required by these specifications.

- c. In lieu of purchasing insurance and providing original endorsements and or certificates of insurance, the Contractor may provide proof of self-insurance; such proof must be to the satisfaction of Omnitrans.

**6) Subcontractors**

Contractor shall include all subcontractors as insureds under its policies or shall furnish separate certificates and endorsements for each subcontractor. All coverage for subcontractors shall be subject to all of the requirements stated herein.

**7) Notification of Terminated Insurance**

Insurance shall not be terminated or expire without thirty (30) days written notice, and are required to be maintained in force until completion of the contract.

**B. MINIMUM INSURANCE COVERAGE**

If the Contractor maintains broader coverage and/or higher limits than the minimum requirements shown below, Omnitrans requires and shall be entitled to the broader coverage and/or higher limits maintained by the Contractor.

- 1) ☒ **Commercial General Liability including Products/Completed Operations:** \$1,000,000; per occurrence for bodily and property damage liability and \$2,000,000 aggregate; *Omnitrans named and endorsed as an Additional Insured.*
- 2) ☒ **Automobile Liability:** \$1,000,000; per occurrence for bodily and property damage liability and aggregate; *Omnitrans named and endorsed as an Additional Insured.*
- 3) ☐ **Errors and Omissions Liability:** \$1,000,000; combined single limit bodily and property damage liability per occurrence and \$ 3,000,000 aggregate or,
- 4) ☐ **Professional Liability:** \$1,000,000; per occurrence and aggregate.
- 5) ☒ **Workers' Compensation:** statutory limits or,
- 6) ☐ **Self Insurance Program:** a State Approved program in an amount and form that meets all applicable requirements of the Labor Code of the State of California.
- 7) ☒ **Employer's Liability:** \$1,000,000; per occurrence.
- 8) ☐ **Environmental Liability:** \$1,000,000; per occurrence and aggregate; *Omnitrans named and endorsed as an Additional Insured.*

- 9) ☐ **Umbrella Policy:** \$4,000,000; per occurrence and aggregate Additional coverage for the above policies, *Omnitrans Additional Insured*.
- 10) ☐ All drivers making deliveries of products specified on this solicitation shall have Hazardous Materials Endorsements on their Commercial Drivers License, and such other Endorsements as may be required by relevant laws and/or regulations.

## 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**

- A. 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.

- B. Government regulations that directly affect the CONTRACTOR'S performance of this contract and unforeseen impacts, which neither party could have contemplated at the onset of the contract and have an unconscionable impact on the CONTRACTOR may be given special pricing consideration. The parties, in good faith, shall review established rates and may adopt any mutually agreed new rates, which shall only be effective as agreed upon by the parties. Thorough documentation including all cost elements is required to support the Contractor's claim to any relief under this clause.

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

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

## **29. PUBLIC RECORDS ACT**

- A. All records, documents, drawings, plans, specifications and other material relating to conduct of OMNITRANS' business, including materials submitted by CONTRACTOR in its proposal and during the course of performing the Work under this Agreement, shall become the exclusive property of OMNITRANS and may be deemed public records. Said materials may be subject to the provisions of the California Public Records Act. OMNITRANS' use and disclosure of its records are governed by this Act.
- B. OMNITRANS will not advise as to the nature or content of documents entitled to protection from disclosure under the California Public Records Act, including interpretations of the Act or the definitions of trade secret, confidential or proprietary. OMNITRANS will accept materials clearly and prominently labeled "TRADE SECRET" or "CONFIDENTIAL" or "PROPRIETARY" as determined by CONTRACTOR. OMNITRANS will endeavor to notify CONTRACTOR of any request of the disclosure of such materials. Under no circumstances, however, will OMNITRANS be liable or responsible for the disclosure of any labeled materials whether the disclosure is required by law or a court order or occurs through inadvertence, mistake or negligence on the part of OMNITRANS or its officers, employees and/or contractors.



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

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

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

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

### **31. FORCE MAJEURE**

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

### **32. CONFIDENTIALITY**

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

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

- A. OMNITRANS shall review and approve in writing all OMNITRANS related copy proposed to be used by CONTRACTOR for advertising or public relations purposes prior to publication. CONTRACTOR shall not allow OMNITRANS related copy to be published in its advertisements and public relations programs prior to receiving such approval. CONTRACTOR shall ensure that all published information is factual and

that it does not in any way imply that OMNITRANS endorses CONTRACTOR's firm, service, and/or product.

- B. CONTRACTOR shall refer all inquiries from the news media to OMNITRANS, and shall comply with the procedures of OMNITRANS' Public Affairs staff regarding statements to the media relating to this Agreement or the Work.
- C. If CONTRACTOR receives a complaint from a citizen or the community, CONTRACTOR shall inform OMNITRANS as soon as possible and inform OMNITRANS of any action taken to alleviate the situation.
- D. The provisions of this Article shall survive the termination or expiration of this Agreement.

#### **34. GOVERNING LAW**

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

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

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

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

- A. The 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, 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. 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.

### 37. PRECEDENCE

Conflicting provisions hereof, if any, shall prevail in the following descending order of precedence: (1) the provisions of this Agreement, and any and all of its Amendments, Appendices, Exhibits and Attachments; (2) provisions of RFP-HRS17-68 and any and all of its Addenda, Appendices, Exhibits and Attachments; and (3) CONTRACTOR's proposal dated March 10, 2017.

### 38. ENTIRE AGREEMENT

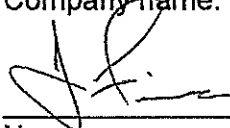
This Agreement, and any attachments or documents incorporated herein by inclusion or by reference, constitutes the complete and entire agreement between OMNITRANS and CONTRACTOR and supersedes any prior representations, understandings, communications, commitments, agreements or proposals, oral or written.

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

OMNITRANS

CONTRACTOR  
Company name:

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

  
\_\_\_\_\_  
Name:  
Title:

\_\_\_\_\_  
Date

\_\_\_\_\_  
Date

Federal Tax I.D. No. 13-4000989

DR 

CM 

CONTRACT HRS17-68  
REVISED 11/15/2016

ATTACHMENT A – SCOPE OF WORK  
HRS17-68  
EMPLOYEE RECOGNITION AWARDS

**1. GENERAL**

- A. Each year Omnitrans recognizes employees for years of service milestones. Years of service certificates are given at 1, 5, 10, 15, 20, 25, 30, 35 and 40 years, along with a brochure to select a commemorative item thanking the recipient for their years of service and dedication to the success of the organization.
- B. In the past, Omnitrans has provided an engraved writing pen, key chain, or a selection brochure at Year 1. Years 5 and above received award selection brochures, with the option to select a lapel pin in lieu of a gift. The lapel pin shall be customized with Omnitrans' logo and shall be 10k gold filled. The quality and addition of gem stones shall increase with the number of years of service.

**2. SERVICE AWARDS REQUIREMENTS**

- A. Certificates shall come pre-printed with the current Omnitrans CEO/General Manager's signature.
- B. Certificates shall come with a presentation case or folder which shall include a certificate, selection brochure, order form, and a letter from Omnitrans' CEO/General Manager.
- C. Certificates shall be ordered biannually and orders submitted to Omnitrans' Human Resources department will be provided to the successful Contractor once per week.
- D. Contractor shall provide a brochure containing a variety of items to allow the recipient to choose.
- E. Selection brochures shall include a wide variety of items from timepieces and jewelry to electronics, household items, and sporting goods. Recipients shall have the option to select a lapel in lieu of a gift, if available.
- F. Contractors' brochure shall allow the recipient to pick any item in the brochure for the quoted price and not an average price per award level.
- G. Contractors' brochure shall contain a service awards for each respective year of 1, 5, 10, 15, 20, 25, 30, 35 and 40 years.
- H. Contractor shall immediately notify Omnitrans of any changes and/or discontinued service award items so that an equal substitute can be offered and approved by Omnitrans at no additional cost.

ATTACHMENT A – SCOPE OF WORK  
HRS17-68  
EMPLOYEE RECOGNITION AWARDS

- I. Contractor shall provide a mobile-friendly solution that displays and functions from any device and has the ability to redeem service award gifts and access social recognition with full functionality from any desktop PC or mobile device.
- J. At the discretion of Omnitrans, Contractor shall provide Omnitrans with a secure social recognition program.
- K. Contractor shall provide on-demand survey and reporting tools.
- L. Contractor shall gift wrap all service award gifts, with the exception of large items, in signature gold wrapping paper.

**3. DELIVERY**

Shipping

- 1) Deliveries shall be made in quarterly bulk shipments to Omnitrans.
- 2) All items shall be shipped F.O.B. Destination Omnitrans, 1700 W. Fifth Street, San Bernardino CA 92411 Attention: Human Resources.
- 3) Delivery of large service award items shall be mailed directly to the recipient at the approval of Omnitrans.

**3. REPLACEMENT OF DAMAGED or DEFECTIVE PRODUCTS**

- A. Contractor shall promptly replace any incorrectly produced, damaged and/or defective service award items at no additional cost to Omnitrans. Items received by employees can be returned within 90 days. All items shall come with a minimum of 60-day warranty and a maximum of five (5) years.
- B. Contractor shall reimburse Omnitrans for any and all cost associated with replacing or acquiring any service award and certificate which is defective, incorrectly produced, damaged and/or delayed in delivery.

ATTACHMENT B - PRICING  
HRS17-68  
EMPLOYEE RECOGNITION AWARDS

## BASE YEAR 1

Quantities listed are for evaluation purposes only and are subject to change

Award Year	Projected Awards	Service Award Item/Description	Award Price	Certificate Price	Total
1	39	Catalog B Award Selection, Certificate and Recognition Packet, Shipping, and Tax	\$75.49	Included	\$2,944.11
5	37	Catalog C Award Selection, Certificate and Recognition Packet, Shipping, and Tax	\$103.20	Included	\$3,818.40
10	18	Catalog E Award Selection, Certificate and Recognition Packet, Shipping, and Tax	\$162.79	Included	\$2,930.22
15	17	Catalog G Award Selection, Certificate and Recognition Packet, Shipping, and Tax	\$206.39	Included	\$3,508.63
20	17	Catalog H Award Selection, Certificate and Recognition Packet, Shipping, and Tax	\$263.98	Included	\$4,487.66
25	7	Catalog K Award Selection, Certificate and Recognition Packet, Shipping, and Tax	\$306.21	Included	\$2,143.47
30	1	Catalog M Award Selection, Certificate and Recognition Packet, Shipping, and Tax	\$360.17	Included	\$360.17
35	0	Catalog N Award Selection, Certificate and Recognition Packet, Shipping, and Tax	\$448.55	Included	\$0.00
40	1	Catalog P Award Selection, Certificate and Recognition Packet, Shipping, and Tax	\$528.40	Included	\$528.40

ATTACHMENT B - PRICING  
HRS17-68  
EMPLOYEE RECOGNITION AWARDS

**BASE YEAR 2**

<b>Award Year</b>	<b>Projected Awards</b>	<b>Service Award Item/Description</b>	<b>Award Price</b>	<b>Certificate Price</b>	<b>Total</b>
1	70	Catalog B Award Selection, Certificate and Recognition Packet, Shipping, and Tax	\$75.49	Included	\$5,284.30
5	51	Catalog C Award Selection, Certificate and Recognition Packet, Shipping, and Tax	\$103.20	Included	\$5,263.20
10	8	Catalog E Award Selection, Certificate and Recognition Packet, Shipping, and Tax	\$162.79	Included	\$1,302.32
15	8	Catalog G Award Selection, Certificate and Recognition Packet, Shipping, and Tax	\$206.39	Included	\$1,651.12
20	18	Catalog H Award Selection, Certificate and Recognition Packet, Shipping, and Tax	\$263.98	Included	\$4,751.64
25	11	Catalog K Award Selection, Certificate and Recognition Packet, Shipping, and Tax	\$306.21	Included	\$3,368.31
30	2	Catalog M Award Selection, Certificate and Recognition Packet, Shipping, and Tax	\$360.17	Included	\$720.34
35	1	Catalog N Award Selection, Certificate and Recognition Packet, Shipping, and Tax	\$448.55	Included	\$448.55
40	2	Catalog P Award Selection, Certificate and Recognition Packet, Shipping, and Tax	\$528.40	Included	\$1,056.80

ATTACHMENT B - PRICING  
HRS17-68  
EMPLOYEE RECOGNITION AWARDS

**BEST AND FINAL OFFER (BAFO) - PRICING  
BASE YEAR 3**

<b>Award Year</b>	<b>Projected Awards</b>	<b>Service Award Item/Description</b>	<b>Award Price</b>	<b>Certificate Price</b>	<b>Total</b>
1	40	Catalog B Award Selection, Certificate and Recognition Packet, Shipping, and Tax	\$75.49	Included	\$3,019.60
5	50	Catalog C Award Selection, Certificate and Recognition Packet, Shipping, and Tax	\$103.20	Included	\$5,160.00
10	15	Catalog E Award Selection, Certificate and Recognition Packet, Shipping, and Tax	\$162.79	Included	\$2,441.85
15	41	Catalog G Award Selection, Certificate and Recognition Packet, Shipping, and Tax	\$206.39	Included	\$8,461.99
20	23	Catalog H Award Selection, Certificate and Recognition Packet, Shipping, and Tax	\$263.98	Included	\$6,071.54
25	16	Catalog K Award Selection, Certificate and Recognition Packet, Shipping, and Tax	\$306.21	Included	\$4,899.36
30	5	Catalog M Award Selection, Certificate and Recognition Packet, Shipping, and Tax	\$360.17	Included	\$1,800.85
35	0	Catalog N Award Selection, Certificate and Recognition Packet, Shipping, and Tax	\$448.55	Included	0
40	0	Catalog P Award Selection, Certificate and Recognition Packet, Shipping, and Tax	\$528.40	Included	0



ATTACHMENT B - PRICING  
HRS17-68  
EMPLOYEE RECOGNITION AWARDS

**OPTION YEAR 1**

<b>Award Year</b>	<b>Projected Awards</b>	<b>Service Award Item/Description</b>	<b>Award Price</b>	<b>Certificate Price</b>
1	40	Catalog B Award Selection, Certificate and Recognition Packet, Shipping, and Tax	\$77.75	Included
5	58	Catalog C Award Selection, Certificate and Recognition Packet, Shipping, and Tax	\$106.30	Included
10	3	Catalog E Award Selection, Certificate and Recognition Packet, Shipping, and Tax	\$167.67	Included
15	46	Catalog G Award Selection, Certificate and Recognition Packet, Shipping, and Tax	\$212.58	Included
20	37	Catalog H Award Selection, Certificate and Recognition Packet, Shipping, and Tax	\$271.90	Included
25	7	Catalog K Award Selection, Certificate and Recognition Packet, Shipping, and Tax	\$315.40	Included
30	8	Catalog M Award Selection, Certificate and Recognition Packet, Shipping, and Tax	\$370.98	Included
35	3	Catalog N Award Selection, Certificate and Recognition Packet, Shipping, and Tax	\$462.01	Included
40	0	Catalog P Award Selection, Certificate and Recognition Packet, Shipping, and Tax	\$544.25	Included

ATTACHMENT B - PRICING  
HRS17-68  
EMPLOYEE RECOGNITION AWARDS

**OPTION YEAR 2**

<b>Award Year</b>	<b>Projected Awards</b>	<b>Service Award Item/Description</b>	<b>Award Price</b>	<b>Certificate Price</b>
1	40	Catalog B Award Selection, Certificate and Recognition Packet, Shipping, and Tax	\$77.75	Included
5	50	Catalog C Award Selection, Certificate and Recognition Packet, Shipping, and Tax	\$106.30	Included
10	20	Catalog E Award Selection, Certificate and Recognition Packet, Shipping, and Tax	\$167.67	Included
15	31	Catalog G Award Selection, Certificate and Recognition Packet, Shipping, and Tax	\$212.58	Included
20	27	Catalog H Award Selection, Certificate and Recognition Packet, Shipping, and Tax	\$271.90	Included
25	15	Catalog K Award Selection, Certificate and Recognition Packet, Shipping, and Tax	\$315.40	Included
30	9	Catalog M Award Selection, Certificate and Recognition Packet, Shipping, and Tax	\$370.98	Included
35	2	Catalog N Award Selection, Certificate and Recognition Packet, Shipping, and Tax	\$462.01	Included
40	0	Catalog P Award Selection, Certificate and Recognition Packet, Shipping, and Tax	\$544.25	Included

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**CURRENT CLIENT REFERENCES. MINIMUM OF FIVE (5) REQUIRED**

*Submit this form with the BID/Proposal, with valid contact information, failure to do so is grounds for disqualification.*

Company	Farmers Insurance
Address	16850 W. 119th Street
City, ST, Zip	Olathe, KS 66061
Phone Numbers/Email	913-564-6411, natalie.giannakis@farmersinsurance.com
Contact Name/Title	Natalie Giannakis LPCS, Agency Administration Manager
Type of Engagement	Service Award Program
Company	County of Riverside
Address	4080 Lemon St FL 3
City, ST, Zip	Riverside, CA 92501-3609
Phone Numbers/Email	951-955-3557, jfuller@rivco.com
Contact Name/Title	Jennifer Fuller, Deputy HR Director
Type of Engagement	Service Award Program
Company	C.R. England Transport
Address	1325 South 4700 West
City, ST, Zip	Salt Lake City, UT 84104
Phone Numbers/Email	801-974-2704, erik.ekberg@crengland.com
Contact Name/Title	Erik Ekberg, Manager Organizational Effectiveness & Development
Type of Engagement	Service Award Program
Company	Kia Motors America, Inc.
Address	111 Peters Canyon Road
City, ST, Zip	Irvine, CA 92606
Phone Numbers/Email	949-383-2692, laurenwong@kiausa.com
Contact Name/Title	Lauren Wong, HR Recruiting Generalist
Type of Engagement	Service Award Program
Company	Orange County Transportation Authority
Address	550 S. Main St.
City, ST, Zip	Orange, CA 92868
Phone Numbers/Email	714-560-5771, cpedroza@octa.net
Contact Name/Title	Camille Pedroza, Employee Programs Specialist
Type of Engagement	Service Award Program
Bidder's/Proposer's Company Name	Michael C. Fina Recognition
Legal Structure (corp./partner/proprietor)	Privately-owned corporation
Principle Office Address	33-01 Hunters Point Avenue
City, ST, Zip	Long Island City, NY 11101
Phone Number and E-Mail	800-999-3462, salesinfo@mcfina.com
Federal Employer Identification Number	13-4000989
Title of Person Authorized to Sign	Chief Customer Officer
Print Name of Person Authorized to Sign	Jeffrey Fina
Date Signed and Authorized Signature	

Rev08172016



**PROPOSED DISADVANTAGED BUSINESS ENTERPRISES (DBE) PARTICIPATION**

*This form must be submitted with the BID/Proposal,  
to have it considered during BID/Proposal evaluation.*

*The bidder/proposer intends to utilize the following DBE contractors on this project.*

*Signature of participating DBE is confirmation of willingness to participate on this project.*

Company	N/A
Address	
City, ST, Zip	
Phone Number	
Email	
Contact Name	
Type of work to be performed	
Dollar value of participation	
Signature of participating DBE	
Company	
Address	
City, ST, Zip	
Phone Number	
Email	
Contact Name	
Type of work to be performed	
Dollar value of participation	
Signature of participating DBE	
Company	
Address	
City, ST, Zip	
Phone Number	
Email	
Contact Name	
Type of work to be performed	
Dollar value of participation	
Signature of participating DBE	
Company	
Address	
City, ST, Zip	
Phone Number	
Email	
Contact Name	
Type of work to be performed	
Dollar value of participation	
Signature of participating DBE	

(DUPLICATE THIS FORM AS REQUIRED)





**NOT ON EXCLUDED PARTIES LIST SYSTEM (REQUIRED)**

*Submit this form with the BID, failure to do so is grounds for disqualification.*

The Bidder certifies that it is NOT on the Excluded Parties List System of ineligible firms for federally financed and assisted construction, materials, equipment contracts or services.

Bidder's Company Name	Michael C. Fina Recognition
Legal Structure (corp./partner/proprietor)	Privately-owned corporation
Principle Office Address	33-01 Hunters Point Avenue
City, ST, Zip	Long Island City, NY 11101
Phone Number	800-999-3462
Fax Number	718-937-7193
E-Mail	salesinfo@mcfina.com
Federal Employer Identification Number	13-4000989
Title of Person Authorized to Sign	Chief Customer Officer
Print Name of Person Authorized to Sign	Jeffrey Fina
Date Signed and Authorized Signature	



**LIST OF SUBCONTRACTORS AND DBES (REQUIRED >½ OF 1% SHARE OF BID)**

*Submit this form with the BID/Proposal, failure to do so is grounds for disqualification.*

**One (1) form required of each bidder and proposed subcontractor having greater than ½ of 1% share of the bid. Government Code § 4100 on, "Subletting and Subcontract Fair Practices Act".**

Company	N/A		
Address			
City, ST, Zip			
Phone Numbers/Email			
Contact Name/Title			
Type of Engagement			
Type of work to be performed			
Dollar value of participation	DBE qualified?	Yes <input type="checkbox"/>	No <input type="checkbox"/>

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Company			
Address			
City, ST, Zip			
Phone Number			
Contact Name/Title			
Type of Engagement			
Type of work to be performed			
Dollar value of participation	DBE qualified?	Yes <input type="checkbox"/>	No <input type="checkbox"/>

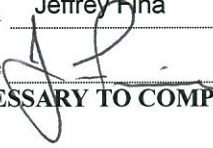
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Company			
Address			
City, ST, Zip			
Phone Number			
Contact Name/Title			
Type of Engagement			
Type of work to be performed			
Dollar value of participation	DBE qualified?	Yes <input type="checkbox"/>	No <input type="checkbox"/>

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Total DBE participation	\$0 Dollars	% of Total Contract	0%
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Bidder's/Proposer's Company Name	Michael C. Fina Recognition
Legal Structure (corp./partner/proprietor)	Privately-owned corporation
Principle Office Address	33-01 Hunters Point Avenue
City, ST, Zip	Long Island City, NY 11101
Phone Number and E-Mail	800-999-3462, salesinfo@mcfina.com
Federal Employer Identification Number	13-4000989
Title of Person Authorized to Sign	Chief Customer Officer
Print Name of Person Authorized to Sign	Jeffrey Fina
Date Signed and Authorized Signature	

**DUPLICATE THIS FORM AS NECESSARY TO COMPLETE LIST (SIGN LAST ONE)**



**DECLARATION OF NON-COLLUSION (REQUIRED)**

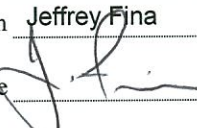
*Submit this form with the BID, failure to do so is grounds for disqualification.*

I hereby declare (or affirm) under penalty of perjury that:

1. I am the bidder (if the bidder is an individual), a partner in the bid (if the bidder is a partnership), or an officer or employee of the bidding corporation and have authority to sign on its behalf (if the bidder is a corporation);
2. The bidder has independently produced the attached bid(s) without collusion, agreement, understanding or planned common course of action, with any other source, that would limit independent bidding competition;
3. The contents of the bid(s) have not been communicated by the bidder and or its employees and or agents to any person not an employee and or agent of the bidder and or its surety, on any bond furnished with the bid, and will not be communicated to any such person prior to the official opening of the bid, and
4. I have fully informed myself regarding the accuracy of the statements made in this declaration.

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Bidder's Company Name	Michael C. Fina Recognition
(corp./partnership/sole proprietor)	Privately-owned corporation
Principle Office Address	33-01 Hunters Point Avenue
City, ST, Zip	Long Island City, NY 11101
Phone Number	800-999-3462
Fax Number	718-937-7193
E-mail Number	salesinfo@mcfina.com
Federal Employer I.D. Number	13-4000989
Title of Person Authorized to Sign	Chief Customer Officer
Print Name Authorized to Sign	Jeffrey Fina
Authorized Signature	
Date Signed	





**DEBARMENT, SUSPENSION, & OTHER RESPONSIBILITY MATTERS  
(REQUIRED >\$25,000)**

*Submit this form with BID, failure to do so is grounds for disqualification.*

**One (1) form required of each bidder and subcontractor having greater than a \$25,000 share of the bid.** U.S. Code, Title 31, § 6101 note and U.S. DOT regulations on "Debarment and Suspension," 49 C.F.R. Part 29.

The Participant (the bidder and potential contractor or potential subcontractor for a third party contract) certifies to the best of its knowledge and belief, that it and its principals:

1. Are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions by a Federal department or agency;
2. Have not within a three-year period preceding this bid been convicted of or had a civil judgment rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (Federal, State or local) transaction or contract under a public transaction; violation of Federal or State antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property;
3. Are not presently indicted for or otherwise criminally or civilly charged by a governmental entity (Federal, State, or local) with commission of any of the offenses enumerated in paragraph (2) of this certification; and
4. Have not within a three-year period preceding this application/bid had one or more public transactions (Federal, State, or local) terminated for cause or default.

*An explanation must be attached to this certification regarding any exception(s).*

The Primary Participant certifies that it has authority under State and local laws to comply with the subject assurances, the truthfulness and accuracy of the contents of this certification, any attached explanation submitted herewith, understands the applicability of 31 U.S.C. Sections 3801 *Et. Seq.* and that this certification has been legally made.

Bidder's Company Name	Michael C. Fina Recognition
Legal Structure (corp./partner/proprietor)	Privately-owned corporation
Select One	<input checked="" type="checkbox"/> Prime or <input type="checkbox"/> Subcontractor (submit after award)
Principle Office Address	33-01 Hunters Point Avenue
City, ST, Zip	Long Island City, NY 11101
Phone Number	800-999-3462
Fax Number	718-937-7193
E-Mail	salesinfo@mcfina.com
Federal Employer Identification Number	13-4000989
Title of Person Authorized to Sign	Chief Customer Officer
Print Name of Person Authorized to Sign	Jeffrey Fina
Date Signed and Authorized Signature	





**ITEM #F7**  
**GENFARE SOFTWARE SUPPORT AND**  
**MAINTENANCE**

# **SAMPLE GENFARE CONTACT (FOR LEGAL REVIEW ONLY)**

## **AGREEMENT FOR GENFARE SUPPORT SERVICES**

This Agreement (this "Agreement") is effective as of **insert effective date here** (hereinafter "Effective Date"), by and between Genfare, a division of SPX Corporation, a Delaware corporation, with an office at 800 Arthur Avenue, Elk Grove Village, IL 60007 (hereinafter "Genfare") and **insert Transit name**, a Transit company, with an office at **insert Transit Address here** (hereinafter "Company"), each a Party and collectively the Parties.

WHEREAS, Genfare is in the business of providing customized fare solutions and collection systems to transit agencies and companies throughout North America including fare control and electronic validating fareboxes, smart card and mobile payment options, ticket vending and point of sale card distribution systems. Genfare additionally provides support and related Services (as specified in the attached Schedules, collectively the "Services") for the purposes of supporting the fare solutions' and collection systems' software;

WHEREAS, Company desires to obtain Services, and Genfare is willing to provide the Services on the terms and conditions set forth herein; and

WHEREAS, Genfare and Company entered into an agreement whereby Company purchased from Genfare certain hardware, software and/or components ("System"), and such agreement may include a Software License Agreement (such Agreement and the Software License Agreement, collectively "Purchase Agreement");

NOW THEREFORE, in consideration of the obligations herein made and undertaken, and other good and valuable consideration (the receipt and sufficiency of which are hereby acknowledged) the Parties intending to be legally bound, covenant and agree as follows:

### **1.0 Scope of Work**

1.1 Genfare shall provide the Services as more fully described in Schedules **A, B and C**, as applicable. (beginning on page 9) The terms and conditions of this Agreement and any additional terms that may apply in the attached Schedule shall apply to the Services performed by Genfare under this Agreement.

1.2 The Services may be amended at any time as agreed to by the Parties from time to time. Upon a request to Genfare for additional support or extra work that is not covered under this Agreement, Genfare shall prepare a proposal setting out the scope of the work, deliverables, work schedule, plan, and the cost. Upon written approval and acceptance of the extra work proposal by both Parties (hereinafter the "Work") such Work shall be attached to the relevant Schedule and performed subject to the terms of this Agreement.

1.3 This Agreement consists of this contract document and the attached Schedules (collectively the "Agreement") and sets forth the full and complete understanding of the parties with regard to the subject matter hereof as of the date first above stated, and it supersedes any and all agreements and representations whether written or verbal made or dated prior thereto with

regard to the same subject matter. In the event of any conflict between the body of this Agreement and any of the Schedules hereto, this Agreement shall control unless it is specifically stated in such Schedule that those terms are intended to and shall supersede the Agreement.

## **2.0 Term of Engagement**

The term of this Agreement shall begin on the Effective Date and shall be in effect for one (1) year (the "Initial Term") and thereafter may be extended by for a term to be mutually agreed to in writing by the Parties (the Initial Term and any written extension, the "Term"). The confidentiality and intellectual provisions shall survive the termination of this Agreement.

## **3.0 Price and Payment**

In consideration of the Services provided herein, Company shall pay Genfare in accordance with the payment terms in the appropriate Schedule. If no payment terms are included in a Schedule, all payments for Services shall be due 100% net thirty (30) days from Company's receipt of Genfare's invoice.

## **4.0 Confidentiality**

"Confidential Information" shall mean any information owned by a Party, including any and all proprietary technical, financial and business information, design, manufacturing, customer information, personnel information, new product developments, and general business plans of any kind whatsoever, regardless of whether furnished in oral, visual, written and/or other any tangible and intangible embodiments thereof, whether or not patentable. All such information shall be treated by the receiving Party as confidential and proprietary. The receiving Party (a) shall safeguard and keep all Confidential Information confidential, (b) shall use the Confidential Information only in furtherance of the Agreement, and (c) shall not be disclose such Confidential Information to any other person, firm or entity except in furtherance of the services (i) to those of its employees, officers, managers, members or representatives (collectively, "Representatives") who have a need to know such Confidential Information to provide the Services provided herein, (ii) as allowed by the express, written consent of the disclosing Party or (iii) as compelled by a court of competent jurisdiction (provided that the receiving Party provides the disclosing Party with prompt written notice that the disclosing Party may seek a protective order or other appropriate remedy). The receiving Party shall be responsible for all actions and omissions of its Representatives. Upon the termination or expiration of this Agreement, receiving Party shall return all Confidential Information to the disclosing Party. However, the receiving Party may retain Confidential Information as may reasonably form a part of the governance record of the receiving Party, and as necessary to comply with legal requirements pertaining to the retention of documents. Notwithstanding the termination or expiration of this Agreement, the obligations in this Section shall survive such termination or expiration for a period of five (5) years after such termination or expiration.

## **5.0 Intellectual Property**

Genfare retains title to all intellectual property, patents, trademarks, know-how, copyrights, software, engineering work product, designs, models, production prints, drawings, technical data, and other information and documents that relate to the goods sold and Services performed to the Company. Unless advised by Genfare in writing to the contrary, all such

intellectual property, information and documents disclosed or delivered by Genfare to the Company are to be deemed proprietary to Genfare and shall be used by Company solely for inspecting, installing, operating and maintaining the goods and services sold to Company and not used by Company for any other purpose. If notified promptly by Company in writing and provided with authority, information, and assistance, Genfare shall defend or may at any time settle, at Genfare's option, any suit or proceeding alleging that any goods designed and sold to Company or Services performed pursuant to Genfare's proposal infringe any United States patent or trademark. Genfare shall pay any damages awarded in such suit or proceeding up to the amount of the purchase price of the goods or the Services performed. In the event any goods or Services are held to constitute such infringement and the use of the goods or Services are enjoined, Genfare shall, at its option and expense: (i) procure for Company the right to continue using the goods or Services; (ii) replace the goods or Services with non-infringing goods; (iii) modify the goods or Services so that they become non-infringing; or (iv) remove the goods or Services and return the depreciated purchase price. The foregoing indemnity shall not apply to any claim that arises out of (i) Genfare's compliance with the specification or design of Company; (ii) any products or Services that have been altered or modified by any part other than Genfare; and (iii) the use of any product or Services in combination with other equipment and materials not furnished by Genfare. THE FOREGOING CONSTITUTES THE ENTIRE LIABILITY OF GENFARE AND SOLE AND EXCLUSIVE REMEDY OF COMPANY FOR PATENT OR TRADEMARK INFRINGEMENT RELATED TO THE GOODS AND SERVICES. NOTWITHSTANDING THE FOREGOING, GENFARE'S LIABILITY SHALL NOT APPLY TO ANY SUIT OR PROCEEDING ALLEGING INFRINGEMENT RESULTING FROM OR RELATED TO GENFARE'S COMPLIANCE WITH THE SPECIFICATIONS OR DESIGN OF COMPANY OR THE USE OF THE GOODS OR SERVICES BY COMPANY IN COMBINATION WITH OTHER GOODS OR MATERIALS.

## **6.0 Warranty**

Genfare warrants that during the Term, all Services provided for under the terms of this Agreement shall be performed in a professional manner and shall meet the highest level of care, skill, knowledge and judgment required or reasonably expected of providers of comparable services. The Services performed hereunder shall be performed (a) in accordance with all conditions and requirements herein, (b) in accordance with all applicable laws and regulations, and (c) in a diligent and workmanlike manner by qualified and skilled personnel appropriately supervised.

If during the Term it shall be proven to Genfare's reasonable satisfaction that any Services are nonconforming, then at Genfare's option, such Services shall, be corrected, reinstalled or upgraded. This warranty shall not apply to (i) any loss or damage resulting from normal wear and tear or alteration, misuse, or abuse or (ii) improper installation, operation or maintenance by Company or a third party, including use of non-OEM parts.

**THE FOREGOING WARRANTIES ARE IN LIEU OF, AND GENFARE EXPRESSLY DISCLAIMS, ALL OTHER WARRANTIES, EXPRESS OR IMPLIED IN FACT OR BY LAW, INCLUDING WITHOUT LIMITATION ALL WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE OR OTHERWISE. THE FOREGOING WARRANTIES STATE GENFARE'S ENTIRE AND EXCLUSIVE LIABILITY AND THE COMPANY'S SOLE AND EXCLUSIVE REMEDY, IN CONNECTION WITH THE SERVICES, SALE OR FURNISHING OF MATERIALS, THEIR DESIGN, SUITABILITY FOR USE, INSTALLATION, OPERATION OR OTHERWISE.**

## **7.0 Termination**

7.1 Either Party may terminate this Agreement at any time, for any reason and without cause, with thirty (30) days written notice to the other Party. If Company cancels all or part of the Agreement without cause, Company will reimburse Genfare for (i) its expenses incurred to perform under this Agreement through the cancellation date, including, without limitation, materials and labor, plus (ii) a reasonable profit.

7.2 Prior to terminating this Agreement, or any part hereof, for cause, breach of default, Company shall give Genfare written notice of such event of cause, breach of default and not less than thirty (30) days to cure such event of cause, breach or default. If Genfare fails to so cure, Company shall be entitled to obtain replacement Services substantially similar and functionally equivalent to those to be purchased pursuant to this Agreement, and Genfare's sole liability shall be to pay the reasonable excess costs incurred by Company in procuring such Services.

7.3 Upon termination of this Agreement, Genfare shall provide reasonable assistance necessary to transition support to another service provider designated by Company. All paid work and partially completed work under any remaining Work agreements shall be promptly delivered to Company by Genfare.

7.4 Termination of this Agreement shall not affect the Purchase Agreement except as otherwise specified in writing by the Parties.

## **8. Indemnification**

Genfare agrees to indemnify and hold harmless Company, its elected and appointed officers, and employees from and against any and all claims, demands, defense costs, liability or damages of any kind or nature from a third party for property damages, personal injury or death to the extent arising directly from: (a) Genfare's (or Genfare's subcontractor's if any), negligent acts, errors or omissions or willful misconduct or (b) third party claims for any actual or alleged infringement of a patent, trademark, copyright, trade secret or other intellectual or proprietary rights regarding the products and Services furnished under this Agreement (except to the extent resulting from Company's combination of Genfare's products with other products or services not provided by Genfare). Notwithstanding the foregoing, there shall be no indemnification hereunder by Genfare as to any losses caused by the negligence or fault of Company or any of its employees or agents. If Company shall claim indemnification hereunder, Company shall notify Genfare in writing of the basis for such claim or demand setting forth the nature of the claim or demand in reasonable detail. Genfare agrees to assume the defense of any such claim and to defend the same at Genfare's expense. The parties agree to reasonably cooperate with each other on any such claims. If Company desires to participate in the defense, then Company shall have the right to do so through counsel of its own choosing, provided that Company will be responsible for all of its costs in so doing.

## **9. Limitation of Liability**

Notwithstanding anything in this Agreement to the contrary, to the fullest extent permitted by applicable law, Genfare shall not be liable under any theory of relief, arising out of or related to the Agreement or Genfare's acts or omissions in connection therewith for incidental, special or

consequential damages of any nature, including, without limitation, loss of profits or contract, damage to property or loss of use, any business interruption or loss of profit, anticipated savings, data, contract, goodwill or the like that may be suffered by Company or claimed against it. Any action for breach of contract or otherwise must commence within one year after cause of action accrues.

Genfare's maximum aggregate liability under the Agreement shall not exceed the total price of Services performed by Genfare and paid for by Company that give rise to a claim hereunder.

## **10. Force Majeure**

To the extent that either party is not able to perform an obligation under this Agreement due to fire, flood, acts of God, severe weather conditions, strikes or labor disputes, war or other violence, acts of terrorism, any law or order of any governmental agency, or other cause beyond that Party's reasonable control, that Party may be excused from such performance so long as such Party provides the other Party with prompt written notice describing the condition and takes all reasonable steps to avoid or remove such causes of nonperformance and immediately continues performance whenever and to the extent such causes are removed.

## **11. Conflict of Terms**

In the event there is a conflict of terms (or the subject matter thereof) between this Agreement and the Purchase Agreement with respect to the Services, this Agreement shall prevail and its terms shall prevail over any other terms (or the subject matter thereof). In the event there is a conflict of terms (or the subject matter thereof) between this Agreement and the Purchase Agreement with respect to the sale of Genfare's System, the Purchase Agreement terms shall prevail over any other terms (or the subject matter thereof).

## **12. Export**

Company warrants that it will adhere to all U.S. laws and regulations in its use and disclosure of the Confidential Information, including, without limitation, the Export Administration Regulations of the U.S. Department of Commerce and the International Traffic In Arms Regulations of the U.S. Department of State and neither it nor its representatives shall export or re-export any Confidential Information (or any part thereof or the direct product of such Confidential Information) in violation of such laws.

## **13. Insurance**

Genfare shall maintain insurance coverage consistent with its existing programs and the requirements of any applicable law.

## **14. Miscellaneous**

### **14.1 Assignment**

This Agreement and/or any rights or obligations hereunder shall not be assigned by either Party without the prior written consent of the other Party, which consent shall not be unreasonably withheld. Any purported assignment contrary to this Section shall be of no legal effect.

#### 14.2 Severability

Each provision of this Agreement shall be valid and enforceable to the fullest extent permitted by law. If any provision of this Agreement or portion thereof or the application thereof to any person or circumstances shall to any extent be invalid or unenforceable: the remainder of this Agreement and its application to any person or circumstances shall not be affected thereby; and the Parties hereto will negotiate in good faith to amend this Agreement to implement the intentions set forth herein.

#### 14.3 Governing Law

This Agreement shall be governed by and construed in accordance with the laws of Illinois and the federal laws of the United States applicable therein and shall be treated in all respects as an Illinois contract. The Parties submit to the exclusive jurisdiction of the courts of Illinois for the resolution of any and all disputes relating to this Agreement or any of its terms.

#### 14.4 Waiver

No party will be deemed to have waived the exercise of any right that it holds under this Agreement unless such waiver is made in writing. No waiver made with respect to any instance involving the exercise of any such right will be deemed to be a waiver with respect to any other instance involving the exercise of the right or with respect to any other such right.

#### 14.5 Counterparts

This Agreement may be executed in any number of counterparts with the same effect as if all parties hereto had all signed the same document. All counterparts shall be construed together and shall constitute one and the same original agreement.

#### 14.6 Legally Required Disclosures

Company will (i) immediately notify Genfare in writing of any legal process served on Company for the purpose of obtaining protected information and (ii) permit Genfare adequate time and control to exercise its legal options to prohibit or limit disclosure. In the event that any disclosure is required, Company must furnish only that portion of protected information that is legally required and must exercise its best efforts to obtain a reliable assurance that confidential treatment will be accorded protected information that is disclosed.

#### 14.7 Taxes

Fees stated in the Schedules do not include applicable taxes. Unless Company is a tax exempt entity and provides Genfare with reasonable documentation demonstrating tax exempt status, Company shall be responsible for the payment of all taxes.

#### 14.8 Notice

Any notice under this Agreement shall be sufficiently given if given by: personal delivery; or registered letter, postage prepaid, and mailed through a US post office; or reputable overnight courier;

In the case of Genfare addressed to:

Genfare  
800 Arthur Avenue  
Elk Grove Village, IL 60007  
Attn: Tara Farnsworth  
Email: tara.farnsworth@spx.com  
Tel. No : 847-871-1238

In the case of the Company addressed to:

Company name:  
Attn:  
Address:  
Email:  
Tel. No.:

or to any address as may be designated in writing by the parties in accordance with this provision. The date of receipt of any notice shall be deemed conclusively given (i) on the day it was received by personal delivery, (ii) at the beginning of business on the third (3<sup>rd</sup>) business day after it was mailed by registered mail or (iii) at the end of business on the next business day after it was mailed by reputable overnight courier.

#### 14.9 Party Status

Neither Genfare nor Company shall be deemed to be an agent or employee of the other and each is an independent company and the legal relationship of any person performing services for Genfare or Company shall be one solely between that person and Genfare or Company.



**IN WITNESS WHEREOF** the parties hereto have caused this Agreement to be executed in triplicate by their respective duly authorized representatives as of the date first written above.

Genfare

By: \_\_\_\_\_  
Name: Tara Farnsworth  
Title: Director of Marketing and Customer Care

Company

By: \_\_\_\_\_  
Name:  
Title:

**ATTACHMENTS**

**AS CHECKED**

SCHEDULE A - Software Support Services	<u>          X          </u>
SCHEDULE B – Help Desk Services	<u>          X          </u>
SCHEDULE C - Detailed Specification for Services	<u>          X          </u>

#### SCHEDULE A SOFTWARE SUPPORT SERVICES

Software Support (Year 1)	insert contract amount here/yr.
Software Support (Year 2), to be evaluated 30 days prior to year one expirations	TBD

#### SERVICES OVER AND ABOVE WARRANTY AGREEMENT

##### System Application Software (Central computer, Central Revenue Server, Workstations)

Item	Description	Unit Price
1	System Discount	5%
2	System Discount	TBD

\*5% discount off of OEM spare parts, repairs, software upgrades, System Support paid services and training.

#### SOFTWARE SUPPORT SERVICES

Services include: 1) All minor versions software upgrades and patches available and/or required; and 2) access to the Issue Resolution Timeline, as described below in Section 3.

The Services do not include:

- Travel expenses required in the course of an intervention;
- Any shipping costs required in the course of an intervention.

The Services will not apply in the event of:

- An unauthorized modification to the software configuration or programming;
- An unauthorized modification to the material;
- A failure to report the issue in a timely manner (no more than seven (7) business days of the issue's initial occurrence);
- Any problem that is caused by abuse, misuse, or an act of God (such as a flood).

#### Definitions

"Error" means any situation where the Product:

(a) does not operate in accordance with the System Specifications; and/or

(b) produces incorrect results; and/or

(c) encounters any other problems or issues set out in the chart in Section 3 of this Schedule.

“Central System” refers to the application software known as the Vendstar Information Processing software, the application software which provides status monitoring and reporting of the Vendstar Ticket Vending Machine activity.

“Critical Error” is an error requiring Tier 1 Support, as set out in Section 3 herein.

“High Priority Error” is an error requiring Tier 2 Support, as set out in Section 3 herein.

“Initial Response” is as set out herein.

“Low Priority Error” is an error requiring Tier 3 Support, as set out in Section 3 herein.

“Major Version” means a release of a software product that contains significant changes to features or functionality or underlying technology and which is commonly identified by a unique numerical or name identifier. For greater certainty, this release does not refer to releases of minor features or functionality or to releases of significant fixes or “dot” releases.

“Tier 1 Support” is set out under Section 3 herein.

“Tier 2 Support” is set out under Section 3 herein.

“Tier 3 Support” is set out under Section 3 herein.

“Standard Service Hours” include the time period Monday through Friday beginning at 8:30am and ending at 5:00pm Central Time, excluding federal, Company, or Genfare holidays.

“Support” means the Company’s support obligations as particularly detailed in this Agreement.

### **1. Software patches and upgrades**

Genfare shall develop, test, provide and install all applicable software “patches” or upgrades that become necessary to remedy system software faults or “bugs” identified during the Term.

Genfare shall provide at no additional cost, all minor version updates (for example, version 2.5 superseding version 2.4, but this does not include a major version update such as 3.0.), software patches and error corrections available for the system software for the duration of this Agreement. Genfare shall update all sites to the same software platform within ninety (90) days of implementing an upgrade to the first site.

Prior to implementing any software patches or upgrades, Genfare shall first notify Company’s IT department in advance to schedule a time and date for the installation. Depending on the scope of the change, Company may wish to back-up their system prior to the software upgrade.

### **1.2 Exceptions**

The provisions of the Warranty shall not apply in the event of negligence on the part of Company, its customers, employees, or representatives. In the event of dispute, it shall be the sole responsibility of Genfare to establish evidence of negligence.

If there is an indication of deliberate tampering or patterns of damage not consistent with normal usage, Genfare will notify Company immediately.

Normal conditions of operating within the limitations specified by the requirements of the specification and normal customer use of the system use shall include those variations in temperature, humidity, vibration, ambient and transient electric conditions, dust, and dirt.

## **2. Genfare's Duties - Support**

2.1 The System consists of several components. For the sake of clarity, although Genfare shall be responsible for the software support of the System, Company shall be the Party that initially responds to all Errors. Genfare agrees to assist Company, as required and contracted by Company. Genfare shall:

- (a) Provide software support for the System, as required by this Agreement, and also provide additional services at agreed upon rates;
- (b) Provide Tier 1 Support, Tier 2 Support and Tier 3 Support to Company for the Fare Collection System and correct and resolve any Errors;
- (c) Carry out all support at the highest level of professional standards;
- (d) Upon request by the Company (but no more than once a month), provide a written report to Company Detailing Company's personnel who have contacted Genfare for support, a description of Errors according to Error classification (as set out in Section 3 below), open and closed cases and their duration, and where a case is open, a correction plan, including estimated time to complete the correction plan;
- (e) Provide a response in accordance with the chart below in Section 3 of this Agreement for all Errors;
- (f) Ensure that the System's software will operate and function with updates, upgrades, modifications or fixes, including without limitation, software patches or bug fixes, that are provided by Genfare;
- (g) Ensure that the System will operate and function with new software releases;
- (h) Ensure that the Company provides support for both the current Major Version of the Software and the Major Version immediately preceding the current Major Version of the Software;
- (i) Co-operate with any third parties employed or used by Company to assist with support, including without limitation, by communicating with such third parties and providing them with any reasonably requested information in a timely manner;
- (j) Ensure that Genfare personnel are available to carry out the obligations of Genfare hereunder. Where such persons are not available, Genfare shall be permitted to provide a substitute, subject to the prior written consent of Company, acting reasonably. Genfare shall, upon request from Company, remove personnel from Company's account under this Agreement if such

personnel are not performing adequately or are not able to work effectively with Company staff, or are not complying with applicable Company policies, or engage in harassing or other inappropriate behavior in the opinion of Company;

- (k) Provide contact information for Genfare personnel, available to receive notices of Errors under Section 3 of this Agreement;

## 2.2 Genfare shall NOT:

- (a) Use any Subcontractors to carry out any of its tasks hereunder unless approved by Company.
- (b) Be responsible for any malfunction of servers, computer equipment, communications infrastructure, cabling, networking capability or any other element not specifically provided by Genfare.
- (c) Be responsible for any System which is not under Genfare warranty.
- (d) Pay any claim pertaining to work done by Company or affiliated personnel for removing modules or equipment to be shipped to Genfare for warranty repair.

## 2.3 Company shall:

- (a) Provide any information reasonably requested by Genfare to understand and describe an Error in order to allow Genfare to carry out its duties hereunder;
- (b) Be entitled to use any third party to carry out all or part of the support and maintenance of the System, or to carry out such support and maintenance itself;
- (c) Make all requests for support through a Company's representative, or Company's representative's substitute(s) or designee(s).
- (d) Provide appropriate personnel and support as is necessary for Company personnel to perform their duties, such as IT technical support, communications support, revenue service support and security personnel, flaggers and other proper personnel;
- (e) Inform Genfare of all Company operating and security policies established for the safe, secure and proper interaction with the System;
- (f) Company shall be responsible for freight charges to Genfare, located in Elk Grove Village, IL, and all costs, expenses related thereto; and
- (g) Promptly update all system documentation when any change is made to the System and update all in-line commenting and provide to Genfare all such updated documents.

### 3. Error Priority and Response

ALL RESPONSE TIMES CONTAINED IN THIS AGREEMENT ARE CALCULATED FROM THE TIME COMPANY MAKES AN INITIAL CALL FOR SUPPORT. RESOLUTION TIMES ARE DEPENDENT UPON ACCESSIBILITY TO THE APPLICABLE SYSTEM, AS GRANTED BY THE COMPANY.

Error Priority Classification / Description for reporting to VENDOR	Description & Expected Action(s) & Response Times from VENDOR
<p><b>Tier 1 Support - CRITICAL</b></p> <p>The Error is classified as Critical if any of the Fare Collection System fails such that any of the following occurs:</p> <ul style="list-style-type: none"><li>• Software and/or equipment cannot be operated</li></ul>	<p>Expected response: Genfare will provide an e-mail response stating the status and action plan in:</p> <p><b>Less than 3 hours from the time Genfare is notified of the Error</b> during Standard Service Hours</p> <p><i>Every attempt is to be made by Genfare to resolve the Error within <u>24 hours</u> (i.e. allocate as many resources as are required to resolve a problem ASAP). Genfare will give the highest scheduling priority and devote its best efforts and best available resources to the verification, analysis, response, temporary avoidance and full resolution and correction of Errors in this category. If the problem is not resolved within 3 hours, Genfare shall ensure that its most senior personnel are assigned to the work of resolving the Error, on a full-time basis.</i></p>

Error Priority Classification / Description for reporting to VENDOR	Description & Expected Action(s) & Response Times from VENDOR
<p><b>Tier 2 Support - HIGH PRIORITY</b></p> <p>The Error is classified as a High Priority Error if any of the Fare Collection Systems such that any of the following occurs:</p> <ul style="list-style-type: none"> <li>• information is not being collected from equipment</li> <li>• reports are not being generated;</li> <li>• the Software or any part or component thereof are not functioning in accordance with the System Specifications;</li> </ul>	<p>Expected response: Genfare will provide an e-mail response stating the status and action plan in:</p> <p><b>Less than 4 hours from the time Genfare is notified of the Error</b> (for High Priority Errors first occurring during Standard Service Hours)</p> <p><b>Prior to 10:00AM CT on the Next Business Day</b> (for High Priority Errors first occurring outside of Standard Service Hours)</p> <p><b>Genfare shall provide a status report of the situation within 1 business day.</b></p> <p><i>Every attempt is to be made by Genfare to resolve the Error within <u>24 hours</u> (i.e. allocate as many resources as are required to resolve a problem within this time). Genfare will give the second highest scheduling priority and devote high efforts and experienced and available resources to the verification, analysis, response, temporary avoidance and full resolution and correction of Errors in this category. If the problem is not resolved within 6 hours, Genfare shall ensure that its most senior personnel are assigned to the work of resolving the Error, on a full-time basis.</i></p>



Error Priority Classification / Description for reporting to VENDOR	Description & Expected Action(s) & Response Times from VENDOR
<p><b>Tier 3 Support – Low Priority</b></p> <p>The Error is classified as a Low Priority Error if any of the Fare Collection System cannot be fixed by the swapping out of components.</p>	<p>Expected response: Genfare will provide an e-mail response stating the status and action plan in:</p> <p><b>Less than 24 hours from the time Genfare is notified of the Error</b> (for Low Priority Errors first occurring during Standard Service Hours)</p> <p><b>Prior to 4PM CT on the Next Business Day</b> (for Low Priority Errors first occurring outside of Standard Service Hours)</p> <p><b>Genfare shall provide a status report of the situation within five (5) business days.</b></p> <p><i>100% resolution of the Error is to be made by Genfare within <u>twenty (20) Business Days</u> (i.e. allocate as many resources as are required to resolve a problem within this time). Genfare will give the third highest scheduling priority and devote reasonable efforts and reasonably available resources to the verification, analysis, response, temporary avoidance and full resolution and correction of Errors in this category. If the problem is not resolved within 12 hours, Genfare shall ensure that more senior personnel are assigned to the work of resolving the Error.</i></p>

### Support Response Time and Testing

#### Initial Response

Genfare shall provide an initial response (the “Initial Response”) in accordance with Section 3 above. As part of the Initial Response Genfare shall:

- (i) Request access to the System or any part thereof, other than to the actual TVM itself, in order to determine the nature of the reported Error. Said access must be coordinated through the primary Company contact or his/her designate. Access will only be provided upon request and will be terminated upon resolution of the Error. During said access, Genfare agrees to observation by Company staff.
- (ii) Determine the cause of the Error and the solution to the Error.
- (iii) Provide Company with an estimate of the time required to correct the reported Error in accordance with Section 3 above.

### Completion of Support

Within five (5) Business Days of the correction of the reported Error, Genfare shall provide Company a written summary of the error correction and the solutions provided by Genfare.

### Telephone Support

#### *Availability*

Telephone Support shall be available during the Standard Service Hours during the Term via Genfare's support telephone numbers: 847.871.1231

#### *Response Time*

Genfare shall make available an adequate number of Support representatives to ensure that the Support requirements, including, without limitation, all required response times as described under Section 3, are met.

#### *Definition of Telephone Support*

Genfare shall provide oral responses to the following telephone enquiries:

- (a) Questions regarding the functions of the System.
- (b) Questions regarding the steps for Company to follow in operating the System.
- (c) Questions regarding the proper format for the input of Company's data or information.
- (d) Questions regarding steps to improve the efficiency of operation of the System.
- (e) Questions regarding the interface of the System, and any related system in Company's Current Technical Environment.
- (f) Questions regarding the interface of the System and other software.
- (g) Questions regarding the documentation relating to the System.
- (h) Questions regarding changes to the operation of the System due to the provision of a maintenance and/or support service to Company.

## **SCHEDULE B – HELP DESK SERVICES**

Genfare will provide Help Desk Services to assist Company with use of the Genfare licensed rights and assistance in resolving problems encountered by Company. If applicable, Genfare will coordinate with Company in connection with obtaining support from third-party vendors for Third Party Software Products. Help Desk services will be available from 8:30 AM – 5:00 PM Central time Monday through Friday with the exception of standard, scheduled Genfare holidays listed below.

### **1. Help Desk Services**

- a. Genfare Business Hours: Phone support during Genfare business hours: 8:30am to 5:00pm Central Standard Time (CST);
- b. Genfare Holidays: Help Desk Services during Genfare Holidays will be covered by Genfare's after-hours call center.
  - i. Genfare Holidays 2017:
    - 1. New Year's Day, January 2nd;
    - 2. Memorial Day, May 29th
    - 3. Independence Day, July 4th
    - 4. Employee Appreciation Day, August 18th
    - 5. Labor Day, September 4th
    - 6. Thanksgiving Day and the day after, November 23rd and 24th
    - 7. Christmas Eve and Christmas Day, December 22nd and December 25th
- c. Help Desk Services Contact Details
  - i. The support line can be reached direct at 847.871.1231 or via email at [genfare.customercare@spx.com](mailto:genfare.customercare@spx.com)
- d. Ticket Procedure
  - i. Each inquiry will be documented, assigned a ticket number and a confirmation email will be sent to the originator to confirm the request has been received; and
  - ii. Each ticket will be assigned to a system support team member to follow up and resolve each issue.

### **2. Communications protocol**

- a. In order to connect to the Company's system and resolve system issues, Genfare must have access and a designated point of contact with Company. Without access, Genfare cannot connect to the system to identify root cause of a reported issue.

- b. Remote Access
    - i. LogMeIn Rescue or Pro (preferred option)
    - ii. TeamViewer
    - iii. VPN (prefer Cisco or Junos)
  - e. Firewall review
- 3. Designated Points of Contact for Company (name, title, email and phone number)
  - a. IT contact -
  - b. Maintenance -
  - c. Third party service contacts -
- 4. Kick off Activities
  - a. Company provides complete details of its current software and hardware (to be incorporated into the Agreement)
    - i. Defines software in use at the agency
    - ii. Defines hardware in use at the agency
    - iii. Details all third party connectivity
- 5. Annual Activities
  - a. One fare structure update
  - b. One design update to include up to 3 rounds of design changes
  - c. One Data System Database rebuild
  - d. (Insert other activities to be included consistent with underlying contract);
- 6. Software Updates

During the duration of this Agreement, software updates will be included as they are released, provided that such updates are compatible with the Company's configuration.

7. Severity Level Response Times

All inquiries will be assigned a Severity Level, each having a defined service level for acknowledging, responding and resolving the issue. The following matrix provides the target service levels for each:

Status	Acknowledgement	Status
Severity 1 - Critical	1 Business hour	3 hours
Severity 2 – High	1 Business hour	4 hours
Severity 3 – Low	2 Business hours	1 business day
Severity 4 - Query	1 Business day	5 business days

Resolution of any issue hereunder may include, but is not limited to, delivering new code, providing a work-around or bringing Company live on the last known prior "good" version of the Licensed Software. Should a work-around or bringing Company live on the last known "good" version be the resolution, Genfare shall continue to resolve the issue in order to bring Company live on the version of the Licensed Software encountering the issue or the current version within sixty (60) days.

8. Exceptions

Genfare's support obligations hereunder shall not apply to the extent the nonconformity results from: (a) modifications to the Licensed Software by anyone other than Genfare or its contractors, (b) use of the Licensed Software contrary to the terms of this Agreement or the instructions in any documentation, (c) the combination of the Licensed Software with any third party hardware or software not expressly recommended or approved by Genfare, or (d) use of any version of the Licensed Software other than the then-current versions of the Licensed Software (including all patches, error corrections and updates) provided by Genfare.

9. Discontinuance and Renewal of Support Agreement

Company understands and agrees that if Company discontinues and then subsequently resumes the purchase of Support Services, Company will be required to pay Genfare all Support Fees for the period of discontinuance, plus the Support Fees for the term of the Support Services then commencing.

(The remainder of this page left intentionally blank)

## **SCHEDULE C: DETAIL SPECIFICATION FOR SERVICES**

### **1. SCOPE**

This specification shall detail the requirements for Genfare to provide support services for the following system, and its associated applications, for a period of up to 24 months from the date of contract execution.

Genfare Network Manager running on the Windows Server at the Company location and Genfare Garage Data System at all operating garage locations. This Agreement does not include any computer hardware maintenance.

### **2. DETAILED REQUIREMENTS**

2.1. Systems: [this is a variable to be defined with each service agreement]

- a) Genfare Network Manager (GNM) which includes Windows Application and Linux/Oracle Database.
- b) Sybase Database in Garage Data System.
- c) Genfare Central database implemented in Company's Oracle Enterprise Database environment.

#### **EXCEPTIONS:**

Genfare will not provide software support or any associated services for the Company's Oracle database environment. Oracle database adjustments, enhancements and/or recommendations will be communicated and passed to Company for implementation. Genfare is not responsible for executing updates to maintenance for the Network Manager/Oracle Database virtual environments, operating systems, database version, database allocation or similar Company-provided resources.

2.2. Tasks:

2.2.1. As required and/or requested by Company:

- a) Monitor disk space usage on Genfare Network Manager and Garage Data System.
- b) Monitor disk space utilization for Databases on Genfare Network Manager and Garage Data Systems. Recommend adjustments/enhancements and execute as necessary.
- c) Monitor and verify the weekly periodic purge process.

2.2.2. As needed and/or requested by Company:

- a) Verify processes are operational on the GNM system.
- b) Verify processes are operational on all the Garage Data systems. Verify Sybase and Oracle Database functionality. Review the Reports Process Messages in the daily event log verifying that software modules were completed.
- c) Monitor and verify that data is loaded.
- d) Monitor and verify the Database backup processes.
- e) Monitor and verify data archive functionality.

2.2.3. As required and/or requested by Company:

- a) Provide Help Desk Support to troubleshoot and solve application related problems.
- b) Provide Help Desk support with the identification/tracking/resolution of Genfare Network System anomalies as requested.
- c) Provide Data Base Administration support to troubleshoot and suggest solutions for the Sybase and Oracle related problems.
- d) Recommend adjustments to enhance Sybase and Oracle performance.

2.3. Service/Support Requests and Availability:

2.3.1. Genfare shall provide Company with Support Services for the following related incidents and/or requests:

- a) Incident/Request Categories:
  - i. "Support Incident:" A single, reproducible issue that focuses on one aspect of the Software and can be identified by isolating specific symptoms. If an incident can be broken down into subordinate issues, each issue shall be handled as a separate incident. A reproducible incident is any problem that can be re-created on our systems. An incident may include multiple contacts, including emails, phone communication, and any other transfer of information necessary to reproduce the problem.
  - ii. "Error:" An error in the Software which causes a material nonconformity of the Software with the specifications therefore set forth in Genfare's published documentation.

- iii. "Error Correction:" The use of reasonable commercial efforts to correct Errors.
- iv. "Fix:" The repair or replacement of object or executable code versions of the Software to remedy an Error.
- v. "Workaround:" A change in the procedures followed or data supplied by Company to avoid an Error without substantially impairing Company's use of the Software.

2.3.2. Genfare shall label and prioritize support services based upon the following severity ratings:

a) Severity Level:

- i. Severity 1 - Critical: Company's production use of the Genfare Software is stopped or so severely impacted that it cannot continue to operate, and the Company has experienced a complete loss of the production service. The operation is mission critical to the business and the situation is an emergency.
- ii. Severity 2 – High Priority: Company is experiencing a severe loss of service. Important features are unavailable with no acceptable workaround; however, operations can continue in a restricted fashion.
- iii. Severity 3 – Low Priority: Company is experiencing a minor loss of service. The impact is an inconvenience, which may require a workaround to restore functionality.
- iv. Severity 4 - Query: Company is requesting information, a product enhancement, or documentation clarification regarding Genfare Software.

NOTE: Severity 1 technical support requests shall be made via telephone using a phone number provided by the Genfare. For Severity 2 - 4 technical support requests shall be submitted by email.

2.3.4. Genfare shall respond to all requests for support and shall begin to ascertain the problem and possible solutions within two (2) hours of the initial request (or as stated in Schedule B- Acknowledgment time) made by Company call to the published Call Center or designated contact employee.

2.3.5. Genfare Telephone and Email Support hours shall be 24 hours a day, seven (7) days a week, excluding national Holidays when the service begins.



- 2.3.6. During support service calls, Company shall make the system available remotely via VPN and/or Remote Desktop similar to what currently exists. Pre-approved travel costs shall be billed to Company should the onsite work be necessitated by circumstances within Company control, including but not limited to, VPN connectivity, password access control, physical proximity requirements, and lack of timely local support.
- 2.3.8. Genfare shall provide all application level Sybase database support, including database management as required by Company.
- a) Object Management (tables/views/synonyms)
  - b) Application Performance Tuning (Jobs initiated by application accounts) Stored Procedure Management and Development
  - c) Data Discrepancy Support
- 2.3.9. Genfare shall provide software upgrades to the current 7.2 version as a 7.2X version and all updates, bug fixes and release notes for all Version 7.2 software. All updates to be installed and verified by Genfare with assistance as necessary from Company. For any major software upgrade, such as version 7.3, or later, 7.4 etc., or any new applications, additional fees may apply.
- 2.3.10. Deliverables:
- a) Status reports to be delivered by email as requested.
  - b) Sample reports to be provided for review and format. Specific reporting items to be determined and agreed upon prior to contract execution.
  - c) Genfare Contacts: Call Center or principal contact person. Office phone, email address and cell phone (Off hours contact listing)
- 2.3.11. Project Schedule/Contract Time:
- a) The schedule shall be mutually agreed upon at contract execution. The monitoring shall continue from date of contract execution for a period of up to two (2) years.

**Licensed Software:** (Insert description of licenses software)

1. Genfare to contact the transit authority to acquire the GFI.INI, INITTAB, CRONTAB Files.
2. Genfare to contact the transit authority to acquire the GFIDAB. EXE.
3. Genfare to contact the transit authority to acquire the latest fare structure file. (fsb)
4. Genfare to contact the transit authority to acquire the Farebox S/N.
5. Genfare to contact the transit authority to acquire the TVM3 S/N. (2 total)
6. Genfare to contact the transit authority to acquire the PEM2 S/N.



**ITEM #F8**  
**UNIFORM TEXTILES (A-B)**



## CONTRACT AGREEMENT

between

P&P Uniforms, Inc.  
14529 Innovation Drive  
Riverside, CA 92518

(hereinafter "CONTRACTOR")  
Telephone: (951) 776-0048  
Email: kristin@pandpuniforms.com

And

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

### CONTRACT DOCUMENTS

CONTRACT NO. MNT17-57A

### UNIFORM AND TEXTILE SERVICES

Contract Amount: \$171,544

#### Omnitrans Project Manager:

Name: Bonnie Judge  
Title: Maintenance Analyst  
Telephone: (909) 379-7180  
Email: [bonnie.judge@omnitrans.org](mailto:bonnie.judge@omnitrans.org)

#### Contract Administrator:

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



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ATTACHMENT A – SCOPE OF WORK

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This Agreement is made and entered into as of this 1st day of May, 2017, by and between Omnitrans (hereinafter referred to as "OMNITRANS") and P&P Uniforms, 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 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 April 30, 2020, unless terminated as specified in Section 10 and 11 of this Agreement. Omnitrans has no obligation to purchase any specified amount of products/services. All applicable indemnification provisions in this Agreement shall remain in effect following the termination of this Agreement.

Omnitrans' election to extend the Agreement beyond the Initial Term shall not diminish its right to terminate the Agreement for Omnitrans' convenience or CONTRACTORS default as provided elsewhere in this Agreement. The "maximum term" of this Agreement shall be the period extended from May 1, 2020 through April 30, 2022, which period encompasses the Initial Term and the Option Year One and Option Year Two.

### **3. CONTRACT OPTIONS**

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

### **4. 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 B, and subject to the maximum cumulative payment obligation.

OMNITRANS' maximum cumulative payment obligation under this Agreement shall not exceed One Hundred Seventy One Thousand Five Hundred Forty Four Dollars (\$171,544), including all amounts payable to CONTRACTOR for all costs, including but not limited to direct labor, other direct costs, subcontracts, indirect costs including, but not limited to, leases, materials, taxes, insurance, and profit.



## 5. INVOICING AND PAYMENT

- A. CONTRACTOR shall invoice OMNITRANS on a monthly basis no later than the 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

[Accountspayable@omnitrans.org](mailto:Accountspayable@omnitrans.org)

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

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

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

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

## C. TITLE

- a. Title shall pass to Omnitrans at the time of payment.
- b. The title transferred as above shall in each case be good, and free and clear from any and all security interests, liens, and/or other encumbrances.
- c. The transfer of title as specified above shall not imply Acceptance by Omnitrans, nor relieve the Contractor from the responsibility for strict compliance with the Contract, including warranty as specified in the Article entitled Warranty of Work, and for any loss of or damage to the Work.
- d. The Contractor at its own expense shall promptly execute, acknowledge, and deliver to the Omnitrans proper bills of sale or other written instruments of title in a form as required by Omnitrans; said instruments shall convey to the Omnitrans' title free and clear of debts, claims, liens, mortgages, taxes, and/or encumbrances.
- e. Contractor shall have title to and bear the risk of any loss of or damage to Work purchased hereunder until they are delivered, unloaded, and received by Omnitrans at the FOB Destination specified herein. Contractor's responsibility for loss or damage except for loss or damage resulting from Contractor's negligence, shall cease when title passes to Omnitrans.

## 6. AUDIT AND INSPECTION OF RECORDS

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

## 7. NOTIFICATION

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

To OMNITRANS:

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

To CONTRACTOR:

P&P Uniforms, Inc.  
14529 Innovation Drive  
Riverside, CA 92518  
Attn: Kristin Matteson

## **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: Bonnie Judge, Maintenance Analyst.

- 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>
Nancy Hathaway	Project Lead
Kristin Mateson	Store Manager
Chris Sampson	C.O.O.

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 28, 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 10, 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.

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

### **A. INSURANCE REQUIREMENTS**

#### **1) General Requirements for Contractor**

- a. Without limiting or diminishing the Contractor's obligation to indemnify or hold Omnitrans harmless, Contractor shall procure, prior to commencement of the services required under this contract and maintain for the duration of the contract at its own expense, insurance of the kinds and in the amounts as indicated below;
- b. Provide Omnitrans with valid original certificates of insurance and endorsements showing Omnitrans as an additional insured.

#### **2) Deductibles or Self-Insured Retention (SIR)**

SIR must be declared to and approved by Omnitrans. At the option of Omnitrans, either: the insurer shall reduce or eliminate such deductibles or SIR or Contractor shall procure a bond guaranteeing payment of losses and related investigations, claim administration and defense expenses.

#### **3) Other Insurance Provisions**

##### **a. Commercial General Liability and Automobile Liability**

Commercial General Liability insurance coverage, including but not limited to, premises liability, contractual liability, products and completed operations liability, personal and advertising injury covering claims which may arise from or out of Contractor's performance of its obligations hereunder and if Contractor's vehicles or mobile equipment are used in the performance of the obligations under this Agreement, then Contractor shall maintain liability insurance for all owned, non-owned or hired vehicles so used. Policy shall name Omnitrans, its officers, officials, employees, agents and volunteers as additional insured as respects: liability arising out of activities performed by or on behalf of Contractor; products and completed operations of Contractor; premises owned, occupied or used by Contractor; or automobiles owned, leased, hired or borrowed by Contractor. The coverage shall contain no special limitations of the scope of protection afforded Omnitrans, its officers, officials, employees, agents, and volunteers.

1. For any claims related to this project, Contractor's insurance coverage shall be primary insurance as respects Omnitrans, its officers, officials, employees, agents, and volunteers. Any insurance and/or deductibles and/or self-insured retentions or self-insured programs maintained by Omnitrans, its officers, officials, employees, agents, and volunteers shall be excess of Contractor's insurance and shall not be construed as contributory.
2. Contractor's insurance shall apply separately to each insured against whom claim is made or suit is brought, except with respect to the limits of the insurer's liability.
3. Each insurance policy required by this clause shall be endorsed to state that coverage shall not be suspended, voided, cancelled by either party, reduced in coverage or in limits except after thirty (30) days prior written notice has been given to Omnitrans.

**b. Workers' Compensation**

If the Contractor has employees as defined by the State of California, the Contractor shall maintain statutory Workers' compensation Insurance (Coverage A) as prescribed by the laws of the State of California. Policy shall include Employers' Liability (Coverage B) including Occupational Disease with limits not less than \$1,000,000 per person per accident. The policy shall be endorsed to waive subrogation in favor of Omnitrans and, if applicable, to provide a Borrowed Servant/Alternate Employer Endorsement.

**c. Care, Custody, and Control**

Contractor shall insure any Omnitrans property while under its Care, Custody, and Control according to the requirements listed in the insurance coverage required.

**4) Acceptability of Insurers**

Insurance companies shall be State of California admitted or approved and have a current **A.M. Best's** rating of no less than **A:VIII**.

**5) Verification of Coverage**

- a. Contractor shall furnish Omnitrans with original endorsements affecting coverage required by this clause. The endorsements are to be signed by a person authorized by that insurer to bind coverage on its behalf. All insurance certificates and endorsements are to be received and approved by Omnitrans before work commences.
- b. As an alternative, Contractor's insurer may provide complete, certified copies of all required insurance policies, including



endorsements affecting the coverage required by these specifications.

- c. In lieu of purchasing insurance and providing original endorsements and or certificates of insurance, the Contractor may provide proof of self-insurance; such proof must be to the satisfaction of Omnitrans.

**6) Subcontractors**

Contractor shall include all subcontractors as insureds under its policies or shall furnish separate certificates and endorsements for each subcontractor. All coverage for subcontractors shall be subject to all of the requirements stated herein.

**7) Notification of Terminated Insurance**

Insurance shall not be terminated or expire without thirty (30) days written notice, and are required to be maintained in force until completion of the contract.

**B. MINIMUM INSURANCE COVERAGE**

If the Contractor maintains broader coverage and/or higher limits than the minimum requirements shown below, Omnitrans requires and shall be entitled to the broader coverage and/or higher limits maintained by the Contractor.

- 1) ☒ **Commercial General Liability including Products/Completed Operations:** \$1,000,000; per occurrence for bodily and property damage liability and \$2,000,000 aggregate; *Omnitrans named and endorsed as an Additional Insured.*
- 2) ☒ **Automobile Liability:** \$1,000,000; per occurrence for bodily and property damage liability and aggregate; *Omnitrans named and endorsed as an Additional Insured.*
- 3) ☐ **Errors and Omissions Liability:** \$1,000,000; combined single limit bodily and property damage liability per occurrence and \$ 3,000,000 aggregate or,
- 4) ☐ **Professional Liability:** \$1,000,000; per occurrence and aggregate.
- 5) ☒ **Workers' Compensation:** statutory limits or,
- 6) ☐ **Self Insurance Program:** a State Approved program in an amount and form that meets all applicable requirements of the Labor Code of the State of California.
- 7) ☒ **Employer's Liability:** \$1,000,000; per occurrence.

- 8) ☐ **Environmental Liability:** \$1,000,000; per occurrence and aggregate; *Omnitrans named and endorsed as an Additional Insured.*
- 9) ☐ **Umbrella Policy:** \$4,000,000; per occurrence and aggregate Additional coverage for the above policies, *Omnitrans Additional Insured.*
- 10) ☐ All drivers making deliveries of products specified on this solicitation shall have Hazardous Materials Endorsements on their Commercial Drivers License, and such other Endorsements as may be required by relevant laws and/or regulations.

## 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**

- A. 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.

- B. Government regulations that directly affect the CONTRACTOR'S performance of this contract and unforeseen impacts, which neither party could have contemplated at the onset of the contract and have an unconscionable impact on the CONTRACTOR may be given special pricing consideration. The parties, in good faith, shall review established rates and may adopt any mutually agreed new rates, which shall only be effective as agreed upon by the parties. Thorough documentation including all cost elements is required to support the Contractor's claim to any relief under this clause.

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

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

## **29. PUBLIC RECORDS ACT**

- A. All records, documents, drawings, plans, specifications and other material relating to conduct of OMNITRANS' business, including materials submitted by CONTRACTOR in its proposal and during the course of performing the Work under this Agreement, shall become the exclusive property of OMNITRANS and may be deemed public records. Said materials may be subject to the provisions of the California Public Records Act. OMNITRANS' use and disclosure of its records are governed by this Act.
- B. OMNITRANS will not advise as to the nature or content of documents entitled to protection from disclosure under the California Public Records Act, including interpretations of the Act or the definitions of trade secret, confidential or proprietary. OMNITRANS will accept materials clearly and prominently labeled "TRADE SECRET" or "CONFIDENTIAL" or "PROPRIETARY" as determined by CONTRACTOR. OMNITRANS will endeavor to notify CONTRACTOR of any request of the disclosure of such materials. Under no circumstances, however, will OMNITRANS be liable or responsible for the disclosure of any labeled materials whether the disclosure is required by law or a court order or occurs through inadvertence, mistake or negligence on the part of OMNITRANS or its officers, employees and/or contractors.

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

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

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

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

### **31. FORCE MAJEURE**

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

### **32. CONFIDENTIALITY**

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

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

- A. OMNITRANS shall review and approve in writing all OMNITRANS related copy proposed to be used by CONTRACTOR for advertising or public relations purposes prior to publication. CONTRACTOR shall not allow OMNITRANS related copy to be published in its advertisements and public relations programs prior to receiving such approval. CONTRACTOR shall ensure that all published information is factual and

that it does not in any way imply that OMNITRANS endorses CONTRACTOR's firm, service, and/or product.

- B. CONTRACTOR shall refer all inquiries from the news media to OMNITRANS, and shall comply with the procedures of OMNITRANS' Public Affairs staff regarding statements to the media relating to this Agreement or the Work.
- C. If CONTRACTOR receives a complaint from a citizen or the community, CONTRACTOR shall inform OMNITRANS as soon as possible and inform OMNITRANS of any action taken to alleviate the situation.
- D. The provisions of this Article shall survive the termination or expiration of this Agreement.

#### **34. GOVERNING LAW**

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

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

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

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

- A. The 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, 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. 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.

### 37. PRECEDENCE

Conflicting provisions hereof, if any, shall prevail in the following descending order of precedence: (1) the provisions of this Agreement, and any and all of its Amendments, Appendices, Exhibits and Attachments; (2) provisions of RFP-MNT17-57 and any and all of its Addenda, Appendices, Exhibits and Attachments; and (3) CONTRACTOR's proposal dated 2/7/17.

### 38. ENTIRE AGREEMENT

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

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

OMNITRANS

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

\_\_\_\_\_  
Date

CONTRACTOR  
Company name:

\_\_\_\_\_  
Name: Paul Shy  
Title: CEO

\_\_\_\_\_  
Date

Federal Tax I.D. No.

DP  
CM  
CONTRACT MNT17-57  
REVISED 11/15/2016

ATTACHMENT A – SCOPE OF WORK  
MNT17-57A  
UNIFORM AND TEXTILE SERVICES

**1. INTRODUCTION AND PROJECT OVERVIEW**

**A. STATEMENT OF WORK**

- 1) Contractor shall provide Uniform Supply, Rental, Laundry, Alteration and Textile Services, for approximately 500 coach operators, 35 Operations department staff, 105 Maintenance department staff, 12 Procurement department staff and 7 Marketing staff.
- 2) Contractor shall be required to accommodate 3 separate shifts for the purpose of obtaining measurements/sizing of each employee. Contractor shall include this transitional effort in the work plan section of their proposal.
- 3) Contractor shall invoice Omnitrans on a monthly basis. Each invoice must be separated by location (East Valley facility and West Valley facility), departments and related employees. Any discrepancies related to a specific employee shall be reflected on the each invoice, ex: changes, credits, non-returns. Each employee shall be identified by name.

**B. DELIVERY**

Omnitrans' transit operations are conducted from two (2) separate facilities in the San Bernardino Valley. Delivery shall be made to both locations:

East Valley Facility (City of San Bernardino)

Located at 1700 West Fifth Street, San Bernardino, CA 92411-2499

West Valley Facility (City of Montclair)

Located at 4748 Arrow Highway, Montclair, CA 91763-1208

**2. GENERAL REQUIREMENTS - OPERATIONS**

- 1) Contractor shall provide uniforms for Omnitrans' Coach Operators, Coach Operations Instructors, Training Instructors, Field Supervisors and SBX Operators for purchase.
- 2) Contractor shall make required alterations and affix required patches as provided by Omnitrans. The Contractor shall only affix or otherwise transfer the Omnitrans logo to garments and accessories that have been approved.
- 3) Contractor shall conduct services at Omnitrans and provide availability at their place of business, and the location, hours and days of operation must allow Omnitrans employees reasonable access to those services. Proposers shall indicate hours and days of operation availability.
- 4) Contractor assumes responsibility for measuring and fitting of uniforms. Proposers shall indicate in their work plan if this service is available, and

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provide a brief description outlining the process to be used, and cost to Omnitrans, if any.

- 5) Contractor shall maintain an adequate stock of uniform pieces to accommodate the uniform requirements of Omnitrans personnel.

NOTE: Additional purchases made by personnel will be billed directly to the employee or paid for by the employee at time of pick up.

**3. UNIFORMS – OPERATIONS (PURCHASE OF UNIFORMS AND RELATED SERVICES)**

**A. General**

- 1) Uniforms must be new, high quality, heavy-duty construction, and provide long lasting durability resulting in proper fit and a neat appearance.
- 2) Uniforms must have reinforced seams and stress points.
- 3) Uniforms for Supervisory and Operational personnel have different requirements and must be provided according to those requirements.
- 4) Uniforms must be appropriately tailored for men and women.
- 5) Uniforms must be made available for each item specified, long- and short-sleeved shirts of each type.
- 6) Uniforms must be made available in men's and women's sizes and styles.
- 7) Uniforms must be provided to Omnitrans within 30 days from date of order, fitting, alteration, repair and/or other work.
- 8) Uniforms must conform to the salient characteristics of the brand name specified or, as an alternative, an approved equal must be submitted to Omnitrans for review and formal written acceptance.
- 9) Manufacturer's name label must be permanently sewn in each garment. The label(s) should include the correct fiber content of the fabric/materials, manufacturer identification, garment individual identification, location of manufacture/assembly, size, and care instructions.
- 10) Garment Substitutions During the Term of the Agreement:
  - a) Contractor must obtain Omnitrans' written approval prior to making a substitution for any garment for any reason including the inability to meet delivery requirements with the contracted garment. The substituted garment shall be priced the same as the garment that should have been delivered.
  - b) If a designated garment is no longer available from the manufacturer in the style or color(s) previously approved by Omnitrans, a permanent substitution will be necessary. The

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Contractor shall give thirty (30) calendar days advance notice to Omnitrans in writing.

- c) The request for permanent garment substitution shall include the description of recommended substitution(s), sample(s), color(s), price and any other pertinent information. Omnitrans reserves the right to accept or reject the Contractor's recommendation.

**B. Samples**

- 1) Upon request, proposers must submit samples of Supervisory and Operational uniforms they intend to provide, including long and short-sleeved options.
- 2) Samples will be evaluated to determine responsiveness to the requirements of the Scope of Work. Sample uniforms will be returned upon award of the contract.
- 3) If samples cannot be furnished in the colors indicated in each detailed specification, swatches of the specified colors shall be provided to Omnitrans with their proposals.
- 4) Sample submittals shall include information regarding variations from the specifications, manufacturer's item or reorder number and available sizes.

**C. Supervisory/Training Instructor Uniforms**

- 1) Shirts
  - a) Type: Long and short-sleeved options required.
  - b) Short Sleeve: Convertible collar; one plain pocket or plain front; full-length tails; form fit.
  - c) Long Sleeve: Dress shirt/blouse; convertible collar; plain front; full length tails.
  - d) Color: White
  - e) Fabric: 65% polyester, 35% cotton, weave poplin.
  - f) Brand: Flying Cross, or an approved equal:
    - (1) S/S Men's 7455100
    - (2) L/S Men's 24N5100
    - (3) S/S Women's 189R5400
    - (4) L/S Women's 139R5400
- 2) Slacks
  - a) Color
    - (1) Heather Grey;
    - (2) Navy Blue.

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- b) Fabric: 100% year round weight hopsack weave woven polyester.
  - c) Men's:
    - (1) Style: Plain front trousers; straight leg styling; Ban-Rol, or approved equal waistband; hook and eye closure with brass zipper; two quarter top pockets; two welt back pockets; washable.
    - (2) Brand: Edwards 2290, or an approved equal.
  - d) Women's:
    - (1) Style: Plain front with half elastic back; tapered leg cut; extension tab and button closure; two front pockets; washable.
    - (2) Brand: Edwards 8270, or an approved equal.
  - 3) Blazer
    - a) Men's Style: Two button front; patch pockets with flaps; center vent back; fully lined; two inside pockets.
    - b) Women's Style: Two outside patch pockets; one inside pocket; fully lined
    - c) Color: Navy Blue
    - d) Fabric: 100% Visa polyester, or approved equal 11/11.5 oz weight.
    - e) Brand: Edwards Men's 3290-07, or an approved equal.
    - f) Edwards Women's 6290-07, or an approved equal.
- D. Operational Uniforms**
- 1) Shirts-Coach Operators
    - a) Type: Long and short- sleeved options.
    - b) Style: Convertible collar; plain pockets with mitered flaps; seven-button front.
    - c) Color: Sky Blue.
    - d) Fabric: 65% Dacron, or approved equal, 35% combed cotton; 4.1-ounce poplin; permanent press; Visa soil, or approved equal, release.
    - e) Brand: Conqueror, or an approved equal:
      - (1) Men's style: short sleeve #905, long sleeve #899;
      - (2) Women's style: short-sleeve #912, long-sleeve #9125.
  - 2) Slacks
    - a) Style: ¼ top pockets; ¾ wide belt loops; tab left hip pocket.

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- b) Color: Navy.
  - c) Fabric: 100% polyester, 12-5-ounce, weave elastic.
  - d) Brand: Flying Cross, or an approved equal:
    - (1) Men's style: 32231.
    - (2) Women's style: 35233.
- 3) Slacks-Postal
- a) Style: Postal; slash pockets; ¾ wide belt loops; tab left hip pocket.
  - b) Color: Navy.
  - c) Fabric: 100% polyester, 12-5-ounce, weave elastic.
  - d) Brand: Horace Small, or an approved equal.
    - (1) Men's style: C-130.
    - (2) Women's style: C-140.
- 4) Windbreaker
- a) Style: Water repellant; unlined; raglan sleeves; two slash pockets; draw string bottom; Omnitrans logo silk screened on front.
  - b) Color: Navy Blue.
  - c) Fabric: 100% nylon.
  - d) Brand: Cardinal, or an approved equal.
- 5) Dress Jacket (Breeze Bender)
- a) Style: Versatile jacket with hood; removable hour and fur collar; Dual side zippers to allow equipment access; two storm front flap pockets; badge tab; ; zip in and out poly liner.
  - b) Color: Black.
  - c) Fabric: 100% nylon shell; water repellant.
  - d) Brand: (style#1009B), or an approved equal.
- 6) Sweater Vest
- a) Style: V-Neck, pullover, ribbed bottom panel.
  - b) Color: Navy Blue.
  - c) Fabric: 100% Acrylic.
  - d) Brand: School Apparel, or an approved equal;
    - (1) Unisex style; 6600.

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- 7) Ties
  - a) Style:
    - (1) Men's style: standard clip on.
    - (2) Women's style: criss-cross with snap.
  - b) Color: Navy Blue.
  - c) Fabric: 100% Polyester.
  - d) Brand: Samuel Broome, or an approved equal.
- 8) Scarf
  - a) Style: Anti-pill finish for lasting wear; 56" x 10".
  - b) Color: Navy Blue, with Omnitrans logo embroidered.
  - c) Fabric: 13-ounce, 100% filament polyester R-Tec fleece.
  - d) Brand: Port Authority FS01, or an approved equal

**E. Patches**

- 1) General
  - a) Omnitrans will supply the Contractor with Omnitrans patches.
  - b) Required and optional patches as shown in Attachment "A".
  - c) Contractor must supply American Flag patches 1.5" X 3.5", with a white border. Contractor must show the charge, if any for this patch on the proposal form.
  - d) Contractor must stitch the patches only on the uniform items and according to the placement requirements as outlined below.
- 2) Patches and Locations
  - a) Shirts for Coach Operators, Coach Operations Instructors. Dress Jackets must have the following patches placed in the following locations unless otherwise noted:
    - (1) Omnitrans Logo Patch on the right sleeve;
    - (2) Safety patches on the right sleeve below logo patch;
    - (3) Million Mile Patches below the logo patch;
    - (4) American Flag above right front pocket (optional).
    - (5) Omnitrans logo cap patch centered above brim (on approved caps only).
  - b) Omnitrans patches are not to be put on any other articles, including but not limited to, wind breakers, hats, caps or other items of apparel, other than those specified above.

ATTACHMENT A – SCOPE OF WORK  
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**4. OPTIONAL ITEMS/ACCESSORIES - OPERATIONS**

- A.** The following uniform pieces and optional items have been approved as a part of Omnitrans' personnel uniforms. These optional items will not be purchased by Omnitrans directly, but will be made available for purchase by Omnitrans personnel to ensure uniformity of quality and style. The Contractor must not invoice Omnitrans for any of the following optional items.
- B.** Contractor shall make these items available for purchase by Omnitrans personnel, and list the prices associated with each item in their respective proposals.
- C.** These items will not be part of the evaluation of the proposal.
- 1) Shorts
    - a) Style: Pleated front; ¼ pockets; 1-3/4" wide belt loops; button through pockets.
    - b) Color: Navy.
    - c) Fabric: 100% cotton.
    - d) Brand: Dickies #26232, Men's 42-234 (8-inch), Women's FR221 (9-inch) or an approved equal.
  - 2) Cardigan
    - a) Style: V-Neck, 5-button, 2 front pockets
    - b) Color: Navy
    - c) Fabric: 100% acrylic.
    - d) Brand: Broadway Knitting, or an approved equal.
  - 3) Cap
    - a) Style: Round, mesh sides.
    - b) Color: Navy
    - c) Fabric: Wool Serge.
    - d) Brand: Lancaster, or an approved equal.
    - e) Patches: Omnitrans will supply patches to be sewn onto the caps. (Omnitrans employee will pay for the cost of the patch to be sewn on the cap.)
  - 4) Cap
    - a) Style: Round, mesh sides.
    - b) Color: Navy.
    - c) Fabric: 65% polyester, 35% cotton.



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- d) Brand: Otto, or an approved equal.
- e) Patches: Omnitrans will supply patches to be sewn onto the caps. (Omnitrans employee will pay for the cost of the patch to be sewn on the cap.)

**5. ALTERATIONS AND REPAIRS - OPERATIONS**

**A. General**

- 1) In order to assure proper fit, alterations may be required to hem and alter sleeve length, leg width, waist, seat and crotch as garments are ordered.
- 2) Such alternations shall be performed in a professional manner including: hems straight, length even on both legs, color of thread matching color of material, and garments pressed after alternations are completed. If the initial alterations are done incorrectly, then the garment shall be realtered at no additional charge to Omnitrans or Omnitrans' personnel.

**B. Routine Alterations**

- 1) Routine Alterations are the alterations that are required to ensure a proper fit and professional appearance after the uniform pieces have been purchased, but prior to receipt and acceptance of them.
- 2) Routine Alterations are to be made at the time of purchase.
- 3) The price for Routine Alterations must be included in per piece price.

**C. Special Alterations**

- 1) Special Alterations, which are required after the uniform pieces have been received and accepted, are those that are required to ensure a continued proper fit and professional appearance.
- 2) Special Alterations are required only because of actual variances in the employee's measurements, not due to stretching or shrinking of material.
- 3) Pricing for Special Alterations must be included in the proposal.
- 4) Special Alterations must be approved by Omnitrans in advance and only on a case-by-case basis, and only for selected alterations to uniforms.

**D. Repairs**

- 1) Employees are responsible for repairs to their uniforms and are responsible to pay for any repairs that are made for them.
- 2) Do not invoice Omnitrans for any repairs, as Omnitrans will not pay for repairs.

**E. Special Sizes**

- 1) Omnitrans has need for XXX sizes and/or XS sizes. The goal is to get Omnitrans employees into the required uniform as quickly as possible.

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- 2) Omnitrans is requiring a wait of no longer than thirty (30) days for Special Sizes. Unless otherwise agreed upon by the parties, in writing, all orders that are not delivered within the required 30 day period will be subject to liquidated damages as described in Sample Contract.

**6. INDIVIDUAL PURCHASE PROCEDURES - OPERATIONS**

- A.** Orders shall be placed by Omnitrans' personnel on an as-needed basis for replacement garments and to outfit department covered employees.
- B.** Omnitrans employees must present two copies of an appropriately authorized Omnitrans Uniform Order Form (Exhibit "A") and any required and optional patches at the Contractor's place of business at the time they wish to place an order for uniform pieces.
- C.** Omnitrans employees are to be measured at the time they place their authorized order to ensure that the received uniforms fit properly at the time they are received.
- D.** Omnitrans employees must sign the Omnitrans Uniform Order Form at the time of receipt at the contractor's place of business.
- E.** Contractor must attach the signed pink-copy of the Omnitrans Uniform Order Form to the invoice so that Omnitrans may reconcile the orders.
- F.** If alterations are not possible and a new set of replacement uniforms are required, at the approval of Omnitrans, Omnitrans shall pay for new replacement uniforms.

\*\*\*End of Scope of Work\*\*\*

ATTACHMENT B - PRICING  
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<i>ITEM</i>	<i>Size Range</i>	<i>Unit</i>	<i>*BASE PERIOD</i>
<b>Supervisor/Instructor</b>			
<b>Long-sleeved Shirts</b>			
Men's Regular	14-18.5	EA.	\$ 29.40
Men's Exceptional	19-22	EA.	\$ 38.23
Women's Regular	28-46	EA.	\$ 35.43
Women's Exceptional	48-52	EA.	\$ 46.05
<b>Short-sleeved Shirts</b>			
Men's Regular	14-18.5	EA.	\$ 24.06
Men's Exceptional	19-22	EA.	\$ 31.28
Women's Regular	28-46	EA.	\$ 28.98
Women's Exceptional	48-52	EA.	\$ 37.26
<b>Slacks</b>			
Men's Regular	28-42	EA.	\$ 22.83
Men's Exceptional	44-54	EA.	\$ 27.40
Women's Regular	0-20	EA.	\$ 22.83
Women's Exceptional	22-28	EA.	\$ 27.40
<b>Blazers</b>			
Men's Regular	35-46	EA.	\$ 48.73
Men's Exceptional	48-50	EA.	\$ 53.64
	52-54	EA.	\$ 53.64
	56-60	EA.	\$ 53.64
Women's Regular	4-18	EA.	\$ 48.76
Women's Exceptional	20-24	EA.	\$ 53.64
	26-28	EA.	\$ 53.64
<b>Coach Drivers</b>			
<b>Shirts-Long Sleeves</b>			
Men's Regular	14-17½	EA.	\$ 35.00
Men's Exceptional	18-22	EA.	\$ 35.00
Women's Regular	28-46	EA.	\$ 35.00
Women's Exceptional	48-54	EA.	\$ 3.00
<b>Short-sleeved Shirts</b>			
Men's Regular	14-17½	EA.	\$ 30.97
Men's Exceptional	18-20	EA.	\$ 30.97
	22-22.5	EA.	\$ 30.97
Women's Regular	28-46	EA.	\$ 30.97
Women's Exceptional	48-54	EA.	\$ 30.97
<b>Slacks</b>			
Men's Regular	28-42	EA.	\$ 46.22
Men's Exceptional	44-50	EA.	\$ 50.85
	52-54	EA.	\$ 50.85
Women's Regular	4-18	EA.	\$ 46.22
Women's Exceptional	20-24	EA.	\$ 50.85
	26-28	EA.	\$ 50.85

ATTACHMENT B - PRICING  
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**All Non-Supervisory Personnel**

**Slacks-Postal**

Men's Regular	28-44	EA.	\$	49.37
Men's Exceptional	46-50	EA.	\$	49.37
	52-56	EA.	\$	49.37
Women's Regular	4-20	EA.	\$	49.37
Women's Exceptional	22-24	EA.	\$	49.37
	26-30	EA.	\$	49.37

**Sweater Vests**

Men's Regular	S - XL	EA.	\$	15.82
Men's Exceptional	2X - 3X	EA.	\$	20.42
	4X - 5X	EA.	\$	20.42
Women's Regular	S - XL	EA.	\$	15.85
Women's Exceptional	2X-3X	EA.	\$	20.42
	4X-5X	EA.	\$	20.42

**Ties**

Men's (Clip on)	18"-22"	EA.	\$	3.20
Women's (Criss Cross)	One Size	EA.	\$	3.22

**Windbreakers**

Regular	S - 2x	EA.	\$	18.95
Exceptional	3X	EA.	\$	20.41
	4X	EA.	\$	20.41
	5X-6X	EA.	\$	20.41

**Dress Jackets**

Regular	S - 2X	EA.	\$	53.77
Exceptional	3X	EA.	\$	59.14
	4X	EA.	\$	59.14
	5X-6X	EA.	\$	59.14

**Shorts**

Men's Regular	30-44	EA.	\$	15.06
Men's Exceptional	44-48	EA.	\$	15.83
	50-54	EA.	\$	15.83
Women's Regular	4-20	EA.	\$	14.42
Women's Exceptional	22-24	EA.	\$	15.83

**Cardigan**

Men's Regular	S-XL	EA.	\$	23.42
Men's Exceptional	2X-3X	EA.	\$	28.89
	4X-5X	EA.	\$	28.89
Women's Regular	S-XL	EA.	\$	23.42
Women's Exceptional	2X-3X	EA.	\$	28.89
	4X-5X	EA.	\$	28.89

**Cap (Style A)**

Brand		EA.	\$	9.43
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**Cap (Style B)**

Brand		EA.	\$	4.99
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ATTACHMENT B - PRICING  
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**American Flags (1.5x3.5) w/white border**

As Specified		EA.	\$	0.99
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**Alterations**


As Specified		Per Item		no charge
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\*Pricing shall remain fixed for the first three (3) years. All subsequent year pricing shall be determined in April of each year using the change (increase or decrease) of Consumer Price Index (CPI).



**CURRENT CLIENT REFERENCES. MINIMUM OF FIVE (5) REQUIRED**

*Submit this form with the BID/Proposal, with valid contact information, failure to do so is grounds for disqualification.*

Company	Omnitrans
Address	1700 W. Fifth St.
City, ST, Zip	San Bernardino, Ca 92401
Phone Numbers/Email	(909)379-7210 / terri.navarro@omnitrans.org
Contact Name/Title	Terri Navarro / Operations Senior Secretary
Type of Engagement	Uniform Services
Company	Riverside Police Department
Address	4102 Orange St.
City, ST, Zip	Riverside, Ca 92501
Phone Numbers/Email	(951) 826-5868 / alara@riversideca.gov
Contact Name/Title	Angie Lara / Senior Office Specialist
Type of Engagement	Uniform Services
Company	San Bernardino Police Department
Address	710 N. D St.
City, ST, Zip	San Bernardino, Ca 92401
Phone Numbers/Email	(909) 384-5693 / stevens_su@sbcity.org
Contact Name/Title	Susan Stevens / Administrative Analyst II
Type of Engagement	Uniform Services
Company	San Manuel Entertainment
Address	27995 Highland Ave Ste 101
City, ST, Zip	Highland, Ca 92346
Phone Numbers/Email	(909) 863-2140 X3612 / jdavidmeier@sanmanuel.com
Contact Name/Title	Julana Davidsmeier / Uniform Dept. Supervisor
Type of Engagement	
Company	Metrolink
Address	One Gateway Plaza 12th Floor
City, ST, Zip	Los Angeles, Ca 90012
Phone Numbers/Email	(213) 494-8051 / kraalg@scrra.net
Contact Name/Title	Gregg Kraal / Customer Relations Supervisor
Type of Engagement	
Bidder's/Proposer's Company Name	P&P Uniforms Inc.
Legal Structure (corp./partner/proprietor)	Corporation
Principle Office Address	14529 Innovation Dr. Ste B
City, ST, Zip	Riverside, Ca 92518
Phone Number and E-Mail	(951) 776-0048
Federal Employer Identification Number	264530318
Title of Person Authorized to Sign	CEO
Print Name of Person Authorized to Sign	Paul Shanabarger
Date Signed and Authorized Signature	 2/7/17



## PROPOSED DISADVANTAGED BUSINESS ENTERPRISES (DBE) PARTICIPATION

*This form must be submitted with the BID/Proposal,  
to have it considered during BID/Proposal evaluation.*

*The bidder/proposer intends to utilize the following DBE contractors on this project.*

*Signature of participating DBE is confirmation of willingness to participate on this project.*

Company	_____
Address	_____
City, ST, Zip	_____
Phone Number	_____
Email	_____
Contact Name	_____
Type of work to be performed	_____
Dollar value of participation	_____
Signature of participating DBE	
_____	
Company	_____
Address	_____
City, ST, Zip	_____
Phone Number	_____
Email	_____
Contact Name	_____
Type of work to be performed	_____
Dollar value of participation	_____
Signature of participating DBE	
_____	
Company	_____
Address	_____
City, ST, Zip	_____
Phone Number	_____
Email	_____
Contact Name	_____
Type of work to be performed	_____
Dollar value of participation	_____
Signature of participating DBE	
_____	
Company	_____
Address	_____
City, ST, Zip	_____
Phone Number	_____
Email	_____
Contact Name	_____
Type of work to be performed	_____
Dollar value of participation	_____
Signature of participating DBE	
_____	

(DUPLICATE THIS FORM AS REQUIRED)



**NOT ON EXCLUDED PARTIES LIST SYSTEM (REQUIRED)**

*Submit this form with the BID, failure to do so is grounds for disqualification.*

The Bidder certifies that it is NOT on the Excluded Parties List System of ineligible firms for federally financed and assisted construction, materials, equipment contracts or services.

Bidder's Company Name	P&P Uniforms Inc.
Legal Structure (corp./partner/proprietor)	Corporation
Principle Office Address	14529 Innovation Dr. Ste B
City, ST, Zip	Riverside, Ca 92518
Phone Number	(951) 776-0048
Fax Number	(951) 776-0385
E-Mail	kristin@pandpuniforms.com
Federal Employer Identification Number	264530318
Title of Person Authorized to Sign	CEO
Print Name of Person Authorized to Sign	Paul Shanabarger
Date Signed and Authorized Signature	 2/7/17





**LIST OF SUBCONTRACTORS AND DBES (REQUIRED >½ OF 1% SHARE OF BID)**

*Submit this form with the BID/Proposal, failure to do so is grounds for disqualification.*

**One (1) form required of each bidder and proposed subcontractor having greater than ½ of 1% share of the bid. Government Code § 4100 on, "Subletting and Subcontract Fair Practices Act".**

Company	Mission Linen		
Address	5400 Alton St.		
City, ST, Zip	Chino, CA 91710		
Phone Numbers/Email	909-364-8700		
Contact Name/Title	Scott Harlin Sharline@missionlinen.com		
Type of Engagement			
Type of work to be performed	Rental and laundry of maintenance personell		
Dollar value of participation		DBE qualified?	Yes <input type="checkbox"/> No <input type="checkbox"/>

---

Company			
Address			
City, ST, Zip			
Phone Number			
Contact Name/Title			
Type of Engagement			
Type of work to be performed			
Dollar value of participation		DBE qualified?	Yes <input type="checkbox"/> No <input type="checkbox"/>

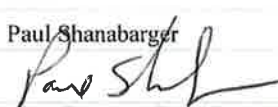
---

Company			
Address			
City, ST, Zip			
Phone Number			
Contact Name/Title			
Type of Engagement			
Type of work to be performed			
Dollar value of participation		DBE qualified?	Yes <input type="checkbox"/> No <input type="checkbox"/>

---

Total DBE participation	Dollars	% of Total Contract
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Bidder's/Proposer's Company Name	P&P Uniforms Inc.
Legal Structure (corp./partner/proprietor)	Corporation
Principle Office Address	14529 Innovation Dr. Ste B
City, ST, Zip	Riverside, Ca 92518
Phone Number and E-Mail	(951) 776-0048 / kristin@pandpuniforms.com
Federal Employer Identification Number	264530318
Title of Person Authorized to Sign	CEO
Print Name of Person Authorized to Sign	Paul Shanabarger
Date Signed and Authorized Signature	 2/7/17

**DUPLICATE THIS FORM AS NECESSARY TO COMPLETE LIST (SIGN LAST ONE)**



**DECLARATION OF NON-COLLUSION (REQUIRED)**

*Submit this form with the BID, failure to do so is grounds for disqualification.*

I hereby declare (or affirm) under penalty of perjury that:

1. I am the bidder (if the bidder is an individual), a partner in the bid (if the bidder is a partnership), or an officer or employee of the bidding corporation and have authority to sign on its behalf (if the bidder is a corporation);
2. The bidder has independently produced the attached bid(s) without collusion, agreement, understanding or planned common course of action, with any other source, that would limit independent bidding competition;
3. The contents of the bid(s) have not been communicated by the bidder and or its employees and or agents to any person not an employee and or agent of the bidder and or its surety, on any bond furnished with the bid, and will not be communicated to any such person prior to the official opening of the bid, and
4. I have fully informed myself regarding the accuracy of the statements made in this declaration.

---

Bidder's Company Name	P&P Uniforms Inc.
(corp./partnership/sole proprietor)	Corporation
Principle Office Address	14529 Innovation Dr. Ste B
City, ST, Zip	Riverisde, Ca 92518
Phone Number	(951) 776-0048
Fax Number	(951) 776-0385
E-mail Number	kristin@pandpuniforms.com
Federal Employer I.D. Number	264530318
Title of Person Authorized to Sign	CEO
Print Name Authorized to Sign	Paul Shanabarger
Authorized Signature	
Date Signed	2/7/17



**DEBARMENT, SUSPENSION, & OTHER RESPONSIBILITY MATTERS  
(REQUIRED >\$25,000)**

*Submit this form with BID, failure to do so is grounds for disqualification.*

**One (1) form required of each bidder and subcontractor having greater than a \$25,000 share of the bid.** U.S. Code, Title 31, § 6101 note and U.S. DOT regulations on "Debarment and Suspension," 49 C.F.R. Part 29.

The Participant (the bidder and potential contractor or potential subcontractor for a third party contract) certifies to the best of its knowledge and belief, that it and its principals:

1. Are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions by a Federal department or agency;
2. Have not within a three-year period preceding this bid been convicted of or had a civil judgment rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (Federal, State or local) transaction or contract under a public transaction; violation of Federal or State antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property;
3. Are not presently indicted for or otherwise criminally or civilly charged by a governmental entity (Federal, State, or local) with commission of any of the offenses enumerated in paragraph (2) of this certification; and
4. Have not within a three-year period preceding this application/bid had one or more public transactions (Federal, State, or local) terminated for cause or default.

*An explanation must be attached to this certification regarding any exception(s).*

The Primary Participant certifies that it has authority under State and local laws to comply with the subject assurances, the truthfulness and accuracy of the contents of this certification, any attached explanation submitted herewith, understands the applicability of 31 U.S.C. Sections 3801 *Et. Seq.* and that this certification has been legally made.

Bidder's Company Name	P&P Uniforms Inc.
Legal Structure (corp./partner/proprietor)	Corporation
Select One	<input type="checkbox"/> Prime or <input type="checkbox"/> Subcontractor (submit after award)
Principle Office Address	14529 Innovation Dr. Ste B
City, ST, Zip	Riverside, Ca 92518
Phone Number	(951) 776-0048
Fax Number	(951) 776-0385
E-Mail	kristin@pandpuniforms.com
Federal Employer Identification Number	264530318
Title of Person Authorized to Sign	CEO
Print Name of Person Authorized to Sign	Paul Shanabarger
Date Signed and Authorized Signature	 2/7/17



## CONTRACT AGREEMENT

between

Aramark Uniform Services  
1135 Hall Avenue  
Riverside, CA 92509

### CONTRACT DOCUMENTS

CONTRACT NO. MNT17-57B

### UNIFORM AND TEXTILE SERVICES

(hereinafter "CONTRACTOR")  
Telephone: (800) 888-1286  
Email: forrester-cody@aramark.com

And

Contract Amount: \$104,793

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

### Omnitrans Project Manager:

Name: Bonnie Judge  
Title: Maintenance Analyst  
Telephone: (909) 379-7180  
Email: [bonnie.judge@omnitrans.org](mailto:bonnie.judge@omnitrans.org)

### Contract Administrator:

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



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ATTACHMENT A – SCOPE OF WORK

ATTACHMENT B - PRICING

ATTACHMENT C - FORMS

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

## **RECITALS**

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

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

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

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

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

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

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

Omnitrans' election to extend the Agreement beyond the Initial Term shall not diminish its right to terminate the Agreement for Omnitrans' convenience or CONTRACTORS default as provided elsewhere in this Agreement. The "maximum term" of this Agreement shall be the period extended from \_\_\_\_\_ through \_\_\_\_\_, which period encompasses the Initial Term and the Option Year One and Option Year Two.

### **3. CONTRACT OPTIONS**

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

### **4. 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 B, and subject to the maximum cumulative payment obligation.

OMNITRANS' maximum cumulative payment obligation under this Agreement shall not exceed One Hundred Four Thousand Seven Hundred Ninety Three Dollars (\$104,793), including all amounts payable to CONTRACTOR for all costs, including but not limited to direct labor, other direct costs, subcontracts, indirect costs including, but not limited to, leases, materials, taxes, insurance, and profit.

### **5. INVOICING AND PAYMENT**

- A. CONTRACTOR shall invoice OMNITRANS on a monthly basis no later than the 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

[Accountspayable@omnitrans.org](mailto:Accountspayable@omnitrans.org)

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

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

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

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

C. TITLE

- a. Title shall pass to Omnitrans at the time of payment.
- b. The title transferred as above shall in each case be good, and free and clear from any and all security interests, liens, and/or other encumbrances.
- c. The transfer of title as specified above shall not imply Acceptance by Omnitrans, nor relieve the Contractor from the responsibility for strict

compliance with the Contract, including warranty as specified in the Article entitled Warranty of Work, and for any loss of or damage to the Work.

d. The Contractor at its own expense shall promptly execute, acknowledge, and deliver to the Omnitrans proper bills of sale or other written instruments of title in a form as required by Omnitrans; said instruments shall convey to the Omnitrans' title free and clear of debts, claims, liens, mortgages, taxes, and/or encumbrances.

e. Contractor shall have title to and bear the risk of any loss of or damage to Work purchased hereunder until they are delivered, unloaded, and received by Omnitrans at the FOB Destination specified herein. Contractor's responsibility for loss or damage except for loss or damage resulting from Contractor's negligence, shall cease when title passes to Omnitrans.

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

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

## **7. NOTIFICATION**

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

To OMNITRANS:

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

To CONTRACTOR:

Aramark Uniforms Services  
1135 Hall Avenue  
Riverside, CA 92509  
Attn: Cody Forrester

## **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: Bonnie Judge, Maintenance Analyst.

- 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>
Ray Rhode	General Manager
Daniel Becerra	Assistant General Manager
Jack Veloz	District Manager
Alex Urrutia	EV Route Sales Representative
Mike Smith	WV Route Sales Representative

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

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

**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 28, 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 10, 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	
<hr/>	<hr/>
<hr/>	<hr/>
<hr/>	<hr/>

## **14. INDEPENDENT CONTRACTOR**

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

## **15. INSURANCE**

### **A. INSURANCE REQUIREMENTS**

#### **1) General Requirements for Contractor**

- a. Without limiting or diminishing the Contractor's obligation to indemnify or hold Omnitrans harmless, Contractor shall procure, prior to commencement of the services required under this contract and maintain for the duration of the contract at its own expense, insurance of the kinds and in the amounts as indicated below;
- b. Provide Omnitrans with valid original certificates of insurance and endorsements showing Omnitrans as an additional insured.

#### **2) Deductibles or Self-Insured Retention (SIR)**

SIR must be declared to and approved by Omnitrans. At the option of Omnitrans, either: the insurer shall reduce or eliminate such deductibles or SIR or Contractor shall procure a bond guaranteeing payment of losses and related investigations, claim administration and defense expenses.

#### **3) Other Insurance Provisions**

##### **a. Commercial General Liability and Automobile Liability**

Commercial General Liability insurance coverage, including but not limited to, premises liability, contractual liability, products and completed operations liability, personal and advertising injury covering claims which may arise from or out of Contractor's performance of its obligations hereunder and if Contractor's vehicles or mobile equipment are used in the performance of the obligations under this Agreement, then Contractor shall maintain liability insurance for all owned, non-owned or hired vehicles so used. Policy shall name Omnitrans, its officers, officials, employees, agents and volunteers as additional insured as respects: liability arising out of activities performed by or on behalf of Contractor; products and completed operations of Contractor;

premises owned, occupied or used by Contractor; or automobiles owned, leased, hired or borrowed by Contractor. The coverage shall contain no special limitations of the scope of protection afforded Omnitrans, its officers, officials, employees, agents, and volunteers.

1. For any claims related to this project, Contractor's insurance coverage shall be primary insurance as respects Omnitrans, its officers, officials, employees, agents, and volunteers. Any insurance and/or deductibles and/or self-insured retentions or self-insured programs maintained by Omnitrans, its officers, officials, employees, agents, and volunteers shall be excess of Contractor's insurance and shall not be construed as contributory.
2. Contractor's insurance shall apply separately to each insured against whom claim is made or suit is brought, except with respect to the limits of the insurer's liability.
3. Each insurance policy required by this clause shall be endorsed to state that coverage shall not be suspended, voided, cancelled by either party, reduced in coverage or in limits except after thirty (30) days prior written notice has been given to Omnitrans.

**b. Workers' Compensation**

If the Contractor has employees as defined by the State of California, the Contractor shall maintain statutory Workers' compensation Insurance (Coverage A) as prescribed by the laws of the State of California. Policy shall include Employers' Liability (Coverage B) including Occupational Disease with limits not less than \$1,000,000 per person per accident. The policy shall be endorsed to waive subrogation in favor of Omnitrans and, if applicable, to provide a Borrowed Servant/Alternate Employer Endorsement.

**c. Care, Custody, and Control**

Contractor shall insure any Omnitrans property while under its Care, Custody, and Control according to the requirements listed in the insurance coverage required.

**4) Acceptability of Insurers**

Insurance companies shall be State of California admitted or approved and have a current **A.M. Best's** rating of no less than **A:VIII**.

**5) Verification of Coverage**

- a. Contractor shall furnish Omnitrans with original endorsements affecting coverage required by this clause. The endorsements are to be signed by a person authorized by that insurer to bind coverage on its behalf. All insurance certificates and endorsements



are to be received and approved by Omnitrans before work commences.

- b. As an alternative, Contractor's insurer may provide complete, certified copies of all required insurance policies, including endorsements affecting the coverage required by these specifications.
- c. In lieu of purchasing insurance and providing original endorsements and or certificates of insurance, the Contractor may provide proof of self-insurance; such proof must be to the satisfaction of Omnitrans.

**6) Subcontractors**

Contractor shall include all subcontractors as insureds under its policies or shall furnish separate certificates and endorsements for each subcontractor. All coverage for subcontractors shall be subject to all of the requirements stated herein.

**7) Notification of Terminated Insurance**

Insurance shall not be terminated or expire without thirty (30) days written notice, and are required to be maintained in force until completion of the contract.

**B. MINIMUM INSURANCE COVERAGE**

If the Contractor maintains broader coverage and/or higher limits than the minimum requirements shown below, Omnitrans requires and shall be entitled to the broader coverage and/or higher limits maintained by the Contractor.

- 1) ☒ **Commercial General Liability including Products/Completed Operations:** \$1,000,000; per occurrence for bodily and property damage liability and \$2,000,000 aggregate; *Omnitrans named and endorsed as an Additional Insured.*
- 2) ☒ **Automobile Liability:** \$1,000,000; per occurrence for bodily and property damage liability and aggregate; *Omnitrans named and endorsed as an Additional Insured.*
- 3) ☐ **Errors and Omissions Liability:** \$1,000,000; combined single limit bodily and property damage liability per occurrence and \$ 3,000,000 aggregate or,
- 4) ☐ **Professional Liability:** \$1,000,000; per occurrence and aggregate.
- 5) ☒ **Workers' Compensation:** statutory limits or,

- 6) ☐ **Self Insurance Program:** a State Approved program in an amount and form that meets all applicable requirements of the Labor Code of the State of California.
- 7) ☒ **Employer's Liability:** \$1,000,000; per occurrence.
- 8) ☐ **Environmental Liability:** \$1,000,000; per occurrence and aggregate; *Omnitrans named and endorsed as an Additional Insured.*
- 9) ☐ **Umbrella Policy:** \$4,000,000; per occurrence and aggregate Additional coverage for the above policies, *Omnitrans Additional Insured.*
- 10) ☐ All drivers making deliveries of products specified on this solicitation shall have Hazardous Materials Endorsements on their Commercial Drivers License, and such other Endorsements as may be required by relevant laws and/or regulations.

## 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**

- A. 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.
- B. Government regulations that directly affect the CONTRACTOR'S performance of this contract and unforeseen impacts, which neither party could have contemplated at the onset of the contract and have an unconscionable impact on the CONTRACTOR may be given special pricing consideration. The parties, in good faith, shall review established rates and may adopt any mutually agreed new rates, which shall only be effective as agreed upon by the parties. Thorough documentation including all cost elements is required to support the Contractor's claim to any relief under this clause.

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

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

## **29. PUBLIC RECORDS ACT**

- A. All records, documents, drawings, plans, specifications and other material relating to conduct of OMNITRANS' business, including materials submitted by CONTRACTOR in its proposal and during the course of performing the Work under this Agreement, shall become the exclusive property of OMNITRANS and may be deemed public records. Said materials may be subject to the provisions of the California Public Records Act. OMNITRANS' use and disclosure of its records are governed by this Act.
- B. OMNITRANS will not advise as to the nature or content of documents entitled to protection from disclosure under the California Public Records Act, including interpretations of the Act or the definitions of trade secret, confidential or proprietary. OMNITRANS will accept materials clearly and

prominently labeled "TRADE SECRET" or "CONFIDENTIAL" or "PROPRIETARY" as determined by CONTRACTOR. OMNITRANS will endeavor to notify CONTRACTOR of any request of the disclosure of such materials. Under no circumstances, however, will OMNITRANS be liable or responsible for the disclosure of any labeled materials whether the disclosure is required by law or a court order or occurs through inadvertence, mistake or negligence on the part of OMNITRANS or its officers, employees and/or contractors.

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

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

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

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

### **31. FORCE MAJEURE**

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

### **32. CONFIDENTIALITY**

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

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

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

### **34. GOVERNING LAW**

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

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

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

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

- A. The 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, 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. 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.

### **37. PRECEDENCE**

Conflicting provisions hereof, if any, shall prevail in the following descending order of precedence: (1) the provisions of this Agreement, and any and all of its Amendments, Appendices, Exhibits and Attachments; (2) provisions of RFP-MNT17-57 and any and all of its Addenda, Appendices, Exhibits and Attachments; and (3) CONTRACTOR's proposal dated February 7, 2017 and its Appendices, Exhibits, Attachments and Best & Final Offer dated March 6, 2017.

### **38. ENTIRE AGREEMENT**

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

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

OMNITRANS

ARAMARK UNIFORM SERVICES

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

\_\_\_\_\_  
Cody Forrester  
MAE

\_\_\_\_\_  
Date

\_\_\_\_\_  
Date

Federal Tax I.D. No. 23-2816365

DP 

CM 

ATTACHMENT A – SCOPE OF WORK  
MNT17-57B  
UNIFORM AND TEXTILE SERVICES

**1. INTRODUCTION AND PROJECT OVERVIEW**

**A. STATEMENT OF WORK**

- 1) Contractor shall provide Uniform Supply, Rental, Laundry, Alteration and Textile Services, for approximately 500 coach operators, 35 Operations department staff, 105 Maintenance department staff, 12 Procurement department staff and 7 Marketing staff.
- 2) Contractor shall be required to accommodate 3 separate shifts for the purpose of obtaining measurements/sizing of each employee. Contractor shall include this transitional effort in the work plan section of their proposal.
- 3) Contractor shall invoice Omnitrans on a monthly basis. Each invoice must be separated by location (East Valley facility and West Valley facility), departments and related employees. Any discrepancies related to a specific employee shall be reflected on the each invoice, ex: changes, credits, non-returns. Each employee shall be identified by name.

**B. DELIVERY**

Omnitrans' transit operations are conducted from two (2) separate facilities in the San Bernardino Valley. Delivery shall be made to both locations:

East Valley Facility (City of San Bernardino)

Located at 1700 West Fifth Street, San Bernardino, CA 92411-2499

West Valley Facility (City of Montclair)

Located at 4748 Arrow Highway, Montclair, CA 91763-1208

**2. GENERAL REQUIREMENTS - OPERATIONS**

- 1) Contractor shall provide uniforms for Omnitrans' Coach Operators, Coach Operations Instructors, Training Instructors, Field Supervisors and SBX Operators for purchase.
- 2) Contractor shall make required alterations and affix required patches as provided by Omnitrans. The Contractor shall only affix or otherwise transfer the Omnitrans logo to garments and accessories that have been approved.
- 3) Contractor shall conduct services at Omnitrans and provide availability at their place of business, and the location, hours and days of operation must allow Omnitrans employees reasonable access to those services. Proposers shall indicate hours and days of operation availability.
- 4) Contractor assumes responsibility for measuring and fitting of uniforms. Proposers shall indicate in their work plan if this service is available, and

ATTACHMENT A – SCOPE OF WORK  
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UNIFORM AND TEXTILE SERVICES

provide a brief description outlining the process to be used, and cost to Omnitrans, if any.

- 5) Contractor shall maintain an adequate stock of uniform pieces to accommodate the uniform requirements of Omnitrans personnel.

NOTE: Additional purchases made by personnel will be billed directly to the employee or paid for by the employee at time of pick up.

**3. GENERAL REQUIREMENTS – MAINTENANCE**

**A. GENERAL**

- 1) Uniforms must be NEW, ironed, high quality, heavy-duty construction, and provide long-lasting durability with proper fit and neat appearance. Wrinkled or scrunched items will not be accepted. Contractor shall correct deficiencies in the uniform's appearance at their own expense and return corrected items within twenty-four hours.
- 2) Uniforms must have reinforced seams and bar tacks at stress points, and brass zippers.
- 3) Uniforms for executive and industrial personnel have different requirements and must be provided according to those requirements.
- 4) Uniforms must be made available for each item specified, long and short-sleeved shirts of each type.
- 5) Uniforms must be made available in men's and women's sizes and styles.
- 6) Uniforms must be appropriately tailored for men and women.
- 7) Uniforms must conform to the transient characteristics of the Brand name specified or its Omnitrans approved equal.
- 8) Uniforms must be replaced with NEW when they show signs of excessive wear.
- 9) A full physical inventory of all rental items shall be performed semi-annually in the months of January and June.
- 10) Pants Mainseams:
  - (1) Inseams and outseams are to be sewn with Federal 401 chainstitch.
  - (2) Seat seams are to be sewn with tandem needle chainstitch.
  - (3) Inseam and outseam edges are to be sprayed with edge sealant.
  - (4) Outlet edges are to be surged.
  - (5) Pockets are to be constructed by stitch, turn and restitch method.
  - (6) All seams are to be sewn with polyester thread with all stress points appropriately reinforced.

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**B. PROVISION FREQUENCY OF RENTALS**

a) **Start-Up**

- (1) Contractor shall provide each employee with eleven (11) uniform sets.
- (2) The monthly rental rate must include the initial provision and the ongoing replacement of all rentals.

b) **Weekly**

- (1) Each employee will turn in up to five (5) uniform sets each week for laundry services.
- (2) Contractor shall provide freshly laundered, ironed and repaired uniforms at the appropriate work location for the intended employee.

c) **Biennial Replacements**

- (1) Uniforms shall be replaced with NEW no later than every two (2) years.
- (2) Omnitrans may waive the Biennial Replacement for given employees if the contract is within six (6) months of conclusion.

**C. NEW EMPLOYEES**

- d) New employees shall be provided new rental uniforms.
- e) These uniforms shall be replaced no later than every two (2) years from the beginning date of their uniform service.

**D. EXECUTIVE UNIFORMS**

f) **Polo Shirts**

Presently, there are male and females who wear polo type shirts with the cotton/polyester blend pants.

- (1) Color: Navy blue; light blue and orange.
- (2) Fabric: 50% polyester, 50% cotton pique; 4.25 ounces per square yard, poplin; durable press with soil release finish.
- (3) Contractor shall supply embroidered name tags, Omnitrans patch, and the American Flag. Name tags shall be sewn on above the right pocket of each shirt, Omnitrans patch on the left chest, and the American Flag on the upper-left arm. Employees are to be given the option of first name only, last name only or first and last.
- (4) Hangars shall be of proper size to avoid crease marks in shoulders.

2) **Slacks**

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UNIFORM AND TEXTILE SERVICES

- (1) Style: Quarter top pockets; straight leg silhouette; single welt hip pockets with button closure on left pocket; drop curtain waist band with 3 inch total outlet; and French fly tab with hook and eye closure.
- (2) Color: Navy Blue.
- (3) Fabric: 100% textured woven polyester (7.5 ounces) with stretch performance.
- (4) Brand: Open.

c) **Emblems**

- (1) Contractor shall supply embroidered name tags, Omnitrans patch, and the American Flag. Name tags shall be sewn on above the right pocket of each shirt, Omnitrans patch on the left chest, and the American Flag on the upper-left arm. Employees are to be given the option of first name only, last name only or first and last.
- (2) Service tech patches will be provided by Omnitrans and as required Contractor shall sew on the upper-right arm.
- (3) Sewing charges will be at no additional charge.

**E. INDUSTRIAL UNIFORMS**

d) **Shirts**

- (1) Style: Six button front with gripper at neck; two button-through, mitered pockets; two piece, lined collar and cuffs; and separate two piece shoulder yoke; and stitched down front hems and facings.
- (2) Type: Long and short sleeved options required.
- (3) Color: Navy blue; light blue and orange.
- (4) Fabric: 65% polyester, 35% combed cotton; 4.25 ounces per square yard, poplin; durable press with soil release finish.
- (5) Select staff shall require shirts that are to be 100% cotton.
- (6) Brand: Open.

e) **Pants**

(1) **Color**

- (1) Navy Blue

(2) **Style**

- (1) Full cut. Straight leg without cuffs; quarter top pockets tacked to side seam with separate facings; capped waistband with 3-inch total outlet at band; two-piece band joined at outlet; hip pocket welts set in with darts above hip

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pockets; belt loops attached by bar tacking through outside at top and bottom of each loop; and heavy duty brass ratcheting zipper.

- (2) Jean cut. Slightly flared leg bottom; western style front pockets with miter corners into side seam; two-piece capped waistband with 3-inch total outlet; two patch pockets attached by double rows of stitching; heavy duty brass ratcheting zipper; double-needle felled seam jean riser on back panels; and topstitched belt loops.

(3) **Fabric**

- (1) 65% polyester and 35% combed cotton; 7.5 ounces per square yard; durable press twill.
- (2) Select staff shall require pants that are to be 100% cotton.

f) **Emblems**

- (1) Contractor shall supply embroidered name tags, Omnitrans patch, and the American Flag. Name tags shall be sewn on above the right pocket of each shirt, Omnitrans patch on the left chest, and the American Flag on the upper-left arm. Employees are to be given the option of first name only, last name only or first and last.
- (2) Service tech patches will be provided by Omnitrans and as required Contractor shall sew on the upper-right arm.

g) **Coveralls**

a) **Color**

- (1) Navy Blue

b) **Style**

- (1) Long Sleeve and Long Pant
- (2) Two Way Zipper Front
- (3) Two Front Pockets
- (4) Two Patch Hip Pockets
- (5) Rule Pocket
- (6) Pass-through Pockets
- (7) Sized to be worn over clothes

c) **Fabric**

65% polyester and 35% cotton twill

ATTACHMENT A – SCOPE OF WORK  
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**4. ALTERATIONS, REPAIRS, AND REPLACEMENTS OF LOST ITEMS - MAINTENANCE**

**C. Routine Alterations**

- a) Routine Alterations are the alterations that are required to ensure a proper fit and professional appearance after the uniform pieces have been issued.
- b) The price for routine alterations must be included in monthly rental rate.

**D. Special Alterations**

- a) Special alterations, which are required after the uniform pieces have been received and accepted, are those that are required to ensure a continued proper fit and professional appearance.
- b) Special alterations are required only because of actual variances in the employee's measurements, not because of stretching or shrinking of material.
- c) Pricing for special alterations must be included in the proposal.
- d) If the alterations are not possible and a new set of replacement uniforms are required prior to the biennial replacement, then Omnitrans will pay for the prorated cost of the replacement uniforms, but only after Omnitrans gives written permission.

**E. Repairs**

- a) Repairs must be made on serviceable uniform pieces to maintain a professional appearance.
- b) Cost of repairs must be included in the monthly rental rate.
- c) Repairs to be completed within 14 days of pick-up. If uniforms cannot be repaired within 14 days, replacement uniforms will be required.

**F. Lost Item**

- a) If the contractor loses any rental item as required by this RFP for more than one week, then the Contractor must replace that item by the following week and credit Omnitrans for the time the item was missing.
- b) If Omnitrans loses any rental item, then Omnitrans will pay for the prorated remaining life of the item based on a two-year life span. Contractor shall supply a life history for all lost bar coded items to substantiate the prorated value.

- G.** Contractor must supply forms for Repair Requests & Lost Items. This form must be in duplicate. Omnitrans will complete the form, retain one copy, and give the other copy to the Contractor.

\*\*\*End of Scope of Work\*\*\*



ATTACHMENT B – PRICING  
MNT17-57B  
UNIFORM AND TEXTILE SERVICES

Maintenance	Size Range	*Base Period	Loss Charges
<b><i>Executive</i></b>			
Shirts Long/Short Sleeve			
Men's Regular	XS-5XL	\$0.22	\$14.00
Women's Regular	S-3XL	\$0.22	\$14.00
Slacks			
Men	28-50	\$0.21	\$18.00
Women	4-26	\$0.21	\$18.00
<b><i>Industrial Blended Fabric</i></b>			
Shirts Long/Short Sleeve			
Men's Regular	SM-5XL	\$0.14	\$10.00
Women's Regular	XS-3XL	\$0.14	\$10.00
Slacks - Men and Women			
Regular	28-50	\$0.22	\$18.00
<b><i>Industrial 100% Cotton</i></b>			
Shirts Long/Short Sleeve			
Regular	SM-4XL	\$0.19	\$16.00
Slacks – Men and Women			
Regular	28-50	\$0.22	\$18.00
Short Sleeve			
Men's Regular	XS-5XL	\$0.22	\$14.00
Women's Regular	S-3XL	\$0.22	\$14.00
Slacks – Men and Women			
Regular	28-50	\$0.22	\$18.00
Emblems			
Name Tags		\$1.00	
Omnitrans Patch		\$2.00	
American Flag		\$1.00	

ATTACHMENT B – PRICING  
MNT17-57B  
UNIFORM AND TEXTILE SERVICES

<b>Coveralls</b>			
	36-64	\$0.35	\$29.00
<b>Shop Towels</b>			
Cotton Wiping Towels (Bar Towel)	288 sq. in.	\$0.08	\$0.50
Treated Blue Towels (Shop Towel)	225 sq. in	\$0.05	\$0.40
Non-Treated White Towels (White Shop Towel)	225 sq. in	\$0.05	\$0.40
<b>Entry Mats</b>			
	3x4	\$1.32	\$40.00
	4x6	\$2.60	\$70.00
<b>Fender Covers</b>			
	3x4	\$0.42	\$7.00
<b>Dust Mops</b>			
	22" Long	\$0.36	\$7.00
	36" Long	\$0.56	\$8.00
	48" Long	\$0.95	\$9.00

\*Pricing shall remain fixed for the first three (3) years. All subsequent year pricing shall be determined in April of each year using the change (increase or decrease) of Consumer Price Index (CPI).



**CURRENT CLIENT REFERENCES. MINIMUM OF FIVE (5) REQUIRED**

*Submit this form with the BID/Proposal, with valid contact information, failure to do so is grounds for disqualification.*

Company	ZODIAC SEATS
Address	11340 Jersey Blvd
City, ST, Zip	Rancho Cucamonga CA 91730
Phone Numbers/Email	909 652 9568 / oscar.gomez@zodiac aerospace.com
Contact Name/Title	OSCAR GOMEZ
Type of Engagement	Rental Customer
Company	VISTA METALS
Address	13425 Whittram Ave.
City, ST, Zip	Fontana CA 92335
Phone Numbers/Email	909 823 4278 / ernie@vistametals.com
Contact Name/Title	ERNIE CABRERA
Type of Engagement	Rental Customer
Company	Augustine Casino
Address	84001 Ave 54
City, ST, Zip	Coachella CA 92236
Phone Numbers/Email	760 391 9500 / HSWAN@augustinecasino.com
Contact Name/Title	Heather Swan
Type of Engagement	Rental Customer
Company	Cucamonga Valley Water
Address	10440 Ashford St. B.
City, ST, Zip	Rancho Cucamonga CA 91730
Phone Numbers/Email	909 4183 7420
Contact Name/Title	SAM CORTEZ
Type of Engagement	Rental Customer
Company	PWLC, INC.
Address	3584 E La Campa Way
City, ST, Zip	Palm Springs CA 92262
Phone Numbers/Email	760 323 9341 / connie-pwlc@hotmail.com
Contact Name/Title	Connie Altano
Type of Engagement	Rental Customer
Bidder's/Proposer's Company Name	ARAMARK UNIFORM SERVICES
Legal Structure (corp./partner/proprietor)	Corporation
Principle Office Address	1135 Hall Ave.
City, ST, Zip	Riverside CA 92509
Phone Number and E-Mail	800 888 1286 / ferrestier - cody@aramark.com
Federal Employer Identification Number	23-2816365
Title of Person Authorized to Sign	MAE
Print Name of Person Authorized to Sign	CODY FERRESTIER
Date Signed and Authorized Signature	A - CF + 2/7/17



**LIST OF SUBCONTRACTORS AND DBES (REQUIRED  $> \frac{1}{2}$  OF 1% SHARE OF BID)**

*Submit this form with the BID/Proposal, failure to do so is grounds for disqualification.*

**One (1) form required of each bidder and proposed subcontractor having greater than  $\frac{1}{2}$  of 1% share of the bid.** Government Code § 4100 on, "Subletting and Subcontract Fair Practices Act".

Company \_\_\_\_\_  
Address \_\_\_\_\_  
City, ST, Zip \_\_\_\_\_  
Phone Numbers/Email \_\_\_\_\_  
Contact Name/Title \_\_\_\_\_  
Type of Engagement \_\_\_\_\_  
Type of work to be performed \_\_\_\_\_  
Dollar value of participation \_\_\_\_\_ DBE qualified? Yes ☐ No ☐

Company \_\_\_\_\_  
Address \_\_\_\_\_  
City, ST, Zip \_\_\_\_\_  
Phone Number \_\_\_\_\_  
Contact Name/Title \_\_\_\_\_  
Type of Engagement \_\_\_\_\_  
Type of work to be performed \_\_\_\_\_  
Dollar value of participation \_\_\_\_\_ DBE qualified? Yes ☐ No ☐

Company \_\_\_\_\_  
Address \_\_\_\_\_  
City, ST, Zip \_\_\_\_\_  
Phone Number \_\_\_\_\_  
Contact Name/Title \_\_\_\_\_  
Type of Engagement \_\_\_\_\_  
Type of work to be performed \_\_\_\_\_  
Dollar value of participation \_\_\_\_\_ DBE qualified? Yes ☐ No ☐

Total DBE participation	Dollars	% of Total Contract
-------------------------	---------	---------------------

Bidder's/Proposer's Company Name Aramark Uniform Services  
Legal Structure (corp./partner/proprietor) Corporation  
Principle Office Address 1135 Hall Ave.  
City, ST, Zip Riverside CA 92509  
Phone Number and E-Mail 800 888 1286 / Forrester-cooly@aramark.com  
Federal Employer Identification Number 23-2816365  
Title of Person Authorized to Sign MAE  
Print Name of Person Authorized to Sign CODY FORRESTER

Date Signed and Authorized Signature \_\_\_\_\_

**DUPLICATE THIS FORM AS NECESSARY TO COMPLETE LIST (SIGN LAST ONE)**





**NOT ON EXCLUDED PARTIES LIST SYSTEM (REQUIRED)**

*Submit this form with the BID, failure to do so is grounds for disqualification.*

The Bidder certifies that it is NOT on the Excluded Parties List System of ineligible firms for federally financed and assisted construction, materials, equipment contracts or services.

Bidder's Company Name ARAMARK Uniform Services  
Legal Structure (corp./partner/proprietor) Corporation  
Principle Office Address 1135 Hall Ave.  
City, ST, Zip Riverside CA 92509  
Phone Number 800-888-1286  
Fax Number 951-274-0936  
E-Mail Forrester - cody@aramark.com  
Federal Employer Identification Number 23-2816365  
Title of Person Authorized to Sign N/A  
Print Name of Person Authorized to Sign CODY FORRESTER  
Date Signed and Authorized Signature A. C. F. 2/7/17

**DECLARATION OF NON-COLLUSION (REQUIRED)**

*Submit this form with the BID, failure to do so is grounds for disqualification.*

I hereby declare (or affirm) under penalty of perjury that:

1. I am the bidder (if the bidder is an individual), a partner in the bid (if the bidder is a partnership), or an officer or employee of the bidding corporation and have authority to sign on its behalf (if the bidder is a corporation);
2. The bidder has independently produced the attached bid(s) without collusion, agreement, understanding or planned common course of action, with any other source, that would limit independent bidding competition;
3. The contents of the bid(s) have not been communicated by the bidder and or its employees and or agents to any person not an employee and or agent of the bidder and or its surety, on any bond furnished with the bid, and will not be communicated to any such person prior to the official opening of the bid, and
4. I have fully informed myself regarding the accuracy of the statements made in this declaration.

Bidder's Company Name Aramark Uniform Services  
(corp./partnership/sole proprietor) Corporation  
Principle Office Address 1138 Hall Ave  
City, ST, Zip Riverside CA 92509  
Phone Number 800 888 1286  
Fax Number 951 274 0936  
E-mail Number forrester-cody@aramark.com  
Federal Employer I.D. Number 23-2816365  
Title of Person Authorized to Sign MAE  
Print Name Authorized to Sign CODY FORRESTER  
Authorized Signature A - C F L  
Date Signed 2/7/17



**DEBARMENT, SUSPENSION, & OTHER RESPONSIBILITY MATTERS  
(REQUIRED >\$25,000)**

*Submit this form with BID, failure to do so is grounds for disqualification.*

**One (1) form required of each bidder and subcontractor having greater than a \$25,000 share of the bid.** U.S. Code, Title 31, § 6101 note and U.S. DOT regulations on "Debarment and Suspension," 49 C.F.R. Part 29.

The Participant (the bidder and potential contractor or potential subcontractor for a third party contract) certifies to the best of its knowledge and belief, that it and its principals:

1. Are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions by a Federal department or agency;
2. Have not within a three-year period preceding this bid been convicted of or had a civil judgment rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (Federal, State or local) transaction or contract under a public transaction; violation of Federal or State antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property;
3. Are not presently indicted for or otherwise criminally or civilly charged by a governmental entity (Federal, State, or local) with commission of any of the offenses enumerated in paragraph (2) of this certification; and
4. Have not within a three-year period preceding this application/bid had one or more public transactions (Federal, State, or local) terminated for cause or default.

*An explanation must be attached to this certification regarding any exception(s).*

The Primary Participant certifies that it has authority under State and local laws to comply with the subject assurances, the truthfulness and accuracy of the contents of this certification, any attached explanation submitted herewith, understands the applicability of 31 U.S.C. Sections 3801 *Et. Seq.* and that this certification has been legally made.

Bidder's Company Name	ARAMARK UNIFORM SERVICES
Legal Structure (corp./partner/proprietor)	CORPORATION
Select One	<input type="checkbox"/> Prime or <input type="checkbox"/> Subcontractor (submit after award)
Principle Office Address	1135 HALL AVE.
City, ST, Zip	RIVERSIDE CA 92509
Phone Number	800 888 1286
Fax Number	951 274 0936
E-Mail	FORRESTER-CODY@ARAMARK.COM
Federal Employer Identification Number	23-2816365
Title of Person Authorized to Sign	MAE
Print Name of Person Authorized to Sign	CODY FORRESTER
Date Signed and Authorized Signature	A.C.F. 2/7/17



**PROPOSED DISADVANTAGED BUSINESS ENTERPRISES (DBE) PARTICIPATION**

*This form must be submitted with the BID/Proposal,  
to have it considered during BID/Proposal evaluation.*

*The bidder/proposer intends to utilize the following DBE contractors on this project.  
Signature of participating DBE is confirmation of willingness to participate on this project.*

Company \_\_\_\_\_  
Address \_\_\_\_\_  
City, ST, Zip \_\_\_\_\_  
Phone Number \_\_\_\_\_  
Email \_\_\_\_\_  
Contact Name \_\_\_\_\_  
Type of work to be performed \_\_\_\_\_  
Dollar value of participation \_\_\_\_\_  
Signature of participating DBE \_\_\_\_\_

*None*

Company \_\_\_\_\_  
Address \_\_\_\_\_  
City, ST, Zip \_\_\_\_\_  
Phone Number \_\_\_\_\_  
Email \_\_\_\_\_  
Contact Name \_\_\_\_\_  
Type of work to be performed \_\_\_\_\_  
Dollar value of participation \_\_\_\_\_  
Signature of participating DBE \_\_\_\_\_

Company \_\_\_\_\_  
Address \_\_\_\_\_  
City, ST, Zip \_\_\_\_\_  
Phone Number \_\_\_\_\_  
Email \_\_\_\_\_  
Contact Name \_\_\_\_\_  
Type of work to be performed \_\_\_\_\_  
Dollar value of participation \_\_\_\_\_  
Signature of participating DBE \_\_\_\_\_

Company \_\_\_\_\_  
Address \_\_\_\_\_  
City, ST, Zip \_\_\_\_\_  
Phone Number \_\_\_\_\_  
Email \_\_\_\_\_  
Contact Name \_\_\_\_\_  
Type of work to be performed \_\_\_\_\_  
Dollar value of participation \_\_\_\_\_  
Signature of participating DBE \_\_\_\_\_

(DUPLICATE THIS FORM AS REQUIRED)





**ITEM #F9**  
**BUS CLEANING SERVICES**



## CONTRACT AGREEMENT

between

CONTRACTOR  
Hallcon Corporation  
14325 W. 95th Street  
P.O. Box 14610  
Lenexa, KS 66285 USA  
Dan Cox, Vice President  
  
(hereinafter "CONTRACTOR")  
Telephone: (416) 885-6016  
Email: dcox@hallcon.com

**CONTRACT DOCUMENTS**  
**CONTRACT NO. MNT17-69**  
**BUS CLEANING SERVICES**

And

Contract Amount: \$185,477.04

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

Omnitrans Project Manager:  
Name: Oscar Tostado  
Title: Maintenance Manager  
Telephone: (909) 379-7483  
Email: [Oscar.tostada@omnitrans.org](mailto:Oscar.tostada@omnitrans.org)

Contract Administrator:  
Name: Krystal Turner  
Title: Contract Administrator  
Telephone: (909) 379-7202  
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

ATTACHMENT D - FORMS

This Agreement is made and entered into as of this 4th day of June, 2017, and between Omnitrans (hereinafter referred to as "OMNITRANS") and Hallcon Corporation (hereinafter referred to as "CONTRACTOR").

## **RECITALS**

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

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

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

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

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

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

The term of this Agreement shall be from the date of execution of this Agreement and continue in effect through June 3, 2020, unless terminated as specified in Section 10 and 11 of this Agreement. Omnitrans has no obligation to purchase any specified amount of products/services. All applicable indemnification provisions in this Agreement shall remain in effect following the termination of this Agreement.

Omnitrans' election to extend the Agreement beyond the Initial Term shall not diminish its right to terminate the Agreement for Omnitrans' convenience or CONTRACTORS default as provided elsewhere in this Agreement. The "maximum term" of this Agreement shall be the period extended from June 4, 2020 through June 3, 2022, which period encompasses the Initial Term and the Option Year One and Option Year Two.

### **3. CONTRACT OPTIONS**

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

### **4. COMPENSATION**

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

OMNITRANS' maximum cumulative payment obligation under this Agreement shall not exceed One Hundred Eighty Five Thousand, Four Hundred Seventy Seven Dollars and Four Cents (\$185,477.04), including all amounts payable to CONTRACTOR for all costs, including but not limited to direct labor, other direct costs, subcontracts, indirect costs including, but not limited to, leases, materials, taxes, insurance, and profit.

### **5. INVOICING AND PAYMENT**

- A. CONTRACTOR shall invoice OMNITRANS on a monthly basis no later than the 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

[Accountspayable@omnitrans.org](mailto:Accountspayable@omnitrans.org)

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

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

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

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

C. TITLE

- a. Title shall pass to Omnitrans at the time of payment.
- b. The title transferred as above shall in each case be good, and free and clear from any and all security interests, liens, and/or other encumbrances.
- c. The transfer of title as specified above shall not imply Acceptance by Omnitrans, nor relieve the Contractor from the responsibility for strict



compliance with the Contract, including warranty as specified in the Article entitled Warranty of Work, and for any loss of or damage to the Work.

d. The Contractor at its own expense shall promptly execute, acknowledge, and deliver to the Omnitrans proper bills of sale or other written instruments of title in a form as required by Omnitrans; said instruments shall convey to the Omnitrans' title free and clear of debts, claims, liens, mortgages, taxes, and/or encumbrances.

e. Contractor shall have title to and bear the risk of any loss of or damage to Work purchased hereunder until they are delivered, unloaded, and received by Omnitrans at the FOB Destination specified herein. Contractor's responsibility for loss or damage except for loss or damage resulting from Contractor's negligence, shall cease when title passes to Omnitrans.

## **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:

To CONTRACTOR:

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

**HALLCON CORPORATION**  
14325 W. 95<sup>TH</sup> STREET  
PO BOX 14610  
LENEXA, KS 66285 USA  
DAN COX, VICE PRESIDENT

## **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: Oscar Tostado, Maintenance Manager.

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

**B. Contractor's Key Personnel**

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

<u>Name</u>	<u>Role</u>
ARLO HERNANDEZ	MANAGER OF OPERATIONS
BETTYE MARTIN	MANAGER
SIRENA LOPEZ	SUPERVISOR
BERNABE YANEZ	LEAD HAND

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 28, 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 10, 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
MACADI CLEANING CORPORATION	WINDOW CLEANING
P.O. Box 8896	
Fountain Valley, CA 92708	

## 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**

### **A. INSURANCE REQUIREMENTS**

#### **1) General Requirements for Contractor**

- a. Without limiting or diminishing the Contractor's obligation to indemnify or hold Omnitrans harmless, Contractor shall procure, prior to commencement of the services required under this contract and maintain for the duration of the contract at its own expense, insurance of the kinds and in the amounts as indicated below;
- b. Provide Omnitrans with valid original certificates of insurance and endorsements showing Omnitrans as an additional insured.

#### **2) Deductibles or Self-Insured Retention (SIR)**

SIR must be declared to and approved by Omnitrans. At the option of Omnitrans, either: the insurer shall reduce or eliminate such deductibles or SIR or Contractor shall procure a bond guaranteeing payment of losses and related investigations, claim administration and defense expenses.

#### **3) Other Insurance Provisions**

##### **a. Commercial General Liability and Automobile Liability**

Commercial General Liability insurance coverage, including but not limited to, premises liability, contractual liability, products and completed operations liability, personal and advertising injury covering claims which may arise from or out of Contractor's performance of its obligations hereunder and if Contractor's vehicles or mobile equipment are used in the performance of the obligations under this Agreement, then Contractor shall maintain liability insurance for all owned, non-owned or hired vehicles so used. Policy shall name Omnitrans, its officers, officials, employees, agents and volunteers as additional insured as respects: liability arising out of activities performed by or on behalf of Contractor; products and completed operations of Contractor; premises owned, occupied or used by Contractor; or automobiles owned, leased, hired or borrowed by Contractor. The coverage shall contain no special limitations of the scope of protection afforded Omnitrans, its officers, officials, employees, agents, and volunteers.

1. For any claims related to this project, Contractor's insurance coverage shall be primary insurance as respects Omnitrans, its officers, officials, employees, agents, and volunteers. Any insurance and/or deductibles and/or self-insured retentions or self-insured programs maintained by Omnitrans, its officers, officials, employees, agents, and volunteers shall be excess of Contractor's insurance and shall not be construed as contributory.
2. Contractor's insurance shall apply separately to each insured against whom claim is made or suit is brought, except with respect to the limits of the insurer's liability.
3. Each insurance policy required by this clause shall be endorsed to state that coverage shall not be suspended, voided, cancelled by either party, reduced in coverage or in limits except after thirty (30) days prior written notice has been given to Omnitrans.

**b. Workers' Compensation**

If the Contractor has employees as defined by the State of California, the Contractor shall maintain statutory Workers' compensation Insurance (Coverage A) as prescribed by the laws of the State of California. Policy shall include Employers' Liability (Coverage B) including Occupational Disease with limits not less than \$1,000,000 per person per accident. The policy shall be endorsed to waive subrogation in favor of Omnitrans and, if applicable, to provide a Borrowed Servant/Alternate Employer Endorsement.

**c. Care, Custody, and Control**

Contractor shall insure any Omnitrans property while under its Care, Custody, and Control according to the requirements listed in the insurance coverage required.

**4) Acceptability of Insurers**

Insurance companies shall be State of California admitted or approved and have a current **A.M. Best's** rating of no less than **A:VIII**.

**5) Verification of Coverage**

- a. Contractor shall furnish Omnitrans with original endorsements affecting coverage required by this clause. The endorsements are to be signed by a person authorized by that insurer to bind coverage on its behalf. All insurance certificates and endorsements are to be received and approved by Omnitrans before work commences.
- b. As an alternative, Contractor's insurer may provide complete, certified copies of all required insurance policies, including

endorsements affecting the coverage required by these specifications.

- c. In lieu of purchasing insurance and providing original endorsements and or certificates of insurance, the Contractor may provide proof of self-insurance; such proof must be to the satisfaction of Omnitrans.

**6) Subcontractors**

Contractor shall include all subcontractors as insureds under its policies or shall furnish separate certificates and endorsements for each subcontractor. All coverage for subcontractors shall be subject to all of the requirements stated herein.

**7) Notification of Terminated Insurance**

Insurance shall not be terminated or expire without thirty (30) days written notice, and are required to be maintained in force until completion of the contract.

**B. MINIMUM INSURANCE COVERAGE**

If the Contractor maintains broader coverage and/or higher limits than the minimum requirements shown below, Omnitrans requires and shall be entitled to the broader coverage and/or higher limits maintained by the Contractor.

- 1) ☒ **Commercial General Liability including Products/Completed Operations:** \$1,000,000; per occurrence for bodily and property damage liability and \$2,000,000 aggregate; *Omnitrans named and endorsed as an Additional Insured.*
- 2) ☒ **Automobile Liability:** \$1,000,000; per occurrence for bodily and property damage liability and aggregate; *Omnitrans named and endorsed as an Additional Insured.*
- 3) ☐ **Errors and Omissions Liability:** \$1,000,000; combined single limit bodily and property damage liability per occurrence and \$ 3,000,000 aggregate or,
- 4) ☐ **Professional Liability:** \$1,000,000; per occurrence and aggregate.
- 5) ☒ **Workers' Compensation:** statutory limits or,
- 6) ☐ **Self Insurance Program:** a State Approved program in an amount and form that meets all applicable requirements of the Labor Code of the State of California.
- 7) ☒ **Employer's Liability:** \$1,000,000; per occurrence.

- 8) ☐ **Environmental Liability:** \$1,000,000; per occurrence and aggregate; *Omnitrans named and endorsed as an Additional Insured.*
- 9) ☐ **Umbrella Policy:** \$4,000,000; per occurrence and aggregate Additional coverage for the above policies, *Omnitrans Additional Insured.*
- 10) ☐ All drivers making deliveries of products specified on this solicitation shall have Hazardous Materials Endorsements on their Commercial Drivers License, and such other Endorsements as may be required by relevant laws and/or regulations.

## 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**

- A. 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.

- B. Government regulations that directly affect the CONTRACTOR'S performance of this contract and unforeseen impacts, which neither party could have contemplated at the onset of the contract and have an unconscionable impact on the CONTRACTOR may be given special pricing consideration. The parties, in good faith, shall review established rates and may adopt any mutually agreed new rates, which shall only be effective as agreed upon by the parties. Thorough documentation including all cost elements is required to support the Contractor's claim to any relief under this clause.

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

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

## **29. PUBLIC RECORDS ACT**

- A. All records, documents, drawings, plans, specifications and other material relating to conduct of OMNITRANS' business, including materials submitted by CONTRACTOR in its proposal and during the course of performing the Work under this Agreement, shall become the exclusive property of OMNITRANS and may be deemed public records. Said materials may be subject to the provisions of the California Public Records Act. OMNITRANS' use and disclosure of its records are governed by this Act.
- B. OMNITRANS will not advise as to the nature or content of documents entitled to protection from disclosure under the California Public Records Act, including interpretations of the Act or the definitions of trade secret, confidential or proprietary. OMNITRANS will accept materials clearly and prominently labeled "TRADE SECRET" or "CONFIDENTIAL" or "PROPRIETARY" as determined by CONTRACTOR. OMNITRANS will endeavor to notify CONTRACTOR of any request of the disclosure of such materials. Under no circumstances, however, will OMNITRANS be liable or responsible for the disclosure of any labeled materials whether the disclosure is required by law or a court order or occurs through inadvertence, mistake or negligence on the part of OMNITRANS or its officers, employees and/or contractors.

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

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

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

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

### **31. FORCE MAJEURE**

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

### **32. CONFIDENTIALITY**

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

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

- A. OMNITRANS shall review and approve in writing all OMNITRANS related copy proposed to be used by CONTRACTOR for advertising or public relations purposes prior to publication. CONTRACTOR shall not allow OMNITRANS related copy to be published in its advertisements and public relations programs prior to receiving such approval. CONTRACTOR shall ensure that all published information is factual and

that it does not in any way imply that OMNITRANS endorses CONTRACTOR's firm, service, and/or product.

- B. CONTRACTOR shall refer all inquiries from the news media to OMNITRANS, and shall comply with the procedures of OMNITRANS' Public Affairs staff regarding statements to the media relating to this Agreement or the Work.
- C. If CONTRACTOR receives a complaint from a citizen or the community, CONTRACTOR shall inform OMNITRANS as soon as possible and inform OMNITRANS of any action taken to alleviate the situation.
- D. The provisions of this Article shall survive the termination or expiration of this Agreement.

#### **34. GOVERNING LAW**

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

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

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

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

- A. The 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, 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. 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.

### 37. PRECEDENCE

Conflicting provisions hereof, if any, shall prevail in the following descending order of precedence: (1) the provisions of this Agreement, and any and all of its Amendments, Appendices, Exhibits and Attachments; (2) provisions of RFP-MNT17-69 and any and all of its Addenda, Appendices, Exhibits and Attachments and (3) CONTRACTOR's proposal dated MARCH 7, 2017.

### 38. ENTIRE AGREEMENT

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

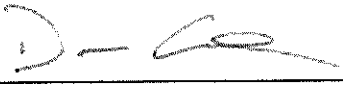
IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed on the date shown below, and effective on the date first hereinabove written.

OMNITRANS

CONTRACTOR

Company name: **HALLCON CORPORATION**

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

  
\_\_\_\_\_  
Name: DAN COX  
Title: VICE PRESIDENT


MARCH 6, 2017

\_\_\_\_\_  
Date

\_\_\_\_\_  
Date

Federal Tax I.D. No.95-468 8677

DP 

CM 

CONTRACT MNT17-69  
REVISED 11/15/2016

ATTACHMENT A – SCOPE OF WORK  
MNT17-69  
BUS CLEANING SERVICES

**1. FLEET COMPOSITION**

- A.** Omnitrans' buses are located at two (2) separate facilities in San Bernardino County and are maintained in the following quantities at the locations as follows:
  - 1) **East Valley:** One hundred eighteen (118) 40ft buses and Fourteen (14) 60ft Articulated buses located at, 1700 West Fifth Street, San Bernardino, CA 92411
    - a) One additional 60ft articulated bus will be added in 2019.
  - 2) **West Valley:** Sixty-six (66) 40ft buses located at, 4748 Arrow Highway, Montclair CA 91763
- B.** Buses are subject to quantity and location changes as required by changes in service levels.

**2. STATEMENT OF WORK**

- A.** Contractor shall provide, on a scheduled basis, all labor, tools, equipment, and materials to perform tri-annually or quarterly bus cleaning services for Omnitrans fixed route transit buses as stated below in Section 8. Work Plan and Exhibit 1. Bus Cleaning Checklist.
- B.** Contractor shall provide a single point of contact, with a backup contact, for the term of the contract. The contact person shall be capable of managing/supervising all aspects of the project as well as subcontractor coordination, if applicable.
- C.** Contractor's work force shall be supervised and the supervisor shall be capable of providing a level of quality control which minimizes workmanship found to be unacceptable.
- D.** Contractor shall provide a qualified labor force, sufficient in number, to satisfactorily complete all specific requirements in the prescribed time period.
- E.** Contractor shall be required to have at least one employee on location while work is in progress, which speaks, writes and understands the English language.
- F.** All project associated personnel must comply with Omnitrans' work and safety rules when on site at either facility. Effective January 1, 2005, all Omnitrans personnel, contractors and vendors shall be required to wear ANSI approved eye protection while in designated areas or while performing any contracted work. **(Contractor shall provide and use reflective vests and any other protective equipment as required/recommended by manufacturer's use of their chemicals, cleaners, etc.)**
- G.** Contractor's employees shall park in the designated employee parking areas at each maintenance facility.
- H.** Contractor shall have a team of cleaners and a supervisor on site at all times.
- I.** Contractor shall work in teams and accomplish one bus at a time and not move to the next bus until one is completely compliant. Each employee will be given



## ATTACHMENT A – SCOPE OF WORK

MNT17-69

### BUS CLEANING SERVICES

specific tasks to accomplish (i.e. Driver Area, Passenger Area, Seats, Floors, etc.) to inspect the bus and know exactly which employee cleaned each area and ensure accountability.

- J.** Any problems that arise shall immediately be addressed by the Manager on site and if necessary the Project Manager will be called to the site. Omnitrans shall have 24 hour cell phone access to our management team who can deal with any situation on site or any special request/issue.
- K.** Contractor shall furnish, at its own expense all equipment necessary to properly perform specified work and maintain established standards. Equipment shall be maintained in good, safe working condition and when not in use removed from Omnitrans property.
- L.** Contractor shall provide all cleaning supplies and related equipment.
- M.** Contractor shall provide safety training sessions as well as a cleaning training session before commencing work at each site. The training shall include Personal Protective Equipment (PPE) requirements including American National Standards Institute (ANSI) approved eye protection and reflective vests. Staff shall be trained on how to clean a bus and at the end of cleaning will do a self-walk through using Exhibits I and II – Checklist and Verification to make sure that all areas were cleaned properly.
- N.** Each scheduled bus shall be inspected by Omnitrans' Maintenance Supervisor, or his/her designee, immediately upon completion. Contractor shall properly fill out a Service Verification Form, signed and turned in to the Maintenance Supervisor or his/her designee for all work that was satisfactorily completed that day as a condition of payment.
- O.** The inspection shall consist of a visual check to ensure the level of quality specified within the work plan.
- P.** Buses failing to pass the inspection may, at Omnitrans discretion, be made available for contractor's correction, or payment to the contractor may be reduced and/or withheld.
- Q.** Buses shall be delivered to the cleaning area by Omnitrans' maintenance personnel, for the scheduled cleaning service. After cleaning, Omnitrans' maintenance personnel will return the buses to a designated parking stall.
- R.** Omnitrans shall provide all facilities and utilities to perform the cleaning services. Bus cleaning shall only be performed in the designated cleaning areas at each of the maintenance facilities.
- S.** Bio-Hazards Exposure – If the Contractor finds bio-hazard substances or materials, contractor shall immediately handle the situation in a proper manner according to their Bio-Hazard plan. Contractor shall submit the Bio-Hazard plan with their proposals. Contractor shall report all bio-hazard findings to an Omnitrans supervisor. This includes, but is not limited to, human blood/body fluid, semi-solid waste, hypodermic needles, syringes, blades, and needles with

ATTACHMENT A – SCOPE OF WORK  
MNT17-69  
BUS CLEANING SERVICES

attached tubing, recognizable fluid blood contaminated clothing, and Rx medications.

**T.** Contractor shall provide a software program to ensure Quality Assurance.

**3. INTERIOR BUS CLEANING:**

**A. FREQUENCY OF INTERIOR BUS CLEANING**

- 1) Each bus, as listed above, shall be cleaned tri-annually or quarterly, per year, under the terms of the schedule established by Omnitrans.
- 2) Contractor shall provide a recommended cleaning schedule for each bus at each facility.

**B.** The following exceptions apply to the cleaning schedule:

- 1) Holidays - If the scheduled cleaning day falls on an Omnitrans holiday, the bus shall be rescheduled for cleaning the next weekend. Thereafter, the bus shall return to its normal schedule.
- 2) Unavailability - If the bus is unavailable due to:
  - a) Out of service (inoperable);
  - b) In service (on the road);
  - c) Not at designated location;
- 3) Any exceptions shall be:
  - a) By written report.
  - b) Submitted to the Maintenance Manager on the next business day. The report may be emailed to the Maintenance Manager.

**4. RESPONSIBILITIES OF CONTRACTOR**

**A.** Contractor shall provide tri-annually or quarterly interior bus cleaning services on Omnitrans' premises as follows:

- 1) Contractor shall keep the assigned work area at each facility clean and free of debris during and after completion of work.
- 2) Contractor shall provide, at Contractor's own expense, all cleaning supplies and materials necessary to fulfill the requirements of this contract.
- 3) Contractor shall submit, prior to commencement of this contract, Safety Data Sheets (SDS) for all chemicals used.
- 4) Contractor shall submit updated or additional SDS as changes occur in chemical usage.

## ATTACHMENT A – SCOPE OF WORK

MNT17-69

### BUS CLEANING SERVICES

- B.** Contractor shall use chemicals in accordance with their designed intent. The public welfare must be protected concerning proper use and disposal of the proper chemicals.
- 1) Contractor shall use chemicals in a manner required or allowed by the chemical manufacturer.
  - 2) Contractor shall only use chemicals which have been approved by governmental agencies such as Food and Drug Administration (FDA), and shall not use chemicals which are not for sale to either the general public or for janitorial services. Homemade chemicals or cleaning agents are strictly forbidden.
  - 3) Contractor shall not mix chemicals together unless specifically permitted by the manufacturers. (Example: two common cleaning agents, Chlorine Bleach and Ammonia, create the deadly gas, Ammonia Chloride.)
- C.** Contractor shall not move buses to and from the work area. An authorized Omnitrans employee will do so, if needed.
- D.** Contractor assumes full responsibility for the care, custody and control of the bus while the bus is under Contractor's control.

#### **5. OMNITRANS' RESPONSIBILITIES**

Omnitrans assumes that the contractor fully understands the tasks of tri-annually or quarterly bus cleaning as applicable to required resources. Therefore, unless specifically indicated otherwise, participation of Omnitrans shall be limited to contract management, scheduling and payment. The following responsibilities shall further define the role of Omnitrans, contractor and tasks, which may be subject to negotiation.

#### **6. PERMISSIBLE HOURS OF OPERATION FOR INTERIOR BUS CLEANING**

Contractor shall provide the interior bus cleaning services during the following times:

- 1) A schedule shall be developed as a guideline, which facilitates tri-annually or quarterly cleaning of all Omnitrans buses.
- 2) All services shall be provided between the hours of 7:00 a.m. and midnight, Saturdays and Sundays only. During this time period the maximum number of buses is available.
- 3) The contractor shall provide cleaning crews at both Omnitrans' maintenance facilities during this period to perform the required services.

#### **7. WORK PLAN**

- A.** The following guidelines shall represent minimum expectations. Sample buses shall be available for viewing at the pre-proposal meeting.
- B.** Each bus shall be properly cleaned as scheduled.
- C.** A first article sample bus will be provided to the successful contractor. This bus will have all the cleaning tasks performed. Omnitrans' Maintenance Supervisor

## ATTACHMENT A – SCOPE OF WORK

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### BUS CLEANING SERVICES

shall inspect the first article sample bus, which will be representative of the workmanship, methods and material relative to the basis and continuation of the contract.

**D.** The basic cleaning tasks shall consist of the items listed in the Exhibit 1. Bus Cleaning Checklist and the following:

- 1) **Driver Area:** Clean driver's area with soap and water, to include dash, panel, rear & side panels, vinyl/plastic portion of seat, visors, steering wheel and overhead ceiling area.
- 2) **Passenger Area:** Clean passenger's area with soap and water to include side panels, ceiling, ventilation vents, roof, vents/hatches, vertical/horizontal railing, window frames and vinyl/plastic/metal portion of seats.
- 3) **Seats:** Clean all seats including cushions and backs, by brushing, vacuuming and if required, gum removal and/or local scrubbing of spots/stains. This will also include bulkhead and other carpeting. Seating: Shampoo, scrub and vacuum dry all fabric seating.
- 4) **Floors:** Scrub & Clean all flooring areas with soap and water to include driver's area, passenger area, wheel housings, steps and ramps/wheelchair lifts. Please note that water hoses will not be used in the bus. Low water volume pressure washers may be used but All standing water, puddles must be removed/eliminated.
- 5) **Interior Glass:** Clean all glass/acrylic and window protectors with glass cleaner. (Window liners must be removed to clean windows.)
- 6) **Interior Window Protectors:** Remove, clean and reinstall all interior acrylic window protectors.
- 7) **Interior:** Clean all interior side panels, ceiling areas, air vents and air intake grating.
- 8) **Interior Light Fixtures:** Disassemble, clean and reassemble all overhead light fixtures.
- 9) Extreme care must be taken and safeguards established to protect all electrical components and systems from water and chemical damage during the cleaning process.

#### 8. 100% SATISFACTION GUARANTEE

Contractor shall make diligent efforts to assure satisfaction. Such efforts shall include, but are not limited to, repeated cleanings at no charge and refunds.

#### 9. THE OMNITRANS DEFINITION OF CLEAN:

**A.** The meaning of clean is defined as: *free from dirt.*

ATTACHMENT A – SCOPE OF WORK  
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BUS CLEANING SERVICES

Exceptions: surface scratches and permanent stains. These must be reported to the Shop Supervisor in written form prior to this conditional acceptance.

- B.** Upon close inspection, the surface shall be free of dirt, dust, smudges, debris, gum and the like.
- C.** A person who rubs their hand, *white glove inspection*, along any surface, there shall not be any dirt, dust, smudges, debris, gum and the like.
- 1) **Clean** *adjective*
    - a) Free from dirt, stain, or impurities; unsoiled.
    - b) Free from foreign matter or pollution; unadulterated: *clean air; clean drinking water.*
    - c) Having no imperfections or blemishes.
    - d) Thorough; complete.
  - 2) **Cleaner, cleanest** *adverb*
    - a) So as to be unsoiled.
    - b) In a clean or nonpolluting manner.
  - 3) **Cleaned** *verb, cleaning; cleans* *verb, transitive; verb, intransitive*
    - a) To rid of dirt, rubbish, or impurities: *clean a room; clean a suit.*
    - b) To get rid of (impurities or dirt, for example); remove: *cleaned up the trash; cleaned off the stains.*
    - c) To undergo or perform an act of cleaning.
  - 4) **Clean out** *phrasal verb*
    - a) To rid of dirt, rubbish, or impurities.
    - b) To empty of contents or occupants.
  - 5) **Clean up**
    - a) To make clean or orderly.
    - b) To make oneself clean, neat, or presentable.
    - c) To dispose of; settle: *cleaned up the unpaid bills.*
  - 6) **Synonyms:** *clean, antiseptic, cleanly, immaculate, spotless.* The central meaning shared by these adjectives is “free from dirt”: *clean clothing; antiseptic surgical instruments; cats, cleanly animals; an immaculate tablecloth; spotless gloves.*
  - 7) **Antonyms:** *dirty.*

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BUS CLEANING SERVICES

**BUS WINDOW CLEANING:**

**10. FREQUENCY OF BUS WINDOW CLEANING**

- A.** Each bus, up to approximately **200**, shall be cleaned tri-annually or quarterly per year, under the terms of the schedule established by Omnitrans Staff.
- B.** Contractor shall restore, remove water spots, clean, treat and protect the windows with an approved protectant, sealant, sheeting action and spot preventing system. The system should dry clear and shall not distort vision.
- C.** The following exceptions apply to the preceding cleaning schedule:
  - 1) Holidays. If the scheduled cleaning day falls on an Omnitrans closed holiday, then the bus or buses shall be rescheduled for cleaning the next weekend. Thereafter, the bus shall return to its normal schedule.
  - 2) Unavailability. If the bus is unavailable due to:
    - a) Out of service (inoperable).
    - b) In service (on the road).
    - c) Not at designated location.
  - 3) Any of the preceding exceptions shall be:
    - a) By written report.
    - b) Submitted to the Director of Maintenance or his designee on the next business day.

**11. RESPONSIBILITIES OF CONTRACTOR**

- A.** Contractor shall provide tri-annual or quarterly bus window cleaning services on Omnitrans' premises as follows:
  - 1) Contractor shall clean/remove water spots from all bus exterior and interior windows, windshields, mirrors, destination signs.
  - 2) Apply a sheeting agent to all windows, windshields, mirrors and destination signs as described in item one (1) to prevent spots from re-occurring.
  - 3) If a bus is written up for spots on the windows, windshields, mirrors as described in item 1) above, Contractor shall be responsible for cleaning within 7 days of notice to the Contractor.
  - 4) No chemicals shall be stored on Omnitrans property.
  - 5) All work shall be performed on Saturdays and Sundays.
  - 6) All buses shall have their windows, windshields, mirrors and destination signs cleaned and treated tri-annual or quarterly.
  - 7) Contractor shall keep the assigned work area at each facility clean and free of debris during and after completion of work.

## ATTACHMENT A – SCOPE OF WORK

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### BUS CLEANING SERVICES

- 8) Contractor shall provide, at Contractor's own expense, all cleaning supplies and materials necessary to fulfill the requirements of this Contract.
  - 9) Contractor shall submit, prior to commencement of this contract, Safety Data Sheets (SDS) for all chemicals used in the performance of this RFP.
  - 10) Contractor shall submit updated or additional SDS as changes occur in chemical usage.
- B.** Contractor shall use chemicals in accordance with their designed intent. The public welfare must be protected concerning proper use and disposal of the chemicals.
- 1) Contractor shall use chemicals in a manner required or allowed by the chemical manufacturer.
  - 2) Contractor shall use only those chemicals which have been approved by governmental agencies such as FDA, and shall not use chemicals which are not for sale to either the general public or janitorial services. Homemade chemicals or cleaning agents are strictly forbidden.
  - 3) Contractor shall not mix chemicals together unless specifically permitted by the manufacturer(s). Example: two common cleaning agents, Chlorine Bleach and Ammonia, create the deadly gas, Ammonia Chloride.
- C.** Contractor shall not move buses to and from the work area. An authorized Omnitrans employee will do so, if required.

## **12. PERMISSIBLE HOURS OF OPERATION BUS WINDOW CLEANING**

Contractor shall provide bus window cleaning services during the following times:

- 1) All services shall be provided between the hours of 7:00 a.m. and midnight, Saturdays and Sundays only. The maximum number of buses is available during this time period.
- 2) Contractor shall provide cleaning crews at both Omnitrans' maintenance facilities during this period to perform the required services.

## **13. EXHIBITS**

Exhibit 1 – Bus Cleaning Checklist

Exhibit 2 – Service Verification Form

# **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.

- D. 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 \$150,000 and to contracts over \$150,000 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 agency's overall goal for DBE participation is 3.3%.
- 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 of damage.

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

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

## **RR-29**

### **VETERANS PREFERENCE**

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

## **END OF REGULATORY REQUIREMENTS**

ATTACHMENT C – PRICING  
MNT17-69  
BUS CLEANING SERVICES

<b>BUS INTERIOR CLEANING SERVICES (Tri-Annual Cleaning Schedule)</b>			
<b>Contract Year</b>	<b>Per Bus Cleaning Price (Tri-Annual)</b>	<b>Window Cleaning Price (Tri-Annual)</b>	<b>*Total Price</b>
<b>Base Years 1-3</b>	<b>\$88.00</b>	<b>\$21.62</b>	<b>\$109.62</b>

\*Pricing shall remain fixed for the Base Year Period (Base Years 1-3). Thereafter, per bus price(s) may be adjusted annually June either up or down, reflecting the change in the Consumer Price Index (CPI)-U, All Items, set forth in the United States Department of Labor, Bureau of Labor Statistics (reference: [www.bls.gov](http://www.bls.gov)).

<b>Description</b>	<b>Price</b>
*Fully Burdened Hourly Rates (i.e., charged to Omnitrans) for positions that will be utilized in the performance of this RFP.	<b>Hourly Rate</b>
<b>Position Name: Cleaner</b>	<b>\$34.36 per hour</b>

\*May be utilized in the event of contract modification.


**BUY AMERICA CERTIFICATE**

*Complete and submit this form with BID/PROPOSAL for solicitations requiring  
**Steel, Iron and Manufactured Products and/or for Rolling Stock**  
Failure to do so is grounds for deeming the bid/proposal as non-responsive.*

**One (1) form required of each bidder/proposer**

The Buy America requirement is set forth in 49 U.S.C Section 5323(j) Fixing America's Surface Transportation Act (FAST) and Section and 49 CFT 661, as amended, and by any guidance issued by Federal Transit Administration (FTA).

1. ☒ The bidder/proposer hereby certifies that it will comply with the requirements of Buy America and will ensure that the lower tier contractors and subcontractors will also comply with the requirements as referenced.
2. ☐ The bidder/proposer hereby certifies that it cannot comply with the requirements as referenced, but may qualify for an exception to the requirement consistent with 49 U.S.C. 5323(j)(2)(C), and the applicable regulations in 49 CFT 661.7. Explain below.
3. ☐ The bidder/proposer hereby certifies that submitted bid/proposal is \$150,000 or less, no certification is necessary.

Company Name	HALLCON CORPORATION
Principal Office Address	14325 W. 95 <sup>th</sup> Street
City, ST, Zip	Lenexa, KS 66215
Title of Person Authorized to Bind Firm	VP
Print Name	Dan Cox 
Date Signed and Authorized Signature	March 6, 2017

(attach additional sheets as necessary to fully explain any exceptions)

Exceptions as referenced in check box number 2:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
Revised 11/4/2016

Note: In accordance with Public Contract Code Section 2205, false certification of this form shall be reported to the California Attorney General and may result in civil penalties equal to the greater of \$250,000 or twice the Contract amount, termination of the Contract and/or ineligibility to bid on contracts for three years.



### RESTRICTIONS ON LOBBYING (REQUIRED >\$100,000)

*Submit this form before final contract award, failure to do so is grounds for disqualification.*

**One form required of bidder and subcontractor having greater than a \$100,000 share of the bid.**

31 U.S.C., § 1352 and U.S. DOT regulations on New Restrictions on Lobbying, 49 C.F.R. Part 20.

Lobbying requirements apply to Construction/Architectural and Engineering/Acquisition of Rolling Stock/Professional Service Contract/Operation Service Contract/Turnkey contracts.

(1) No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of an agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal Contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan or cooperative agreement.

(2) If any funds other than Federal appropriated funds have been paid or will be paid to any person for making lobbying contacts to an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form-LLL "Disclosure Form to Report Lobbying," in accordance with its instructions.

(3) The undersigned shall require that the language of this certification be included in the award documents for all sub-awards at all tiers (including subcontracts, sub-grants, and contracts under grants, loans, and cooperative agreements) and that all tiers shall certify and disclose accordingly.

This certification is a material representation of fact upon which reliance is placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by 31, U.S.C. § 1352 (as amended by the Lobbying Disclosure Act of 1995). Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

The Contractor, as signed below, certifies or affirms the truthfulness and accuracy of each statement of its certification and disclosure, if any. In addition, the Contractor understands and agrees that the provisions of 31 U.S.C. A 3801, *et seq.*, apply to this certification and disclosure, if any.

Bidder's Company Name	HALLCON CORPORATION
Legal Structure (corp./partner/proprietor)	CORP
Select One	<input checked="" type="checkbox"/> Prime or <input type="checkbox"/> Subcontractor (submit after award)
Principle Office Address	14325 W. 95 <sup>th</sup> Street
City, ST, Zip	Lenexa, KS 66215
Phone Number	416.885.6016
Fax Number	416.964.3528
E-Mail	dcox@hallcon.com
Federal Employer Identification Number	95-468 8677
Title of Person Authorized to Sign	CFO
Print Name of Person Authorized to Sign	Brian Kirk 
Date Signed and Authorized Signature	March 1, 2017





**PROPOSED DISADVANTAGED BUSINESS ENTERPRISES (DBE) PARTICIPATION**

*This form must be submitted with the BID/Proposal, to  
have it considered during BID/Proposal evaluation.*

*The bidder/proposer intends to utilize the following DBE contractors on this project.  
Signature of participating DBE is confirmation of willingness to participate on this project.*

Company	Macadi Cleaning Corporation
Address	P.O. Box 8896
City, ST, Zip	Fountain Valley, CA 92708
Phone Number	969.581.3330
Email	macadicleaning@aol.com
Contact Name	Marco Lopez, Owner
Type of work to be performed	Cleaning Operations
Dollar value of participation	\$12,000.00 Per Year

Company	
Address	
City, ST, Zip	
Phone Number	
Email	
Contact Name	
Type of work to be performed	
Dollar value of participation	

Company	
Address	
City, ST, Zip	
Phone Number	
Email	
Contact Name	
Type of work to be performed	
Dollar value of participation	

Company	
Address	
City, ST, Zip	
Phone Number	
Email	
Contact Name	
Type of work to be performed	
Dollar value of participation	

(DUPLICATE THIS FORM AS REQUIRED)

**LIST OF SUBCONTRACTORS AND DBES (REQUIRED >½ OF 1% SHARE OF BID)**

*Submit this form with the BID, failure to do so is grounds for disqualification.*

**One (1) form required of each bidder and proposed subcontractor having greater than ½ of 1% share of the bid.** Government Code § 4100 on, Subletting and Subcontract Fair Practices Act.

Company	Macadi Cleaning Corporation		
Address	P.O. Box 8896		
City, ST, Zip	Fountain Valley, CA 92708		
Phone Numbers/Email	969.581.3330 / <a href="mailto:macadicleaning@aol.com">macadicleaning@aol.com</a>		
Contact Name/Title	Marco Lopez, Owner		
Type of Engagement	DBE Sub-Contractor		
Type of work to be performed	Cleaning Operations		
Dollar value of participation	\$12,000.00 Per Year	DBE qualified?	Yes <input checked="" type="checkbox"/> No <input type="checkbox"/>


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Company			
Address			
City, ST, Zip			
Phone Numbers/Email			
Contact Name/Title			
Type of Engagement			
Type of work to be performed			
Dollar value of participation		DBE qualified?	Yes <input type="checkbox"/> No <input type="checkbox"/>

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Company			
Address			
City, ST, Zip			
Phone Numbers/Email			
Contact Name/Title			
Type of Engagement			
Type of work to be performed			
Dollar value of participation		DBE qualified?	Yes <input type="checkbox"/> No <input type="checkbox"/>

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<b>Total DBE participation</b>	<b>Dollars</b>	<b>% of Total Contract</b>
Bidder's/Proposer's Company Name	HALLCON CORPORATION	
Legal Structure (corp./partner/proprietor)	CORP.	
Principle Office Address	14325 W. 95 <sup>th</sup> Street	
City, ST, Zip	Lenexa, KS 66215	
Phone Number and E-Mail	416.885.6016	
Federal Employer Identification Number	416.964.3528	
Title of Person Authorized to Sign	CFO	
Print Name of Person Authorized to Sign	Brian Kirk 	
Date Signed and Authorized Signature	March 1, 2017	

**DUPLICATE THIS FORM AS NECESSARY TO COMPLETE LIST (SIGN LAST ONE)**



**DEBARMENT, SUSPENSION, & OTHER RESPONSIBILITY MATTERS  
(REQUIRED >\$25,000)**

*Submit this form with BID, failure to do so is grounds for disqualification.*


**One (1) form required of each bidder and subcontractor having greater than a \$25,000 share of the bid.** U.S. Code, Title 31, § 6101 note and U.S. DOT regulations on Debarment and Suspension, 49 C.F.R. Part 29.

The Participant (the bidder and potential contractor or potential subcontractor for a third party contract) certifies to the best of its knowledge and belief, that it and its principals:

1. Are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions by a Federal department or agency;
2. Have not within a three-year period preceding this bid been convicted of or had a civil judgment rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (Federal, State or local) transaction or contract under a public transaction; violation of Federal or State antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property;
3. Are not presently indicted for or otherwise criminally or civilly charged by a governmental entity (Federal, State, or local) with commission of any of the offenses enumerated in paragraph (2) of this certification; and
4. Have not within a three-year period preceding this application/bid had one or more public transactions (Federal, State, or local) terminated for cause or default.

*An explanation must be attached to this certification regarding any exception(s).*

The Primary Participant certifies that it has authority under State and local laws to comply with the subject assurances, the truthfulness and accuracy of the contents of this certification, any attached explanation submitted herewith, understands the applicability of 31 U.S.C. Sections 3801 *Et. Seq.* and that this certification has been legally made.

Bidder's Company Name	HALLCON CORPORATION
Legal Structure (corp./partner/proprietor)	CORP
Select One	<input checked="" type="checkbox"/> Prime or <input type="checkbox"/> Subcontractor (submit after award)
Principle Office Address	14325 W. 95 <sup>th</sup> Street
City, ST, Zip	Lenexa, KS 66215
Phone Number	416.885.6016
Fax Number	416.964.3528
E-Mail	dcox@hallcon.com
Federal Employer Identification Number	95-468 8677
Title of Person Authorized to Sign	CFO
Print Name of Person Authorized to Sign	Brian Kirk 
Date Signed and Authorized Signature	March 1, 2017




**DECLARATION OF NON-COLLUSION (REQUIRED)**

*Submit this form with the BID, failure to do so is grounds for disqualification.*

I hereby declare (or affirm) under penalty of perjury that:

1. I am the bidder (if the bidder is an individual), a partner in the bid (if the bidder is a partnership), or an officer or employee of the bidding corporation and have authority to sign on its behalf (if the bidder is a corporation);
2. The bidder has independently produced the attached bid(s) without collusion, agreement, understanding or planned common course of action, with any other source, that would limit independent bidding competition;
3. The contents of the bid(s) have not been communicated by the bidder and or its employees and or agents to any person not an employee and or agent of the bidder and or its surety, on any bond furnished with the bid, and will not be communicated to any such person prior to the official opening of the bid, and
4. I have fully informed myself regarding the accuracy of the statements made in this declaration.

Bidder's Company Name	HALLCON CORPORATION
(corp./partner/proprietor)	CORP
Principle Office Address	14325 W. 95 <sup>th</sup> Street
City, ST, Zip	Lenexa, KS 66215
Phone Number	416.885.6016
Fax Number	416.964.3528
E-Mail	dcox@hallcon.com
Federal Employer Identification Number	95-468 8677
Title of Person Authorized to Sign	CFO
Print Name of Person Authorized to Sign	Brian Kirk
Authorized Signature	
Date Signed	March 1, 2017

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**NOT ON EXCLUDED PARTIES LIST SYSTEM (REQUIRED)**

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*Submit this form with the BID, failure to do so is grounds for disqualification.*

The Bidder certifies that it is NOT on the Excluded Parties List System of ineligible firms for federally financed and assisted construction, materials, equipment contracts or services.


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Bidder's Company Name	HALLCON CORPORATION
Legal Structure (corp./partner/proprietor)	CORP
Principle Office Address	14325 W. 95 <sup>th</sup> Street
City, ST, Zip	Lenexa, KS 66215
Phone Number	416.885.6016
Fax Number	416.964.3528
E-Mail	dcox@hallcon.com
Federal Employer Identification Number	95-468 8677
Title of Person Authorized to Sign	CFO
Print Name of Person Authorized to Sign	Brian Kirk 
Date Signed and Authorized Signature	March 1, 2017

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**CURRENT CLIENT REFERENCES. MINIMUM OF FIVE (5) REQUIRED**

*Submit this form with the BID/Proposal, with valid contact information, failure to do so is grounds for disqualification.*

Company	TORONTO TRANSIT COMMISSION (TTC)
Address	1900 Yonge Street
City, ST, Zip	Toronto, ON M4S 1Z2
Phone Numbers/Email	416. 899.0430 grant.houston@ttc.ca
Contact Name/Title	Grant Houston - Contract Administrator
Type of Engagement	Passenger Bus Cleaning and Servicing
Company	Bombardier (California)
Address	1555 San Fernando Road
City, ST, Zip	Los Angeles, CA 90065
Phone Numbers/Email	213-219-5545 sylvain.gervais@rail.bombardier.com
Contact Name/Title	Sylvain Gervais - GM
Type of Engagement	Commuter Rail Car Cleaning
Company	GO Transit / Metrolinx
Address	20 Bay Street, Ste. 600
City, ST, Zip	Toronto, ON M5J 2W3
Phone Numbers/Email	416.702.8329 david.gilman@rail.bombardier.com
Contact Name/Title	David Gilman - GM
Type of Engagement	Commuter Rail Car Cleaning
Company	New Jersey Transit (New Jersey)
Address	700 Beideman Avenue
City, ST, Zip	Camden New Jersey 08205
Phone Numbers/Email	267-648-3634 gil.kovar@us.transport.bombardier.com
Contact Name/Title	Gil Kovar ó Director of Operations
Type of Engagement	LRV and Station Cleaning
Company	Facebook
Address	1 Hacker Way
City, ST, Zip	Menlo Park, CA 94025
Phone Numbers/Email	510.772.7624 kmathy@fb.com
Contact Name/Title	Kevin Mathy, Transportation Manager
Type of Engagement	Bus Operating, Maintenance and Cleaning
Bidderø/Proposerø Company Name	HALLCON CORPORATION
Legal Structure (corp./partner/proprietor)	CORP.
Principle Office Address	14325 W. 95 <sup>th</sup> Street
City, ST, Zip	Lenexa, KS 66215
Phone Number and E-Mail	416.885.6016
Federal Employer Identification Number	416.964.3528
Title of Person Authorized to Sign	CFO
Print Name of Person Authorized to Sign	Brian Kirk 
Date Signed and Authorized Signature	March 6, 2017