



**BOARD OF DIRECTORS
OCTOBER 3, 2018
SUPPLEMENTAL INFORMATION**

ITEM #E6	PRE-EMPLOYMENT BACKGROUND CHECKS
ITEM #E7	HYDRAULIC HOIST INSPECTION AND REPAIR
ITEM #E8	VEHICLE UP-FITTING SERVICES
ITEM #F3	WORKERS' COMPENSATION CLAIMS ADMINISTRATION



CONTRACT AGREEMENT

between

CONSULTANT
Employers Choice Online, Inc.
9845 Painter Avenue, Suite B
Whittier, CA 90605

(hereinafter "CONSULTANT")
Telephone: (562) 319-0413
Email:
corporate@employerschoicesscreening.com

And

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

CONTRACT DOCUMENTS

CONTRACT NO. HRS19-01

Pre-Employment Background Checks

Contract Amount: \$45,000

Omnitrans Project Manager:

Name: Denise Gibson

Title: HR Specialist

Telephone: (909) 379-7262

Email:

denise.gibson@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

This Agreement is made and entered into as of this 1st day of December, 2018 and between Omnitrans (hereinafter referred to as "OMNITRANS") and Employers Choice Online, Inc. (hereinafter referred to as "CONSULTANT").

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

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

1. SCOPE OF WORK

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

2. PERIOD OF PERFORMANCE

The term of this Agreement shall be from the date of execution of this Agreement and continue in effect through November 30, 2021, 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 CONSULTANTS default as provided elsewhere in this Agreement. The "maximum term" of this Agreement shall be the period extended from December 1, 2021 through November 30, 2023, 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 Consultant's PROPOSAL or offer must have been evaluated in making the contract award prior to exercising any such options.
 - 2) Since Consultant's proposed pricing for the option years and additional services are considered in evaluating the Consultant's original proposal and form the basis for awarding the contract, Consultant 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 Consultant 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 CONSULTANT's full and complete performance of its obligations under this Agreement, OMNITRANS shall pay CONSULTANT on a FIXED 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 Forty-Five Thousand Dollars (\$45,000), including all amounts payable to CONSULTANT for all costs, including but not limited to direct labor, other direct costs, subcontracts, indirect costs including, but not limited to, leases, materials, taxes, insurance, and profit.

5. INVOICING AND PAYMENT

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

CONSULTANT shall submit invoices in duplicate to:

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

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

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 Consultant 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 Consultant 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. Consultant 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. Consultant's responsibility for loss or damage except for loss or damage resulting from Consultant's negligence, shall cease when title passes to Omnitrans.

6. AUDIT AND INSPECTION OF RECORDS

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

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 CONSULTANT:

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

Employers Choice Online, Inc.
9845 Painter Avenue, Suite B
Whittier, CA 90605
Attn: Jesus A. Lopez
Title: Procurement Contract Specialist

8. OMNITRANS' AND CONSULTANT'S REPRESENTATIVES

A. OMNITRANS' Project Manager

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

Project Manager: Denise Gibson, HR Specialist

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

B. Consultant's Key Personnel

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

<u>Name</u>	<u>Role</u>
Jesus A. Lopez	Procurement Contract Specialist
Cody Farzad	Vice President / Compliance
Tina Diaz	Account Manager
Amalia "Mollie" Compos	Customer Service Lead

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

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

9. DISPUTE RESOLUTION

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

11. TERMINATION FOR BREACH OF AGREEMENT

- A. If CONSULTANT fails to perform any of the provisions of this Agreement or so fails to make progress as to endanger timely performance of this Agreement, OMNITRANS may give CONSULTANT written notice of such default. If CONSULTANT does not cure such default or provide a plan to cure such default which is acceptable to OMNITRANS within the time permitted by OMNITRANS, then OMNITRANS may terminate this Agreement due to CONSULTANT's breach of this Agreement.
- B. If a federal or state proceeding for relief of debtors is undertaken by or against CONSULTANT, or if CONSULTANT makes an assignment for the benefit of creditors, then OMNITRANS may immediately terminate this Agreement.
- C. If CONSULTANT violates Section 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 CONSULTANT shall be liable to OMNITRANS for all of its costs and damages, including, but not limited, any excess costs for such Work.
- E. All finished or unfinished documents and materials produced or procured under this Agreement shall become OMNITRANS' property upon date of such termination.
- F. If, after notice of termination of this Agreement under the provisions of this Section, it is determined for any reason that CONSULTANT was not in default under the provisions of this Section, or that the default was

excusable under the terms of this Agreement, the rights and obligations of the parties shall be the same as if the notice of termination had been issued pursuant to Section 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 CONSULTANT either voluntarily or by operation of law, nor may all or any part of this Agreement be subcontracted by CONSULTANT, without the prior written consent of OMNITRANS. Consent by OMNITRANS shall not be deemed to relieve CONSULTANT of its obligations to comply fully with all terms and conditions of this Agreement.

13. SUBCONTRACTING

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

CONSULTANT shall not, without the express written consent of Omnitrans, either:

- a. Substitute any person, firm, or corporation as subconsultant in place of the subconsultants identified below; or
- b. Permit any subcontract to be assigned or transferred; or
- c. Allow work to be performed by anyone other than the original subconsultant listed below.

Subconsultant’s Name and Address	Work to Be Performed
N/A	

14. INDEPENDENT CONSULTANT

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

15. INSURANCE

A. INSURANCE REQUIREMENTS

1) General Requirements for Consultant

- a. Without limiting or diminishing the Consultant's obligation to indemnify or hold Omnitrans harmless, Consultant 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 Consultant 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 Consultant's performance of its obligations hereunder and if Consultant's vehicles or mobile equipment are used in the performance of the obligations under this Agreement, then Consultant 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 Consultant; products and completed operations of Consultant;

premises owned, occupied or used by Consultant; or automobiles owned, leased, hired or borrowed by Consultant. 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, Consultant'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 Consultant's insurance and shall not be construed as contributory.
2. Consultant'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 Consultant has employees as defined by the State of California, the Consultant 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

Consultant 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. Consultant 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, Consultant'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 Consultant may provide proof of self-insurance; such proof must be to the satisfaction of Omnitrans.

6) Subconsultants

Consultant shall include all subconsultants as insureds under its policies or shall furnish separate certificates and endorsements for each subconsultant. All coverage for subconsultants 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 or electronic notice, and are required to be maintained in force until completion of the contract.

B. MINIMUM INSURANCE COVERAGE

If the Consultant 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 Consultant.

- 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

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

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, CONSULTANT shall perform the Work, as amended.

18. RIGHTS IN TECHNICAL DATA

- A. No material or technical data prepared by CONSULTANT under this Agreement is to be released by CONSULTANT to any other person or entity except as necessary for the performance of the Work. All press releases or information concerning the Work that might appear in any publication or dissemination, including but not limited to, newspapers, magazines, and electronic media, shall first be authorized in writing by OMNITRANS.

- B. The originals of all letters, documents, reports and other products and data produced under this Agreement shall become the property of OMNITRANS without restriction or limitation on their use and shall be made available upon request to OMNITRANS at any time. Original copies of such shall be delivered to OMNITRANS upon completion of the Work or termination of the Work. CONSULTANT shall be permitted to retain copies of such items for the furtherance of its technical proficiency; however, publication of this material is subject to the prior written approval of OMNITRANS. The provisions of this paragraph shall survive termination or expiration of this Agreement and/or final payment thereunder.

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

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

execute any documents as OMNITRANS may from time to time reasonably request to effectuate the terms of this paragraph.

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

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. CONSULTANT, by his/her endorsement hereon agrees that all rights to any work(s) created or produced are waived, and that ownership rests with OMNITRANS. CONSULTANT further agrees to ensure transfer of all rights to such work(s), as defined under federal copyright law, that may be created or produced under this Agreement by its suppliers, consultants or subconsultants.

22. SUBMITTAL OF CLAIMS BY CONSULTANT

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

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

23. EQUAL OPPORTUNITY

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

24. STANDARD OF PERFORMANCE

- A. CONSULTANT shall perform and exercise, and require its subconsultants to perform and exercise due professional care and competence in the

performance of the Work in accordance with the requirements of this Agreement. CONSULTANT shall be responsible for the professional quality, technical accuracy, completeness and coordination of the Work, it being understood that OMNITRANS will be relying upon such professional quality, accuracy, completeness and coordination in utilizing the Work. The foregoing obligations and standards shall constitute the "Standard of Performance" for purposes of this Agreement. The provisions of this paragraph shall survive termination or expiration of this Agreement and/or final payment thereunder.

- B. All workers shall have sufficient skill and experience to perform the Work assigned to them. OMNITRANS shall have the right, at its sole discretion, to require the immediate removal of CONSULTANT's personnel at any level assigned to the performance of the Work at no additional fee or cost to OMNITRANS, if OMNITRANS considers such removal in its best interests and requests such removal in writing and such request is not done for illegal reasons. Further, an employee who is removed from performing Work under this Agreement under this Article shall not be re-assigned to perform Work in any other capacity under this Agreement without OMNITRANS' prior written approval.

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

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

26. DISQUALIFYING POLITICAL CONTRIBUTIONS

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

27. COMPLIANCE WITH LAW

- A. CONSULTANT shall familiarize itself with and perform the Work required under this Agreement in conformity with requirements and standards of OMNITRANS, municipal and public agencies, public and private utilities, special districts, and railroad agencies whose facilities and work may be affected by Work under this Agreement. CONSULTANT shall also comply with all Federal, state and local laws and ordinances.
- B. Government regulations that directly affect the CONSULTANT'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 CONSULTANT 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 Consultant's claim to any relief under this clause.

28. COMPLIANCE WITH LOBBYING POLICIES

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

29. PUBLIC RECORDS ACT

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

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

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

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

32. CONFIDENTIALITY

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

33. CONSULTANT'S INTERACTION WITH THE MEDIA AND THE PUBLIC

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

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 CONSULTANT warrants that it has all necessary licenses and permits required by the laws of the United States, State of California, and the County of San Bernardino, the Local Jurisdictions, and all other appropriate governmental agencies, and agrees to maintain these licenses and permits in effect for the duration of the Agreement. Further, FIRM warrants that its employees, agents, and consultants and subconsultants shall conduct themselves in compliance with such laws

and licensure requirements including, without limitation, compliance with laws applicable to nondiscrimination, sexual harassment and ethical behavior throughout the duration of this Agreement. CONSULTANT further warrants that it shall not retain or employ an unlicensed subconsultant to perform work on this Project. CONSULTANT shall notify OMNITRANS immediately and in writing of its employees', agents', consultants' or subconsultants' inability to obtain or maintain, irrespective of the pendency of any appeal, any such licenses, permits, approvals, certificates, waivers, exemptions. Such inability shall be cause for termination of this Agreement.

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

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-HRS19-01 and any and all of its Addenda, Appendices, Exhibits and Attachments; and (3) CONSULTANT's proposal dated July 3, 2018 and its Appendices, Exhibits, Attachments.

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 CONSULTANT and supersedes any prior representations, understandings, communications, commitments, agreements or proposals, oral or written.

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

OMNITRANS

EMPLOYERS CHOICE ONLINE, INC.

P. Scott Graham
CEO/General Manager

Jesus A.Lopez
Procurement Contract Specialist

Date

Date

Federal Tax I.D. No. 45-3193031

CM

A handwritten signature in black ink, consisting of a stylized 'C' and 'M' intertwined, written over a horizontal line.

ATTACHMENT A-SCOPE OF WORK
HRS19-01
PRE-EMPLOYMENT BACKGROUND CHECKS

1. BACKGROUND

- A. Consultant shall provide the following:
 - 1) Pre-employment criminal background checks, (7 years for a felony and 7 years for a misdemeanor)
 - 2) Previous employment verifications (10 years)
 - 3) Education verifications
 - 4) Previous Department of Transportation (DOT) drug and alcohol testing records (2 years)
 - 5) E-verify services
 - 6) Credit checks on applicants during the hiring process
- B. Omnitrans currently uses a third-party service provider for pre-employment background checks.
- C. Omnitrans averages 75-100 new hires annually, but is anticipating an increase to 100-125 in hiring during the 2019 fiscal year.

2. STATEMENT OF WORK

- A. Consultant shall conduct pre-employment background investigations and produce comprehensive reports to include: Federal, State and local criminal records search, previous employment information, E-Verify services, self-employment information, full credit reports, professional and educational credentials, social security validation, criminal records and previous DOT drug and alcohol test results. Out-of-country and self-employment checks may be requested on an as-needed basis.
- B. Employment verification shall cover the applicant's and employee's previous education and degrees obtained, as well as certifications, licenses and current and previous employment information.
- C. A Standard Check is defined as information that Omnitrans will receive on every candidate submitted unless otherwise instructed. This "standard check" will always include the following:
 - 1. SSN Trace
 - 2. National Criminal File Search
 - 3. Sex Offender Trace
 - 4. Criminal History Checks from the following counties: San Bernardino, Los Angeles, Riverside, Orange; also any county that is pulled through the SSN trace where the candidate may have resided.
- D. Standard checks shall be completed within five days of request.
- E. Consultant shall provide a web-based system.

3. TYPES OF BACKGROUND CHECKS

- A. Employment verification: reference past employers and previous work history; includes dates of employment, reason for termination (voluntary or involuntary) position held, salary (if available) and performance information, including verification of self-employment. Self-employment can be verified by business license during the specified dates as well as tax forms.
- B. Criminal: comprehensive search at the county for any jurisdiction identified by the applicant's current and prior addresses whether indicated by applicant or revealed by Social Security or other check. The search shall involve all levels of criminal offense, all types of adjudications, all legal processes not yet resolved and all types of offenses extending as far back as possible within statutory restriction. Standard checks shall always include the counties of Orange, Los Angeles, Riverside and San Bernardino and shall always include a Social Security Number Trace, National Criminal File Search and Sex Offender Trace and E-verify services.
- C. Social Security: verifies previous addresses and protects against fictitious name.
- D. Education: verification includes all degrees or highest degree completed, dates of awarded degree and grade point average, depending on the position requested. (If available, include primary source verification.) For grade point average, verification with school transcripts from the Educational Institution are preferred.
- E. Department of Transportation Drug and Alcohol Test Results: in accordance with the Department of Transportation Title 49 CFR §382, inquire into applicant's previous history of alcohol and substance abuse from their former employer. Information received shall include whether or not the applicant has ever tested positive for a controlled substance within the past two years, if the applicant ever had an alcohol test with a breath alcohol concentration of 0.04 or greater in the past two years and whether or not the applicant has ever refused a required test for drugs or alcohol within the past two years.

4. FEDERAL AND STATE-WIDE CRIMINAL RECORDS

Consultant shall provide follow-up services to re-check results that are disputed by the employee or applicant or will check additional jurisdictions if information revealed by the first check indicates that more information is required.

5. COMPLIANCE

- A. Consultant shall conduct background investigations in compliance with the Fair Credit Reporting Act. The applicant must be notified and must provide written authorization to allow information contained on the application to be investigated including criminal records, education, employment, reputation and credit history. Omnitrans will be responsible to obtain the required signatures on the authorization for release form provided by the Consultant.

- B. Commercial Practices Title 16 CFR § 604 of the Fair Credit Reporting Act (FCRA) identifies the permissible purposes for conducting a credit check. Application for employment is one area identified by the Act as a permissible purpose for accessing credit records. Any employee, who is denied employment, in whole or in part due to the information contained in a report, must be notified of this decision and must be informed of the agency that provided the information. Firm shall provide, on their letterhead, the FCRA required adverse action and disclosure notifications with proof of service.
- C. CONSULTANT WILL NOT, DURING THE COURSE OF A BACKGROUND INVESTIGATION, CONDUCT ANY QUESTIONING OF FORMER EMPLOYERS AND REFERENCES THAT WOULD IDENTIFY AN APPLICANT'S RACE, RELIGION, COUNTRY OF NATURAL ORIGIN, MARITAL STATUS OR AGE.

6. REIMBURSEMENT

In the event the Consultant is unable to provide all of the background information required by the Contract or within the time allotted, and Omnitrans' staff must research this information, Consultant shall reimburse Omnitrans at Omnitrans' hourly labor rate based on Omnitrans' current labor cost accounting system for a Human Resources Specialist wage rate plus 35% fringe benefits costs. This amount shall be deducted from the Consultant's monthly invoice.

7. TRAINING

Consultant shall provide orientation and training for Human Resources personnel who will be administering and utilizing these services.

End Scope of Work

ATTACHMENT B - PRICING
HRS19-01
PRE-EMPLOYMENT BACKGROUND CHECKS
SCHEDULE OF FEES

Service	Unit Price*				
	Base Year 1	Base Year 2	Base Year 3	Option Year 1	Option Year 2
Civil Suits and Judgments:	EACH	EACH	EACH	EACH	EACH
Upper and Lower	\$9.50	\$9.50	\$9.50	\$9.50	\$9.50
Credit Searches:					
Individual	\$4.50	\$4.50	\$4.50	\$4.50	\$4.50
Criminal Searches:					
Four county search**	\$12.50	\$12.50	\$12.50	\$12.50	\$12.50
All counties, statutory limits (within 1 week)	\$6.50	\$6.50	\$6.50	\$6.50	\$6.50
Statewide search	\$6.00	\$6.00	\$6.00	\$6.00	\$6.00
Federal search	\$3.00	\$3.00	\$3.00	\$3.00	\$3.00
International search***	\$10.00	\$10.00	\$10.00	\$10.00	\$10.00
National Criminal File Search	\$5.00	\$5.00	\$5.00	\$5.00	\$5.00
Sex Offender Search	Included	Included	Included	Included	Included
Identity Validation					
Social Security Validation	\$1.25	\$1.25	\$1.25	\$1.25	\$1.25
Verifications					
Employment	\$6.50	\$6.50	\$6.50	\$6.50	\$6.50
Self-employment	\$6.50	\$6.50	\$6.50	\$6.50	\$6.50
Employment, International	\$10.00	\$10.00	\$10.00	\$10.00	\$10.00
Education	\$6.50	\$6.50	\$6.50	\$6.50	\$6.50
License / Professional	\$6.00	\$6.00	\$6.00	\$6.00	\$6.00
Military****	\$6.00	\$6.00	\$6.00	\$6.00	\$6.00
Drug / Alcohol test results from prior DOT employers	\$6.50	\$6.50	\$6.50	\$6.50	\$6.50
Personal References	\$6.50	\$6.50	\$6.50	\$6.50	\$6.50
E Verify	\$2.50	\$2.50	\$2.50	\$2.50	\$2.50

*Attach list of State, County, or third party fees for each. Apply to rates that require fees

** Four standard counties are San Bernardino, Riverside, Los Angeles and Orange.

*** If unavailable, attach written explanation with the background.

****May get a copy of the DD214 from applicant.



CONTRACT AGREEMENT

between

CONTRACTOR
Southwest Lift & Equipment, Inc.
254 E. Valley Street
San Bernardino, CA 92408

(hereinafter "CONTRACTOR")
Telephone: (909) 885-8262
Email: dean@southwestlift.com

And

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

CONTRACT DOCUMENTS

CONTRACT NO. MNT19-14

HYDRAULIC HOIST INSPECTION AND REPAIR

Contract Amount: \$55,050

Omnitrans Project Manager:

Name: John Gensel
Title: Facilities Supervisor
Telephone: (909) 379-7190
Email: john.gensel@omnitrans.org

Contract Administrator:

Name: Krystal N. Turner
Title: Contracts Administrator
Telephone: (909) 379-7202
Email: krystal.turner@omnitrans.org



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ATTACHMENT A – SCOPE OF WORK
EXHIBIT 1 – DRAWINGS

ATTACHMENT B - REGULATORY REQUIREMENTS

ATTACHMENT C – PRICING

ATTACHMENT D – PROHIBITING WEAPONS IN THE WORKPLACE

ATTACHMENT E – PREVAILING WAGES

This Agreement is made and entered into as of this 3rd day of October, 2018, by and between Omnitrans (hereinafter referred to as "OMNITRANS") and Southwest Lift & Equipment, Inc. (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 October 2, 2021, 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 October 3, 2021 through October 2, 2023, 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 Fifty Five Thousand and Fifty Dollars (\$55,050), 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 15th of each month. CONTRACTOR shall furnish information as may be requested by OMNITRANS to substantiate the validity of an invoice.

CONTRACTOR shall submit invoices in duplicate to:

OMNITRANS
1700 West Fifth Street
San Bernardino, CA 92411
Attn: Accounts Payable
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 N. Turner
Title: Contracts Administrator

Southwest Lift & Equipment
254 E. Valley Street
San Bernardino, CA 92408
Attn: Dean McDonald
Title: 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: John Gensel, Facilities Supervisor.

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

B. Contractor's Key Personnel

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

<u>Name</u>	<u>Role</u>
Dean McDonald	President
_____	_____
_____	_____
_____	_____

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

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

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.

CONTRACTOR shall not, without the express written consent of Omnitrans, either:

- a. Substitute any person, firm, or corporation as subcontractor in place of the subcontractors identified below; or
- b. Permit any subcontract to be assigned or transferred; or
- c. Allow work to be performed by anyone other than the original subcontractor listed below.

Subcontractor's Name and Address

Work to Be Performed

N/A

14. INDEPENDENT CONTRACTOR

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

15. INSURANCE

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 or electronic 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 RFQ-MNT19-14 and any and all of its Addenda, Appendices, Exhibits and Attachments; and (3) CONTRACTOR's bid dated August 20, 2018 and its Appendices, Exhibits, Attachments.

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

SOUTHWEST LIFT & EQUIPMENT, INC.

P. Scott Graham
CEO/General Manager

Name: Dean McDonald
Title: President

Date

Date

Federal Tax I.D. No. 20-5603400

CM 

ATTACHMENT A – SCOPE OF WORK
MNT19-14
HYDRAULIC HOIST INSPECTION AND REPAIR

I. GENERAL REQUIREMENTS

Contractor shall furnish all necessary labor and equipment needed to provide complete service and repairs on all of Omnitrans' lifting and hoisting equipment (Rotary, Koni, Sefac and PKS) on an as needed, scheduled, and/or emergency basis and as may be determined during the life of the contract. Contractor shall respond to Omnitrans' request for emergency service within four (4) hours of the call. Contractor shall respond to the site within (24) twenty-four hours of notification for repairs and shall complete such work within (24) twenty-four hours of notification. All services and repairs shall be performed at Omnitrans facilities.

II. SCOPE OF WORK

- 1) This scope of work pertains to all lifts and hoists provided in the enclosed equipment lists per facility.
- 2) Work shall include, but not limited to: replacement of seals, glands, removal and replacement of pistons, automatic locking legs, bearings and pins. Repair of hydraulic and pneumatic lines and fittings. Repair of any controls, valve assemblies, pumps, and reservoirs associated with or attached to lifting and hoisting equipment. Troubleshooting and repair of all electrical components and controls associated with the lifts and hoists.
- 3) Contractor shall rebuild or remanufacture hoists, structures, platforms, components and controls. Contractor shall troubleshoot, repair any/all components and furnish all parts necessary to repair or rebuild equipment.
- 4) Contractor shall perform annual inspections and provide certifications as required. Contractor shall ensure that testing is conducted within the appropriate time frame to maintain compliance for all equipment.
- 5) Contractor shall ensure 100% equipment up time. Repair times shall be within 24 twenty-four hours of the initial call from Omnitrans representatives.
- 6) Contractor shall provide services for repairs, modifications, and maintenance of hoist equipment in accordance with all Local, State, and Federal regulations.
- 7) Contractor shall conduct examinations and testing of all equipment as required by local, state, federal laws and current applicable safety codes in compliance with Occupational Safety and Health Administration (OSHA) and American National Standards Institute (ANSI)/Automotive Lift Institute (ALI) ALOIM: Current Edition.
- 8) Contractor shall possess all licenses and certificates necessary to provide hoist crane inspections, testing, certification, repairs and preventive maintenance.

ATTACHMENT A – SCOPE OF WORK
MNT19-14
HYDRAULIC HOIST INSPECTION AND REPAIR

III. EQUIPMENT LIST

East Valley: 1700 West 5th St., San Bernardino, CA 92411-2499

Quantity	Description	Manufacturer	Age of Equipment
5	Twin post/axel engaging	Rotary, 70-C	20 Years
1	Platform	Koni Skylifts, 250-9-FM-US	2 Years
2	Platform	Koni, 250-14.5-FM-US	2 Years
2	Triple post/axel engaging	Koni, ECO90-10-10	2 Years
2	Twin post/axel engaging	Rotary, SL90206	20 Years

West Valley: 4748 Arrow Highway, Montclair, CA 91763-1208

Quantity	Description	Manufacturer	Age of Equipment
6	Twin post	PKS, MCZC30-210HP	1 Years
1	Platform	Koni Skylift, 250-9-FM-US	10 Years
1	Twin post	PKS PKDT-16	1 Year

I-Street: 234 South I Street, San Bernardino, CA 92410-2408

Quantity	Description	Manufacturer	Age of Equipment
4	Mobil Columns	Sefac, 1200-M65	18 Years

Omnitrans Mobile Column Lifts

Quantity	Description	Manufacturer	Age of Equipment
3	Sets of 4 Mobile Columns	Stertil Koni, ST1072	18 Years
1	Sets of 6 Mobile Columns	Stertil Koni, ST 1085 FWA US	3 Years
1	Set of 4 Mobile Columns	Stertil Koni, ST1085 FWA-US	3 Years

IV. PARTS

Contractor shall provide Omnitrans repair/spare parts for in-house repairs of all equipment included in the list of equipment.

V. FINAL INSPECTION

All work performed by the Contractor shall be inspected by the Facilities Maintenance Manager, or designee, prior to departing the premises. A “verification of work” document shall be completed and forwarded to the Facilities Manager prior to approve of invoice for payment.

I-STREET SEFAC



Exhibit 1

WEST VALLEY PKS HOIST CONTROLLER



Exhibit 1

WEST VALLEY PKS HOIST



Exhibit 1

WEST VALLEY STEAM RACK HOIST



Exhibit 1

WEST VALLEY STEAM RACK HOIST CONTROLLER



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 permit any of the foregoing parties to reproduce without any cost by any means whatsoever or to copy excerpts and transcriptions as reasonably needed.
- E. Contractor shall maintain all books, records, accounts and reports required under this Contract for a period of not less than three years after the date of termination or expiration of this Contract, except in the event of litigation or settlement of claims arising from the performance of this Contract, in which case Contractor agrees to maintain same until Omnitrans, the FTA Administrator, the Comptroller General, or any of their duly authorized representatives, have disposed of all such litigation, appeals, claims or exceptions related thereto.

RR-06

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

A. Applicability

This Article applies to all federally funded contracts.

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

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

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

RR-07

ENERGY CONSERVATION REQUIREMENTS

A. Applicability

This Article applies to all federally funded contracts.

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

RR-08

CIVIL RIGHTS REQUIREMENTS *

A. Applicability

This Article applies to all federally funded contracts.

- B. Nondiscrimination - In accordance with Title VI of the Civil Rights Act, as amended, 42 U.S.C. § 2000d, section 303 of the Age Discrimination Act of 1975, as amended, 42 U.S.C. § 6102, section 202 of the Americans with Disabilities Act of 1990, 42 U.S.C. §

12132, and Federal transit law at 49 U.S.C. § 5332, Contractor shall not discriminate against any employee or applicant for employment because of race, color, creed, national origin, sex, age, or disability. In addition, Contractor shall comply with applicable Federal implementing regulations and other implementing requirements FTA may issue.

C. Equal Employment Opportunity

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

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

This Article applies to all federally funded contracts.

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

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

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

This Article applies to all federally funded contracts.

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

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

RR-11

SUSPENSION AND DEBARMENT*

A. Applicability

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

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

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

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

RR-12

RECYCLED PRODUCTS

A. Applicability

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

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

Order 12873, as they apply to the procurement of the items designated in Subpart B of 40 CFR Part 247.

RR-13

CLEAN WATER AND CLEAN AIR REQUIREMENTS*

A. Applicability

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

B. CLEAN WATER REQUIREMENTS

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

C. CLEAN AIR

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

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

RR-14

COMPLIANCE WITH FEDERAL LOBBYING POLICY *

A. Applicability

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

- B. The Byrd Anti-Lobbying Amendment, 31 U.S.C. 1352, requires that Contractors who apply or bid for an award of \$100,000 or more shall file the certification required by 49 CFR Part 20, "New Restrictions on Lobbying," attached hereto as the certification entitled, "Certification of Compliance with Federal Lobbying Requirements." As set forth in the certifications, each tier of subcontractors shall certify to the tier above that it will

not and has not used Federal appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee of any agency, a member of Congress in connection with obtaining any Federal contract, grant or any other award covered by 31 U.S.C. 1352. Each tier shall also disclose the name of any registrant under the Lobbying Disclosure Act of 1995 who has made lobbying contacts on its behalf with non-Federal funds with respect to that Federal contract, grant or award covered by 31 U.S.C. 1352. Such disclosures shall be forwarded from tier to tier up to Omnitrans.

RR-15

BUY AMERICA *

A. Applicability

The following Article applies to federally funded rolling stock purchase and construction contracts over \$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 loading 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 3.5%.
- 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>

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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 five (5) 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.

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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 with 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.

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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.

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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.

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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.

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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 Construction Manager. This decision shall be final and conclusive unless within ten (10) days from the date of receipt of its copy, the Contractor mails or otherwise furnishes a written appeal to Omnitrans Construction Manager. In connection with any such appeal, the Contractor shall be afforded an opportunity to be heard and to offer evidence in support of its position. The decision of Omnitrans Project Manager shall be binding upon the Contractor and the Contractor shall abide by the decision.

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

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

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

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

RR-29

VETERANS PREFERENCE

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

END OF REGULATORY REQUIREMENTS

ATTACHMENT C - PRICING					
MNT19-14					
HYDRAULIC HOIST INSPECTION AND REPAIR					
Item Num	Section	Description	Unit of Measure	Quantity	Southwest Lift & Equipment, Inc.
1	BASE YEAR 1	East Valley Facility	Year	1	\$3,200.00
2	BASE YEAR 1	I Street Facility	Year	1	\$500.00
3	BASE YEAR 1	Mobile Column Lifts	Year	1	\$2,650.00
4	BASE YEAR 1	Optional: West Valley Facility	Year	1	\$2,075.00
				Subtotal	\$8,425.00
5	BASE YEAR 2	East Valley Facility	Year	1	\$3,200.00
6	BASE YEAR 2	I Street Facility	Year	1	\$500.00
7	BASE YEAR 2	Mobile Column Lifts	Year	1	\$2,650.00
8	BASE YEAR 2	Optional: West Valley Facility	Year	1	\$2,075.00
				Subtotal	\$8,425.00
9	BASE YEAR 3	East Valley Facility	Year	1	\$3,200.00
10	BASE YEAR 3	I Street Facility	Year	1	\$500.00
11	BASE YEAR 3	Mobile Column Lifts	Year	1	\$2,650.00
12	BASE YEAR 3	Optional: West Valley Facility	Year	1	\$2,075.00
				Subtotal	\$8,425.00
13	OPTION YEAR 1	East Valley Facility	Year	1	\$3,650.00
14	OPTION YEAR 1	I Street Facility	Year	1	\$575.00
15	OPTION YEAR 1	Mobile Column Lifts	Year	1	\$3,020.00
16	OPTION YEAR 1	Optional: West Valley Facility	Year	1	\$2,365.00
				Subtotal	\$9,610.00
17	OPTION YEAR 2	East Valley Facility	Year	1	\$3,650.00
18	OPTION YEAR 2	I Street Facility	Year	1	\$575.00
19	OPTION YEAR 2	Mobile Column Lifts	Year	1	\$3,020.00
20	OPTION YEAR 2	Optional: West Valley Facility	Year	1	\$2,365.00
				Subtotal	\$9,610.00
				Total	\$44,495.00
16	Hourly Rates As Needed Repairs	Standard Rate Base Year 1	Hour	1	\$101.00
17	Hourly Rates As Needed Repairs	Overtime Rate Base Year 1	Hour	1	\$151.50
18	Hourly Rates As Needed Repairs	Travel Time Rate Base Year 1	Hour	1	\$101.00
19	Hourly Rates As Needed Repairs	Standard Rate Base Year 2	Hour	1	\$101.00
20	Hourly Rates As Needed Repairs	Overtime Rate Base Year 2	Hour	1	\$151.50
21	Hourly Rates As Needed Repairs	Travel Time Rate Base Year 2	Hour	1	\$101.00
22	Hourly Rates As Needed Repairs	Standard Rate Base Year 3	Hour	1	\$101.00
23	Hourly Rates As Needed Repairs	Overtime Rate Base Year 3	Hour	1	\$151.50
24	Hourly Rates As Needed Repairs	Travel Time Rate Base Year 3	Hour	1	\$101.00
25	Hourly Rates As Needed Repairs	Standard Rate Option Year 1	Hour	1	\$115.00
26	Hourly Rates As Needed Repairs	Overtime Rate Option Year 1	Hour	1	\$172.50
27	Hourly Rates As Needed Repairs	Travel Time Rate Option Year 1	Hour	1	\$115.00
28	Hourly Rates As Needed Repairs	Standard Rate Option Year 2	Hour	1	\$115.00
29	Hourly Rates As Needed Repairs	Overtime Rate Option Year 2	Hour	1	\$172.50
30	Hourly Rates As Needed Repairs	Travel Time Rate Option Year 2	Hour	1	\$115.00

**Omnitrans****PERSONNEL POLICY MANUAL**

POLICY 707 PAGE 1 OF 6

SUBJECT**PROHIBITING WEAPONS IN THE WORKPLACE****APPROVED BY OMNITRANS
BOARD OF DIRECTORS**

DATE: June 7, 2017

I. Purpose

It is the policy of Omnitrans to maintain a work environment that is safe for all persons, including the community, and conducive to attaining high work standards. To achieve these objectives, the Agency prohibits the possession of firearms and weapons in the work place, regardless of any license or permit that an individual may have which otherwise authorizes the individual to carry firearms or weapons.

It is illegal and a criminal violation to possess weapons in public buildings (California Penal Code 171b and 171.7).

II. Scope

This policy applies to all Omnitrans employees, including but not limited to staffing agency workers and contractors working for or with the Agency at any time, regardless of whether the Agency is the actual employer.

Possession of firearms and weapons is prohibited at all Omnitrans' offices, parking lots, agency vehicles and job sites, and in all Agency vehicles.

The following person/s are exempt from this policy as stated: a guard of a contract carrier operating an armored vehicle, and any law enforcement officer who is carrying out official duties engaged in protecting and preserving property or life within the scope of his or her employment.

Omnitrans will strictly enforce this policy. Violation of this policy will result in immediate disciplinary action, up to and including termination.

III. Procedure**A. COMMUNICATION OF POLICY**

(a) Each employee of the Agency shall receive a copy of this policy at the time of his/her hire and shall sign a copy of the acknowledgment. Employees who were employed before the effective date of this policy shall also receive a copy of this policy and shall sign a copy of the acknowledgment. A copy of the signed acknowledgment and of all new and revised policies throughout the employee's employment shall be maintained in each employee's personnel file.

(b) A copy of this policy shall be attached to each contractor's contract, and shall become a part of its contract. The contractor shall be responsible for communicating this policy to its employees and any subcontractors to which the contractor sublets any portion of its contract.

**OmniTrans****PERSONNEL POLICY MANUAL**

POLICY 707 PAGE 2 OF 6

SUBJECT**PROHIBITING WEAPONS IN THE WORKPLACE****APPROVED BY OMNITRANS
BOARD OF DIRECTORS**

DATE: June 7, 2017

B. PROHIBITED CONDUCT

(a) The transportation of firearms or weapons in Agency vehicles is prohibited. This includes but is not limited to:

- (1) to and from work,
- (2) when conducting Agency business,
- (3) at all times in Agency-owned or leased vehicles.

(b) The possession or carrying of permitted and non-permitted firearms or weapons while at Agency buildings, parking lots, sponsored events, and job sites.

(c) Exception: Power actuated tools which are manufactured for the use of fastening building materials and sanctioned tools for the purpose of performing Agency job duties are not subject to this policy.

C. SEARCH

(a) Omnitrans reserves the right to conduct reasonable, unannounced searches of Agency premises and personal searches of employees and others while entering, on, or leaving Agency premises, including, but not limited to, personal effects, vehicles, lockers, desks, tool boxes, clothing, meal containers, and baggage. Searches will be conducted when the Agency has a reasonable suspicion to believe that a particular employee may be in possession of a weapon or firearm.

(b) "Reasonable suspicion" is defined as a suspicion that is based on specific personal observations such as an employee's manner, disposition, behavior, speech, information provided to management by an employee, by law enforcement officials, by a security service, or by other persons believed to be reliable, or a suspicion that is based on other surrounding circumstances.

(c) Individuals refusing to allow an inspection will not be detained or forced to submit to the inspection. Refusal violates Agency policy and constitutes an act of insubordination constituting disciplinary action, up to and including separation of the employment relationship. Non-employees who refuse to allow an inspection will not be permitted on Agency premises and will be required to immediately leave the premises. Employees will be relieved of all duties while pending investigation.

D. DISCIPLINE

(a) Violations of any portion of this policy will subject the employee to discipline,

**OmniTrans****PERSONNEL POLICY MANUAL**

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SUBJECT**PROHIBITING WEAPONS IN THE WORKPLACE****APPROVED BY OMNITRANS
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DATE: June 7, 2017

up to and including separation of employment.

(b) Violations by a contractor's employee or subcontractor of any portion of this policy may constitute a breach of contract and regardless will mandate the immediate removal of the contractor's employee from Agency premises, prohibition against the individual accessing Agency premises in the future, and may also constitute a breach of contract.

E. REPORT OF VIOLATIONS**1. Employee Violations**

Employees are required to report violations of this policy without regard to the relationship between the individual who initiates the prohibited behavior and the individual reporting it. An employee who believes that another employee may be in violation of this policy must report the alleged violation to the employee's manager or supervisor, the department director, security, or the appropriate departmental Human Resources representative.

Departments are responsible for implementing this policy. The Agency will promptly investigate allegations of violations of this policy.

Omnitrans reserves the right to authorize searches for prohibited weapons on its property when a violation is reported or when probable cause or reasonable suspicion is present consistent with law.

Employees should be aware that there is no reasonable expectation of privacy with respect to weapons in the workplace. The Agency's right to conduct searches includes, but is not limited to, such areas and items as lockers, desks, workstations, offices, purses, briefcases, bags, toolboxes, and lunch bags.

Searches of the employee's work area and belongings, as described above, may be conducted by the Security & Emergency Preparedness Coordinator, or designee. Searches of all types, including surrounding agency property, personal property and the employee may be conducted by law enforcement in accordance with law should reasonable suspicion be present. Any weapon found in violation of this policy may be confiscated. Refusal to permit a search may result in discipline, up to and including separation.

2. Visitor Violations

Visitors are not allowed to carry a weapon on the premises. Any visitor carrying a weapon into a posted no-carry agency facility is creating an elevated risk to security and safety that warrants a response leading to compliance with the law. If the visitor

**Omnitrans****PERSONNEL POLICY MANUAL**

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SUBJECT**PROHIBITING WEAPONS IN THE WORKPLACE****APPROVED BY OMNITRANS
BOARD OF DIRECTORS**

DATE: June 7, 2017

poses an immediate risk to security or safety, law enforcement shall be notified immediately by calling 9-911. The visitor shall be considered an immediate risk to safety and security if he/she is acting in an aggressive, belligerent, confrontational, suspicious or in an otherwise questionable manner while carrying a weapon.

F. FALSE REPORTS

Employees making intentionally false and malicious complaints of weapons in the workplace will be subject to disciplinary action, up to and including separation and/or will be reported to the proper authorities as appropriate.

G. ROLES AND RESPONSIBILITIES

Employees are responsible for understanding and complying with the Policy Prohibiting Weapons in the Workplace.

Whenever there is a question as to whether an instrument, article or substance is considered a weapon in violation of this policy, it is the employee's responsibility to seek clarification. Employees seeking clarification should direct their questions to the agency's Security & Emergency Preparedness Coordinator at 909-379-7117 prior to bringing the item(s) to Omnitrans work sites and events, as well as agency-owned or leased facilities or vehicles.

H. SAFETY FIRST

In applying this policy, no employee shall take any action that will risk his or her own safety or the safety of other individuals. No attempt should ever be made by an employee to restrain or forcibly evict an armed person from agency premises.

An individual's continued non-compliance after being properly informed of the law (California Penal Code 171 (b)) will result in notification to law enforcement and discipline, up to and including separation of employment. Employees should notify security immediately.

An employee who feels an imminent danger to his or her own safety or the safety or security of others, should avoid any interaction with the individual. Immediately contact law enforcement by calling 9-911 and security at 909-379-7117.

I. ANTI-RETALIATION PROVISION

Omnitrans strictly prohibits any retaliation against an employee who has reported a possible breach of policy. If an employee feels that he or she has been subjected to retaliation in violation of this policy, the employee must immediately report it to his or her supervisor or other designated Human Resources representative.

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SUBJECT

PROHIBITING WEAPONS IN THE WORKPLACEAPPROVED BY OMNITRANS
BOARD OF DIRECTORS

DATE: June 7, 2017

J. DEFINITIONS

1. **Firearm or weapon includes, but is not limited to:** A weapon, a pistol or rifle, whether loaded or unloaded, capable of firing a projectile and using an explosive as a propellant.
 - A firearm, whether loaded or unloaded, from which a shot may be discharged including but not limited to handguns, pistols, revolvers, shotguns, rifles, and bb guns;
 - A gun that can discharge a shot or a projectile by means of an explosive or gas, or compressed air;
 - A device designed to be used as a weapon, from which can be expelled a projectile by the force of any explosion or force of combustion;
 - Any weapon (including a starter gun) which will or is designed to or may readily be converted to expel a projectile by the action of an explosive;
 - Any destructive device;
 - Any device designed as a weapon and capable of producing great bodily harm, including but not limited to, stun guns, stun batons;
 - An electric weapon such as a taser gun;
 - Any combustible or flammable liquid, or other substance, device, or instrumentality that, in a manner it is used or intended to be used, is calculated or likely to produce death or great bodily harm, or any fire that is used to produce death or great bodily harm;
 - Any knife that is carried with intention or calculation to produce death or great bodily harm having a blade length in excess of four (4) inches, the blade of which is fixed or is capable of being fixed in an unguarded position by the use of one or two hands. Switchblades are specifically prohibited. (Knives intended to be used as eating utensils, and stored or maintained in office kitchens or lunchrooms do not represent a violation of this policy.)
2. **Office:** All permanent facilities, all mobile facilities, all leased facilities, and any facility designated as an office by the agency.
3. **Parking lot:** All lots at permanent facility, park and rides, lots at project sites, any lot that the agency designates as a parking lot that is not at a permanent facility or project site.
4. **Agency vehicle:** All agency-owned buses/vehicles, all agency-leased buses/vehicles, all agency-rental buses/vehicles, and all personal vehicles for which the owner receives a vehicle allowance, all personal vehicles where the owner receives reimbursement for mileage.



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PERSONNEL POLICY MANUAL

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SUBJECT

PROHIBITING WEAPONS IN THE WORKPLACE

APPROVED BY OMNITRANS
BOARD OF DIRECTORS

DATE: June 7, 2017

5. **Search:** To examine in order to find something concealed.

6. **Job sites:** Any and all locations where the agency conducts business.

SIGNS

1. At each entrance to buildings, parking lots, and project sites, a sign shall be posted in a location that is conspicuous to all who could enter a building, parking lot, or project site.
2. Signs shall have wording or pictogram that prohibits firearms, weapons and give notice of video surveillance. Signs shall be vandalism resistant and of the quality that they will not fade due to the elements.

ATTACHMENT “E”

PREVAILING WAGE RATES

MNT19-14

HYDRAULIC HOIST INSPECTION AND REPAIR

GENERAL PREVAILING WAGE DETERMINATION MADE BY THE DIRECTOR OF INDUSTRIAL RELATIONS
PURSUANT TO CALIFORNIA LABOR CODE PART 7, CHAPTER 1, ARTICLE 2, SECTIONS 1770, 1773 AND 1773.1

FOR COMMERCIAL BUILDING, HIGHWAY, HEAVY CONSTRUCTION AND DREDGING PROJECTS

CRAFT: #LABORER AND RELATED CLASSIFICATIONS

DETERMINATION: SC-23-102-2-2017-2

ISSUE DATE: August 22, 2017

EXPIRATION DATE OF DETERMINATION: July 31, 2018* Effective until superseded by a new determination issued by the Director of Industrial Relations. Contact the Office of the Director – Research Unit at (415) 703-4774 for the new rates after ten days after the expiration date if no subsequent determination is issued.

LOCALITY: All localities within Imperial, Inyo, Kern, Los Angeles, Mono, Orange, Riverside, San Bernardino, San Luis Obispo, Santa Barbara, and Ventura counties.

Classification ^a (Journey person)	Basic Hourly Rate	Employer Payments					Straight-Time		Overtime Hourly Rates		
		Health and Welfare	Pension	Vacation/ and Holiday ^d	Training	Other Payment	Hours	Total Hourly Rate	Daily ^b 1 1/2X	Saturday ^{bc} 1 1/2X	Sunday and Holiday

CLASSIFICATION GROUPS

Group 1	\$33.19	7.12	7.53	4.59	0.69	0.61	8	53.73	70.325	70.325	86.920
Group 2	33.74	7.12	7.53	4.59	0.69	0.61	8	54.28	71.150	71.150	88.020
Group 3	34.29	7.12	7.53	4.59	0.69	0.61	8	54.83	71.975	71.975	89.120
Group 4	35.84	7.12	7.53	4.59	0.69	0.61	8	56.38	74.300	74.300	92.220
Group 5	36.19	7.12	7.53	4.59	0.69	0.61	8	56.73	74.825	74.825	92.920

Indicates an apprenticeable craft. The current apprentice wage rates are available on the Internet @ <http://www.dir.ca.gov/OPRL/PWAppWage/PWAppWageStart.asp>. To obtain any apprentice wage rates as of July 1, 2008 and prior to September 27, 2012, please contact the Division of Apprenticeship Standards or refer to the Division of Apprenticeship Standards' website at <http://www.dir.ca.gov/das/das.html>.

^a For classification within each group, see page 14.

^b Any hours worked over 12 hours in a single workday are double (2) time.

^c Saturdays in the same work week may be worked at straight-time if job is shut down during work week due to inclement weather or similar Act of God, or a situation beyond the employers control.

^d Includes an amount per hour worked for supplemental dues

RECOGNIZED HOLIDAYS: Holidays upon which the general prevailing hourly wage rate for Holiday work shall be paid, shall be all holidays in the collective bargaining agreement, applicable to the particular craft, classification, or type of worker employed on the project, which is on file with the Director of Industrial Relations. If the prevailing rate is not based on a collectively bargained rate, the holidays upon which the prevailing rate shall be paid shall be as provided in Section 6700 of the Government Code. You may obtain the holiday provisions for the current determinations on the Internet at <http://www.dir.ca.gov/OPRL/DPreWageDetermination.htm>. Holiday provisions for current or superseded determinations may be obtained by contacting the Office of the Director – Research Unit at (415) 703-4774.

TRAVEL AND/OR SUBSISTENCE PAYMENT: In accordance with Labor Code Sections 1773.1 and 1773.9, contractors shall make travel and/or subsistence payments to each worker to execute the work. You may obtain the travel and/or subsistence provisions for the current determinations on the Internet at <http://www.dir.ca.gov/OPRL/DPreWageDetermination.htm>. Travel and/or subsistence requirements for current or superseded determinations may be obtained by contacting the Office of the Director – Research Unit at (415) 703-4774.

CLASSIFICATION GROUPS

GROUP 1

Boring Machine Helper (Outside)
Certified Confined Space Laborer
Cleaning and Handling of Panel Forms
Concrete Screeding for Rough Strike-Off
Concrete, Water Curing
Demolition Laborer, the cleaning of brick if performed by an employee performing any other phase of demolition work, and the cleaning of lumber
Fiberoptic Installation, Blowing, Splicing, and Testing Technician on public right-of-way only
Fire Watcher, Limbers, Brush Loaders, Pilers and Debris Handlers
Flagman
Gas, Oil and/or Water Pipeline Laborer
Laborer, Asphalt-Rubber Material Loader
Laborer, General or Construction
Laborer, General Cleanup
Laborer, Jetting
Laborer, Temporary Water and Air Lines
Plugging, Filling of Shee-Bolt Holes; Dry Packing of Concrete and Patching
Post Hole Digger (Manual)
Railroad Maintenance, Repair Trackman and Road Beds; Streetcar and Railroad Construction Track Laborers
Rigging and Signaling
Scaler
Slip Form Raisers
Tarmen and Mortar Man
Tool Crib or Tool House Laborer
Traffic Control by any method
Water Well Driller Helper
Window Cleaner
Wire Mesh Pulling - All Concrete Pouring Operations

GROUP 2

Asphalt Shoveler
Cement Dumper (on 1 yard or larger mixer and handling bulk cement)
Cesspool Digger and Installer
Chucktender
Chute Man, pouring concrete, the handling of the chute from readymix trucks, such as walls, slabs, decks, floors, foundations, footings, curbs, gutters and sidewalks
Concrete Curer-Impervious Membrane and Form Oiler
Cutting Torch Operator (Demolition)
Fine Grader, Highways and Street Paving, Airport, Runways, and similar type heavy construction
Gas, Oil and/or Water Pipeline Wrapper-Pot Tender and Form Man
Guinea Chaser
Headerboard Man-Asphalt
Installation of all Asphalt Overlay Fabric and Materials used for Reinforcing Asphalt
Laborer, Packing Rod Steel and Pans
Membrane Vapor Barrier Installer
Power Broom Sweepers (small)
Riprap, Stonepaver, placing stone or wet sacked concrete
Roto Scraper and Tiller
Sandblaster (Pot Tender)
Septic Tank Digger and Installer (leadman)

GROUP 2 (continued)

Tank Scaler and Cleaner
Tree Climber, Faller, Chain Saw Operator, Pittsburgh Chipper and similar type Brush Shredders
Underground Laborer, including Caisson Bellow

GROUP 3

Asphalt Installation of all fabrics
Buggymobile Man
Compactor (all types including Tampers, Barko, Wacker)
Concrete Cutting Torch
Concrete Pile Cutter
Driller, Jackhammer, 2 1/2 ft. drill steel or longer
Dri Pak-it Machine
Gas, Oil and/or Water Pipeline Wrapper - 6-inch pipe and over by any method, inside and out
High Scaler (including drilling of same)
Impact Wrench, Multi-Plate
Kettlemen, Potmen and Men applying asphalt, lay-kold, creosote, lime caustic and similar type materials
Laborer, Fence Erector
Material Hoseman (Walls, Slabs, Floors and Decks)
Operators of Pneumatic, Gas, Electric Tools, Vibrating Machines, Pavement Breakers, Air Blasting, Come-Alongs, and similar mechanical tools not separately classified herein; operation of remote controlled robotic tools in connection with Laborers work
Pipelayer's backup man, coating, grouting, making of joints, sealing, caulking, diapering and including rubber gasket joints, pointing and any and all other services
Power Post Hole Digger
Rock Slinger
Rotary Scarifier or Multiple Head Concrete Chipping Scarifier
Steel Headerboard Man and Guideline Setter
Trenching Machine, Hand Propelled

GROUP 4

Any Worker Exposed to Raw Sewage
Asphalt Raker, Luteman, Ironer, Asphalt Dumpman, and Asphalt Spreader Boxes (all types)
Concrete Core Cutter (walls, floors or ceilings), Grinder or Sander
Concrete Saw Man, Cutting Walls or Flat Work, Scoring old or new concrete
Cribber, Shorer, Lagging, Sheeting and Trench Bracing, Hand-Guided Lagging Hammer
Head Rock Slinger
Laborer, Asphalt-Rubber Distributor Bootman
Laser Beam in connection with Laborer's work
Oversize Concrete Vibrator Operator, 70 pounds and over
Pipelayer
Prefabricated Manhole Installer
Sandblaster (Nozzleman), Water Blasting, Porta Shot-Blast
Subsurface Imaging Laborer
Traffic Lane Closure, certified

GROUP 5

Blasters Powderman
Driller
Toxic Waste Removal
Welding, certified or otherwise in connection with Laborers' work



CONTRACT AGREEMENT

between

CONTRACTOR
Bear Communications, Inc.
2601 Manhattan Beach Blvd.
Redondo Beach, CA 90278

(hereinafter "CONTRACTOR")
Telephone:
Email:

And

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

CONTRACT DOCUMENTS

CONTRACT NO. OPS19-13

VEHICLE UPFITTING SERVICES

Contract Amount: \$124,120

Omnitrans Project Manager:

Name: Joseph Tibiita
Title: Application Specialist
Telephone: (909) 379-7249
Email: joseph.tibiita@omnitrans.org

Contract Administrator:

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



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ATTACHMENT A – SCOPE OF WORK

ATTACHMENT B - REGULATORY REQUIREMENTS

ATTACHMENT C – PRICING

ATTACHMENT D – PROHIBITING WEAPONS IN THE WORKPLACE

This Agreement is made and entered into as of this 3rd day of October, 2018 by and between Omnitrans (hereinafter referred to as "OMNITRANS") and Bear Communications, Inc. (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 December 14, 2018, 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.

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 Twenty Four Thousand One Hundred and Twenty Dollars (\$124,120), 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 15th of each month. CONTRACTOR shall furnish information as may be requested by OMNITRANS to substantiate the validity of an invoice.

CONTRACTOR shall submit invoices in duplicate to:

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

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 N. Turner
Title: Contracts Administrator

To CONTRACTOR:

Bear Communications, Inc.
2601 Manhattan Beach Blvd.
Redondo Beach, CA 90278
Attn: Walter Kadyk
Title: Project Manager

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: Joseph Tibiita, Application Specialist.

- 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>
Walter Kadyk	Project Manager
Michael Conrey	Install Manager On Site
Lorna Gomez	Project Scheduler
Jason Holladay	Para-Tech On Site

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.

CONTRACTOR shall not, without the express written consent of Omnitrans, either:

- a. Substitute any person, firm, or corporation as subcontractor in place of the subcontractors identified below; or
- b. Permit any subcontract to be assigned or transferred; or
- c. Allow work to be performed by anyone other than the original subcontractor listed below.

Subcontractor's Name and Address	Work to Be Performed
N/A	

14. INDEPENDENT CONTRACTOR

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

15. INSURANCE

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 or electronic 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-OPS19-13 and any and all of its Addenda, Appendices, Exhibits and Attachments; and (3) CONTRACTOR's proposal dated August 1, 2018 and its Appendices, Exhibits, Attachments.

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

BEAR COMMUNICATIONS, INC.

P. Scott Graham
CEO/General Manager

Name: Walter Kadyk
Title: MR Account Manager

Date

Date

Federal Tax I.D. No. 95-3868203

CM _____

ATTACHMENT A – SCOPE OF WORK
OPS19-13
VEHICLE UP-FITTING SERVICES

I. INTRODUCTION AND PROJECT OVERVIEW

A. INTRODUCTION

Contractor shall supply, install and custom modify equipment hereafter referred to as “up-fitting services” on 12 new 2018 Ford Edge utility vehicles.

B. BACKGROUND

- 1) Omnitrans’ transit operations are conducted from two (2) separate facilities in the San Bernardino Valley including the following locations:

- i. East Valley Facility (City of San Bernardino)
Located at 1700 West Fifth Street, San Bernardino, CA 92411
- ii. West Valley Facility (City of Montclair)
Located at 4748 Arrow Highway, Montclair, CA 91763

C. REQUIREMENTS FOR UP-FITTING SERVICES

- 1) Central Equipment Console (Mount)
- 2) Pre-Wiring (Electric and Data) for the following:
 - i. Vision-Communication™ Motorola™ Radio (see figure: 6)
 - ii. TSI™ Remote Video Access System (See Figure: 5)
 - iii. Trapeze™ AVL System (See Figure: 4)
 - iv. Safety-Vision™ video surveillance system (See Figure: 3)
- 3) Installation of the following equipment:
 - i. Optional: Cradle-Point-Router
 - 1. Router: COR IBR900 Series
 - 2. Antenna: CP-1002-1-PAN
 - 3. Cables
 - (a) Cell: Double Shielded RG58
 - (b) WiFi: Double Shielded sold core 5mm
 - (c) GPS: RG58 C/U
 - (d) Power: 9-wire power and GPIO cable (Part #17068-000)
 - 4. Management Software: Net Could Manager
 - ii. Interior LED light bar
 - iii. Auxiliary power supply unit
- 4) Other Requirements include:
 - i. Fabrication and Installation of the following

ATTACHMENT A – SCOPE OF WORK

OPS19-13

VEHICLE UP-FITTING SERVICES

1. Electronics mounting Tray (See Figure: 2)
2. Cargo Guard Plate

II. GENERAL SCOPE OF WORK

A. **Center Equipment Console and Computer mount:** An equipment mount unit shall be installed between the front seats to support installations of the equipment as specified below. The mount unit will accommodate mounting brackets, filler panels and console accessories.

- 1) A pre-wire and filler panel for the Motorola™ CDM1250 series control head. This will be on the vertical portion of the mount-unit and will accommodate the installation bracket and cable and the filler panel will fit the remote control head.
- 2) A pre-wire and filler panel for the Safety-Vision™ 7-inch Touch Screen Monitor. This will be in the vertical portion of the mount unit and will accommodate the monitor attachment bracket and provide for the attachments of a video harness.
- 3) A pre-wire and filler panel for a Trapeze™ Color Mobile Data Terminal (MDT). The filler will be in the angle area between the vertical and horizontal portions and will accommodate the 10.2” monitor-terminal with room for the supporting terminal bracket and the attachment of the MDT Cable.
- 4) Attachment panel to secure a Dell™ Latitude 14 Rugged Extreme Docking station with port replications for USB, Ethernet, Serial Port DB9, Video-VGA; Speaker, microphone and a power input of 10-17 VDC. To include:
 - i. Laptop Mount Docking Station; DS-Dell® 402 Series 400, or approved equal.
 - (a) Dimensions: 12.4" (31.6 cm) x 10.9" (27.6 cm) x 2.7" (6.8 cm)
 - (b) Certifications: Vibration Testing: MIL-STD 810G 514.5, crash test: SAE J1455 30mph Crash Testing, cycle test: latch handle & docking connectors mechanism 30,000 cycles, environmental testing: hot/cold operational & storage
 - (c) Connectivity includes: fully-powered USB 3.0 (3), USB: fully-powered USB 2.0 (1, front facing), Ethernet: RJ45 Ethernet (1), serial: DB9 (9-Pin) connection (2), video: VGA (1), HDMI (1), speaker & mic: (1 each, front facing), input voltage: 19.5V dc
 - (d) Product weight: 5.25 lbs.
 - (e) Gross Weight: 8.50 lbs

ATTACHMENT A – SCOPE OF WORK

OPS19-13

VEHICLE UP-FITTING SERVICES

- ii. Laptop Joint Swivel arm for Dell® docking station: Ram Mounts, Ram VP-SW1-89 9 inch, or approved equal.

- (a) Item weight: 5.91 pounds

- 5) Microphone clip and bracket to hold the radio microphone.

The Console unit to be Ford Edge® Console 16” by Havis ®: Product –ID 9174: SKU: C-VS00 1600 EDG, or approved equal.

- B. **Electronics Mounting Tray:** The electronics mounting tray will be installed in the rear of the vehicle in the spare tire area (spare tire to be removed) and below the removable cargo guard plate. The electronic mounting tray surface will provide mounting for the following components:

- 1) Trapeze™ IVLU unit

- i. Dimensions : 11”X12”X3”
 - ii. Weight: 7 lbs.
 - iii. Power-Input: 12 v -16

- 2) Safety-Vision™ video system DVDr with a power back-up unit

- i. DVDr
 - ii. Dimensions: 9”X4”X11”
 - iii. Weight: 6 lbs.
 - iv. Power input: 6v-36v (DC)
 - v. Power back-up unit
 - o Dimension : 3.48” X 1.66” X 4.84”
 - o Weight : 1.43 lbs.
 - o Power Input: 8-36V DC

- 3) Motorola™ CDM1250 Radio
Transceiver and Antenna Duplexer

- 4) A cooling unit (fan) to provide cooling for the equipment on the electronics Tray. American Volt: 6" small Slim cooling fan; 12 volts' push in Fin probe thermostat: SKU AV-1006B-S-1-38, or approved equal. Location: Electronic tray space.

- 5) The Electronic Mounting Tray specifications shall be equivalent to:
Multi Mounting Electronics Tray: 21” X 32” X 2” deep, Glide track with full extended length ball bearing or approved equal.

- C. **Lights:** An emergency Warning Amber -LED Lights Bar shall be installed on the interior glass part of the upper side of the lift gate.

- 1) The light bar shall be connected on a slide switch mounted on the center console unit.
 - 2) The lights shall flash in synchronization with each other.

ATTACHMENT A – SCOPE OF WORK

OPS19-13

VEHICLE UP-FITTING SERVICES

The emergency light to be Amber light bar, LED Lamp; Model EZ1414: UNSPCS #25172901: Standards- SAE J595 Class I, 12-24VDC, or approved equal.

- D. **Optional - Auxiliary Power supply:** Contractor shall install an auxiliary power supply in the form of a Battery or Alternator or Generator with an electric output to power all the outfitted equipment. The power supply will have the below specifications:

- 1) Ability to utilize as input a minimum 12 V
- 2) Provide for both AC/DC output
- 3) Compact and light weight
- 4) Remote controllable from the center console
- 5) Have safety controls for Overload, Overheating, short-circuit and reverse polarity protection
- 6) Sine Wave
- 7) The auxiliary power source shall be equivalent to : Amstron Battery® 12V/75 Ah, deep cycle with SAE past DC group or approved equal.
 - (a) Voltage per unit: 12 Volts
 - (b) Cell per unit: 6 cells
 - (c) Approximate Weight: 51.8 lb / 23.50 kg
 - (d) Energy Density: 1.43 W-h/in³ (87.17 W-h/l)
 - (e) Specific Density: 17.65 W-h/lb (38.91 W-h/kg)
 - (f) Operating temperature range:

Charge	-4°F (-20°C) to 122°F (50°C)
Discharge	-40°F (-40°C) to 140°F (60°C)
 - (g) Charging Voltage (25°C)

Cycle Use	14.4-15V(-30mV/°C), Max. Current 18A
Float Use	13.6-13.8V(-20mV/°C)

- E. **Electric Power System:** All wiring and configuration will remain consistent across the fleet of vehicles.

- 1) The wiring will be designed to originate from the auxiliary power supply in a harness and be distributed through the vehicle relative to the installed equipment with plug-in terminations ends. The wiring system will comply to the following;
 - i. The wiring system will be contained as part of a complete vehicle harness

ATTACHMENT A – SCOPE OF WORK

OPS19-13

VEHICLE UP-FITTING SERVICES

- ii. Wire and cable must be routed consistently in each vehicle
 - iii. All wiring shall include a printed label to identify the circuit component.
 - iv. All the fuses for the installed components will be housed in a fuse panel and the fuse panel will be cabled with a safety breaker.
- 2) Contractor shall supply the following;
- i. Circuit Identification
 - ii. Wire routing diagrams
 - iii. Connection diagrams for all the components including amplifiers, relays and fuse panel
 - iv. Documentation for all factory wire interfaces
 - v. Documentation of all OEM fuses that have an effect of the unfitting-services
- 3) The power harness shall include power cables originating from the power source to the following equipment:
- i. Trapeze® power cable: Part# 75T0239-025 cable, power W1, Ext. 10 AWG
 - ii. Safety vision® Power cable: 41-PWR# RNS: Power Harness 4000/4108/4112/4116
 - iii. 3-Power Cables to carry minimum of 7.5 Amperage. DC current.

F. **Cargo Guard Plate:**

The fabricated cargo guard plate will provide for secure, dust free and moisture leak-proof covering of the electronic Tray cabinet area. Cargo Mat Diamond® plate Aluminum 200: SKU:711001. Location: Cover for the Electronic Tray space.

G. **Electronic Wiring System:**

To include the cables from the systems Equipment and terminate at the Connectors, GPS, WLAN units. These will include:

- 1) Safety Vision® cables
 - i. 4108-CAM#RNS: Camera harness for 4108, DB844
 - ii. 41-GPS – Trigger harness for 41 Series TRIGGER
 - iii. 082 -00168: Camera #3 Cable\BNC
 - iv. SVS -10 MMF: 10m M\F THREADED cable
 - v. BNC – BNCZ: BNC –m/BNC M 3' Cable
 - vi. 30 – 1600 30: cat 6 30' cable

ATTACHMENT A – SCOPE OF WORK

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VEHICLE UP-FITTING SERVICES

vii. SVBC – 640 ADA: Cam cable.

2) Trapeze®

- i. 1-24T0116 – 001 Antenna, ¼ wave 450 MHZ
- ii. 1-24T0029 – 002 Antenna, WLAN, White
- iii. 1-24T0001 – 012 Antenna, GPS
- iv. 1-75T0025- 025 Cable, RF, SMC to SMA, 25ft
- v. 1-75T0005 – 020 Cable, RF, SMA to SMA, 20ft
- vi. 1-75T0355 – 008 Cable MDT, DV1, 8M
- vii. 1-75T0227 – 001 Cable W2, IVLU

3) Vision Communication® Cables

- i. 2- RG-58 50-ohm Cable

4) Termination Accessories:

- i. Vision Communication®
 - o “NMO” Style connectors on the roof
 - o “mini PL” Standard Motorola antenna connector
 - o “TNC” style Antenna Connectors
- ii. Safety Vision®
 - o 41. GPS: GPS module for 41 Series
- iii. Trapeze®
 - o 8-23T0020-001 Terminal, 0.062 Female
 - o 1-23T0017-009 Connector, receptacle, Power .062
 - o 1-24T0090-001 Fuse Holder, ADD A CKT, ATC
 - o 1-24T0011-006 Fuse Holder, ATC, 3-30 Amp, 10 AWG
 - o 1-24T0010-020 Fuse, ATC, 20 Amp
 - o 1-24T0010-010 ATC, 10, AMP

H. Other Accessories: Brackets

- 1) (1) Radio Microphone Bracket: Zebra Side Mount: Part# KT-ACCMNT – VC70-R, or approved equal.
- 2) (1) Fire Extinguisher Bracket: Tem 3jmy: Model#8175, 2.5 lbs.
- 3) (1) Monitor Mounting Bracket for roof ceiling LCD part# MouNT-M-FD27
- 4) (10) Harness clamps – ¼” stainless Cable clamps: SKU-S 3374

ATTACHMENT A – SCOPE OF WORK
OPS19-13
VEHICLE UP-FITTING SERVICES

III. INFRASTRUCTURE REQUIREMENTS

- A. Contractor shall be responsible for the complete design and installation of all infrastructure improvements required to support the up-fitting-Services project
- B. Design work shall include, but not limited to, all civil, structural, electrical, and mechanical engineering to provide a complete product.
- C. Painting. All new equipment, conduits, piping, ducting and modifications to the vehicle shall be painted with a minimum of one coat of primer and two finish coats to match adjacent surfaces.

IV. DAMAGES

Contractor shall be responsible for and repair, at its own expense, all damages to the up-fitted vehicle caused by the Contractor's faulty workmanship.

V. INSPECTIONS

- A. Omnitrans' representative shall, at all times, have access to the work sites and shall be furnished with every reasonable facility for ascertaining that the materials and the workmanship are in accordance with the specifications.
- B. All work done and all materials furnished shall be subject to Omnitrans' inspection.
- C. The inspection of the work or materials shall not relieve the Contractor of any of his obligations to fulfill his contract as prescribed. Work and materials not meeting such requirements shall be made good and unsuitable work materials may be rejected, notwithstanding that such work or materials have been previously inspected.
- D. Removal of rejected and unauthorized work.
- E. All work, which has been rejected, shall be remedied or removed and replaced by the Contractor in an acceptable manner. No compensation will be allowed to the Contractor for such removal, replacement, or remedial work.
- F. Final Inspection. When the work has been completed, Omnitrans' Safety, Security and Regulatory Compliance Manager, or his/her designee, will make the final inspection.

ATTACHMENT A – SCOPE OF WORK

OPS19-13

VEHICLE UP-FITTING SERVICES

VI. WARRANTY

- A. Contractor shall warrant the work to be free of any defects of equipment, material or design furnished, or workmanship performed by the Contractor or any of its sub-contractors or the Contractors' suppliers at any time. All vehicle modifications must be in accordance with dealer's protocol.
- B. Such warranty shall continue for a period of two (2) years from the date Omnitrans accepts the final completed project.
- C. Under this warranty, Contractor shall remedy, at its own expense, any such failure to conform or any such defect. In addition, Contractor shall remedy, at its own expense, any damage to Omnitrans owned or controlled real or personal property, when that damage is the result of Contractor's failure to conform to contract requirements or any such defect of equipment, material workmanship or design.
- D. Contractor shall also restore any work damaged in fulfilling their terms of this clause. These costs can include vehicle down time, Omnitrans staff time, and other costs associated with data integrity or data loss. Contractor's warranty with respect to work repaired or replaced, there under, will run for one (1) year from the date of such repair or replacement.

VII. GENERAL REQUIREMENTS

- A. It is the Contractor's responsibility to coordinate the Work so as to minimize conflicts and optimize efficiency.
- B. All subcontractors must possess the appropriate licenses for each specialty subcontracted.
- C. All work is to comply with all applicable state and city code requirements.
- D. Contractor shall ensure that all of his operations strictly adhere to all Federal, State, and Local safety and environmental laws and regulations. Omnitrans reserves the right to correct unsafe practices by the contractor's employees, or stop work until the contractor makes the appropriate corrections.
- E. Installation may take place at the Contractor's facility or at Omnitrans' facility located at: 1700 West 5th Street, San Bernardino, CA 92411. Contractor's drivers must be properly licensed to transport vehicles.
- F. A pilot vehicle shall be made available to Omnitrans for inspection prior to proceeding work on additional vehicles.

ATTACHMENT A – SCOPE OF WORK
OPS19-13
VEHICLE UP-FITTING SERVICES

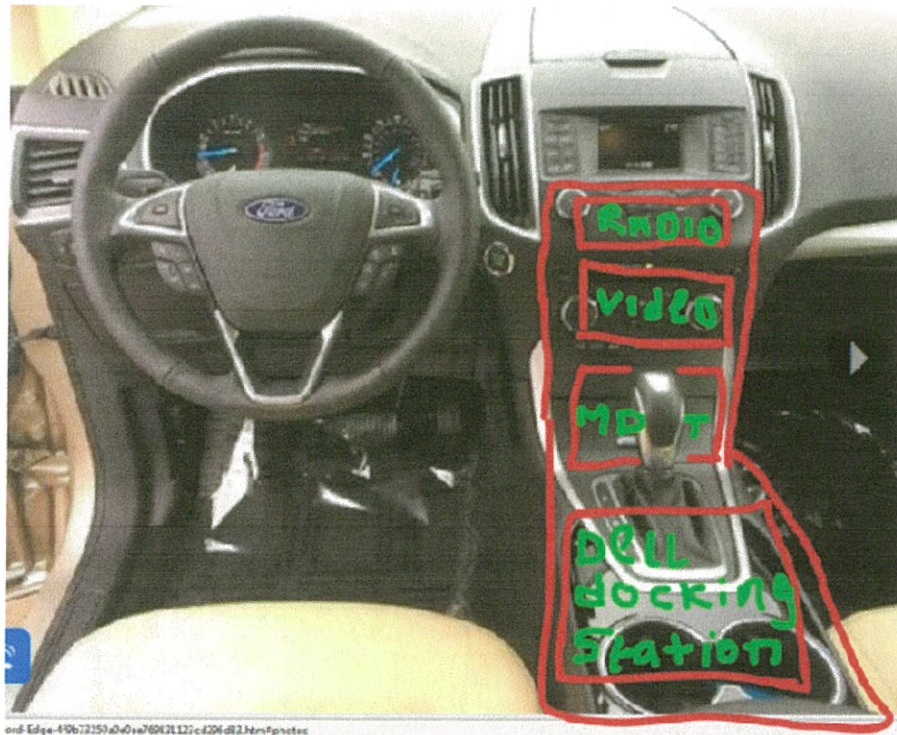


Figure:1

ATTACHMENT A – SCOPE OF WORK
OPS19-13
VEHICLE UP-FITTING SERVICES

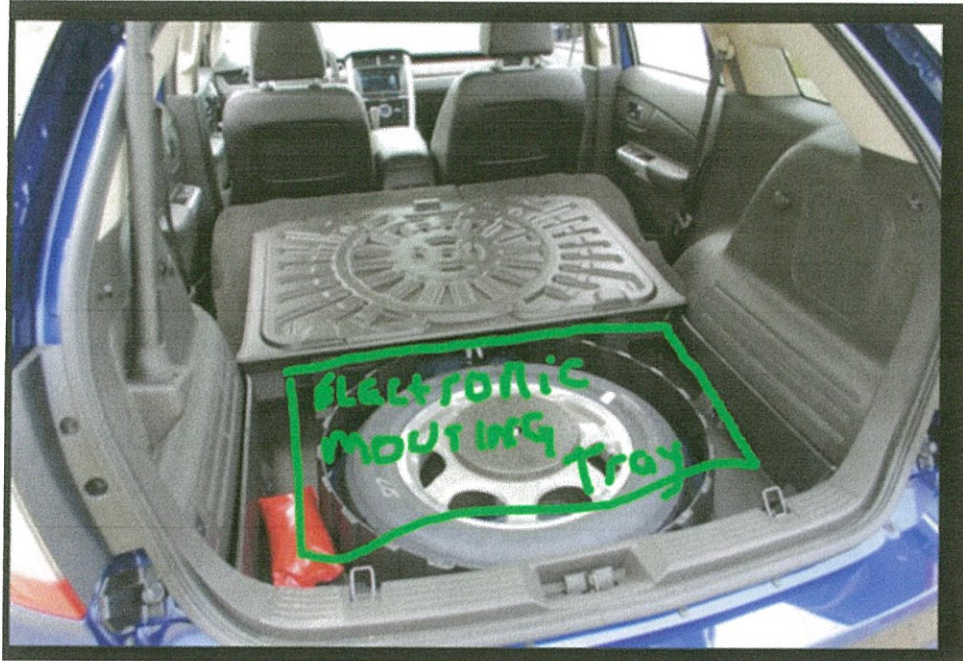


Figure:2

ATTACHMENT A – SCOPE OF WORK
OPS19-13
VEHICLE UP-FITTING SERVICES



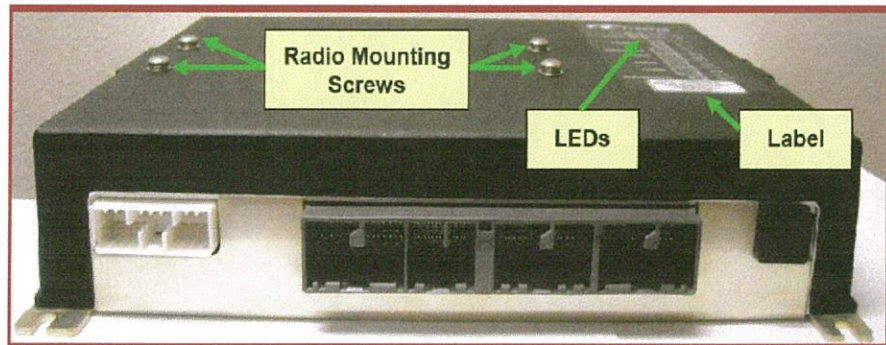
Figure:3

ATTACHMENT A – SCOPE OF WORK
OPS19-13
VEHICLE UP-FITTING SERVICES

MDT Options



Radio



Top and side 2 view of IVLU

Trapeze Equipment

Figure:4



TSI 802.11n Wireless Access Point

TSI Equipment

Figure: 5

ATTACHMENT A – SCOPE OF WORK
OPS19-13
VEHICLE UP-FITTING SERVICES



Motorola CDM1250 radio + Extender
Vision Communication Equipment

Figure:6

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 permit any of the foregoing parties to reproduce without any cost by any means whatsoever or to copy excerpts and transcriptions as reasonably needed.
- E. Contractor shall maintain all books, records, accounts and reports required under this Contract for a period of not less than three years after the date of termination or expiration of this Contract, except in the event of litigation or settlement of claims arising from the performance of this Contract, in which case Contractor agrees to maintain same until Omnitrans, the FTA Administrator, the Comptroller General, or any of their duly authorized representatives, have disposed of all such litigation, appeals, claims or exceptions related thereto.

RR-06

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

A. Applicability

This Article applies to all federally funded contracts.

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

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

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

RR-07

ENERGY CONSERVATION REQUIREMENTS

A. Applicability

This Article applies to all federally funded contracts.

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

RR-08

CIVIL RIGHTS REQUIREMENTS *

A. Applicability

This Article applies to all federally funded contracts.

- B. Nondiscrimination - In accordance with Title VI of the Civil Rights Act, as amended, 42 U.S.C. § 2000d, section 303 of the Age Discrimination Act of 1975, as amended, 42 U.S.C. § 6102, section 202 of the Americans with Disabilities Act of 1990, 42 U.S.C. §

12132, and Federal transit law at 49 U.S.C. § 5332, Contractor shall not discriminate against any employee or applicant for employment because of race, color, creed, national origin, sex, age, or disability. In addition, Contractor shall comply with applicable Federal implementing regulations and other implementing requirements FTA may issue.

C. Equal Employment Opportunity

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

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

This Article applies to all federally funded contracts.

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

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

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

This Article applies to all federally funded contracts.

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

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

RR-11

SUSPENSION AND DEBARMENT*

A. Applicability

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

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

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

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

RR-12

RECYCLED PRODUCTS

A. Applicability

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

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

Order 12873, as they apply to the procurement of the items designated in Subpart B of 40 CFR Part 247.

RR-13

CLEAN WATER AND CLEAN AIR REQUIREMENTS*

A. Applicability

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

B. CLEAN WATER REQUIREMENTS

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

C. CLEAN AIR

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

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

RR-14

COMPLIANCE WITH FEDERAL LOBBYING POLICY *

A. Applicability

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

- B. The Byrd Anti-Lobbying Amendment, 31 U.S.C. 1352, requires that Contractors who apply or bid for an award of \$100,000 or more shall file the certification required by 49 CFR Part 20, "New Restrictions on Lobbying," attached hereto as the certification entitled, "Certification of Compliance with Federal Lobbying Requirements." As set forth in the certifications, each tier of subcontractors shall certify to the tier above that it will

not and has not used Federal appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee of any agency, a member of Congress in connection with obtaining any Federal contract, grant or any other award covered by 31 U.S.C. 1352. Each tier shall also disclose the name of any registrant under the Lobbying Disclosure Act of 1995 who has made lobbying contacts on its behalf with non-Federal funds with respect to that Federal contract, grant or award covered by 31 U.S.C. 1352. Such disclosures shall be forwarded from tier to tier up to Omnitrans.

RR-15

BUY AMERICA *

A. Applicability

The following Article applies to federally funded rolling stock purchase and construction contracts over \$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 3.5%.
- 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 five (5) 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.

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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.

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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 Construction Manager. This decision shall be final and conclusive unless within ten (10) days from the date of receipt of its copy, the Contractor mails or otherwise furnishes a written appeal to Omnitrans Construction Manager. In connection with any such appeal, the Contractor shall be afforded an opportunity to be heard and to offer evidence in support of its position. The decision of Omnitrans Project Manager shall be binding upon the Contractor and the Contractor shall abide by the decision.

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

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

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

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

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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					
OPS19-13					
VEHICLE UP-FITTING SERVICES					
Item Number	Description	Unit of Measure	Quantity	Unit Price	Total
1	Center Equipment Console and Computer Mount	Each	12	\$430.00	\$5,160.00
2	Electronics Mounting Tray	Each	12	\$133.75	\$1,605.00
3	Emergency Warning Light Bar	Each	12	\$406.25	\$4,875.00
4	Laptop Tray	Each	12	\$868.75	\$10,425.00
5	Power System Harness	Each	12	\$468.75	\$5,625.00
6	Data Cables	Each	12	\$543.75	\$6,525.00
7	Brackets	Each	72	\$38.55	\$2,775.60
8	Cooling Unit (Fan)	Each	12	\$135.00	\$1,620.00
9	Cargo Plate	Each	12	\$285.00	\$3,420.00
10	Auxiliary Power Supply	Each	12	\$462.00	\$5,544.00
11	Sales Tax @ 8%	Lot	1	\$4,074.96	\$3,805.97
12	Shipping/Delivery	Lot	1	\$4,340.00	\$4,340.00
				Subtotal	\$55,720.57
13	Installation	Lot	1	\$68,400.00	\$68,400.00
	Total				\$124,120.57

**Omnitrans****PERSONNEL POLICY MANUAL**

POLICY 707 PAGE 1 OF 6

SUBJECT**PROHIBITING WEAPONS IN THE WORKPLACE****APPROVED BY OMNITRANS
BOARD OF DIRECTORS**

DATE: June 7, 2017

I. Purpose

It is the policy of Omnitrans to maintain a work environment that is safe for all persons, including the community, and conducive to attaining high work standards. To achieve these objectives, the Agency prohibits the possession of firearms and weapons in the work place, regardless of any license or permit that an individual may have which otherwise authorizes the individual to carry firearms or weapons.

It is illegal and a criminal violation to possess weapons in public buildings (California Penal Code 171b and 171.7).

II. Scope

This policy applies to all Omnitrans employees, including but not limited to staffing agency workers and contractors working for or with the Agency at any time, regardless of whether the Agency is the actual employer.

Possession of firearms and weapons is prohibited at all Omnitrans' offices, parking lots, agency vehicles and job sites, and in all Agency vehicles.

The following person/s are exempt from this policy as stated: a guard of a contract carrier operating an armored vehicle, and any law enforcement officer who is carrying out official duties engaged in protecting and preserving property or life within the scope of his or her employment.

Omnitrans will strictly enforce this policy. Violation of this policy will result in immediate disciplinary action, up to and including termination.

III. Procedure**A. COMMUNICATION OF POLICY**

(a) Each employee of the Agency shall receive a copy of this policy at the time of his/her hire and shall sign a copy of the acknowledgment. Employees who were employed before the effective date of this policy shall also receive a copy of this policy and shall sign a copy of the acknowledgment. A copy of the signed acknowledgment and of all new and revised policies throughout the employee's employment shall be maintained in each employee's personnel file.

(b) A copy of this policy shall be attached to each contractor's contract, and shall become a part of its contract. The contractor shall be responsible for communicating this policy to its employees and any subcontractors to which the contractor sublets any portion of its contract.



PERSONNEL POLICY MANUAL

POLICY 707 PAGE 2 OF 6

SUBJECT
PROHIBITING WEAPONS IN THE WORKPLACE

APPROVED BY OMNITRANS
BOARD OF DIRECTORS

DATE: June 7, 2017

B. PROHIBITED CONDUCT

(a) The transportation of firearms or weapons in Agency vehicles is prohibited. This includes but is not limited to:

- (1) to and from work,
- (2) when conducting Agency business,
- (3) at all times in Agency-owned or leased vehicles.

(b) The possession or carrying of permitted and non-permitted firearms or weapons while at Agency buildings, parking lots, sponsored events, and job sites.

(c) Exception: Power actuated tools which are manufactured for the use of fastening building materials and sanctioned tools for the purpose of performing Agency job duties are not subject to this policy.

C. SEARCH

(a) Omnitrans reserves the right to conduct reasonable, unannounced searches of Agency premises and personal searches of employees and others while entering, on, or leaving Agency premises, including, but not limited to, personal effects, vehicles, lockers, desks, tool boxes, clothing, meal containers, and baggage. Searches will be conducted when the Agency has a reasonable suspicion to believe that a particular employee may be in possession of a weapon or firearm.

(b) "Reasonable suspicion" is defined as a suspicion that is based on specific personal observations such as an employee's manner, disposition, behavior, speech, information provided to management by an employee, by law enforcement officials, by a security service, or by other persons believed to be reliable, or a suspicion that is based on other surrounding circumstances.

(c) Individuals refusing to allow an inspection will not be detained or forced to submit to the inspection. Refusal violates Agency policy and constitutes an act of insubordination constituting disciplinary action, up to and including separation of the employment relationship. Non-employees who refuse to allow an inspection will not be permitted on Agency premises and will be required to immediately leave the premises. Employees will be relieved of all duties while pending investigation.

D. DISCIPLINE

(a) Violations of any portion of this policy will subject the employee to discipline,

**OmniTrans****PERSONNEL POLICY MANUAL**

POLICY 707 PAGE 3 OF 6

**SUBJECT
PROHIBITING WEAPONS IN THE WORKPLACE****APPROVED BY OMNITRANS
BOARD OF DIRECTORS**

DATE: June 7, 2017

up to and including separation of employment.

(b) Violations by a contractor's employee or subcontractor of any portion of this policy may constitute a breach of contract and regardless will mandate the immediate removal of the contractor's employee from Agency premises, prohibition against the individual accessing Agency premises in the future, and may also constitute a breach of contract.

E. REPORT OF VIOLATIONS**1. Employee Violations**

Employees are required to report violations of this policy without regard to the relationship between the individual who initiates the prohibited behavior and the individual reporting it. An employee who believes that another employee may be in violation of this policy must report the alleged violation to the employee's manager or supervisor, the department director, security, or the appropriate departmental Human Resources representative.

Departments are responsible for implementing this policy. The Agency will promptly investigate allegations of violations of this policy.

OmniTrans reserves the right to authorize searches for prohibited weapons on its property when a violation is reported or when probable cause or reasonable suspicion is present consistent with law.

Employees should be aware that there is no reasonable expectation of privacy with respect to weapons in the workplace. The Agency's right to conduct searches includes, but is not limited to, such areas and items as lockers, desks, workstations, offices, purses, briefcases, bags, toolboxes, and lunch bags.

Searches of the employee's work area and belongings, as described above, may be conducted by the Security & Emergency Preparedness Coordinator, or designee. Searches of all types, including surrounding agency property, personal property and the employee may be conducted by law enforcement in accordance with law should reasonable suspicion be present. Any weapon found in violation of this policy may be confiscated. Refusal to permit a search may result in discipline, up to and including separation.

2. Visitor Violations

Visitors are not allowed to carry a weapon on the premises. Any visitor carrying a weapon into a posted no-carry agency facility is creating an elevated risk to security and safety that warrants a response leading to compliance with the law. If the visitor

**Omnitrans****PERSONNEL POLICY MANUAL**

POLICY 707 PAGE 4 OF 6

SUBJECT**PROHIBITING WEAPONS IN THE WORKPLACE****APPROVED BY OMNITRANS
BOARD OF DIRECTORS**

DATE: June 7, 2017

poses an immediate risk to security or safety, law enforcement shall be notified immediately by calling 9-911. The visitor shall be considered an immediate risk to safety and security if he/she is acting in an aggressive, belligerent, confrontational, suspicious or in an otherwise questionable manner while carrying a weapon.

F. FALSE REPORTS

Employees making intentionally false and malicious complaints of weapons in the workplace will be subject to disciplinary action, up to and including separation and/or will be reported to the proper authorities as appropriate.

G. ROLES AND RESPONSIBILITIES

Employees are responsible for understanding and complying with the Policy Prohibiting Weapons in the Workplace.

Whenever there is a question as to whether an instrument, article or substance is considered a weapon in violation of this policy, it is the employee's responsibility to seek clarification. Employees seeking clarification should direct their questions to the agency's Security & Emergency Preparedness Coordinator at 909-379-7117 prior to bringing the item(s) to Omnitrans work sites and events, as well as agency-owned or leased facilities or vehicles.

H. SAFETY FIRST

In applying this policy, no employee shall take any action that will risk his or her own safety or the safety of other individuals. No attempt should ever be made by an employee to restrain or forcibly evict an armed person from agency premises.

An individual's continued non-compliance after being properly informed of the law (California Penal Code 171 (b)) will result in notification to law enforcement and discipline, up to and including separation of employment. Employees should notify security immediately.

An employee who feels an imminent danger to his or her own safety or the safety or security of others, should avoid any interaction with the individual. Immediately contact law enforcement by calling 9-911 and security at 909-379-7117.

I. ANTI-RETALIATION PROVISION

Omnitrans strictly prohibits any retaliation against an employee who has reported a possible breach of policy. If an employee feels that he or she has been subjected to retaliation in violation of this policy, the employee must immediately report it to his or her supervisor or other designated Human Resources representative.



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PERSONNEL POLICY MANUAL

POLICY 707 PAGE 5 OF 6

SUBJECT
PROHIBITING WEAPONS IN THE WORKPLACE

APPROVED BY OMNITRANS
BOARD OF DIRECTORS

DATE: June 7, 2017

J. DEFINITIONS

1. **Firearm or weapon includes, but is not limited to:** A weapon, a pistol or rifle, whether loaded or unloaded, capable of firing a projectile and using an explosive as a propellant.
 - A firearm, whether loaded or unloaded, from which a shot may be discharged including but not limited to handguns, pistols, revolvers, shotguns, rifles, and bb guns;
 - A gun that can discharge a shot or a projectile by means of an explosive or gas, or compressed air;
 - A device designed to be used as a weapon, from which can be expelled a projectile by the force of any explosion or force of combustion;
 - Any weapon (including a starter gun) which will or is designed to or may readily be converted to expel a projectile by the action of an explosive;
 - Any destructive device;
 - Any device designed as a weapon and capable of producing great bodily harm, including but not limited to, stun guns, stun batons;
 - An electric weapon such as a taser gun;
 - Any combustible or flammable liquid, or other substance, device, or instrumentality that, in a manner it is used or intended to be used, is calculated or likely to produce death or great bodily harm, or any fire that is used to produce death or great bodily harm;
 - Any knife that is carried with intention or calculation to produce death or great bodily harm having a blade length in excess of four (4) inches, the blade of which is fixed or is capable of being fixed in an unguarded position by the use of one or two hands. Switchblades are specifically prohibited. (Knives intended to be used as eating utensils, and stored or maintained in office kitchens or lunchrooms do not represent a violation of this policy.)
2. **Office:** All permanent facilities, all mobile facilities, all leased facilities, and any facility designated as an office by the agency.
3. **Parking lot:** All lots at permanent facility, park and rides, lots at project sites, any lot that the agency designates as a parking lot that is not at a permanent facility or project site.
4. **Agency vehicle:** All agency-owned buses/vehicles, all agency-leased buses/vehicles, all agency-rental buses/vehicles, and all personal vehicles for which the owner receives a vehicle allowance, all personal vehicles where the owner receives reimbursement for mileage.



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PROHIBITING WEAPONS IN THE WORKPLACE

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DATE: June 7, 2017

5. **Search:** To examine in order to find something concealed.

6. **Job sites:** Any and all locations where the agency conducts business.

SIGNS

1. At each entrance to buildings, parking lots, and project sites, a sign shall be posted in a location that is conspicuous to all who could enter a building, parking lot, or project site.
2. Signs shall have wording or pictogram that prohibits firearms, weapons and give notice of video surveillance. Signs shall be vandalism resistant and of the quality that they will not fade due to the elements.



CONTRACT AGREEMENT

between

CONSULTANT
Pacific Claims Management
7060 N. Marks Avenue #118
Fresno CA 93711

(hereinafter "CONSULTANT")
Telephone: (559-432-9400
Email: jlaival@pacclaims.com

And

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

CONTRACT DOCUMENTS

CONTRACT NO. HRS19-04

Workers' Compensation Claims
Administrative Services

Contract Amount: \$586,067

Omnitrans Project Manager:

Name: Jennifer Villalobos

Title: Leave Administrator

Telephone: (909) 379-7170

Email:

jennifer.villalobos@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 - PROHIBITING WEAPONS IN THE WORKPLACE POLICY 707

This Agreement is made and entered into as of this 1st day of December, 2018 and between Omnitrans (hereinafter referred to as "OMNITRANS") and Pacific Claims Management (hereinafter referred to as "CONSULTANT").

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

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

1. SCOPE OF WORK

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

2. PERIOD OF PERFORMANCE

The term of this Agreement shall be from the date of execution of this Agreement and continue in effect through November 30, 2021, 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 CONSULTANTS default as provided elsewhere in this Agreement. The "maximum term" of this Agreement shall be the period extended from December 1, 2021 through November 30, 2023, 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 Consultant's PROPOSAL or offer must have been evaluated in making the contract award prior to exercising any such options.
 - 2) Since Consultant's proposed pricing for the option years and additional services are considered in evaluating the Consultant's original proposal and form the basis for awarding the contract, Consultant 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 Consultant 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 CONSULTANT's full and complete performance of its obligations under this Agreement, OMNITRANS shall pay CONSULTANT on a FIXED 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 Five Hundred Eighty-Six Thousand and Sixty-Seven Dollars (\$586,067), including all amounts payable to CONSULTANT for all costs, including but not limited to direct labor, other direct costs, subcontracts, indirect costs including, but not limited to, leases, materials, taxes, insurance, and profit.

5. INVOICING AND PAYMENT

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

CONSULTANT shall submit invoices in duplicate to:

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

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

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 Consultant 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 Consultant 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. Consultant 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. Consultant's responsibility for loss or damage except for loss or damage resulting from Consultant's negligence, shall cease when title passes to Omnitrans.

6. AUDIT AND INSPECTION OF RECORDS

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

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 CONSULTANT:

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

Pacific Claims Management
7060 N. Marks Avenue #118
Fresno CA 93711
Attn: Jerry Laval
Title: President

8. OMNITRANS' AND CONSULTANT'S REPRESENTATIVES

A. OMNITRANS' Project Manager

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

Project Manager: Jennifer Villalobos, Leave Administrator

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

B. Consultant's Key Personnel

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

<u>Name</u>	<u>Role</u>
Jerry Laval	President
Randy Bugg	Vice President Claims
Suzie Barnette	Claims Supervisor
Tracey Hill	Claims Estimator

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

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

9. DISPUTE RESOLUTION

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

11. TERMINATION FOR BREACH OF AGREEMENT

- A. If CONSULTANT fails to perform any of the provisions of this Agreement or so fails to make progress as to endanger timely performance of this Agreement, OMNITRANS may give CONSULTANT written notice of such default. If CONSULTANT does not cure such default or provide a plan to cure such default which is acceptable to OMNITRANS within the time permitted by OMNITRANS, then OMNITRANS may terminate this Agreement due to CONSULTANT's breach of this Agreement.
- B. If a federal or state proceeding for relief of debtors is undertaken by or against CONSULTANT, or if CONSULTANT makes an assignment for the benefit of creditors, then OMNITRANS may immediately terminate this Agreement.
- C. If CONSULTANT violates Section 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 CONSULTANT shall be liable to OMNITRANS for all of its costs and damages, including, but not limited, any excess costs for such Work.
- E. All finished or unfinished documents and materials produced or procured under this Agreement shall become OMNITRANS' property upon date of such termination.
- F. If, after notice of termination of this Agreement under the provisions of this Section, it is determined for any reason that CONSULTANT was not in default under the provisions of this Section, or that the default was

excusable under the terms of this Agreement, the rights and obligations of the parties shall be the same as if the notice of termination had been issued pursuant to Section 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 CONSULTANT either voluntarily or by operation of law, nor may all or any part of this Agreement be subcontracted by CONSULTANT, without the prior written consent of OMNITRANS. Consent by OMNITRANS shall not be deemed to relieve CONSULTANT of its obligations to comply fully with all terms and conditions of this Agreement.

13. SUBCONTRACTING

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

CONSULTANT shall not, without the express written consent of Omnitrans, either:

- a. Substitute any person, firm, or corporation as subconsultant in place of the subconsultants identified below; or
- b. Permit any subcontract to be assigned or transferred; or
- c. Allow work to be performed by anyone other than the original subconsultant listed below.

Subconsultant's Name and Address

Work to Be Performed

N/A

14. INDEPENDENT CONSULTANT

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

15. INSURANCE

A. INSURANCE REQUIREMENTS

1) General Requirements for Consultant

- a. Without limiting or diminishing the Consultant's obligation to indemnify or hold Omnitrans harmless, Consultant 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 Consultant 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 Consultant's performance of its obligations hereunder and if Consultant's vehicles or mobile equipment are used in the performance of the obligations under this Agreement, then Consultant 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 Consultant; products and completed operations of Consultant;

premises owned, occupied or used by Consultant; or automobiles owned, leased, hired or borrowed by Consultant. 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, Consultant'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 Consultant's insurance and shall not be construed as contributory.
2. Consultant'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 Consultant has employees as defined by the State of California, the Consultant 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

Consultant 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. Consultant 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, Consultant'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 Consultant may provide proof of self-insurance; such proof must be to the satisfaction of Omnitrans.

6) **Subconsultants**

Consultant shall include all subconsultants as insureds under its policies or shall furnish separate certificates and endorsements for each subconsultant. All coverage for subconsultants 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 or electronic notice, and are required to be maintained in force until completion of the contract.

B. **MINIMUM INSURANCE COVERAGE**

If the Consultant 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 Consultant.

- 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

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

17. FIDELITY BOND

The Consultant shall provide to Agency a fidelity bond to collateralize the Imprest account. It shall be from an insurance company admitted in the State of California with a rating of A- or better with a financial size category of IX or better as determined by A.M. Best Company. Said fidelity bond shall remain in effect throughout the entire term of the contract unless waived in writing by Agency at its sole discretion.

18. REVISIONS IN SCOPE OF WORK

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

19. RIGHTS IN TECHNICAL DATA

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

20. OWNERSHIP OF REPORTS AND DOCUMENTS

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

21. OWNERSHIP RIGHTS

- A. In the event OMNITRANS rightfully obtains copies of Proprietary Data under the terms of the separate License Agreement and Escrow Agreement that govern rights in Documentation, Software and Intellectual Property created and/or developed by Consultant, its Third Party Software Consultants and its Suppliers as part of the Project, any derivative works and associated documentation created by or on behalf of OMNITRANS by Permitted Programmers (as defined in the License Agreement) shall be the sole and exclusive property of OMNITRANS (collectively, "OMNITRANS Intellectual Property"), and OMNITRANS may use, disclose and exercise dominion and full rights of ownership, in any manner in OMNITRANS Intellectual Property in connection with the use, operation and maintenance of a transportation system administered by OMNITRANS. No use of OMNITRANS Intellectual Property shall be made for any purpose other than in conjunction with a transportation

system administered by CONSULTANT, and OMNITRANS shall not sell, lease, rent, give away or otherwise disclose any OMNITRANS Intellectual Property to any outside third party other than Permitted Programmers. To the extent there may be any question of rights of ownership or use in any OMNITRANS Intellectual Property, Consultant shall require all of its subconsultants and suppliers (including without limitation its Third Party Software Consultants) to assign to OMNITRANS, all worldwide right, title and interest in and to all OMNITRANS Intellectual Property in a manner consistent with the foregoing terms of this paragraph. Consultant shall execute any documents as OMNITRANS may from time to time reasonably request to effectuate the terms of this paragraph.

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

22. WORK FOR HIRE

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

23. SUBMITTAL OF CLAIMS BY CONSULTANT

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

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

24. EQUAL OPPORTUNITY

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

25. STANDARD OF PERFORMANCE

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

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

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

27. DISQUALIFYING POLITICAL CONTRIBUTIONS

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

28. COMPLIANCE WITH LAW

- A. CONSULTANT shall familiarize itself with and perform the Work required under this Agreement in conformity with requirements and standards of OMNITRANS, municipal and public agencies, public and private utilities, special districts, and railroad agencies whose facilities and work may be affected by Work under this Agreement. CONSULTANT shall also comply with all Federal, state and local laws and ordinances.
- B. Government regulations that directly affect the CONSULTANT'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 CONSULTANT 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 Consultant's claim to any relief under this clause.
- C. The dedicated claims adjuster must complete the California State Fair Political Practices and Commission, Conflict of Interest form 700, annually by March 1st.

29. COMPLIANCE WITH LOBBYING POLICIES

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

30. PUBLIC RECORDS ACT

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

31. 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.

32. FORCE MAJEURE

Performance of each and all CONSULTANT's and OMNITRANS' covenants herein shall be subject to such delays as may occur without CONSULTANT's or

36. 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.

37. LICENSING, PERMITS AND INSPECTION COSTS

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

38. 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-HRS19-04 and any and all of its Addenda, Appendices, Exhibits and Attachments; and (3) CONSULTANT's proposal dated July 31, 2018 and its Appendices, Exhibits, Attachments and Best & Final Offer dated August 23, 2018.

39. ENTIRE AGREEMENT

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

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

OMNITRANS

PACIFIC CLAIMS MANAGEMENT

P. Scott Graham
CEO/General Manager

Jerry Laval
President

Date

Date

Federal Tax I.D. No. 82-05988936

CM



ATTACHMENT A - SCOPE OF WORK
MKP19-04
WORKERS' COMPENSATION CLAIMS ADMINISTRATION SERVICES

1. INTRODUCTION AND PROJECT OVERVIEW

A. Introduction

- 1) Omnitrans places primary importance on a quality benefits delivery program that will manage and direct Workers' Compensation claims in a manner that will ensure consistently good employee relations; reduction in litigation; containment of costs; and control of allocated expenses. Our goal is the highest professional level of aggressive claims handling to exceed existing guidelines and industry standards beyond usual and customary administrative services with consistent and aggressive loss control strategies. This requires responsive, continuous and compassionate communication with injured workers from inception to disposition of the claim while providing cost savings. Consultant shall have a successful track record of reducing costs.
- 2) Omnitrans has been self-insured for Workers' Compensation since 1980 and has approximately 690 employees (446 Coach Operators, 117 Maintenance and Clerical, and 127 Management/Confidential). Omnitrans' annual claims administration costs are approximately \$150,000 per year based on an average of 75 claims filed per year.
- 3) Omnitrans expects its claims administrator to provide state of the art, ongoing and latest technological, integrated claims administration services including, but not limited to, frequent contact with medical providers and compassionate communication with injured employees, cost containment practices, aggressive pursuit of fraud and system abuse, aggressive pursuit of subrogate cases to maximize recoveries, stability of provider claims staff, aggressive administration to claim resolution and prompt contact, communication and follow-up with Omnitrans' designated staff to facilitate the review of claims, settlement of cases and approval of payments, as required. Omnitrans reserves the right to unbundle services with a 30-day notice.
- 4) Omnitrans identifies its claims administrator as the custodian of records and expects an immediate assumption of physical files including the data feed transfer for recordkeeping/historical purposes.
- 5) Further, Omnitrans expects its claims administrator to represent the Agency in such, that includes, but is not limited to, financial conservativeness, aggressive approach in regards to medical treatment and treating all employees with dignity and respect that is favorable and fosters good employee relations and is maintained during all phases of the claims process.

B. General

- 1) Eligible Omnitrans employees are members of the Public Employees Retirement System (CALPERS).

WORKERS' COMPENSATION CLAIMS ADMINISTRATION SERVICES

- 2) Omnitrans employees may supplement leave benefits (sick leave, vacation) with temporary disability benefits to full salary. Total number of open indemnity files is 130, future medical is 24 and medical only claims are 4.
- 3) The California State Association of Counties (CSAC) provides the Agency's excess Workers' Compensation coverage. Omnitrans has a self-insurance retention of \$1,000,000 per claim.
- 4) Omnitrans' Workers' Compensation program is managed by the Human Resources Leave Administrator, under the auspices of the Director of Human Resources, which encompasses the employee benefit programs, risk assessment, insurance acquisition, and coordination with safety programs and staff, and the management of many cost-saving practices that include evaluating current practices, risks and exposures, and processes to reduce claim frequency, severity, and financial impact upon the Agency.

2. STATEMENT OF WORK/PERFORMANCE SPECIFICATIONS

A. Background and Experience

- 1) Consultant shall maintain a certification by a professional body in the field of Workers' Compensation Claims Administration and Management.
- 2) Consultant shall maintain a current certificate to administer self-insured Workers' Compensation Claims in the State of California.

B. Minimum Qualifications

- 1) Consultant must:
 - a) Have the ability to meet onsite within a one (1) day notice for the expedient investigation/administration of claims.
 - b) Provide a dedicated Claims Adjuster to service Omnitrans account with the following qualifications:
 - 1) A minimum of five years of experience as an adjuster level in addition to lower level position experience (claims assistant, medical only adjuster). The claims adjuster must be in possession of a self-insurance certificate issued by the State of California, or be certified within six months of assignment. The dedicated Claims Examiner-Adjuster must also possess a professional designation and certification as a WCCA – Workers' Compensation Claims Administration and WCCP – Workers' Compensation Claims Professional through a recognized professional organization such as IEA – Insurance Education Association.
 - 2) And/or senior personnel, must be experienced in issues involving coordination of American Disabilities Act (ADA), Federal Employment & Housing Act (FEHA) and California

WORKERS' COMPENSATION CLAIMS ADMINISTRATION SERVICES

Public Employees' Retirement System (CalPERS) disability retirements.

- 3) Experience in public entity client work.
- 4) A maximum caseload of 150 open indemnity files only.
- c) Have strong customer service orientation at all levels. A designated manager must have the authority to resolve client issues immediately, including re-assignment of adjusting Consultant's staff to client's satisfaction.
- d) Consultant must provide a qualified back up adjuster in the event of absence of the dedicated adjuster.
- 2) Claims Examiners on Omnitrans' account shall be subject to prior approval by Omnitrans' Director of Human Resources.

C. Reports and Loss Runs

- 1) Consultant must provide the following reports:
 - a) Loss Experience Report;
 - b) Check Register;
 - c) Cost & Frequency Report;
 - d) Injuries by Day of Week Report;
 - e) Open Indemnity File List;
 - f) TD Payment Strata Report;
 - g) Claim File Status Report;
 - h) Claim File Payment History;
 - i) Claim File Report;
 - j) Weekly Reserve Changes Report;
 - k) Excess Claims (at \$500,000) Report;
 - l) Safety Analysis Report;
 - m) Denied Claims Report;
 - n) Occurrence Repeater Report;
 - o) Settlement Award Log;
 - p) Litigation Assignment Log; and
 - q) Penalties Log.
- 2) Consultant shall provide summaries on a monthly basis of all open and closed claims, medical only, future medical and indemnity, sub totaled by each department and division, and total for Agency by claim year;

WORKERS' COMPENSATION CLAIMS ADMINISTRATION SERVICES

- 3) Consultant shall upon request provide various responsive reports on demand, at no additional charge, such as injury analysis reports, i.e., by age, occupation, cause, site, years of service, etc;
- 4) Provide monthly claim summary reports within 5 days from month end;
- 5) Provide loss run data and required reports for actuarial, auditing and reserve analysis purposes, on an as needed basis;
- 6) Prepare and submit, in a timely manner, all reports, including statistical reports required by the State to include the annual Self-insurer's Report;
- 7) Provide a report writer function for Omnitrans staff to design customized ad hoc and standard reports to be printed at Omnitrans office; and
- 8) Provide, at no additional charge, 24-hour on-line claims reporting system for use by Omnitrans staff, including training of Omnitrans staff.

D. Claims Management/Administration Services

- 1) Consultant shall provide complete claims management/administration services including, but not limited to:
 - a) Assume all open claims existing at the beginning of the contract terms;
 - b) Reduce or resolve older claims;
 - c) Allow Omnitrans to participate in the selection process when the need arises to reassign a dedicated claims adjuster to the contract;
 - d) Obtain Omnitrans' approval before making changes to the reserves.
- 2) Omnitrans reserves the right to render a final decision on any specific case pertinent to claim compensability.
- 3) Prior to the denial of compensability of any claim, Consultant must obtain Omnitrans' approval.
- 4) Develop a Plan of Action for each new claim/case that includes maintaining current estimates of costs of all anticipated benefits and related expenses and keeping it up-to-date. Maintain procedures for reviewing and adjusting reserve adequacy no less frequently than every ninety (90) days. Ensure each file contains a clearly outlined plan of action for future handling.
- 5) Monitor and maintain claims statistics as they relate to the Cal/OSHA 300 and 300A requirements so that reports are ready for Omnitrans to post each year as required by law.
- 6) Submit a written request for settlement approval to Omnitrans' Director of Human Resources for every settlement which exceeds their contract authority. This request will include:
 - a) A brief history of the injury and file diary.

WORKERS' COMPENSATION CLAIMS ADMINISTRATION SERVICES

- b) The ratings of all pertinent medical reports.
 - c) The amounts paid and reserved on the claim.
 - d) The proposed settlement details and amount.
 - e) The recommendation for settlement.
 - f) The pros and cons of the proposed settlement including an estimate of future cost of consequences if Omnitrans rejects the proposed settlement.
 - g) Any other pertinent information available to the Board.
- 7) Develop and recommend, as requested by Omnitrans, a panel of attorneys, and investigators through the local vicinity of Omnitrans.
 - 8) Manage all claims electronically through claims management software, which is also accessible to Omnitrans.
 - 9) Investigate, or arrange investigation of, when appropriate, questionable cases and the status of disabled employees to adjust all cases and to assist in the trial or settlement of litigated cases.
 - 10) Seek Agency authorization before conducting an outside investigation.
 - 11) Consult with Omnitrans for returning injured employees to modified duty or in cases of employees whose injuries result in permanent or possible permanent restrictions and/or retirement and/or for employees with physical or performance limitations resulting from industrial injuries, when medically appropriate.
 - 12) Provide monthly reports to the Agency that will set forth requested accounting and statistical data to allow Omnitrans to interpret and evaluate its self-insurance program.
 - 13) Act as the liaison between the Excess insurance carrier and the Agency on matters affecting the adjustment of such claims.
 - 14) Prepare the Agency's Self-Insured Annual Report in a timely fashion for submission to the Department of Self-Insurance Plans prior to the October 1st deadline.
 - 15) Provide and send IRS Forms to all qualifying providers of services and send to Omnitrans a listing of 1099 Forms sent.
 - 16) Provide all printed Workers' Compensation forms, including but not limited to the Division of Workers' Compensation, DWC-1, which the members and employees of Omnitrans will need for claims processing purposes.
 - 17) Provide to Omnitrans posters and notices as required by the State of California, including posters with the name and address of the Consultant.

WORKERS' COMPENSATION CLAIMS ADMINISTRATION SERVICES

- 18) Provide a written procedural claims manual within 180 days of the contract award which will:
 - a) Establish standards of performance detailing how Consultant will administer the Agency's Workers' Compensation Program; and
 - b) Chargeable expenses to the Agency as part of the claims cost, as is customary under insured plans when computing losses for experience rating, retrospective rating, or dividend computation of non-staff expenses such as:
 1. Legal costs and fees.
 2. Investigations and rehabilitation vendor fees.
 3. Costs of employing experts for professional advice.
 4. Expert Opinion or testimony.
 5. Similar costs normally considered as Allocated Loss Expenses are not included in the compensation to Consultant as set forth hereinafter.

E. Execution of Imprest Account

- 1) Agency shall execute payment to Consultant to establish the Imprest account.
- 2) The Imprest account shall be established upon execution of all contract documents on the start date of the contract or as shortly thereafter as reasonably possible.
- 3) The Imprest account shall be under the guardianship of the Consultant and collateralized by the fidelity bond described in Attachment C – Contract Agreement, Section 17. Fidelity Bond.
- 4) Consultant shall monitor and maintain the imprest trust account for payment of the Agency's Worker's Compensation expenses with an initial imprest balance of \$75,000 which may be adjusted upon mutual approval of both parties.
- 5) Associated data will be transferred to Consultant's computerized system utilizing appropriate magnetic media or data transfer, and most efficient and latest technological media by an agreed upon date.
- 6) The data will be provided by the Consultant.

F. Claim File Set-Up

- 1) Prepare individual claim files within two (2) working days for each claim. File preparation shall include, but not be limited to:
 - a) Data entry into database system and establishing appropriate reserves.

WORKERS' COMPENSATION CLAIMS ADMINISTRATION SERVICES

- b) File review, at a minimum, every 30 days for active status and settled claims shall be reviewed at a minimum every 6 months.
 - c) Separate, but detailed historical case documentation plan of action with the most up-to-date details and regular diary review.
- 2) Consultant must provide Omnitrans' staff with detailed and electronic information regarding the:
 - a) Type and nature of services provided for the injured employee and to Omnitrans.
 - b) Types of correspondence sent to employees.
 - c) Types of brochures describing benefits, posters, training, classes, etc.
- 3) Review and process all claims for Workers' Compensation benefits within 24 hours in coordination with the requirements of the California Department of Industrial Relations for reporting and notification.
- 4) Consultant shall initiate a three (3) point contact with Omnitrans, injured employee and medical provider within three working days from receipt of claim.
- 5) Employee/Claimant Contact: Compassionate interface and contact with the injured worker within one working day of receipt of claims and assist employees in understanding and explaining the Workers' Compensation process. Contact shall continue monthly, or more frequently as needed, until the claim has been closed.
- 6) Demonstrate procedures to remind employees about their Qualified Medical Examination (QME) or Agreed Medical Examination (AME) appointments.
- 7) Thoroughly investigate all claims to determine Arose Out of Employment (AOE) / Course of Employment (COE), and the compensability of claimed injuries and illnesses in coordination with California's Workers' Compensation laws.

G. Medical Control

- 1) Determine the eligibility and authorize payments of medical benefits and authorize examinations and other medical treatments timely and promptly within 24 hours of receipt of request/reports, when appropriate, and determine the nature and extent of disability and if it requires Utilization Review submission. Authorization will be granted by the dedicated claims adjuster, not to exceed the first six (6) physical therapy visits.
- 2) Coordinate the reduction of medical bill payments to the Relative Value Schedule (RVS) recommend rates set by the Administrative Director, Division of Workers' Compensation and other negotiated price reductions.

WORKERS' COMPENSATION CLAIMS ADMINISTRATION SERVICES

- 3) Monitor treatment programs for injured or ill employees, including review of all doctor's reports, referring as necessary to a state-approved and Omnitrans-approved utilization review management program for required determinations.
- 4) Recommend referrals and with the consent of Omnitrans, submit a claim for nurse case management services for assistance in medical control of claim. Action plans and notes will be documented in the claim file.
- 5) Maintain close liaison with treating physicians, all other care providers and provide Omnitrans with reported updates.
- 6) Provide guidance in the evaluation of physical capacity of injured employees and their ability to return to work with or without restrictions.
- 7) Immediately challenge any treatment, service, medication, etc. which may be unnecessary or excessive.
- 8) Determine the eligibility for, and authorize payment of, temporary disability compensation in coordination with medical advice and rehabilitation efforts.
- 9) Determine the degree of permanent disability, if any, of injured workers utilizing, as necessary and desirable, advisory ratings of the Permanent Disability Rating Bureau.
- 10) Authorize the payment of permanent disability compensation and death benefits in coordination with advisory ratings, orders of the Workers' Compensation Appeals Board, Compromise and Release settlements, and Litigation Avoidance Programs.
- 11) Be responsible for payment of any penalties incurred as a result of the failure to comply with any statutory laws and regulations. Payment of these penalties shall be the sole responsibility of the Consultant. Omnitrans shall be notified in writing within 30 days of any penalty paid by the Consultant and the reason for the penalty.
- 12) Permanent Disability – Shall assist and explain to injured employees all necessary forms needed to obtain a permanent disability rating; Shall explain the Supplemental Job Displacement Benefits voucher when applicable; Shall determine the nature and extent of the permanent disability and assist with the informal disability rating as needed; Shall assure permanent disability benefit notices are sent to employees as required by the Labor Code.
- 13) At Omnitrans' sole discretion, Consultant shall provide a program to identify cases with high-risk of opioid abuse and dependency.

H. Medical Case Management and Integrated Cost Savings

- 1) Consultant must provide Omnitrans with a detail of:
 - a) Procedures used and made available to Omnitrans, and the benefits of those procedures that demonstrate cost containment.
 - b) Incorporate an Integrated Cost Savings Program that includes, but is not limited to:
 1. Prescription Benefit Network (PBN) (prescription of opioids will be authorized by claims adjuster for first fill (two weeks) then sent to utilization review for authorization; and the claims adjuster will have the physician enter into an opioid contract upon the first prescription)
 2. Medical Provider Network (MPN)
 3. Litigation Cost Containment that includes legal Preferred Provider Organization (PPO) and Legal Bill Review
 4. Nurse Screening on Claims
 5. Medical Utilization and Bill Review
 6. Early Return to Work Strategies
 7. Use of Analytics to demonstrate results
 8. Explanation of Benefits (EOBs)

3. OBLIGATIONS OF THE CONSULTANT

A. General

GENERAL REQUIREMENTS:

- 1) Supervise and administer the Self-Insurance Workers' Compensation Program for the Agency.
- 2) Represent Omnitrans in all matters related to the investigation, adjustment, processing, supervision and resolution of Workers' Compensation claims asserted by employees against the Agency.

B. Litigation Management and Legal Support Services

- 1) Omnitrans reserves the right to select legal counsel.
- 2) Consultant shall provide, but not limited to, the following litigation management and legal support services on each claim wherein the claimant has commenced litigation.
- 3) Assign litigation cases, when appropriate, to attorneys utilizing a previously agreed upon listing of legal Consultants that are at least 85% Workers' Compensation defense; who are also certified as Workers'

WORKERS' COMPENSATION CLAIMS ADMINISTRATION SERVICES

Compensation specialists by the state bar with ten years of experience in Workers' Compensation. Also, have expertise in litigation management for public entities. Hourly rates will be capped at a negotiated discounted rate.

- 4) Assist in the preparation of litigation cases, negotiations of stipulations, compromise and release settlements and subrogation actions.
- 5) Monitor cases to ensure that:
 - a) Necessary subpoenas for records and/or witnesses are issued; depositions are taken.
 - b) Medical reports and legal documents, including, but not limited to, Answers to Applications, Liens, Motions, Dismissals, etc. and are filed and served in full compliance with California legal statutes.
 - c) Track and maintain master calendars from each attorney weekly to include all Workers' Compensation Appeals Board (WCAB) appearances, depositions, meetings, etc.
 - d) Obtain defense counsel's litigation reports no later than 30 days prior to Mandatory Settlement Conferences (MSCs) or trials and all hearing and deposition reports no later than 10 days following each appearance.
 - e) Obtain approval from Omnitrans for each Compromise and Release or Stipulations with Request for Award settlement that falls within Omnitrans' Workers' Compensation Settlement Agreement procedure.
 - f) Consult with Omnitrans before incurring expenses for fraud investigation and before referring any matter involving fraud to the District Attorney or Department of Insurance.
- 6) The Consultant/TPA will manage litigated files where appropriate and will work with legal counsel to manage the defense of the claim, including, but not limited to, the preparation of litigated cases, submittal of regular and timely reports, negotiations of Compromise and Release or Stipulated Award settlements, Stipulated Findings and Awards, and filing of Recon and/or Writs.

4. MEDICAL MANDATORY SET ASIDE REPORT (MMIR)

- A. Consultant shall be responsible for assisting Omnitrans with mandatory registration for the required Medicare Mandatory Insurer Reporting Requirements. The Consultant shall provide the following:
 - 1) Assistance with RRE registration
 - 2) EDI set-up and testing with the CMS
 - 3) Initial and subsequent quarterly reporting

WORKERS' COMPENSATION CLAIMS ADMINISTRATION SERVICES

- 4) Claims data clean-up and modifications
- 5) Verification of Medicare eligibility
- 6) Basic claims matching services involves sending claims information as gathered by the client or Consultant to CMS to determine whether or not the claimants are on Social Security
- 7) Provide MSA allocation report services.
- B. Consultant shall be responsible for assisting with any questions regarding Medicare Set-Asides.
- C. Consultant shall be responsible for tracking the submission progress.

5. QUALITY CONTROL PLAN**A. Disposition of Files on Termination of Contract**

- 1) All files on each claim are and shall be the property of Omnitrans
 - a) Upon expiration of the Contract Consultant shall:
 - (1) Place all completed and pending claims files in sealed boxes and forward to Agency or its designee within 14 calendar days;
 - (2) Invoice Agency, subject to the rate quoted in the Bid Pricing Form (Section 5.0) for work completed on each claim
 - b) Upon cancellation of this Contract by Agency, Consultant shall:
 - (1) Place all completed and pending claims files in sealed boxes and forward to the Agency or designee within 14 calendar days;
 - (2) Agency requests Consultant to continue to process such files pursuant to Consultant's current time and expense rates at the time such services are rendered.
- 2) Failure to comply with this section will result in forfeiture of the fidelity bond and appropriate legal action.

B. Financial Accounting Services

- 1) Consultant shall:
 - a) Maintain a trust fund for the purpose of paying benefits that may be due on the claims. The amount that will be maintained in the trust fund shall be determined by the parties and Consultant by written document.

WORKERS' COMPENSATION CLAIMS ADMINISTRATION SERVICES

- b) Maintain a copy of all checks, vouchers or warrants drawn by the Consultant to pay benefits on the Agency's claims. These shall be provided at no additional expense to Omnitrans upon request.
 - c) Prepare and maintain a monthly check/voucher register of all transactions made for the period. These shall be provided at no additional expense to Omnitrans upon request.
 - d) Must have the functionality and ability to deliver funds to all parties via Electronic Fund Transfer (EFT), also known as direct deposits to banking and financial institutions for payment of a myriad of expenses including, but not limited, Temporary Total Disability (TTD) and Permanent Disability payments.
- 2) Omnitrans reserves the right to conduct a financial audit of the trust account to insure the integrity of the account at any time during the contract period. Consultant will make all documents available for any audit available in a timely manner. Agency will provide a minimum of 10 days notice of any audit request.

C. Additional Services

- 1) Examiner attendance at Workers' Compensation appeals board hearing, rehabilitation conference, conferences with legal counsel (defense counsel), and meetings with Omnitrans staff, departments and employee groups when required.
- 2) Communication, written, oral and in person, with Omnitrans staff by the claims examiner is an important element of the services expected.
- 3) Provide all forms necessary for Omnitrans processing of benefits or claims information at the expense of the Consultant, with Omnitrans and Consultant information preprinted.
- 4) Consultant is the custodian of records of Omnitrans' Workers' Compensation claims.
- 5) All claim files shall be maintained in accordance with statutory time requirements and Omnitrans shall be notified prior to any destruction of files.
- 6) All records, files, transcripts, computer tapes and other materials stored by all methods available (paper, electronic, etc.) on Workers' Compensation adjusting activity developed on the Omnitrans Workers' Compensation claims is the property of Omnitrans and must be relinquished in good order and condition upon termination of this contract with Consultant. Omnitrans shall not be required to pay any additional cost for the transfer of files to Omnitrans.
- 7) Attend on-site case file reviews quarterly as requested.
- 8) Attend all meetings with Omnitrans staff as requested.

WORKERS' COMPENSATION CLAIMS ADMINISTRATION SERVICES

- 9) Be available for spot audit checks by Omnitrans when requested.
- 10) Cooperate with file and program audits with state agencies and Omnitrans designated auditors.
- 11) Be available to respond to a major emergency or catastrophe involving injuries to Omnitrans employees to expedite treatment and claims processing.
- 12) Provide quarterly reports to Omnitrans staff listing all claims by claim number and client name assigned to Omnitrans designated claims adjusters.
- 13) Provide Monthly claims review of all active indemnity files and enter review notes on claim daily reporting system.
- 14) Assist Omnitrans with developing medical treatment and reporting protocols with area medical service providers to enhance return to work and light duty program effectiveness.
- 15) Recommend medical bill review, utilization review and medical case management service providers to Omnitrans staff.
- 16) Provide training to Omnitrans managers and supervisors on claims reporting, responsibilities to employees, and practices to improve return to work of injured employees.
- 17) Provide internet e-mail communications for designated claims adjuster to Omnitrans staff.
- 18) If available, loss control, investigative services (Subrosa, AOE/COE), safety and ergonomic services should be stated, including additional costs for such services.
- 19) Maintain appropriate recordkeeping ensuring regulatory compliance and reporting as required by California Occupational Safety & Health Administration (Cal/OSHA).

6. OMNITRANS' OBLIGATIONS

- A. Agency shall provide Consultant with copies of all relevant documents upon request and without charge.
- B. Agency shall make available to Consultant, any Agency employee for interviews by Consultant at reasonable times concerning any investigations of a claim or incident pursuant to this Contract.
- C. Associated data will be transferred to Consultant's computerized system utilizing appropriate magnetic media or data transfer and most efficient and latest technological media, by an agreed upon date.

End of Scope of Work

ATTACHMENT B - PRICING
HRS19-04
WORKERS' COMPENSATION CLAIMS ADMINISTRATION SERVICES

Contract Years	Begin & End Dates	Monthly Cost	Annual Total	Percent of Change
Year 1	12-01-18 to 11-30-19	\$19,958.34	\$191,500.00	
Year 2	12-01-19 to 11-30-20	\$16,277.50	\$195,330.00	2.0%
Year 3	12-01-20 to 11-30-21	\$16,603.05	\$199,236.60	2.0%
Year 4	12-01-21 to 11-30-22	\$16,603.05	\$199,236.60	0.0%
Year 5	12-01-22 to 11-30-23	\$16,603.05	\$199,236.60	0.0%
		SUBTOTAL	\$984,539.80	
Labor			Flat Rate	
Assumption of existing claims, physical file pick-up for recordkeeping/historical purposes, including data feed transfer			\$0.00	
		TOTAL	\$984,539.80	



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SUBJECT

PROHIBITING WEAPONS IN THE WORKPLACE

APPROVED BY OMNITRANS
BOARD OF DIRECTORS

DATE: June 7, 2017

I. Purpose

It is the policy of Omnitrans to maintain a work environment that is safe for all persons, including the community, and conducive to attaining high work standards. To achieve these objectives, the Agency prohibits the possession of firearms and weapons in the work place, regardless of any license or permit that an individual may have which otherwise authorizes the individual to carry firearms or weapons.

It is illegal and a criminal violation to possess weapons in public buildings (California Penal Code 171b and 171.7).

II. Scope

This policy applies to all Omnitrans employees, including but not limited to staffing agency workers and contractors working for or with the Agency at any time, regardless of whether the Agency is the actual employer.

Possession of firearms and weapons is prohibited at all Omnitrans' offices, parking lots, agency vehicles and job sites, and in all Agency vehicles.

The following person/s are exempt from this policy as stated: a guard of a contract carrier operating an armored vehicle, and any law enforcement officer who is carrying out official duties engaged in protecting and preserving property or life within the scope of his or her employment.

Omnitrans will strictly enforce this policy. Violation of this policy will result in immediate disciplinary action, up to and including termination.

III. Procedure

A. COMMUNICATION OF POLICY

(a) Each employee of the Agency shall receive a copy of this policy at the time of his/her hire and shall sign a copy of the acknowledgment. Employees who were employed before the effective date of this policy shall also receive a copy of this policy and shall sign a copy of the acknowledgment. A copy of the signed acknowledgment and of all new and revised policies throughout the employee's employment shall be maintained in each employee's personnel file.

(b) A copy of this policy shall be attached to each contractor's contract, and shall become a part of its contract. The contractor shall be responsible for communicating this policy to its employees and any subcontractors to which the contractor sublets any portion of its contract.



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B. PROHIBITED CONDUCT

(a) The transportation of firearms or weapons in Agency vehicles is prohibited. This includes but is not limited to:

- (1) to and from work,
- (2) when conducting Agency business,
- (3) at all times in Agency-owned or leased vehicles.

(b) The possession or carrying of permitted and non-permitted firearms or weapons while at Agency buildings, parking lots, sponsored events, and job sites.

(c) Exception: Power actuated tools which are manufactured for the use of fastening building materials and sanctioned tools for the purpose of performing Agency job duties are not subject to this policy.

C. SEARCH

(a) Omnitrans reserves the right to conduct reasonable, unannounced searches of Agency premises and personal searches of employees and others while entering, on, or leaving Agency premises, including, but not limited to, personal effects, vehicles, lockers, desks, tool boxes, clothing, meal containers, and baggage. Searches will be conducted when the Agency has a reasonable suspicion to believe that a particular employee may be in possession of a weapon or firearm.

(b) "Reasonable suspicion" is defined as a suspicion that is based on specific personal observations such as an employee's manner, disposition, behavior, speech, information provided to management by an employee, by law enforcement officials, by a security service, or by other persons believed to be reliable, or a suspicion that is based on other surrounding circumstances.

(c) Individuals refusing to allow an inspection will not be detained or forced to submit to the inspection. Refusal violates Agency policy and constitutes an act of insubordination constituting disciplinary action, up to and including separation of the employment relationship. Non-employees who refuse to allow an inspection will not be permitted on Agency premises and will be required to immediately leave the premises. Employees will be relieved of all duties while pending investigation.

D. DISCIPLINE

(a) Violations of any portion of this policy will subject the employee to discipline,



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up to and including separation of employment.

(b) Violations by a contractor's employee or subcontractor of any portion of this policy may constitute a breach of contract and regardless will mandate the immediate removal of the contractor's employee from Agency premises, prohibition against the individual accessing Agency premises in the future, and may also constitute a breach of contract.

E. REPORT OF VIOLATIONS

1. Employee Violations

Employees are required to report violations of this policy without regard to the relationship between the individual who initiates the prohibited behavior and the individual reporting it. An employee who believes that another employee may be in violation of this policy must report the alleged violation to the employee's manager or supervisor, the department director, security, or the appropriate departmental Human Resources representative.

Departments are responsible for implementing this policy. The Agency will promptly investigate allegations of violations of this policy.

OmniTrans reserves the right to authorize searches for prohibited weapons on its property when a violation is reported or when probable cause or reasonable suspicion is present consistent with law.

Employees should be aware that there is no reasonable expectation of privacy with respect to weapons in the workplace. The Agency's right to conduct searches includes, but is not limited to, such areas and items as lockers, desks, workstations, offices, purses, briefcases, bags, toolboxes, and lunch bags.

Searches of the employee's work area and belongings, as described above, may be conducted by the Security & Emergency Preparedness Coordinator, or designee. Searches of all types, including surrounding agency property, personal property and the employee may be conducted by law enforcement in accordance with law should reasonable suspicion be present. Any weapon found in violation of this policy may be confiscated. Refusal to permit a search may result in discipline, up to and including separation.

2. Visitor Violations

Visitors are not allowed to carry a weapon on the premises. Any visitor carrying a weapon into a posted no-carry agency facility is creating an elevated risk to security and safety that warrants a response leading to compliance with the law. If the visitor



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poses an immediate risk to security or safety, law enforcement shall be notified immediately by calling 9-911. The visitor shall be considered an immediate risk to safety and security if he/she is acting in an aggressive, belligerent, confrontational, suspicious or in an otherwise questionable manner while carrying a weapon.

F. FALSE REPORTS

Employees making intentionally false and malicious complaints of weapons in the workplace will be subject to disciplinary action, up to and including separation and/or will be reported to the proper authorities as appropriate.

G. ROLES AND RESPONSIBILITIES

Employees are responsible for understanding and complying with the Policy Prohibiting Weapons in the Workplace.

Whenever there is a question as to whether an instrument, article or substance is considered a weapon in violation of this policy, it is the employee's responsibility to seek clarification. Employees seeking clarification should direct their questions to the agency's Security & Emergency Preparedness Coordinator at 909-379-7117 prior to bringing the item(s) to Omnitrans work sites and events, as well as agency-owned or leased facilities or vehicles.

H. SAFETY FIRST

In applying this policy, no employee shall take any action that will risk his or her own safety or the safety of other individuals. No attempt should ever be made by an employee to restrain or forcibly evict an armed person from agency premises.

An individual's continued non-compliance after being properly informed of the law (California Penal Code 171 (b)) will result in notification to law enforcement and discipline, up to and including separation of employment. Employees should notify security immediately.

An employee who feels an imminent danger to his or her own safety or the safety or security of others, should avoid any interaction with the individual. Immediately contact law enforcement by calling 9-911 and security at 909-379-7117.

I. ANTI-RETALIATION PROVISION

Omnitrans strictly prohibits any retaliation against an employee who has reported a possible breach of policy. If an employee feels that he or she has been subjected to retaliation in violation of this policy, the employee must immediately report it to his or her supervisor or other designated Human Resources representative.



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J. DEFINITIONS

1. **Firearm or weapon includes, but is not limited to:** A weapon, a pistol or rifle, whether loaded or unloaded, capable of firing a projectile and using an explosive as a propellant.
 - A firearm, whether loaded or unloaded, from which a shot may be discharged including but not limited to handguns, pistols, revolvers, shotguns, rifles, and bb guns;
 - A gun that can discharge a shot or a projectile by means of an explosive or gas, or compressed air;
 - A device designed to be used as a weapon, from which can be expelled a projectile by the force of any explosion or force of combustion;
 - Any weapon (including a starter gun) which will or is designed to or may readily be converted to expel a projectile by the action of an explosive;
 - Any destructive device;
 - Any device designed as a weapon and capable of producing great bodily harm, including but not limited to, stun guns, stun batons;
 - An electric weapon such as a taser gun;
 - Any combustible or flammable liquid, or other substance, device, or instrumentality that, in a manner it is used or intended to be used, is calculated or likely to produce death or great bodily harm, or any fire that is used to produce death or great bodily harm;
 - Any knife that is carried with intention or calculation to produce death or great bodily harm having a blade length in excess of four (4) inches, the blade of which is fixed or is capable of being fixed in an unguarded position by the use of one or two hands. Switchblades are specifically prohibited. (Knives intended to be used as eating utensils, and stored or maintained in office kitchens or lunchrooms do not represent a violation of this policy.)
2. **Office:** All permanent facilities, all mobile facilities, all leased facilities, and any facility designated as an office by the agency.
3. **Parking lot:** All lots at permanent facility, park and rides, lots at project sites, any lot that the agency designates as a parking lot that is not at a permanent facility or project site.
4. **Agency vehicle:** All agency-owned buses/vehicles, all agency-leased buses/vehicles, all agency-rental buses/vehicles, and all personal vehicles for which the owner receives a vehicle allowance, all personal vehicles where the owner receives reimbursement for mileage.



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5. **Search:** To examine in order to find something concealed.

6. **Job sites:** Any and all locations where the agency conducts business.

SIGNS

1. At each entrance to buildings, parking lots, and project sites, a sign shall be posted in a location that is conspicuous to all who could enter a building, parking lot, or project site.
2. Signs shall have wording or pictogram that prohibits firearms, weapons and give notice of video surveillance. Signs shall be vandalism resistant and of the quality that they will not fade due to the elements.