



BOARD OF DIRECTORS MEETING
WEDNESDAY, APRIL 6, 2016 – 8:00 A.M.
OMNITRANS METRO FACILITY
1700 WEST 5TH STREET
SAN BERNARDINO, CA 92411

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

A. CALL TO ORDER

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

B. ANNOUNCEMENTS/PRESENTATIONS

1. Next Board Meeting: Wednesday, May 4, 2016 – 8:00 a.m.
Omnitrans Metro Facility Board Room

C. COMMUNICATIONS FROM THE PUBLIC

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

D. POSSIBLE CONFLICT OF INTEREST ISSUES

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

E. CONSENT CALENDAR

The following items are expected to be routine and non-controversial. The Board will act upon them at one time without discussion, unless the Board directs that an item be held for further discussion under Agenda Item F, Discussion Items. Any person wishing to address consent items should address the Board under Agenda Item #E10, Action on Consent Calendar.

- | | |
|--|----|
| 1. Approve Board Minutes – March 2, 2016 | 5 |
| 2. Receive and File Administrative and Finance Committee Minutes – February 11, 2016 | 10 |
| 3. Receive and File sbX Construction Progress Report No. 45 through February 29, 2016 | 14 |
| 4. Receive and File FTA 2015 Procurement System Review Final Report and Corrective Action Plan | 22 |



BOARD OF DIRECTORS MEETING
WEDNESDAY, APRIL 6, 2016 – 8:00 A.M.
OMNITRANS METRO FACILITY
1700 WEST 5TH STREET
SAN BERNARDINO, CA 92411

E. CONSENT CALENDAR CONTINUED	
5. Approve Fiscal Year 2016-2017 Budget Assumptions	92
6. Ratify Change Order 1 – Purchase Order 4500021954, Stake Bed Trucks Month-to-Month Lease	95
7. Authorize Release, Invitation for Bids IFB-MNT16-109, Miscellaneous Bulk Oils and Lubricants	97
8. Authorize CEO/General Manager to Sign Cooperative Service Agreements with Victor Valley Transit Authority and Mountain Transit	99
9. Press Articles and Letters of Interest to the Board	111
10. Action on Consent Calendar	
F. DISCUSSION ITEMS	
The following items do not legally require any public testimony, although the Chair may open the meeting for public input.	
1. CEO/General Manager's Report	114
2. Receive and File Presentation, Los Angeles and San Bernardino County Inter-County Transit and Rail Connectivity Study – Presentation	115
3. Adopt Omnitrans' Proposed Fiscal Year 2017-2020 Strategic Plan – Presentation	137
4. Approve Sale of 28.73 Acre Property Located in Rancho Cucamonga, California, and Authorize CEO/General Manager to Sign All Required Documents to Complete Sale	170
5. Authorize Amendment 5, Sole Source Contract OPS16-107 – Trapeze Software License and Maintenance Master Agreement	188
6. Authorize Award – Contract MNT16-100, Brake Shoe Relining Services	213
G. PUBLIC HEARING	
There is no Public Hearing scheduled.	
H. BOARD BUSINESS	
Closed Session	
1. Conference with Labor Negotiator Sam Spagnolo concerning labor negotiations with Chief Executive Officer/General Manager pursuant to Government Code Section 54957.6	
2. Conference with Labor Negotiator P. Scott Graham concerning labor negotiations with Amalgamated Transit Union Local No. 1704 regarding the Coach Operator Unit, pursuant to Government Code Section 54957.6	
Open Session	
1. Approve the Amended Employment Agreement for P. Scott Graham, Chief Executive Office/General Manager, effective February 5, 2016	269
I. REMARKS AND ANNOUNCEMENTS	
J. ADJOURNMENT	

ITEM # D1

DATE: April 6, 2016

TO: Board Chair Sam Spagnolo and Members of the Omnitrans Board of Directors

THROUGH: P. Scott Graham, CEO/General Manager

FROM: Jennifer M. Sims, Director of Procurement

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

FORM MOTION

Staff hereby provides a listing of principals and subcontractors associated with action items on the agenda for the Board of Director's Meeting scheduled April 6, 2016.

Item	Contract	Principals & Agents	Subcontractors
#E6	Ratify Change Order 1 – Purchase Order 4500021954 Stake Bed Trucks Month-to-Month Lease	<i>Enterprise Fleet Management Ontario, CA Richard Murrell Regional Sales Manager</i>	<i>None</i>
#F4	Approve Sale of 28.73 Acre Property Located in Rancho Cucamonga, CA	<i>Industrial Property Trust Inc. Denver, CO Peter Vanderburg Senior Vice President, Development</i>	<i>None</i>
#F5	Authorize Amendment 5 Sole Source Contract OPS16-107 Trapeze Software License and Maintenance Master Agreement	<i>Trapeze Software Group, Inc. Cedar Rapids, IA Eric Herrmann, Chief Financial Officer</i>	<i>None</i>
#F6	Authorize Award Contract MNT16-100 Brake Shoe Relining Services	<i>Franklin Truck Parts, Inc. Commerce, CA Derrick Pinnecker General Manager</i>	<i>None</i>

PSG:JMS



CONFLICT OF INTEREST FORM

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

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

BOARD MEMBER INFORMATION

BOARD MEMBER NAME	CITY/COUNTY NAME	MEETING DATE

CAMPAIGN CONTRIBUTIONS

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

FINANCIAL INTEREST

1. I have a financial interest of _____
State income, real property interest or business position

Identify company or property location
2. I have a financial interest of _____
State income, real property interest or business position

SIGNATURE

Board Member Signature

Date

ITEM # _____ E1 _____

**BOARD OF DIRECTORS' MEETING
MINUTES OF MARCH 2, 2016**

A. CALL TO ORDER

Chairman Sam Spagnolo called the regular meeting of the Omnitrans Board of Directors to order at 8:01 a.m., Wednesday, March 2, 2016, at the Omnitrans Facility located at 1700 West 5th Street, San Bernardino, California.

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

BOARD MEMBERS PRESENT

Mayor Pro Tem Sam Spagnolo, City of Rancho Cucamonga – Chairman
Council Member Ron Dailey, City of Loma Linda – Vice Chairman
Mayor Carey Davis, City of San Bernardino
Mayor Richard DeLaRosa, City of Colton
Mayor Paul Eaton, City of Montclair
Council Member Pat Gilbreath, City of Redlands
Council Member Ed Graham, City of Chino Hills
Supervisor Curt Hagman, County of San Bernardino
Council Member Penny Lilburn, City of Highland
Mayor Ray Musser, City of Upland
Supervisor James Ramos, County of San Bernardino
Council Member Dick Riddell, City of Yucaipa
Council Member John Roberts, City of Fontana
Mayor Pro Tem Sylvia Robles, City of Grand Terrace
Supervisor Janice Rutherford, County of San Bernardino
Council Member Alan Wapner, City of Ontario
Mayor Dennis Yates, City of Chino

BOARD MEMBERS NOT PRESENT

Supervisor Josie Gonzales, County of San Bernardino
Supervisor Robert Lovingood, County of San Bernardino
Mayor Deborah Robertson, City of Rialto

OMNITRANS' ADMINISTRATIVE STAFF PRESENT

Diane Caldera, Director of Operations
Jack Dooley, Director of Maintenance
Marge Ewing, Director of Human Resources, Safety & Regulatory Compliance
Samuel Gibbs, Director of Internal Audit
Jacob Harms, Director of Information Technology
Andres Ramirez, IPMO Program Manager
Don Walker, Director of Finance
Jeremiah Bryant, Service Planning Manager
Maurice Mansion, Treasury Manager
Ray Maldonado, Employee Relations Manager
Omar Bryant, West Valley Maintenance Manager
Kathy McClure, Sr. Contracts Administrator
Krystal Turner, Contracts Administrator
Christine Van Matre, Contracts Administrator
Mark Crosby, Security & Emergency Preparedness Coordinator
Vicki Dennett, Executive Assistant to CEO/General Manager

LEGAL COUNSEL

Carol Greene

B. ANNOUNCEMENTS/PRESENTATIONS

1. Next Board Meeting: Wednesday, April 6, 2016, 8:00 a.m.
Omnitrans Metro Facility Board Room

Chairman Spagnolo and Director of Human Resources Marjorie Ewing presented Omnitrans One- and Two-Million Mile Awards to the following recipients: One Million Miles—Lydia Bennefield, Aundre Caldwell, and Robbie Fields; Two Million Miles—Francisco Astorga.

C. COMMUNICATIONS FROM THE PUBLIC

1. Jeffrey DeFillipes spoke about Route 3 where the bus driver is supposed to stop, but said she stops short. He also expressed his concern that children are allowed to duck under the line and board for free, and felt that handicap persons' bus pass ID's should be annual. Chairman Spagnolo asked Omnitrans to look into his concerns. Mr. DeFillipes also complimented most other operators, stating that as a group they serve the bus-riding public very well.
2. Susan Wallace spoke with regard to returning altered bus routes to their former stops and locations. Ms. Wallace was very complimentary to the bus drivers and the valuable service they provide, especially to elderly and disabled passengers.

D. POSSIBLE CONFLICT OF INTEREST ISSUES

There were no Conflict of Interest Issues identified.

Member Hagman arrived at 8:10 a.m.

E. CONSENT CALENDAR

1. Approve Board Minutes – February 3, 2016
2. Receive and File Administrative and Finance Committee Minutes – January 14, 2016
3. Receive and File Operations and Safety Committee Minutes – October 19, 2015
4. Receive and File sbX Construction Progress Report No. 44 through January 31, 2016
5. Receive and File Affirmative Action Status Report – As of February 11, 2016
6. Receive and File Omnitrans' Fiscal Year Ended June 30, 2015 Audit Reports
7. Receive and File Update and Call for Public Scoping Period – West Valley Connector Project
8. Authorize Release, Request for Proposals RFP-MKP16-102, Bus Book Printing Services
9. Authorize Release, Request for Proposals RFP-OPS16-17, Audible Pedestrian Warning System
10. Adopt Proposed Personnel Policy Changes and Approve Job Descriptions for Special Transit Services Department
11. Press Articles and Letters of Interest to the Board

M/S (Eaton/Musser) that approved the Consent Calendar. Motion was unanimous by Members present.

Member Ramos arrived at 8:12 a.m.

F. DISCUSSION ITEMS

1. CEO/General Manager's Report

County Counsel Carol Greene spoke briefly about the decision to not proceed with the award, and to reissue the solicitation, of the Design-Build-Maintain contract of the CNG Infrastructure. Marge Ewing reviewed the remainder of the CEO/General Manager's Report.

2. Authorize Award – Contract OPS16-01 – Modular Wheelchair Restraint Stations and Passive Rear-Facing Systems

M/S (Graham/DeLaRosa) that authorized the CEO/General Manager to award Contract OPS16-01 to New Flyer Industries Canada ULC (New Flyer), of Winnipeg, MB, for the provision of Modular Wheelchair Restraint Stations and Passive Rear-Facing Systems and installation, in the amount of \$771,296, plus a ten percent contingency of \$77,129, and a 3.27% Cost Allocation Plan (CAP) of \$27,743, for a total not-to-exceed amount of \$876,168. Motion was unanimous by Members present.

3. Authorize Award – Contract MKP16-83 – Permanent Fence San Bernardino Transit Center (SBTC)

M/S (Roberts/Gilbreath) that authorized the CEO/General Manager to award Contract MKP16-83 to Alcorn Fence Company of Sun Valley, CA, for the provision of permanent fencing for the San Bernardino Transit Center (SBTC) in the amount of \$130,896, plus a ten percent contingency of \$13,090, and a 3.27% Cost Allocation Plan (CAP) in the amount of \$4,708, for a total not-to-exceed amount of \$148,694. Motion was unanimous by Members present.

4. Authorize Award (Bench) – Contracts MNT16-14A-H, New Flyer Miscellaneous Bus Parts

M/S (Graham/Yates) that authorized the CEO/General Manager to award Contracts MNT16-14A-H as listed below for the provision of New Flyer Miscellaneous Bus Parts beginning April 3, 2016 and ending no later than April 2, 2017, and the authority to exercise four (4) single option years ending April 2, 2021, in an aggregate amount of \$1,623,750 for the base period and \$6,997,934 for the remaining four option years, for a total aggregate not-to-exceed contract amount of \$8,621,684. Motion was unanimous by Members present.

Contract No.	Contractor
MNT16-14A	Harbor Diesel and Equipment of Long Beach, CA
MNT16-14B	Vehicle Maintenance Program, Inc. of Boca Raton, FL
MNT16-14C	Kirk's Automotive, Inc. of Detroit, MI
MNT16-14D	American Moving Parts of Los Angeles, CA
MNT16-14E	Mohawk Manufacturing & Supply Company of Niles, IL
MNT16-14F	Prevost of Elgin, IL
MNT16-14G	Muncie Reclamation and Supply, dba Muncie Transit Supply of Muncie, IN
MNT16-14H	New Flyer Industries, Inc. of Winnipeg, MB Canada

G. PUBLIC HEARING

There is no Public Hearing scheduled.

Member Dailey arrived at 8:20 a.m.

H. BOARD BUSINESS

Closed Session convened at 8:20 a.m.

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

The Board Meeting reconvened at 8:25 a.m. with no reportable action.

I. REMARKS AND ANNOUNCEMENTS

There were no remarks or announcements.

J. ADJOURNMENT

The Board adjourned at 8:25 a.m. The next regular meeting is scheduled Wednesday, April 6, 2016, at 8:00 a.m., with location posted on the Omnitrans website and at Omnitrans' San Bernardino Metro Facility.

Prepared by:

Christine Vega, Administrative Secretary

ITEM # _____ E2 _____

**ADMINISTRATIVE & FINANCE COMMITTEE
MINUTES, FEBRUARY 11, 2016**

A. CALL TO ORDER

Board Chairman Sam Spagnolo called the regular meeting of the Administrative and Finance Committee to order at 8:03 a.m., Thursday, February 11, 2016.

1. Pledge of Allegiance
2. Roll Call

Committee Members Present

Mayor Carey Davis, City of San Bernardino
Mayor Paul Eaton, City of Montclair
Council Member Pat Gilbreath, City of Redlands
Supervisor Curt Hagman, County of San Bernardino
Mayor Ray Musser, City of Upland
Council Member Dick Riddell, City of Yucaipa
Council Member John Roberts, City of Fontana
Council Member Alan Wapner, City of Ontario

Others Present

Mayor Pro Tem Sam Spagnolo, City of Rancho Cucamonga
Michael Xu, Vavrinek, Trine, Day & Company
Roger Alfaro, Vavrinek, Trine, Day & Company

Committee Members Not Present

Council Member Ed Graham, City of Chino Hills
Mayor Pro Tem Sylvia Robles, City of Grand Terrace

Omnitrans Administrative Staff Present

P. Scott Graham, CEO/General Manager
Diane Caldera, Director of Operations
Jack Dooley, Director of Maintenance
Marge Ewing, Director of Human Resources/Safety & Regulatory Compliance
Samuel Gibbs, Director of Internal Audit Services
Jacob Harms, Director of Information Technology
Andres Ramirez, IPMO Manager
Don Walker, Director of Finance
Wendy Williams, Director of Marketing/Planning

Omar Bryant, East Valley Maintenance Manager
Eugenia Pinheiro, Contracts Manager
Maurice Mansion, Treasury Manager
Mark Crosby, Security & Emergency Preparedness Coordinator
Vicki Dennett, Executive Assistant to CEO/General Manager

B. ANNOUNCEMENTS/PRESENTATIONS

The next Committee Meeting is scheduled Thursday, March 10, 2016, at 8:00 a.m.

C. COMMUNICATIONS FROM THE PUBLIC

There were no communications from the public.

D. POSSIBLE CONFLICT OF INTEREST ISSUES

There were no conflict of interest issues identified.

E. DISCUSSION ITEMS

1. Approve Administrative & Finance Committee Minutes – January 14, 2016

M/S (Eaton/Musser) that approved the Committee Minutes of January 14, 2016. Motion was unanimous by Members present.

2. Recommend to Board of Directors, Receive and File Construction Progress Report No. 44 through January 31, 2016 – sbX E Street Corridor BRT Project

IPMO Manager Andres Ramirez presented this item. The San Bernardino City final acceptance work is complete, and contract closure is scheduled to go before the full Board in March.

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

3. Receive and File Omnitrans' Director of Finance Report on Price of Compressed Natural Gas

Finance Director Don Walker presented this item, summarizing the downward trend from January 2015 to the present, twenty-one cents below budget, equating to an estimated monthly saving of \$83,098.

This item was received and filed.

4. Recommend the Board of Directors Receive and File Omnitrans' Fiscal Year Ended June 30, 2015 Audit Reports

Roger Alfaro, Partner of Vavrinek, Trine, Day & Company, presented an overview of this item, summarizing the audit reports:

- Statement of Auditing Standards Letter, and Management Letter
- Agreed-Upon Procedures Performed with Respect to the National Transit Database (NTD) Report
- Single Audit Report on Federal Awards
- Independent Auditors' Report on Proposition 1B
- Comprehensive Annual Financial Report

Member Gilbreath questioned the donation of \$72 million, stating that a disclosure footnote should have been included for clarification purposes. Member Musser asked if there's anything that wasn't disclosed in the audit that could be discussed verbally regarding succession planning. As a result of the audit process, if anything is identified as a deficiency, Vavrinek has a responsibility to bring it to the attention of the Omnitrans Board; so, the answer to Member Musser's question is no.

M/S (Gilbreath/Musser) that recommended to the Board of Directors receipt and file of Omnitrans financial audit reports for fiscal year ended June 30, 2015. This item was received and filed, and will be forwarded to the Board of Directors for receipt and file.

5. Recommend the Board of Directors Adopt Proposed Personnel Policy Changes and Approve Job Descriptions for Special Transit Services Department

Director of Human Resources/Safety & Regulatory Compliance Marjorie Ewing presented this item for discussion.

M/S (Eaton/Musser) that adopted the proposed changes to Policy 303 – New Positions and Policy 402 – Salary Ranges – Management and Confidential Employees; and that approved Job Descriptions for the new Special Transit Services Department. Motion was unanimous by Members present.

F. ADJOURNMENT

The Administrative and Finance Committee meeting adjourned at 8:36 a.m.

The next Administrative and Finance Committee Meeting is scheduled Thursday, March 10, 2016, at 8:00 a.m., with location posted on the Omnitrans website and at Omnitrans' San Bernardino Metro Facility.

Prepared by:

Christine Vega, Administrative Secretary

ITEM # E3

DATE: April 6, 2016

TO: Board Chair Sam Spagnolo and Members of the Omnitrans Board of Directors

THROUGH: P. Scott Graham, CEO/General Manager

FROM: Andres Ramirez, Program Manager

**SUBJECT: CONSTRUCTION PROGRESS REPORT NO. 45 THROUGH
FEBRUARY 29, 2016 – sbX E STREET CORRIDOR BRT PROJECT**

FORM MOTION

Receive and file Construction Progress Report No. 45 for the sbX E Street Corridor BRT Project through February 29, 2016.

This item was reviewed by the Administrative and Finance Committee at its March 10, 2016, meeting, and recommended for receipt and file.

BACKGROUND

This is Construction Progress Report No. 45 for the sbX E Street Corridor Project.

CONCLUSION

Receive and file Construction Progress Report No.45 for the sbX E Street Corridor BRT Project through February 29, 2016.

PSG:AR

Attachment

**sbX E Street Corridor
Bus Rapid Transit (BRT) Project
Construction Progress Report No. 45**

February 29, 2016

Prepared By:

**Omnitrans
Integrated Project Management Office**

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

Contractor Contract No.: IPMO11-5

Omnitrans Program Manager: Andres Ramirez



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- I. Project Status Summary
 - A. Project Description
 - B. Summary Status Update
- II. Project Schedule
- III. Safety
- IV. Project Budget and Cost

I. PROJECT STATUS SUMMARY

A. Project Description

The sbX E Street Corridor BRT Project is an Omnitrans transit improvement project that consists of three components.

E Street Corridor: A 15.7-mile-long Bus Rapid Transit corridor that will connect the northern portion of the City of San Bernardino with the City of Loma Linda. The sbX E Street Corridor Bus Rapid Transit (BRT) Project has evolved as the highest priority corridor identified in the System-Wide Transit Corridor Plan for the San Bernardino Valley.

Bus Purchase: In order to provide service to the E Street Corridor a total of fourteen 60' articulated buses will be purchased.

Vehicle Maintenance Facility Modifications: A 4.4-acre facility maintaining and servicing the Omnitrans' bus fleet, comprised of over 160 buses. Modifications to Omnitrans' facility include the demolition of a bus washing station, removal of abandoned underground fuel tanks and new construction of a bus washing system, a new Genset, a three-lane CNG fueling station, and re-configuring the bus parking area. Modifications to the maintenance building are made in order to accommodate Omnitrans' 60-foot articulated bus fleet.

B. Summary Status Update

E Street Corridor:

10th to Highland:

- Concrete work continues.
- Road-work to start in March.



Concrete Removals



Concrete Removals



Concrete Replacement



Concrete Replacement

PA System:

- Solicitation package has been released. Expecting Bids in March

Traffic Signal Synchronization:

- Closeout continues.

Vehicle Maintenance Facility:

Contractor Close-Out

- All contractual items turned over.
- Final Stop Notice resolved.
- Legal Counsel created letter for release of retention funds to the Contractor.

Completion of Work Removed from Contract

- Vacuum System: We will be putting together a sole source justification based on cost and time efficiency to have the subcontractor that installed the vacuum system complete the work.
- Concrete Work: We will be doing an informal mini procurement in accordance with Procurement Procedure 2030-1 to have this work completed as we are projecting it to be under \$50,000.
- Removal of the Temp Canopy and Re-Stripe the Parking: We are working with STV to put together a design packet that we can put out on the street for an IFB.

II. PROJECT SCHEDULE

The three major components of the project (E Street Corridor, 60' Articulated Buses, and the Vehicle Maintenance) are complete and have been placed into operation. Additional components to the project (i.e. 10th to Highland, City Acceptance Work, the PA System, and the VMF Completion Work) are currently being worked on and are in different stages of progress. Projected completion dates are listed below:

	Scheduled Completion	Projected Completion
E Street Corridor		
City of SB Final Work / World Oil	February 2016	Completed
10 th to Highland	June 2016	July 2016
PA System	November 2016	December 2016
Vehicle Maintenance Facility		
Completion Work	May 2016	June 2016

III. SAFETY

The project team considers safety to be the utmost priority. As such, the entire project team works towards a “no-lost time” goal on a daily basis. Below is a breakdown of the hours achieved with zero lost time due to injuries:

	Through December 2015
E Street Corridor	
Corridor Construction including final Work	425,441
10 th to Highland	4213
PA System	0
Vehicle Maintenance Facility	64,436
Total	494,090

V. PROJECT BUDGET AND COST

The project continues to be within budget. We currently have zero open claims on the project. A breakdown of the project costs and projections is detailed in the following tables:

Total Project Budget Summary Budget as of January 31, 2016

Approved Budget	\$191,706,000
Cost to Date	\$179,612,936
Estimate to Complete	
Corridor Project	\$ 4,874,823
10 th to Highland	\$ 4,209,344
Estimate at Completion	\$188,697,103

Budget By Contract Packages 30-Jan-2016								(Contract Award + Approved Changes)		(Approved Current Budget- Committed)	Forecast		
											Potential Uses of Contingency		
					% of Approved Current Budget	Contracts Awarded	Approved Changes		Expenditure Authorization Remaining	Remaining Contingency	Pending Commitments/ Potential Changes		Estimate At Completion
	PCGA Budget	Approved Current Budget	Authorized for Expenditure	Expended to Date				Committed				Trends/Risks	
BRT Construction													
Griffith/Comet JV	90,780,000	84,637,000	87,760,263	81,303,645	96.5%	64,937,853	16,365,792	81,303,645	6,456,618	3,333,355	-	-	81,303,645
Art			68,000	68,000		68,000	-	68,000	-	(68,000)	-	-	68,000
Other Direct Payments			48,401	199,729		143,892	-	143,892	(95,491)	(143,892)	-	-	143,892
Delineators				89,943		89,943	-	89,943	(89,943)	(89,943)	-	-	89,943
PA System				-		-	-	-	-	-	616,000	-	616,000
Miscellaneous Work				-		17,500	-	17,500	(17,500)	(17,500)	125,000	-	142,500
BRT Design													
Parsons	19,193,400	17,849,400	18,097,876	17,989,834	101.1%	14,464,092	3,725,637	18,189,729	(91,853)	(340,329)	(1,098,058)	-	17,091,671
PA System				58,500		83,000	-	83,000	(83,000)	(83,000)	8,300	-	91,300
Miscellaneous Work				-		-	-	-	-	-	-	-	-
VMF Construction - USS Cal Builders	5,370,000	8,131,000	14,498,152	14,508,233	178.4%	10,579,786	3,952,439	14,532,225	(34,073)	(6,401,225)	-	560,000	15,092,225
VMF Design													
STV	1,007,600	1,007,600	1,418,132	1,862,813	186.7%	951,029	1,048,727	1,999,756	(581,624)	(992,156)	25,000	-	2,024,756
Carlin Environmental			27,800	18,380		10,000	9,800	19,800	8,000	(19,800)	-	-	19,800
Vehicles Design & Manufacturing-N.F.	16,628,000	16,628,000	15,978,093	15,192,458	92.4%	15,483,572	325,110	15,808,682	169,411	819,318	38,000	-	15,846,682
Other Vehicle Equipment			318,853	173,484		318,853	-	318,853	-	(318,853)	75,000	-	393,853
ROW Acquisition Services-SANBAG	6,532,000	10,357,000	11,738,400	11,391,506	110.0%	10,971,135	767,265	11,738,400	-	(1,381,400)	-	100,000	11,838,400
3rd Party Utilities Design & Reloc.		1,003,000	1,157,223	1,225,401	122.2%	1,106,117	-	1,106,117	51,106	(103,117)	50,000	-	1,156,117
Project Admin. And Management													
Jacobs	6,638,000	6,632,000	11,852,647	12,969,303	195.6%	3,898,769	9,198,560	13,097,329	(1,244,682)	(6,465,329)	-	-	13,097,329
Other													
IPMO	17,624,000	15,012,450	14,722,701	13,329,162	88.8%	15,172,701	-	15,172,701	(450,000)	(160,251)	(300,000)	-	14,872,701
Insurance	1,113,000	1,112,000	500,000	-	0.0%	500,000	-	500,000	-	612,000	(500,000)	-	-
Legal-BB&K, County	2,525,450	1,000,000	1,000,000	358,600	35.9%	1,000,000	-	1,000,000	-	-	-	-	1,000,000
In Kind Contributions	8,080,550	8,080,550	8,080,550	8,401,239	104.0%	8,401,239	-	8,401,239	(320,689)	(320,689)	-	-	8,401,239
Survey	1,464,000	1,463,000	464,000	-	0.0%	25,000	-	25,000	439,000	1,438,000	-	-	25,000
Start-Up	720,000	720,000	700,000	-	0.0%	700,000	-	700,000	-	20,000	-	-	700,000
Sub-Total	177,676,000	173,633,000	188,431,091	179,140,230	103.2%	148,922,481	35,393,330	184,315,811	4,115,280	(10,682,811)	(960,758)	660,000	184,015,053
Unallocated Contingency	14,030,000	18,073,000	4,416,038					10,682,811		7,390,189			7,690,947
10th to Highland Projected Costs		4,682,050	4,682,050	472,706	10.1%	3,957,000	-	3,957,000	725,050	725,050	675,050	50,000	4,682,050
Remaining Unallocated Contingency		(4,682,050)											3,008,897
Total	191,706,000	191,706,000	188,697,103	179,612,936	93.7%								191,706,000

IPMO/sbX Project Cost Report										
Period Ended 30-Jan-2016										
Description	Current Budget	Approved Current Budget	Expenditures		Remaining Budget	Committed		Estimate to Complete	Estimate at Completion	Budget Forecast Variance
			\$	%			%			
BRT Construction	\$ 84,637,000	\$ 84,637,000	\$ 81,661,316	96.5%	2,975,684	\$ 81,622,980	96.4%	\$ 741,000	\$ 82,363,980	\$ 2,273,020
Vehicle Maintenance Facility (VMF) Construction	\$ 8,131,000	\$ 8,131,000	\$ 14,508,233	178.4%	(6,377,233)	\$ 14,532,225	178.7%	\$ 560,000	\$ 15,092,225	\$ (6,961,225)
Vehicles - Design & Manufacturing	\$ 16,628,000	\$ 16,628,000	\$ 15,365,942	92.4%	1,262,058	\$ 16,127,535	97.0%	\$ 113,000	\$ 16,240,535	\$ 387,465
ROW Acquisition Services	\$ 10,357,000	\$ 10,357,000	\$ 11,391,506	110.0%	(1,034,506)	\$ 11,738,400	113.3%	\$ 100,000	\$ 11,838,400	\$ (1,481,400)
3rd Party Utilities Design & Relocation	\$ 1,003,000	\$ 1,003,000	\$ 1,225,401	122.2%	(222,401)	\$ 1,106,117	110.3%	\$ 50,000	\$ 1,156,117	\$ (153,117)
BRT Design	\$ 17,849,400	\$ 17,849,400	\$ 18,048,334	101.1%	(198,934)	\$ 18,272,729	102.4%	\$ (1,089,758)	\$ 17,182,971	\$ 666,429
VMF Design	\$ 1,007,600	\$ 1,007,600	\$ 1,881,193	186.7%	(873,593)	\$ 2,019,556	200.4%	\$ 25,000	\$ 2,044,556	\$ (1,036,956)
Other Professional, Technical & Management Services	\$ 34,020,000	\$ 34,020,000	\$ 35,058,304	103.1%	(1,038,304)	\$ 38,896,269	114.3%	\$ (800,000)	\$ 38,096,269	\$ (4,076,269)
Allocated Contingency (Construction Contract)	\$ -	\$ -			-	\$ -	0.0%	\$ -	\$ -	\$ -
SUB-TOTAL	\$ 173,633,000	\$ 173,633,000	\$ 179,140,230	103.2%	(5,507,230)	\$ 184,315,811	106.2%	(300,758)	184,015,053	(10,382,053)
Unallocated Contingency	\$ 18,073,000	\$ 18,073,000	\$ -		18,073,000	\$ -	0.0%	\$ -	\$ -	\$ 18,073,000
TOTAL	\$ 191,706,000	\$ 191,706,000	\$ 179,140,230	93.4%	12,565,770	\$ 184,315,811	96.1%	\$ (300,758)	\$ 184,015,053	\$ 7,690,947

ITEM # E4

DATE: April 6, 2016

TO: Board Chair Sam Spagnolo and Members of the Omnitrans Board of Directors

THROUGH: P. Scott Graham, CEO/General Manager

FROM: Jennifer M. Sims, Director of Procurement

**SUBJECT: FTA 2015 PROCUREMENT SYSTEM REVIEW FINAL REPORT AND
CORRECTIVE ACTION PLAN**

FORM MOTION

Receive and file the 2015 FTA Procurement System Review Final Report and Omnitrans' Corrective Action Plan.

This item was reviewed by the Administrative & Finance Committee at its March 10, 2016 meeting, and recommended for receipt and file by the Board of Directors.

BACKGROUND

On June 24, 2015, Omnitrans was informed by the Federal Transit Administration (FTA) that Omnitrans was scheduled for a Procurement System Review (PSR) to examine Omnitrans' procurement policies, control procedures, and selected purchase orders and contracts involving Federal funds.

The FTA contracted with Leon Snead & Company, P.C. (Snead) of Rockville, Maryland, to conduct the review. An entrance conference was held on Monday, August 24, and concluded with an exit conference on Wednesday, August 26. Snead reviewed Omnitrans' Procurement Policies and Procedures, analyzed the contents of nineteen contract files and purchase orders valued at about \$47.1 million. The review analyzed 57 system-wide and individual elements as defined in FTA Circular 4220.1F.

The review was a follow up to Omnitrans' 2013 FTA PSR. Snead's review determined that procurement officials at Omnitrans have taken actions to correct all deficiencies noted in the prior PSR report. It further showed that the procurement system was substantially in compliance with the FTA Circular. Omnitrans was found to be non-deficient in 41 elements, deficient relative to 9, with 7 elements not-applicable/observable. Staff provided documentation to show that the deficiency noted with its policies and procedures had been corrected prior to Snead drafting its report to the FTA. No further action was required on those elements as well as 2 additional elements that were closed based on Omnitrans' response to the draft report.

In anticipation of receiving the draft report, staff conducted training on August 31, 2015. The training focused on revised Procurement Procedure 1070-1 as it related to the FTA's Veterans' Hiring Preference. All of the contracts pulled for the review included the veterans hiring preference even though Omnitrans' procurement procedure didn't state the requirement.

A draft report was provided to Omnitrans by the FTA on October 8, 2015, listing the deficiencies and recommendations for corrective action. Omnitrans respectfully disagreed with 3 of the deficiencies and prepared a corrective action plan to address the remaining deficiencies. A training session was held on October 26 to train staff on the use of progress payments, adequate security for those payments and sufficient written documentation to substantiate the work for which payment is requested. The FY2015 PSR Final Report was received on October 29, 2015. Staff provided the final corrective action report and internal audit verifying effectiveness of the training on January 11, 2016. On January 20, 2016, the FTA determined that all deficient elements had been successfully addressed and formally closed out Omnitrans' 2015 PSR.

Included with this memorandum are the following documents:

- Attachment A – FY2015 Procurement System Review Corrective Action Plan
- Attachment B – Documentation of the relative training with respective attendance sheets
- Attachment C – Internal Audit Verifying the Effectiveness of the training
- Attachment D – Fiscal Year 2015 Procurement System Review Final Report for Omnitrans

PSG:JMS

FY2015 Procurement System Review Corrective Action Report
Attachment A

Element	Reviewer's Observation	FTA Instructions/Reviewer's Comments	Management Corrective Action	Task % Complete/ Target Date
6) Policies and Procedures - Veterans Employment [FTA C4220.1F, IV, 2.c.(1)(c)].	<p>The recipient's list of clauses did include a Veterans Employment clause; however, its policies and procedures did not contain requirements for the application of that clause.</p> <p><i>On August 31, 2015, (after our site visit) the Director of Procurement provided updates to Omnitrans procurement policies and procedures that include the FTA circular requirements cited above. The policy changes are sufficient to correct both deficiencies. The Director of Procurement also provided evidence that the procurement staff has received training to ensure they are aware of the requirements. The actions taken by Omnitrans are sufficient</i></p>	Corrective action has been taken. No further corrective action is required.	N/A	N/A

FY2015 Procurement System Review Corrective Action Report
Attachment A

	<i>to resolve the findings. No further action is required for compliance with FTA Circular on these issues.</i>				
7) Independent Cost Estimate	We reviewed 14 procurement files to verify that independent cost estimates were performed and found three files lacked supporting documentation indicating an adequate independent cost estimate had been performed by the recipient before the transit authority received bids or proposals.	<i>The actions taken by Omnitrans are sufficient to resolve the finding. However, the finding should remain open until Omnitrans provides to FTA the results of its internal audit.</i>	Omnitrans will conduct an internal audit.	100% completed on January 7, 2016	
11) Organizational Conflict of Interest	We reviewed 14 procurement files for organizational conflict of interest and found in one procurement file an instance where the contractor, who was selected to provide architectural and engineering design services may have an organizational conflict of	<i>The information provided by Omnitrans is sufficient to close out the finding.</i>	N/A	N/A	

FY2015 Procurement System Review Corrective Action Report
Attachment A

	interest regarding potential follow-on contracts for work in which it has been involved.			
39) Cost Analysis Required (Sole Source) [FTA C 4220.1F, VI, 6.a	We reviewed four noncompetitive procurement files and found three procurement files that did not contain documentation to support that an adequate cost analysis had been performed. In the deficient files the recipient failed to perform an element by element analysis or discussion of the cost or profit. In addition, there was no evidence of any negotiations being conducted. No detailed independent in-house cost estimates were available to support cost comparisons in this deficiency.	Omnitrans must conduct training on developing cost and profit analysis for sole source procurements (including analysis of fixed fee) and verify compliance by conducting a self-audit of sole source procurements within 90 days from the date of the final report. <i>The actions planned by Omnitrans are sufficient to resolve the finding. However, the finding should remain open until Omnitrans provides to FTA evidence that the training has been completed.</i>	Omnitrans agrees that staff would benefit from additional training on developing cost and profit analysis for sole source procurements. Omnitrans will verify compliance by conducting a self-audit of sole source procurements within 90 days from the date of the final report.	100% Complete 100% completed on January 7, 2016
40) Evaluation of Options [FTA C 4220.1F IV, 1.d;	We reviewed five procurement files that included options and	Omnitrans must conduct training on evaluation of options, implement	Omnitrans will train staff on evaluation of options, implement management	100% Complete

FY2015 Procurement System Review Corrective Action Report
Attachment A

VI.7.b; V.7.a(1)(c)1	<p>found one procurement file failed to adequately address this element. The procurement was a major buy for fare machines parts for buses. We found that the options or option years were not priced, or if priced no indication that they were considered or evaluated. In this particular instance unpriced options were included in the contract and the contractor was to provide the next years prices at a later date. The contractor after the first year had expired had to be contacted and requested to submit the required prices that adequately addressed the recipient's requirements. The contractor indicated the prior year's prices would be the same except that freight charges would now be on all outgoing orders. No escalation provisions were included in the contract. When there is no evaluation of</p>	<p>management controls that ensure that options are priced and evaluated as part of the contract award and verify compliance with FTA requirements within 60 days from the date of the final report.</p> <p><i>The finding should remain open until Omnitrans provides evidence to FTA that the recommended training has been completed.</i></p>	<p>controls that ensure options are priced and evaluated as part of the contract award.</p> <p>Omnitrans will verify compliance by conducting a self-audit of sole source procurements within 60 days from the date of the final report.</p>	<p>100% completed on January 7, 2016</p>
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FY2015 Procurement System Review Corrective Action Report
Attachment A

	options or option years at the time of award and no option provisions are contained in the contract, the recipient has no unilateral right to exercise the option and is now placed in either a sole source or a recompetition situation.			
41) Cost or Price Analysis [FTA C 4220.1F, VI,6.a(2); VI, 6.b; VI, 6.a(3)]	We reviewed 14 procurement files for cost or price analysis and found one deficient procurement file relative to this element. Basically, the deficiency resulted from a general lack of detailed documentation to support the results of a cost or price analysis or whether a cost or price analysis had ever been performed. The only documentation to support the reasonableness of the costs were the statements "Award based on most advantageous proposal to Agency", and "Prices are reasonable based on past purchase history." There was no discussion or	Omnitrans must conduct training on cost and price analysis procedures, verify compliance by conducting a self-audit and verify compliance with updated requirements within 90 days from the date of the final report. <i>The finding should remain open until Omnitrans provides evidence to FTA that the recommended training has been completed.</i>	Omnitrans will train staff on cost and price analysis procedures. Omnitrans will verify compliance by conducting a self-audit of sole source procurements within 60 days from the date of the final report.	100% Complete To be conducted within 60 days

FY2015 Procurement System Review Corrective Action Report
Attachment A

	negotiations of the hours or other elements proposed or the profit of 20 percent. In those procurement files where adequate competition existed and award was made to the lowest offeror, the recipient was found not deficient; however, the procurement files should be documented to reflect this decision. In procurements where adequate competition exists and the selection is made, there always exists the possibility that negotiations may be warranted or desirable.			
44) Out of Scope Changes [FTA C 4220.1F, VI.3.i(1)(b)	We reviewed 14 procurement files for out of scope changes and found one deficient procurement file relative to this element. The deficiency was found in the Resource planning System Upgrade contract. The contract was modified five times; the	Omnitrans must conduct training on procedures regarding contract changes and verify compliance with FTA requirements within 90 days from the date of the final report. <i>The information provided is sufficient to resolve the finding. However, the finding should</i>	Omnitrans will provide training on contract changes. Omnitrans will verify compliance with the FTA within 90 days from the date of the final report.	100% Complete 100% completed on January 7, 2016

FY2015 Procurement System Review Corrective Action Report
Attachment A

<p>first changed firm fixed price hours to firm fixed price deliverable items; the second and third increase the contract dollars; the fourth adjusted the payment schedule; and the fifth extended the contract completion date. There was little or no documentation supporting or explaining the modifications. Any contracts amended to add requirements which are over and above the requirements outlined in the original request and the resultant contract are considered new work and as such require compliance with FTA requirements for an approved sole source justification, a cost analysis, and cost and profit negotiations and the procurement file documented.</p>	<p>remain open until Omnitrans provides to FTA evidence that the planned training has been completed.</p>		
<p>46) Progress Payments [FTA C 4220.1F,</p>	<p>We reviewed 14 procurement files</p>	<p>Omnitrans must conduct training on procedures</p>	<p>Boilerplate templates will be modified to address progress 100% Complete</p>


FY2015 Procurement System Review Corrective Action Report
Attachment A

2.B(5)(c)	involving progress payments and found two of the contracts deficient when they failed to obtain title for which costs for goods/products were made. Normally, progress payments are made based on costs incurred and secured by title for that which the progress payments were made. It should be noted the Common Grant Rules allow the use of the percentage of completion method of payment in construction contracts only. Adequate security may include taking title, letter of credit, or performance bonds, or equivalent means to protect the recipient's interest.	regarding progress payments and verify compliance with FTA requirements within 60 days from the date of the final report.	payments and partial payments to be based on costs incurred and include appropriate title or other adequate security provisions as required. Omnitrans will provide training on progress payments.	100% completed on January 7, 2016
50) Piggybacking - Acquisition Through Assigned Contract Rights [FTA C 4220.IF, V, 7.a.(2)(a)].	We reviewed one procurement file involving a piggybacking award under a contract awarded by the Morongo Basin Transit Authority (MBTA) for Allstar buses	<i>The actions taken are sufficient to close out the finding. The procurement in question preceded the training that has been provided and there were no noted deficient procurement files after this date.</i>	N/A	N/A

FY2015 Procurement System Review Corrective Action Report
Attachment A


	which was deficient. The recipients' deficient procurement file lacked documentation to show before exercising the requirements that the contract prices remained fair and reasonable and the terms and conditions were in compliance with the Federal requirements.			
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FY2015 PSR Training

JENNIFER M. SIMS
DIRECTOR OF PROCUREMENT
OCTOBER 26, 2015




Element 46 Progress Payments

[FTA C 4220.1F, IV, 2 b. (5) (c)] "Progress Payments are payments made for contract work that has not been completed. The recipient may use FTA assistance to support progress payments provided the recipient obtains adequate security for those payments and has sufficient written documentation to substantiate the work for which payment is requested."




Element 46 Progress Payments

- Common Grant Rules allow the use of percentage of completion method of payment in construction contracts only.



Element 46 Progress Payments

- Adequate security may include taking title, letter of credit, or performance bonds, or equivalent means to protect the recipient's interest.



Element 46 Progress Payments

Effective immediately:

- Open agreements are to be amended to include the revised progress payment language (see handout).
- Open Solicitations: Attached "Sample Agreements" are to be updated via addenda

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:

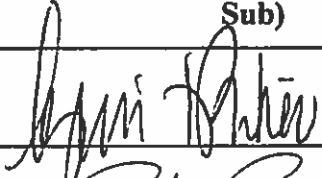
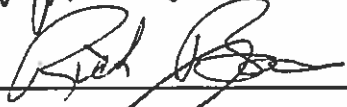
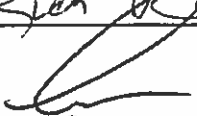
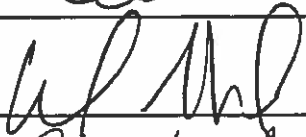
OMNITRANS
1700 WEST FIFTH STREET
SAN BERNARDINO, CALIFORNIA 92411

PROGRESS PAYMENTS

OCTOBER 26, 2015

FUELING FACILITIES

ATTENDANCE LOG

PRINT NAME & COMPANY (Indicate if Prime or Sub)	TELEPHONE NUMBER/E-MAIL
	x7124
	x7204
	7187
	x7246
Christine VanMatre	x7122
Kathy McClure	x7186
Crystal Turner	x7202

Procurement Training

FTA C 4220.1F

December 02, 2015



Presented by:
Jennifer M. Sims, C.P.M., Director of Procurement

Agenda

- › Element 39 - Cost Analysis Required [Sole Source]
- › Element 40 - Evaluation of Options
- › Element 41 - Cost or Price Analysis;
- › Element 44 - Out of Scope Changes
- › Element 46 - Progress Payments



11/8/2012

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Element 39 - Cost Analysis Required [Sole Source]

When less than full and open competition is available to the recipient, the Common Grant Rule for governmental recipients directs the recipient to:

"Prepare or obtain a cost analysis verifying the proposed cost data, the projections of data, and the evaluation of the costs and profits."



11/8/2012

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Element 39 - Cost Analysis Required [Sole Source]

The method and degree of analysis depends on the facts and circumstances surrounding each procurement, but as a starting point, the recipient must make independent estimates before receiving bids or proposals.



11/8/2012

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Element 39 - Cost Analysis Required [Sole Source]

The recipient must obtain a cost analysis when the offeror submits elements (that is, labor hours, overhead, materials, and so forth) of the estimated cost, (such as professional consulting and A&E contracts, and so forth). The recipient is also expected to obtain a cost analysis when price competition is inadequate, when only a sole source is available, even if the procurement is a contract modification, or in the event of a change order.



11/8/2012

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Element 39 - Cost Analysis Required [Sole Source]

Profit. FTA expects the recipient to negotiate profit as a separate element of the cost for each contract in which there has been no price competition, and in all acquisitions in which the recipient performs or acquires a cost analysis.



11/8/2012

6

Element 39 - Cost Analysis Required [Sole Source]

To establish a fair and reasonable profit, the recipient needs to consider the complexity of the work to be performed, the risk undertaken by the contractor, the contractor's investment, the amount of subcontracting, the quality of the contractor's record of past performance, and industry profit rates in the surrounding geographical area for similar work.



11/8/2012

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Element 39 - Cost Analysis Required [Sole Source]

What is a cost analysis?

- An element by element analysis of the costs which make up the total price of the product.
- A break down of the total price broken down into components, into the degree of looking at the suppliers costs to determine the profit and margin contained in the price.



11/8/2012

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Element 39 - Cost Analysis Required [Sole Source]

When to use a Cost Analysis?

- When the price analysis does not provide sufficient information.
- adequate price competition is lacking.
- the offerer is required to submit costs such as labor hours, overhead, material and equipment costs.



11/8/2012

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Element 39 - Cost Analysis Required [Sole Source]

When to use a Cost Analysis?

- When the price analysis does not provide sufficient information.
- adequate price competition is lacking.
- the offerer is required to submit costs such as labor hours, overhead, material and equipment costs.



11/8/2012

10

Element 39 - Cost Analysis Required [Sole Source]

Analyzing Cost and Using Pricing Data

Submitted by Contractor "A" proposal for Curb/Gutter and Landscaping Services.

Item	Cost
Direct Labor	\$1,203.50
Equipment	\$300.00
Overhead	\$241.31
Total Costs	\$1,744.80
Profit	\$127.69
Price	\$1,872.50



11/8/2012

11

Element 39 - Cost Analysis Required [Sole Source]

Description	Type	Quantity	Type	Rate	Overhead	Mark-Up	Total
Labor	Operator	10	Hour	\$48.55	20%	7.8	\$628.70
Labor	Landscaper	10	Hour	\$6.25	20%	7.8	\$68.93
Labor	Labor	10	Hour	\$5.55	20%	7.8	\$59.87
Equipment	Skid Steer	10	Hour	\$30.00	5%		\$315.00
Total							\$1,872.50



11/8/2012

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Element 39 – Cost Analysis Required [Sole Source]

- Analysis: explanation of the costs submitted vs. the cost that were estimated based on the Independent Cost Estimate.
- What is the reasoning for the variance.
- A breakdown of the cost will allow for detailed analysis.
- Establish that costs fair and reasonable.



11/8/2012

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Element 39 – Cost Analysis Required [Sole Source]

Description	Type	Quantity	Unit	Rate	Overhead	Mark Up	Total
Labor	Operator	10	Hour	\$48.55	20%	7.8	\$628.70
Labor	Landscaper	10	Hour	\$6.25	20%	7.8	\$68.93
Labor	Labor	10	Hour	\$5.55	20%	7.8	\$79.87
Total							\$1,557.50

Description	Type	Quantity	Unit	Rate	Overhead	Mark Up	Total
Labor	Operator	5	Hour	\$48.55	20%	8.0	\$314.60
Labor	Landscaper	10	Hour	\$6.25	20%	8.0	\$68.80
Labor	Labor	10	Hour	\$5.55	20%	8.0	\$68.72
Total							\$1,245.12



11/8/2012

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Element 39 – Cost Analysis Required [Sole Source]

Cost Analysis:

Work was required for curb, gutter and landscaping services. A proposal was submitted by Contractor "A" in the amount of \$1,872.50.

On date "X" the contract was advised to submit a breakdown of their cost. Contractor "A" submitted his cost. In review of the contractors cost, and the cost submitted through the ICE in the amount of \$1,545.12, a breakdown and comparison was completed of the cost proposal and ICE.



11/8/2012

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Element 39 – Cost Analysis Required [Sole Source]

- The proposal cost is 17% higher than the cost of the ICE.
- The contractor shows a total of 5 more hours for operator services.
- Enter into a discussion with the contractor and the project manager:
 - Discuss hours.
 - Negotiate Mark-up



11/8/2012

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Element 40 – Evaluation of Options

The option quantities or periods contained in the contractor's bid or offer were evaluated in order to determine contract award. (To be eligible for Federal funding, options must be evaluated as part of the price evaluation of offers, or must be treated as sole source awards.)

Review Examples:

- Not Deficient: RFQu-MNT15-04
- Deficient: RFQu-OPS14-13 TR Design



11/8/2012

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Element 41 – Cost or Price Analysis

Either a cost analysis, with associated profit negotiation, or a price analysis is to be performed and documented in the procurement file with respect to the initial contract award. Also, cost analysis was performed when negotiating contract modifications unless price reasonableness was established on the basis of a catalog or market price of a commercial product sold in substantial quantities to the general public or on the basis of prices set by law or regulation.



11/8/2012

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Element 41 - Cost or Price Analysis

What is the difference? When to use each one?

Price Analysis	Cost Analysis
Analyzes suppliers' price	Compares costs to other market prices
Direct comparison of a supplier's price with benchmark prices for the same goods or service	Reviews profits and mark-ups
	Analyze hourly rates, equipment rates, and material costs



11/6/2012

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Element 44 - Out of Scope Changes

Contracts cannot be amended outside the scope of the original contract. Out of scope amendments are treated as sole source procurements (complying with FTA requirements for a justification, cost analysis and profit negotiation).

[FTA C 4220.1F VI, 3.1.1(b)] When the recipient requires an existing contractor to make a change to its contract that is beyond the scope of that contract, the recipient has made a sole source award that must be justified.

Review Deficient Procurement: ITS15-50 TMR Management



11/6/2012

09

Element 46 - Progress Payments

Progress Payments. Progress payments are payments for contract work that has not been completed. The recipient may use FTA assistance to support progress payments provided the recipient obtains adequate security for those payments and has sufficient written documentation to substantiate the work for which payment is requested.

- Adequate Security for Progress Payments
- Adequate Documentation
- Percentage of Completion Method



11/6/2012

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Element 46 - Progress Payments

Adequate Security for Progress Payments - Adequate security for progress payments may include taking title or obtaining a letter of credit or taking equivalent measures to protect the recipient's financial interest in the progress payment. Adequate security should reflect the practical realities of different procurement scenarios and factual circumstances.

- Consider the costs (bonds or letters of) and the impact of those costs on the contract price, as well as the consequences of incomplete performance.



11/6/2012

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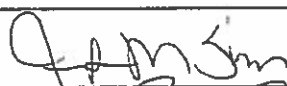


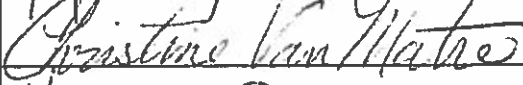



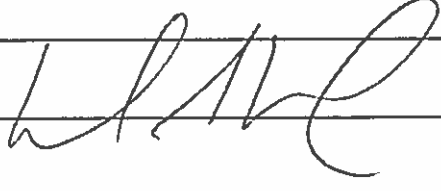
Element 46 - Progress Payments

- **Adequate Documentation** - Sufficient documentation is required to demonstrate completion of the amount of work for which progress payments are made.
- **Updated Boilerplate language** - Omnitrans' standard agreement, Section 5 - Invoicing and Payment has been updated to include subsection C. Title (see handout).
- **Percentage of Completion Method** - The Common Grant Rules requires that any progress payments for construction contracts be made on a percentage of completion method described therein. The recipient, however, may not make progress payments for other than construction contracts based on this percentage method.



11/6/2012

23

Name	Signature
Jennifer M. Sims, Director of Procurement	
Rick Barone, Material Manager	
Kathy McClure, Sr. Contract Administrator	
Christine Van Matre, Contract Administrator	
Krystal Turner, Contract Administrator	
Megann Martinez, Procurement Admin. Clerk	
Frank Flores, Warranty Coordinator	
Sam Gibbs, Internal Auditor	
WILLIAM A. VALLE	



Omnitrans Department of Internal Audit Services

Internal Audit Report # 15-09

Procurement System Review Follow-Up Audit

Auditor Name: Samuel Gibbs, PhD

Audit Date: December 22, 2015

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INTRODUCTION

Background

Omnitrans is the transit provider for the San Bernardino Valley under a Joint Power Agreement (JPA) between fifteen cities and the County of San Bernardino. The Mission of Omnitrans is to provide the San Bernardino Valley with comprehensive public mass transportation services which maximize customer use, comfort, safety and satisfaction while efficiently using financial and other resources in an environmentally sensitive manner. A significant portion of Omnitrans' operations are funded by Federal Transit Administration (FTA) grants.

Under contract to the United States Department of Transportation, Federal Transit Administration (FTA), Leon Snead & Company, P.C. performed a Procurement System Review of Omnitrans in San Bernardino, California during the period from August 24 through August 26, 2015. The review was made to determine whether Omnitrans was deficient or not deficient with respect to each of the requirements of FTA Circular 4220.1F as it relates to procurements for the purpose of developing and administering transit related programs.

During the 24-month period ended July 31, 2015, covered by the review, Omnitrans awarded 79 contracts and purchases orders for approximately \$64 million that included Federal funds. The review covered 19 contracts and purchase orders valued at about \$47.1 million. The review assessed the Omnitrans' compliance with 57 "elements," or requirements, as defined in FTA Circular 4220.1F. The review assessment is divided into two categories: 1. Not Deficient (definition: in all instances the grantee complied with the requirement), and 2. Deficient (definition: in one or more of the applicable instances the grantee did not comply with the requirement).

This review was a follow up to the PSR conducted in 2013. The review determined that Procurement officials at Omnitrans have taken actions to correct all deficiencies noted in the prior PSR report. It further showed that the procurement system was substantially in compliance with the FTA Circular requirements. Omnitrans had no deficiencies with respect to 41 of the Procurement requirements of the FTA Circular 4220.1F and it had deficiencies relative to nine of the requirements. Compliance with seven elements in the FTA Circular did not apply to the contract files reviewed.

The deficiencies noted were not widespread. Eleven of the 19 contracts files reviewed had no deficiencies. Two contract files had two or more deficiencies and another six files had only one. We also noted that the agency needed to update its procurement procedures to add two requirements of the circular and to ensure that pre-award and post-delivery certifications are executed properly. The deficiencies shown below reflect the areas where more attention was needed to ensure compliance with the Circular requirements.

Element 6 - Policies and Procedures	Element 41 - Cost or Price Analysis
Element 7 - Independent Cost Estimate	Element 44 - Out of Scope Changes
Element 11 - Organizational Conflict of Interest	Element 46 - Progress Payments
Element 39 - Cost Analysis Required (Sole Source)	Element 50 - Piggybacking

Element 40 - Evaluation of Options

After the onsite visit, Omnitrans provided documentation to show that the deficiency noted with its policies and procedures has been corrected. No further action is required for compliance on Element 6. Also, it was recommended closing Elements 11 and 50 based on Omnitrans response to the draft report.

There are six elements that required additional action by Omnitrans' staff. Training must be conducted for Elements 46-Progress Payment, 44-Out of Scope Changes, 41-Cost or Price Analysis, 40-Evaluation of Options, and 39-Cost Analysis Required (Sole Source). For Element 7-Independent Cost Estimate, training is required, and an internal audit conducted on the updated requirements.

Audit Perspective

Present audit status

This audit was conducted to provide assurances that the corrective actions recommended were completed. This audit is a validation of corrective actions to the PSR review; therefore an audit opinion is not required.

Recent past audits

The last Procurement reviews were conducted by FTA contractors in April 2013.

External audit coverage

N/A

Scope & Objectives

The scope of this audit is to verify compliance for corrective actions recommended for Elements 46-Progress Payment, 44-Out of Scope Changes, 41-Cost or Price Analysis, 40-Evaluation of Options, 39-Cost Analysis Required (Sole Source), and Element 7-Independent Cost Estimate, which were identified in the final report of the PSR.

EXECUTIVE SUMMARY

Purpose

Under contract to the United States Department of Transportation, Federal Transit Administration (FTA), Leon Snead & Company, P.C. performed a Procurement System Review of Omnitrans in San Bernardino, California during the period from August 24 through August 26, 2015. The review was made to determine whether Omnitrans was deficient or not deficient with respect to each of the requirements of FTA Circular 4220.1F as it relates to procurements for the purpose of developing and administering transit related programs.

During the 24-month period ended July 31, 2015, covered by the review, Omnitrans awarded 79 contracts and purchases orders for approximately \$64 million that included Federal funds. The review covered 19 contracts and purchase orders valued at about \$47.1 million. The review assessed the Omnitrans's compliance with 57 "elements," or requirements, as defined in FTA Circular 4220.1F. The review assessment is divided into two categories: 1. Not Deficient (definition: in all instances the grantee complied with the requirement), and 2. Deficient (definition: in one or more of the applicable instances the grantee did not comply with the requirement). This report validates that the recommended training were conducted, and serves as the required internal audit.

Limitations

This audit is limited to the specific recommendations taken from the final report of the PSR for site visit dated August 24-26, 2015. More specifically the audit is further limited to the 6 elements identified for corrective action in the context of the PSR. In the cases where there were no contracts done within the 30 days of the final report, validation will be conducted by other means. This review will need to validate compliance through observations and interviews, in addition to the review of contracts.

Audit Opinion

A normal audit opinion is not required in this instance since the scope of this audit is to validate already identified deficiencies, not fact find.

Method(s)

Random Procurement employees were interviewed to validate understanding of the Procurement process for the elements specified above. Contracts were reviewed randomly to validate application of corrective measures.

INTERNAL AUDIT OPINION

As a result of observations, interviews, and audits I validate, the Omnitrans' Procurement staff is compliance with the corrective action requirements of the PSR review.

I would further recommend that the training provided continues on an ongoing base.



AUDITOR-IN-CHARGE

December 31, 2015
DATE



DIRECTOR, INTERNAL AUDIT

December 31, 2015
DATE

DETAIL REPORT

Overview

Under contract to the United States Department of Transportation, Federal Transit Administration (FTA), Leon Snead & Company, P.C. performed a Procurement System Review of Omnitrans in San Bernardino, California during the period from August 24 through August 26, 2015. The review was made to determine whether Omnitrans was deficient or not deficient with respect to each of the requirements of FTA Circular 4220.1F as it relates to procurements for the purpose of developing and administering transit related programs.

During the 24-month period ended July 31, 2015, covered by the review, Omnitrans awarded 79 contracts and purchases orders for approximately \$64 million that included Federal funds. The review covered 19 contracts and purchase orders valued at about \$47.1 million. The review assessed the Omnitrans's compliance with 57 "elements," or requirements, as defined in FTA Circular 4220.1F. The review assessment is divided into two categories: 1. Not Deficient (definition: in all instances the grantee complied with the requirement), and 2. Deficient (definition: in one or more of the applicable instances the grantee did not comply with the requirement). Listed below are the primary validation, an outline of the deficiencies, the results of the validations, and an overall evaluation.

Primary Validation

The validation process was broken into two areas. The areas are sectioned out under the header labeled "deficiencies", and are listed as: training only, and training and internal audit.

Deficiencies

Training Only

Training must be conducted for Elements 46-Progress Payment, 44-Out of Scope Changes, 41-Cost or Price Analysis, 40-Evaluation of Options, and 39-Cost Analysis Required (Sole Source.

Result of validation

All training was conducted and the required employees were present (see attachment).

Additionally, the reviewer mentioned in the final report regarding Element 46, the actions taken and planned are sufficient to resolve the finding. However, the finding should remain open until Omnitrans provides to FTA evidence that the planned training has been completed. All required training have been completed (see attachment)

Training and Internal Audit

For Element 7-Independent Cost Estimate, training is required, and an internal audit conducted on the updated requirements.

Results of validation.

The reviewer indicated on the final PSR report, the actions taken by Omnitrans is sufficient to resolve the finding. However, the finding should remain open until Omnitrans provides to FTA the results of its internal audit. The grantee should have the following supporting documentation indicating an adequate independent cost estimate had been performed by the recipient before the transit authority received bids or proposals:

- The grantee should use a formal procurement requisition form to initiate the procurement process. This form is generated by the requiring organization.
- The independent cost estimate must be received before receipt of proposals and supported with sufficient detailed information as to its development and/or source; in other words, how derived and by whom.
- The independent cost estimate becomes the first step in the cost/price reasonableness analysis.









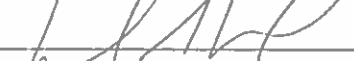
The following contracts were reviewed for compliance with the above ICE requirements: PRC15-140 Office Supplies, RFP-HRS16-28 Temporary Employment Services, and RFPMNT15-133 Design-Build-Maintain Compressed Natural Gas Infrastructure at East and West Valley Vehicle Fueling Facilities. All contracts reviewed were within compliance and had all required documentation.

Overall Evaluation

It is my determination based on the interviews conducted, observations, and audits of contracts, purchase orders, and change orders; Omnitrans has complied with all corrected actions recommended by FTA through their reviewing contractor.

Attachments:

Procurement Training
 Elements: 39, 40, 41, 44
 December 2, 2015

Name	Signature
Jennifer M. Sims, Director of Procurement	
Rick Barone, Material Manager	
Kathy McClure, Sr. Contract Administrator	
Christine Van Matre, Contract Administrator	
Krystal Turner, Contract Administrator	
Megann Martinez, Procurement Admin. Clerk	
Frank Flores, Warranty Coordinator	
Sam Gibbs, Internal Auditor	
WILLIAM A. VALLE	

FINAL REPORT

Procurement System Review of Omnitrans

San Bernardino, California

Dates of Site Visit: August 24-26, 2015

**Prepared by:
Leon Snead & Company, P. C.
416 Hungerford Drive, Suite 400
Rockville, MD 20850**

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EXECUTIVE SUMMARY

Under contract to the United States Department of Transportation, Federal Transit Administration (FTA), Leon Snead & Company, P.C. performed a Procurement System Review of Omnitrans in San Bernardino, California during the period from August 24 through August 26, 2015. The review was made to determine whether Omnitrans was deficient or not deficient with respect to each of the requirements of FTA Circular 4220.1F as it relates to procurements for the purpose of developing and administering transit related programs.

During the 24-month period ended July 31, 2015, covered by the review, Omnitrans awarded 79 contracts and purchases orders for approximately \$64 million that included Federal funds. The review covered 19 contracts and purchase orders valued at about \$47.1 million. The review assessed the recipient's compliance with 57 “elements,” or requirements, as defined in FTA Circular 4220.1F. The review assessment is divided into two categories: 1. Not Deficient (definition: in all instances the grantee complied with the requirement), and 2. Deficient (definition: in one or more of the applicable instances the grantee did not comply with the requirement).

This review was a follow up to the PSR conducted in 2013. Our review determined that procurement officials at Omnitrans have taken actions to correct all deficiencies noted in the prior PSR report. It further showed that the procurement system was substantially in compliance with the FTA Circular requirements. The recipient had no deficiencies with respect to 41 of the procurement requirements of the FTA Circular 4220.1F and it had deficiencies relative to nine of the requirements. Compliance with seven elements in the FTA Circular did not apply to the contract files reviewed (See Appendix I).

The deficiencies noted were not widespread. Eleven of the 19 contracts files reviewed had no deficiencies. Two contract files had two or more deficiencies and another six files had only one. We also noted that the agency needed to update its procurement procedures to add two requirements of the circular and to ensure that pre-award and post-delivery certifications are executed properly. The deficiencies shown below reflect the areas where more attention was needed to ensure compliance with the Circular requirements.

Element 6 - Policies and Procedures	Element 41 - Cost or Price Analysis
Element 7 - Independent Cost Estimate	Element 44 - Out of Scope Changes
Element 11 - Organizational Conflict of Interest	Element 46 - Progress Payments
Element 39 - Cost Analysis Required (Sole Source)	Element 50 - Piggybacking
Element 40 - Evaluation of Options	

After our onsite visit, Omnitrans provided documentation to show that the deficiency noted with its policies and procedures has been corrected. No further action is required for compliance on element number six. Also, we recommend closing elements 11 and 50 based on Omnitrans response to the draft report. Corrective actions have not been completed on the remaining elements. As a result, we are requesting that Omnitrans provide to FTA information on the status of completion within the timeframes prescribed in section III, B, of the report.

I. PROCUREMENT SYSTEM REVIEW BACKGROUND

Background

This procurement system review of Omnitrans was performed in accordance with the Federal Transit Administration (FTA) procedures and included a risk assessment phase and contract review phase. During the risk assessment phase, we obtained an understanding of the recipient's procurement system and assessed its risk for noncompliance. During the contract review phase, we assessed the recipient's compliance with the FTA circular and other regulatory requirements through a review of selected procurement files.

The objectives of the Procurement System Review (PSR) are to encourage and facilitate improved procurement operations of FTA grant recipients and to assess their compliance with all applicable Federal requirements. Specifically, the PSR ensures improved and greater compliance with the requirements of FTA Circular 4220.1F and the Pre-Award and Post-Delivery Rule. The PSR is designed to be a customer-oriented review that encourages working relationships between FTA and Omnitrans.

Required Elements

The PSR looks at both systemwide elements and individual procurement elements. Systemwide procurement elements are FTA requirements that apply to the procurement system as a whole. Individual procurement elements are requirements evaluated on an individual contract-by-contract basis.

Classification of Findings

The reviewer records deficiencies for each systemwide and individual procurement element. The reviewer determines deficiencies for systemwide elements based on the results of the Systemwide Requirements Review Check List. The reviewer determines deficiencies for each individual procurement element based upon all the contract files reviewed.

Two levels of findings are used:

- Not Deficient. A finding of "not deficient" indicates that Omnitrans complied with the basic requirements of the element. This is defined as, "The review of the selected procurement files found that in all instances, the grantee complied with the requirement."
- Deficient. A finding of "deficient" indicates that Omnitrans did not always comply with the requirements of the element. This is defined as, "The review of the selected procurement files found that in one or more of the applicable instances, the grantee did not comply with the requirement."

We discussed our findings and recommendations with Omnitrans officials at an exit conference on August 26, 2015. The officials listed below were in attendance.

Name	Title	Organization	Phone/E-Mail
Scott Graham	CEO/General Manager	Omnitrans	909-379-7112 scott.graham@omnitrans.org
Jennifer Sims	Director of Procurement	Omnitrans	909-379-7203 jennfer.sims@omnitrans.org
Donald Walker	Director of Finance	Omnitrans	909-379-7131 donald.walker@omnitrans.org
Diane Cacodna	Director of Operations	Omnitrans	909-379-7211 diane.cacodna@omnitrans.org
Samuel Gibbs	Director of Internal Audit	Omnitrans	909-379-7292 samuel.gibbs@omnitrans.org
Marjorie Ewing	Director of Human Resource	Omnitrans	909-379-7261 marjorie.ewing@omnitrans.org
Christine VanMatre	Contract Administrator	Omnitrans	909-379-7122 christine.vanmatre@omnitrans.org
Krystal Turner	Contract Administrator	Omnitrans	909-379-7202 krystal.turner@omnitrans.org
Omar Bryant	Maintenance Manager	Omnitrans	909-379-7482 omar.bryant@omnitrans.org
William Valle	Contracts Review Analyst	Omnitrans	909-379-7246 william.valle@omnitrans.org
Eugenia Pinheiro	Contracts Manager	Omnitrans	909-379-7128 eugenia.pinheiro@omnitrans.org
Andres Ramirez	Program Manager	Omnitrans	909-379-7288 andres.ramirez@omnitrans.org
Megann Martinez	Procurement Admin Clerk	Omnitrans	909-379-7146 megann.martinez@omnitrans.org
Leon Snead	Program Manager	Leon Snead & Company, P.C.	301-738-8190 leonsnead.companypc@erols.com
Bud Maraist	Assistant Program Mgr.	Leon Snead & Company, P.C.	301-738-8190 leonsnead.companypc@erols.com
John Moore	Sr. Procurement Analyst	Leon Snead & Company, P.C.	301-738-8190 leonsnead.companypc@erols.com

II. DESCRIPTION OF THE GRANTEE

Omnitrans is a Joint Powers Authority (JPA) formed to provide public transportation in the San Bernardino Valley including the County of San Bernardino and 15 member cities of: Chino, Chino Hills, Colton, Fontana, Grand Terrace, Highland, Loma Linda, Montclair, Ontario, Rancho Cucamonga, Redlands, Rialto, San Bernardino, Upland and Yucaipa. In addition, Omnitrans serves the unincorporated communities of Bloomington, Mentone and Muscoy. The county and all member cities are represented on the Omnitrans Board of Directors. The Board is responsible for the establishment of all policies, rules and regulations under which the agency operates.

The agency is managed by a General Manager who is appointed by the Board. The General Manager also holds the position of Chief Executive Officer. The agency management team operations through 13 departments which include the Department of Procurement. The Director of Procurement reports to the CEO/General Manager.

Omnitrans serve area is about 460 square mile with a population of 1.5 million residents. The agency offers a selection of fixed route and on demand services designed to match the service with the land use, ridership activity and needs of the community. It operates a fleet of 177 transit coaches, 100% CNG powered, and 110 vans and mini buses for demand response. Service is provided weekdays from 3:48 a.m.to 11:13 p.m. Saturday and Sunday service is operated from 5:00 to 10:50 p.m. Complementary paratransit service operates during the same days and hours of service as the fixed routes. The agency provides the following type of services.

- **Bus Rapid Transit (BRT):** BRT service (launched in April 2014) mirrors light-rail service on rubber tires with dedicated lanes, enhanced amenities, stand-alone stations, level boarding and significantly reduced travel times while utilizing dedicated branded BRT buses.
- **Local Service:** Traditional large bus service operating on set route with set schedule at defined frequencies.
- **Community Circulator (OmniGo):** Small bus service designed to offer lifeline mobility for areas with relatively low population and employment density. OmniGo provides service to key locations within Grand Terrace, Chino Hills and Yucaipa.
- **Express Service:** Freeway bus service using a traditional large bus on a set route with a set schedule and frequency that is designed to connect two or more areas of highly concentrated activity. Route(s) typically travel mostly by freeway and stops are placed several miles apart.
- **ADA Paratransit:** Origin-to-destination service provided to comply with the Americans with Disabilities Act (ADA) that is complementary to fixed-route service, and is provided within $\frac{3}{4}$ -mile of a fixed route. Beyond-the boundary Access service extends Access past the $\frac{3}{4}$ -mile fixed route boundary to the edge of each JPA member city, for a nominal fee.
- **General Public Dial-a-ride:** Origin-to-destination general public lifeline service in Chino Hills and Yucaipa for cities where traditional fixed route service have not historically been efficient due to the intensity of activity and the lack of directness of the road network.

The operating revenue for fiscal year 2014 was \$14,363,317 and operating expenses were \$86,171,845. Revenues from other sources amounted to \$111,385,424 of which \$50,785,745 were provided by federal and local operating grants.

III. RESULTS OF THE REVIEW

The results of the review are summarized for each systemwide and individual procurement element. For each procurement requirement, the report describes the required element, cites a reference to FTA Circular 4220.1F (and other applicable regulations), discusses the issues and identifies deficiencies, presents best practices/advisory comments, and incorporates the recipient's corrective actions and schedule.

A. SYSTEMWIDE PROCUREMENT ELEMENTS

Systemwide procurement elements are requirements that apply to the procurement system as a whole. The systemwide procurement elements are primarily evaluated during the Assessment Phase. During the Assessment Phase, we interviewed senior management and reviewed the policies, regulations and procedures of the grantee to assess the procurement system environment. We also interviewed procurement staff to assess the effectiveness of the procurement system. The findings in this section are a result of these interviews, review of regulations, and additional insights gained during the Contract Review Phase.

NOT DEFICIENT

The recipient's system was "not deficient" with respect to the following element:

Element 1 – *Written Standards of Conduct*

Element 2 – *Contract Administration System*

Element 3 – *Written Protest Procedures*

Element 4 – *Prequalification System*

Element 5 – *Procedures for Ensuring Most Efficient and Economic Purchase*

DEFICIENT

The grantee was "deficient" with respect to the following elements:

Element 6 – *Procurement Policies and Procedures*

Written Procurement Procedures [FTA C4220.1F, III, 3.a.] The Common Grant Rule for non-governmental recipients requires the recipient to have written procurement procedures, and by implication, the Common Grant Rule for governmental recipients requires written procurement procedures as a condition of self-certification.

Discussion

The recipient's system was "deficient" with respect to this element. The recipient's procurement policies and procedures were reviewed for the mandatory requirements of FTA C 4220.1F. The following FTA requirements, listed by the FTA Circular paragraph number were deficient as noted below:

Architectural Engineering (A&E) Services and Other Services [FTA C 4220.1F, VI, 3.f.] FTA's enabling legislation at 49 U.S.C. Section 5325(b)(1) requires the use of the qualifications-based procurement procedures contained in the "Brooks Act," 40 U.S.C. Sections 1101 through 1104, to acquire A&E services, but also for program management, construction management, feasibility studies, preliminary engineering, design, architectural, engineering, surveying, mapping and related services. The nature of the work to be performed and its relationship to construction, not the nature of the prospective contractor, determine whether qualifications-based procurement procedures may be used as described below.

- (1) Qualifications-Based Procurement Procedures Required. The recipient must use qualifications-based procurement procedures not only when contracting for A&E services, but also for other services listed in 49 U.S.C. Section 5325(b)(1) that are directly in support of, directly connected to, directly related to, or lead to construction, alteration, or repair of real property. (Emphasis added) For example, a contractor performing program management, project design, construction management, or engineering services in which that contractor would select the finished products to be acquired for an FTA assisted construction project must be selected through qualifications-based procurement procedures.

The recipient's policies and procedures did not contain the underlined qualifying requirements with respect to construction related services.

Veterans Employment [FTA C4220.1F, IV, 2.c.(1)(c)]. Recipients and subrecipients of Federal financial assistance under this chapter shall ensure that contractors working on a capital project funded using such assistance 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.

The recipient's list of clauses did include a Veterans Employment clause; however, its policies and procedures did not contain requirements for the application of that clause.

Advisory Comments

On August 31, 2015, (after our site visit) the Director of Procurement provided updates to Omnitrans procurement policies and procedures that include the FTA circular requirements cited above. The policy changes are sufficient to correct both deficiencies. The Director of Procurement also provided evidence that the procurement staff has received training to ensure they are aware of the requirements. The actions taken by Omnitrans are sufficient to resolve the findings. No further action is required for compliance with FTA Circular on these issues.

Corrective Action and Schedule

Corrective action has been taken. No further corrective action is required.

B. INDIVIDUAL PROCUREMENT ELEMENTS

The individual procurement elements are applicable to the contract files reviewed. We compiled the findings from all contracts reviewed by each individual procurement element. The results of those findings and conclusions are presented below and organized by whether the element was evaluated as “not deficient” or “deficient.” Those elements for which the recipient was “not deficient” are shown first and those defined as “deficient” with respect to that element are shown second. The elements classified as “not applicable” to the sample contract files reviewed are shown in Appendix I, Report Summary Table. Within each category the numbered elements appear as they are listed in FTA’s Procurement System Review Guide. We reviewed 19 procurement files involving requests for proposals, invitations for bids, sole sources and small purchases, and eight files had at least one deficiency relative to the requirements of FTA Circular 4220.1F.

NOT DEFICIENT (A full description of the elements for which the recipient was “not deficient” is in Appendix II.)

The recipient was “not deficient” with respect to the following elements:

- Element 8 – *A&E Geographic Preferences***
- Element 9 – *Unreasonable Qualification Requirements***
- Element 10 – *Unnecessary Experience and Excessive Bonding***
- Element 12 – *Arbitrary Action***
- Element 13 – *Brand Name Restrictions***
- Element 14 – *Geographic Preferences***
- Element 15 – *Contract Term Limitation***
- Element 16 – *Written Procurement Selection Procedures***
- Element 18 – *Award to Responsible Contractors***
- Element 19 – *Sound and Complete Agreement***
- Element 20 – *No Splitting [Micro-Purchase]***
- Element 21 – *Fair and Reasonable Price Determination***
- Element 24 – *Clear, Accurate, and Complete Specification***
- Element 25 – *Adequate Competition***
- Element 26 – *Firm Fixed Price [Sealed Bid]***
- Element 27 – *Selection on Price [Sealed Bid]***
- Element 28 – *Discussions Unnecessary [Sealed Bid]***
- Element 29 – *Advertised/Publicized***
- Element 30 – *Adequate Solicitation***
- Element 31 – *Sufficient Bid Time [Sealed Bid]***
- Element 32 – *Bid Opening [Sealed Bid]***
- Element 33 – *Responsiveness [Sealed Bid]***
- Element 35 – *Rejecting Bids [Sealed Bid]***
- Element 36 – *Evaluation [RFP]***
- Element 37 – *Price and Other Factors***
- Element 38 – *Sole Source If Other Award is Infeasible***
- Element 42 – *Written Record of Procurement History***

Element 45 – *Advance Payments*
Element 48 – *Cost Plus Percentage of Cost*
Element 49 – *Liquidated Damages Provisions*
Element 51 – *Qualifications Exclude Price [A&E]*
Element 52 – *Serial Price Negotiations [A&E and Other Services]*
Element 53 – *Bid Security [Construction Over \$100,000]*
Element 54 – *Performance Security [Construction Over \$100,000]*
Element 55 – *Payment Security [Construction Over \$100,000]*
Element 56 – *Clauses*

DEFICIENT

Element 7 - Independent Cost Estimate

COST ANALYSIS AND PRICE ANALYSIS [FTA C 4220.1F, VI, 6]. The Common Grant Rules require the recipient to perform a cost analysis or price analysis in connection with every procurement action, including contract modifications. The method and degree of analysis depends on the facts and circumstances surrounding each procurement, but as a starting point, the recipient must make independent estimates before receiving bids or proposals.

Discussion

We reviewed 14 procurement files to verify that independent cost estimates were performed and found three files lacked supporting documentation indicating an adequate independent cost estimate had been performed by the recipient before the transit authority received bids or proposals. Our review found the recipient does use a formal procurement requisition form to initiate the procurement process. This form is generated by the requiring organization. The independent cost estimate must be received before receipt of proposals and supported with sufficient detailed information as to its development and/or source; in other words, how derived and by whom. The independent cost estimate becomes the first step in the cost/price reasonableness analysis. In the deficient procurement files the in-house estimates were either not found or were budgetary type numbers without sufficient supporting details.

Advisory Comments

Within 30 days after the date of this report, the recipient should develop procedures, and implement management controls to ensure that one of the first steps taken in connection with every procurement action is an independent cost or price estimate. This independent estimate should be completed before receiving bids or proposals and should be maintained in the official contract file. The final purpose of the independent cost estimate is for price analysis. Either a cost or price analysis is required for every contract and every change order so that the essential objective of a reasonable price is assured. The adequacy of the price or cost analysis is a critical responsibility of the contracting official. In many contract awards the bids alone may be adequate to assure a reasonable price. However, in all negotiated procurements, most contract changes, and sealed bids where price competition was not sufficient, further analysis is required. An independent cost estimate prepared before receipt of offers is invaluable in these

circumstances. The estimate alone may, if prepared with sufficient detail and reliability in the contracting official's judgment, be sufficient to determine whether the price is reasonable. It will at least supplement other pricing data in making the determination of reasonableness. Because cost analysis can be time consuming, expensive, and raise disputes, the availability of an independent pre-bid estimate which enables price analysis and obviates cost analysis is worth material pre-bid effort.

FTA Instructions

Omnitrans must update its manual to include detailed procedural guidance on developing independent cost estimates for each procurement method such as IFBs, RFPs, sole source, and small purchases. Training must be conducted with staff on updated procedures and compliance with these updated requirements must be verified by conducting an internal audit of procurements within 90 days from the date of the final report.

Corrective Action and Implementation Schedule

While Omnitrans recognizes the opportunity to improve how Independent Cost Estimates (ICE) are developed, Consultant states that in the "deficient procurement files the in-house estimates were either 'not found' or were budgetary type numbers without sufficient supporting details." 100% of the procurement actions during the review period of July 1, 2013 through June 30, 2015 were initiated by signed and dated ICEs based on historic usage, recent prices paid for similar goods and services, catalog or market prices, etc. as evidenced in the corresponding procurement files.

Omnitrans' Procurement Policy 4000-1 has been updated since each of the above procurements was awarded. Despite Omnitrans' disagreement with this deficiency, Omnitrans recognizes the value of continuous improvement and agrees to retrain project managers on developing ICEs with greater detail in support of FTA Circular 4220.1F and the Common Grant Rule. An internal audit will be conducted within 90 days of the date of the final report.

Reviewer's Comments

The actions taken by Omnitrans are sufficient to resolve the finding. However, the finding should remain open until Omnitrans provides to FTA the results of its internal audit.

Element 11 – Organizational Conflict of Interest

Organizational Conflicts of Interest [FTA C 4220.1F, VI, 2.a.(4)(h)]. Engaging in practices that result in organizational conflicts of interest as prohibited by the Common Grant Rules:

- 1 **Occurrence.** An organizational conflict of interest occurs when any of the following circumstances arise:
 - a **Lack of Impartiality or Impaired Objectivity.** When the contractor is unable, or potentially unable, to provide impartial and objective assistance or advice to the recipient due to other activities, relationships, contracts, or circumstances.

- b Unequal Access to Information. The contractor has an unfair competitive advantage through obtaining access to nonpublic information during the performance of an earlier contract.
 - c Biased Ground Rules. During the conduct of an earlier procurement, the contractor has established the ground rules for a future procurement by developing specifications, evaluation factors, or similar documents.
- 2 Remedies. FTA expects the recipient to analyze each planned acquisition in order to identify and evaluate potential organizational conflicts of interest as early in the acquisition process as possible, and avoid, neutralize, or mitigate potential conflicts before contract award.

Discussion

We reviewed 14 procurement files for organizational conflict of interest and found in one procurement file an instance where the contractor, who was selected to provide architectural and engineering design services may have an organizational conflict of interest regarding potential follow-on contracts for work in which it has been involved. The procurement file is silent regarding planning to avoid a potential organizational conflict of interest. The recipient's solicitation and the contract contained a "Conflict of Interest" provision which states, "Firm agrees to avoid organizational conflict of interest. An organizational conflict of interest means that due to other activities, relationships, or contracts, the Firm is unable or potentially unable to render impartial assistance or advise Omnitrans; is or might be otherwise impaired; Firm's objectivity in performing the work identified in the solicitation is or might be otherwise impaired; or the Firm has an unfair advantage. Firm is obligated to fully disclose to Omnitrans in writing any Conflict of interest issues as soon as they are known to the Firm. All disclosures must be must be disclosed at the time of Proposal submittal." This provision requires the potential contractor to make this determination. However, the circular expects the recipient to analyze each planned acquisition in order to identify and evaluate potential organizational conflicts of interest as early in the acquisition process as possible, and avoid, neutralize, or mitigate potential conflicts before contract award.

Advisory Comments

Within 30 days after the date of this report, the recipient should develop procedures and establish management controls to ensure that organizational conflicts of interest are eliminated or mitigated. When preparing specifications and scopes of work the recipient should identify the possibilities that a firm or subcontractors may have a corporate capability to compete for follow-on work that results from the contractual design effort and thus have a competitive advantage because of prior work done, or may have a bias performing the work because of prior work done or future interests of the firm or subcontractors. Consideration should be given to using a solicitation provision that restricts the firm's eligibility for related follow-on contracts. The procurement file documentation must reflect these deliberations.

FTA Instructions

Omnitrans must update its policies and procedures and training must be conducted with user departments and requisitioners to ensure that procedures are being followed. Compliance with procedures must be verified by conducting an internal audit of procurements within 30 days from the date of the final report.

Corrective Action and Implementation Schedule

Omnitrans disagrees with this deficiency. Consultant states that the file is silent regarding “planning to avoid a potential organizational conflict of interest” yet acknowledges that the agreement includes a provision that the “firm agrees to avoid organizational conflicts of interest.” In addition to the Conflict of Interest provision, the solicitation and resulting agreement includes a Code of Conduct provision which states that the “successful firm agrees to comply with Omnitrans’ Code of Conduct as it relates to Third-Party contracts which is hereby referenced and by this reference is incorporated herein. Firm agrees to include these requirements in all of its subcontracts.”

Excerpt from solicitation RFQu-MNT15-04:

R. CODE OF CONDUCT

The successful Firm agrees to comply with Omnitrans’ Code of Conduct as it relates to Third-Party contracts which is hereby referenced and by this reference is incorporated herein. Firm agrees to include these requirements in all of its subcontracts.

Section 4.1.1 of Omnitrans’ Code of Conduct (Procurement Policy 1050 - Attachment A) states that “no Contractor shall be eligible to bid on any solicitation, procurement or contract developed from plans, specifications or drafted specifications, design, requirements, statements of work, invitations or bids and/or requests for proposals prepared in whole or in part by that Contractor;

- 4.1.1. No Contractor shall be eligible to bid on any solicitation, procurement or contract developed from plans, specifications or drafted specifications, design, requirements, statements of work, invitations or bids and/or requests for proposals prepared in whole or in part by that Contractor:

Section 36 PRECEDENCE of the fully executed agreement incorporates the provisions of RFQu-MNT15-04.

36. PRECEDENCE

Conflicting provisions hereof, if any, shall prevail in the following descending order of precedence: (1) the provisions of this Agreement, including its Attachments A-Scope of Work, B-Fee Schedule, C-Regulatory Requirements, and D-Special Provisions; (2) provisions of RFQu MNT15-04; and (3) CONSULTANT’s proposal dated December 22, 2014, Best and Final Offer dated February 26, 2015 and Fee Schedule dated March 6, 2015.

Staff does not rely solely on the contractor to make the determination that no conflicts or potential conflicts exist. In addition to the above provisions, staff reviews bids, proposals, and statements of qualifications to identify and evaluate potential organizational conflicts of interest before contract award and documents deliberations accordingly. Section 18 of every contract

binder includes an FTA checklist where the Contract Administrator documents that any organizational conflicts of interest has been eliminated or mitigated before contract award (Attachment B).

It is for these reasons that Omnitrans respectfully requests that the deficiency on Element 11 - Organizational Conflict of Interest be removed from the FTA's final report.

Reviewer' Comments

The information provided by Omnitrans is sufficient to close out the finding.

Element 39 - Cost Analysis Required (Sole Source)

Methods of Procurement [FTA C 4220.1F, VI, 3]. The recipient should use competitive procedure(s) appropriate for the acquisition undertaken. The procedures used must comply with State and local law as well as with Federal requirements. Federal restrictions vary with the type of procurement method used. The following guidance is based on the requirements of the Common Grant Rule for governmental recipients, supplemented by FTA policies that address the needs of FTA recipients.

- i. Other Than Full and Open Competition. Normally, the recipient must provide for full and open competition when soliciting bids or proposals. The Common Grant Rule for governmental recipients, however, acknowledges that under certain circumstances, a recipient may conduct procurements without providing for full and open competition.
- (3) Procurement Procedures. When less than full and open competition is available to the recipient, the Common Grant Rule for government recipients directs the recipient to:
 - (c) Cost Analysis. Prepare or obtain a cost analysis verifying the proposed cost data, the projections of the data, and the evaluation of the costs and profits.

Discussion

We reviewed four noncompetitive procurement files and found three procurement files that did not contain documentation to support that an adequate cost analysis had been performed. In the deficient files the recipient failed to perform an element by element analysis or discussion of the cost or profit. In addition, there was no evidence of any negotiations being conducted. No detailed independent in-house cost estimates were available to support cost comparisons in this deficiency.

Advisory Comments

Within 30 days after the date of this report, the recipient should develop procedures and implement management controls to ensure that an adequate cost analysis is performed for all sole source procurements. A contract file checklist and a review by the manager or supervisor are a good way of ensuring compliance with this element. The analysis should be documented in the contract or purchase order file. The cost analysis should include an evaluation of labor,

materials, other direct costs, overhead rates, G&A rates, and a profit factor. When negotiations take place, the file should be documented to reflect the results of the negotiations and the rationale behind the agreements reached.

FTA Instructions

Omnitrans must conduct training on developing cost and profit analysis for sole source procurements (including analysis of fixed fee) and verify compliance by conducting a self-audit of sole source procurements within 90 days from the date of the final report.

Corrective Action and Implementation Schedule

Of the nine (9) sole source procurements reviewed in the 2013 PSR, eight (8) were found to be deficient for “no visible effort having been made to conduct a sole source cost analysis.” In the 2015 PSR, Consultant found that the cost analysis of three (3) of the four files reviewed were not adequate. Omnitrans’ Procurement Team has made significant advances in its endeavor to be fully compliant with the requirements of FTA Circular 4220.1F. It should be noted that the subjectivity associated with measuring adequacy reverts back to the interpretation of the method and degree of analysis required as it is dependent upon the facts and circumstances surrounding each procurement. Regardless, Omnitrans agrees that staff would benefit from additional training on developing cost and profit analysis for sole source procurements and will verify compliance by conducting a self-audit of sole source procurements within 90 days from the date of the final report.

Reviewer’s Comments

The actions planned by Omnitrans are sufficient to resolve the finding. However, the finding should remain open until Omnitrans provides to FTA evidence that the training has been completed.

Element 40 - Evaluation of Options

Options [FTA C 4220.1F, IV, 1.d]. The recipient’s contracts may include options to ensure the future availability of property or services, so long as the recipient is able to justify those options as needed for its public transportation or project purposes. An option is a unilateral right in a contract by which, for a specified time, a recipient may acquire additional equipment, supplies, or services than originally procured. An option may also extend the term of the contract.

Options [FTA C 4220.1F, VI, 7.b]. In awarding the contract that will include options, the following standards apply:

- (1) Evaluation Required. In general, FTA expects the recipient to evaluate bids or offers for any option quantities or periods contained in a solicitation if it intends to exercise those options after the contract is awarded.
- (2) Evaluation Not Required. The recipient need not evaluate bids or offers for any option quantities when the recipient determines that evaluation would not be in its best interests.

An example of a circumstance that may support a recipient's determination not to evaluate bids or offers for option quantities is when the recipient is reasonably certain that funds will not be available to permit it to exercise the option.

Awards Treated as Sole Source Procurements [FTA C 4220.1F, V, 7.a.(1)(c)]. The following actions constitute sole source awards:

- 1 Failure to Evaluate Options Before Awarding the Underlying Contract. If a contract has one or more options and those options were not evaluated as part of the original contract award, exercising those options after contract award will result in a sole source award.
- 2 Negotiating a Lower Option Price. Exercising an option after the recipient has negotiated a lower or higher price will also result in a sole source award unless that price can be reasonably determined from the terms of the original contract, or that price results from Federal actions that can be reliably measured, such as changes in Federal prevailing labor rates, for example.

In the circumstances described in this paragraph, FTA assistance may be used to support a sole source award only if that award can be justified under FTA's third party contract standards for sole source awards.

Discussion

We reviewed five procurement files that included options and found one procurement file failed to adequately address this element. The procurement was a major buy for fare machines parts for buses. We found that the options or option years were not priced, or if priced no indication that they were considered or evaluated. In this particular instance unpriced options were included in the contract and the contractor was to provide the next years prices at a later date. The contractor after the first year had expired had to be contacted and requested to submit the required prices that adequately addressed the recipient's requirements. The contractor indicated the prior year's prices would be the same except that freight charges would now be on all outgoing orders. No escalation provisions were included in the contract. When there is no evaluation of options or option years at the time of award and no option provisions are contained in the contract, the recipient has no unilateral right to exercise the option and is now placed in either a sole source or a recompetition situation.

Advisory Comments

Within 30 days after receipt of this report the recipient should develop procedures and implement management controls that ensure that options are priced and evaluated as part of the contract award. The recipient should further ensure, when using options, that they have the unilateral right to exercise the options. Often the prices of the option years determine which contractor has the most advantageous bid for the recipient. On the other hand, an apparent low bidder may in fact be the high bidder after the prices of the option years are considered. If a market is such that offerors are unable to propose prices for the option years, the solicitation may identify an applicable index to be used as an escalator and the mechanics for its use. These escalation provisions must be firmly established in the solicitation and the contract. The offeror should be

advised in the solicitation how the option year price will be calculated, evaluated and the selection made.

FTA Instructions

Omnitrans must conduct training on evaluation of options, implement management controls that ensure that options are priced and evaluated as part of the contract award and verify compliance with FTA requirements within 60 days from the date of the final report.

Corrective Action and Implementation Schedule

Consultant concluded in its discussion above that “when there is no evaluation of options or option years at the time of award and no option provisions are contained in the contract, the recipient has no unilateral right to exercise the option and is now placed in either a sole source or a recompetition situation.” The deficient procurement file is a sole source contract for proprietary parts only available from Genfare. This contract was generated for the purpose of obtaining more favorable pricing. Omnitrans respectfully requests that this deficiency be removed from the final report.

Reviewer’s Comments

The reply to the finding was not responsive to the recommendation for corrective action. The finding should remain open until Omnitrans provides evidence to FTA that the recommended training has been completed.

Element 41 - Cost or Price Analysis

COST ANALYSIS AND PRICE ANALYSIS [FTA C 4220.1F, VI, 6.] The Common Grant Rules require the recipient to perform a cost analysis or price analysis in connection with every procurement action, including contract modifications. The method and degree of analysis depends on the facts and circumstances surrounding each procurement, but as a starting point, the recipient must make independent estimates before receiving bids or proposals.

- a. **Cost Analysis.** The recipient must obtain a cost analysis when a price analysis will not provide sufficient information to determine the reasonableness of the contract cost. The recipient must obtain a cost analysis when the offeror submits elements (that is, labor hours, overhead, materials, and so forth) of the estimated cost, (such as professional consulting and A&E contracts, and so forth). The recipient is also expected to obtain a cost analysis when price competition is inadequate, when only a sole source is available, even if the procurement is a contract modification, or in the event of a change order. The recipient, however, need not obtain a cost analysis if it can justify price reasonableness of the proposed contract based on a catalog or market price of a commercial product sold in substantial quantities to the general public or based on prices set by law or regulation.
- (1) **Federal Cost Principles.** Federal cost principles contain many requirements about the allowability and allocability of costs.

- (2) Profit. FTA expects the recipient to negotiate profit as a separate element of the cost for each contract in which there has been no price competition, and in all acquisitions in which the recipient performs or acquires a cost analysis. To establish a fair and reasonable profit, the recipient needs to consider the complexity of the work to be performed, the risk undertaken by the contractor, the contractor's investment, the amount of subcontracting, the quality of the contractor's record of past performance, and industry profit rates in the surrounding geographical area for similar work.
- b. Price Analysis. If the recipient determines that competition was adequate, a price analysis, rather than a cost analysis, is required to determine the reasonableness of the proposed contract price. As discussed previously in subsection 3.a of this Chapter, the price analysis for micro-purchases may be limited. Similarly, the recipient may use an abbreviated price analysis for small purchases in most cases. One method to record this price analysis is through the use of a preprinted form on which a contracting officer (or other responsible person) can annotate a finding of fair and reasonable pricing and check off the most common reasons why this would be so, such as catalog or market prices offered in substantial quantities to the general public, regulated prices (for example, for many utilities purchases), or a comparison with recent prices for similar goods and services.

Discussion

We reviewed 14 procurement files for cost or price analysis and found one deficient procurement file relative to this element. Basically, the deficiency resulted from a general lack of detailed documentation to support the results of a cost or price analysis or whether a cost or price analysis had ever been performed. The only documentation to support the reasonableness of the costs were the statements "Award based on most advantageous proposal to Agency", and "Prices are reasonable based on past purchase history." There was no discussion or negotiations of the hours or other elements proposed or the profit of 20 percent. In those procurement files where adequate competition existed and award was made to the lowest offeror, the recipient was found not deficient; however, the procurement files should be documented to reflect this decision. In procurements where adequate competition exists and the selection is made, there always exists the possibility that negotiations may be warranted or desirable.

Advisory Comments

Within 30 days after the date of this report, the recipient should develop procedures and implement management controls to ensure that cost or price analysis is conducted for all applicable procurement actions, consistent with FAR Part 31 cost principles, and that such analysis is adequately documented in the contract file.

FTA Instructions

Omnitrans must conduct training on cost and price analysis procedures, verify compliance by conducting a self-audit and verify compliance with updated requirements within 90 days from the date of the final report.

Corrective Action and Implementation Schedule

Adequate competition did in fact exist on RFP-ITS15-50. This best value solicitation was awarded based on the criteria listed in the solicitation: RFP-ITS15-50, Instructions to Proposers, Section Z - Selection Criteria:

Z. SELECTION CRITERIA

A. The following selection criteria will be used in determining the highest ranked Proposer:

- 1) 20 points for QUALIFICATIONS - Proposer's knowledge, skills, and ability. Documented functional and technical expertise.
- 2) 30 points for QUALITY OF WORK - The quality of the work plan or description of how the work will be performed by the consultant.
- 3) 30 points for EXPERIENCE - Proposer's experience in performing the work as described in the statement of work.
- 4) 20 points for COST/PRICE - Overall lowest cost to Omnitrans.

Consultant further states that "in procurements where adequate competition exists and the selection is made, there always exists the possibility that negotiations may be warranted or desirable." Negotiations are not required by the FTA when price competition exists:

As a result, Omnitrans respectfully requests that this deficiency be removed from the Final Report.

Reviewer's Comments

The reply to the finding was not responsive to the recommendation for corrective action. The finding should remain open until Omnitrans provides evidence to FTA that the recommended training has been completed.

Element 44 – Out of Scope Changes

Methods of Procurement [FTA C 4220.1F, VI, 3.]

i. Other Than Full and Open Competition.

(1) When Appropriate. A recipient may use noncompetitive proposals only when the procurement is inappropriate for small purchase procedures, sealed bids, or competitive proposals, and at least one of the following circumstances are present:

(b) Sole Source. When the recipient requires supplies or services available from only one responsible source, and no other supplies or services will satisfy its requirements, the recipient may make a sole source award. When the recipient requires an existing contractor to make a change to its contract that is beyond the scope of that contract, the recipient has made a sole source award that must be justified.

Discussion

We reviewed 14 procurement files for out of scope changes and found one deficient procurement file relative to this element. The deficiency was found in the Resource planning System Upgrade contract. The contract was modified five times; the first changed firm fixed price hours to firm fixed price deliverable items; the second and third increase the contract dollars; the fourth adjusted the payment schedule; and the fifth extended the contract completion date. There was little or no documentation supporting or explaining the modifications.

Any contracts amended to add requirements which are over and above the requirements outlined in the original request and the resultant contract are considered new work and as such require compliance with FTA requirements for an approved sole source justification, a cost analysis, and cost and profit negotiations and the procurement file documented.

Advisory Comments

Within 30 days after the date of this report, the recipient should develop and implement management controls to ensure that all contract amendments and change orders are within the scope of the contract. If the change is not within the scope of the original contract, it is considered a cardinal change. Such changes are not properly processed as being within the authority of the Changes clause. Such changes are a sole source and must be processed and handled as new work and treated as sole source procurements whereby appropriate approvals are obtained and that the procurement files are adequately documented. In the event a sole source cannot be justified, a competitive procurement action must be initiated. All changes must be adequately documented in the procurement file.

FTA Instructions

Omnitrans must conduct training on procedures regarding contract changes and verify compliance with FTA requirements within 90 days from the date of the final report.

Corrective Action and Implementation Schedule

Omnitrans partially agrees. Management controls successfully prevented tasks outside of the scope of work of the original agreement and the CEO's authority from being added to Contract ITS15-50 under the change order clause. As a result, Amendment 3 was presented to the Board of Directors for approval on February 4, 2015 and was processed as a sole source. Omnitrans does, however, agree that the Procurement file did not adequately document the procurement history and as it pertained to the amendment process. Omnitrans will provide training on contract changes within the next 30 days and verify compliance with the FTA within 90 days from the date of the final report.

Reviewer's Comments

The information provided is sufficient to resolve the finding. However, the finding should remain open until Omnitrans provides to FTA evidence that the planned training has been completed.

Element 46 - Progress Payments

- (c) Progress Payments. Progress payments are payments for contract work that has not been completed. The recipient may use FTA assistance to support progress payments provided the recipient obtains adequate security for those payments and has sufficient written documentation to substantiate the work for which payment is requested. [FTA C 4220.1F, IV, 2, b, (5) (c)]

Discussion

We reviewed 14 procurement files involving progress payments and found two of the contracts deficient when they failed to obtain title for which costs for goods/products were made. Normally, progress payments are made based on costs incurred and secured by title for that which the progress payments were made. It should be noted the Common Grant Rules allow the use of the percentage of completion method of payment in construction contracts only. Adequate security may include taking title, letter of credit, or performance bonds, or equivalent means to protect the recipient's interest.

Advisory Comments

Within 30 days after the date of the report, the recipient should develop procedures and implement management controls for ensuring that contracts containing progress payments are based on costs incurred and include provisions giving the recipient title to property for which progress payments are made or to insure the contracts contain other adequate security provisions.

FTA Instructions

Omnitrans must conduct training on procedures regarding progress payments and verify compliance with FTA requirements within 60 days from the date of the final report.

Corrective Action and Implementation Schedule

Omnitrans agrees with this assessment. Boilerplate templates are being modified to address progress payments and partial payments to be based on costs incurred and include appropriate title or other adequate security provisions as required. Training will be provided prior to October 31, 2015.

Reviewer's Comments

The actions taken and planned are sufficient to resolve the finding. However, the finding should remain open until Omnitrans provides to FTA evidence that the planned training has been completed.

Element 50 – Piggybacking

Acquisition Through Assigned Contract Rights [FTA C 4220.1F, V, 7.a.(2)(a)]. Although FTA does not encourage the practice, a recipient may find it useful to acquire contract rights through assignment by another recipient. A recipient that obtains contractual rights through assignment may use them after first determining the contract price remains fair and reasonable, and that the

contract provisions are adequate for compliance with all Federal requirements. The recipient need not perform a second price analysis if a price analysis was performed for the original contract. However, FTA expects the recipient to determine whether the contract price or prices originally established are still fair and reasonable before using those rights. The recipient using assigned contract rights is responsible for ensuring the contractor's compliance with FTA's Buy America requirements and execution of all the required pre-award and post-delivery Buy America review certifications. Before proceeding with the assignment, however, FTA does expect the recipient seeking the assignment to review the original contract to be sure that the quantities the assigning recipient acquired, coupled with the quantities the acquiring recipient seeks, do not exceed the amounts available under the assigning recipient's contract.

Discussion

We reviewed one procurement file involving a piggybacking award under a contract awarded by the Morongo Basin Transit Authority (MBTA) for Allstar buses which was deficient. The recipients' deficient procurement file lacked documentation to show before exercising the requirements that the contract prices remained fair and reasonable and the terms and conditions were in compliance with the Federal requirements.

Advisory Comments

Within 30 days of the date of this report, the recipients should develop procedures and implement management controls to ensure that a determination is made that contract prices remain fair and reasonable at the time the requirement is acquired. FTA has historically encouraged recipients to consider combining efforts in their procurements to obtain better pricing through larger purchases. Recipients must ensure all Federal requirements, required clauses, and certifications are properly followed and included in the resulting joint solicitation and contract documents.

FTA Instructions

Omnitrans must revise its policies and procedures with regards to piggybacking to include FTA requirements. Training must be conducted on revised procedures and compliance must be verified within 30 days from the date of the final report.

Corrective Action and Implementation Schedule

Procurement Procedure 4000-1 was revised on October 2, 2013 as the result of the 2013 PSR and training was conducted on June 13, 2013. The deficient file noted in the 2015 PSR was awarded by the Omnitrans Board of Directors on October 1, 2014. Per the FTA's request, Procurement Procedure 4000-1 was further revised on November 5, 2014 to provide additional guidance with regard to the use of intergovernmental agreements and piggybacking. Procurement staff was re-trained on November 12, 2014 (Attachment C). The FTA closed out the 2013 PSR the following day.

The actions taken by Omnitrans in November 2014 should be sufficient to resolve the finding requiring no further action for compliance with FTA Circular on these issues.

Reviewer's Comments

The actions taken are sufficient to close out the finding. The procurement in question preceded the training that has been provided and there were no noted deficient procurement files after this date.

C. PRE-AWARD AND POST-DELIVERY REVIEW REQUIREMENTS

A recipient purchasing revenue service rolling stock with funds obligated by FTA on or after October 24, 1991, must certify to FTA that it will conduct or cause to be conducted pre-award and post-delivery audits as prescribed in this part. In addition, such a recipient must maintain on file the certifications required under subparts B, C, and D of this part. [49 CFR § 663.7]

Pre-Award

Pre-award audit requirements [49 CFR § 663.21]. A recipient purchasing revenue service rolling stock with FTA funds must ensure that a pre-award audit under this part is completed before the recipient enters into a formal contract for the purchase of such rolling stock.

Description of pre-award audit [49 CFR § 663.23]. A pre-award audit under this part includes - (a) A Buy America certification as described in § 663.25 of this part; (b) A purchaser's requirements certification as described in § 663.27 of this part; and (c) Where appropriate, a manufacturer's Federal Motor Vehicle Safety certification information as described in § 663.41 or § 663.43 of this part.

The recipient shall ensure before signing a contract with a supplier that the Buy American Certification has been reviewed and verified for both the 60% domestic content; and the proposed U.S. final assembly location, operations, and total costs. The recipient before signing a contract with a supplier, shall have performed the "Purchaser's Requirements Certification" and checked bid specification compliance with the solicitation specifications and completed the manufacturer capability study. The recipient before signing a contract with a supplier for buses shall have requested and received the manufacturer's letter satisfying the "Federal Motor Vehicle Safety Standards (FMVSS) Certification". In the event any of the foregoing has not been accomplished, the recipient has requested and received a waiver from FTA.

Discussion

The recipient was deficient with respect to this requirement. We reviewed six procurement files covering various sizes and types of buses subject to the required reviews and certifications. The review covered four contracts and two modifications exercising option quantities. In three of the procurement files all of the required pre-award certifications were found. The other three were deficient in that two were signed by the contractor and not by the recipient and the third was accomplished after the award of the contract. Pre-award documentation must be completed prior to the award of the contract.

Advisory Comments

Refer to the Advisory Comments following the Post-Delivery Review Element.

Post-Delivery

Post-delivery audit requirements [49 CFR § 663.31]. A recipient purchasing revenue service rolling stock with FTA funds must ensure that a post-delivery audit under this part is completed before title to the rolling stock is transferred to the recipient.

Description of post-delivery audit [49 CFR § 663.33]. A post-delivery audit under this part includes - (a) A post-delivery Buy America certification as described in § 663.35 of this part; (b) A post-delivery purchasers certification as described in § 663.37 of this part; and (c) When appropriate, a manufacturer's Federal Motor Vehicle Safety Standard self-certification information as described in § 663.41 and § 663.43 of this part.

The recipient shall insure before using the vehicles in transit service that the "Buy American Certification" has been reviewed and verified for both the 60% domestic content; and the actual U.S. final assembly location, operations, and total costs. In addition, the Purchaser's Requirements Certification for procurements of rail vehicles or more than ten buses or modified vans is completed for the Resident Inspector's report and the Visual Inspections and Road Tests or Performance Tests in the case of rail vehicles. Finally, the recipient has verified that the Federal Motor Vehicle Safety Standards (FMVSS) sticker is affixed to each bus. In the event that any of the foregoing this has not been accomplished the recipient has requested and received a waiver from the FTA.

Discussion

The recipient was "deficient" with respect to this requirement. We reviewed six procurement files covering various sizes and types of buses subject to the required reviews and certifications. The review covered four contracts and two modifications exercising option quantities. In three of the procurement files, all of the required post-award certifications were found. Two of the other three were deficient in that one was signed by the contractor and not by the recipient, and the second was accomplished before the award of the contract. It should be noted the required FMVSS Certifications are to certify that the FMVSS Stickers have been affixed to the buses in addition to compliance to the FMVSS Standard. Finally, there were no deliveries yet for the third bus procurement.

Advisory Comments

Within 30 days after the date of this report, the recipient should develop procedures and implement management controls to insure compliance with the Pre-Award and Post-Delivery requirements. The FTA Administrator's Dear Colleague Letter C-97-03, dated March 18, 1997, and outlines the steps that a Recipient must take in performing pre-award and post-delivery reviews of rolling stock procurements to ensure their compliance with Buy America Act requirements. This Dear Colleague Letter may be found in Appendix A.2 of the Best Practices Procurement Manual. It must be stressed that Recipients are to document their reviews and include this documentation in their contract files as evidence that they have performed the required reviews. FTA has published manuals that provide detailed guidance to Recipients concerning which Buy America certifications and documents are needed to support the procurement process from issuance of the solicitation to title transfer, as well as the procedures that the Recipient may follow when conducting the pre-award and post-delivery reviews. There are also examples of Buy America calculations and responses to frequently asked questions.

The manuals are: Conducting Pre-Award and Post-Delivery Reviews for Bus Procurements; Document No: FTA DC-90-7713-93-1, Rev. B, dated May 1, 1995 and Conducting Pre-Award

and Post-Delivery Reviews for Rail Vehicle Procurements; Document No: FTA DC-90-7713-94-1, Rev. B, dated May 1, 1995.

Corrective Actions and Implementation Schedule

Omnitrans agrees with this assessment and will update its procedures accordingly and provide training within 30 days.

Reviewer's Comments

The actions planned are sufficient to resolve the finding. However, the finding should remain open until Omnitrans provides to FTA evidence that the procedures have been updated and the training has been completed.

REPORT SUMMARY TABLE

	Element	Basic Requirement	ND	D	NA	Total	Corrective Actions
1	Written Standards of Conduct	FTA C 4220.1F, III, 1.a.b.c.	1			1	
2	Contract Administration System	FTA C 4220.1F, III, 3.	1			1	
3	Written Protest Procedures	FTA C 4220.1F, VII, 1.a.b.	1			1	
4	Prequalification System	FTA C 4220.1F, VI, 1.c.	1			1	
5	Procedures for Ensuring Most Efficient and Economic Purchase	FTA C 4220.1F, IV, 1.b.c.e.	1			1	
6	Procurement Policies & Procedures	FTA C 4220.1F, III, 3.a.		1		1	Corrective Action Taken
7	Independent Cost Estimate	FTA C 4220.1F, VI, 6.	16	3		19	Establish Mgt Controls
8	A&E Geographic Preference	FTA C 4220.1F, VI, 2.a.(4)(g)	19			19	
9	Unreasonable Qualification Requirements	FTA C 4220.1F, VI, 2.a.(4)(a)	19			19	
10	Unnecessary Experience and Bonding	FTA C 4220.1F, VI, 2.a.(4)(e);	19			19	
11	Organizational Conflict of Interest	FTA C 4220.1F, VI, 2.a.(4)(h)	18	1		19	Establish Mgt Controls
12	Arbitrary Action	FTA C 4220.1F, VI, 2.a (4)(j)	19			19	
13	Brand Name Restrictions	FTA C 4220.1F, VI, 2.a (3)(4)(f)	19			19	
14	Geographic Preferences	FTA C 4220.1F, VI, 2.a.(4)(g)	19			19	
15	Contract Term Limitation	FTA C 4220.1F, IV, 2.e.(12)	19			19	
16	Written Procurement Selection Procedures	FTA C 4220.1F, III, 3.a.; VI, 2.e.	19			19	
17	Solicitation Prequalification Criteria	FTA C 4220.1F, VI, 1.c.(1)(2)(3)			19	19	
18	Award to Responsible Contractors	FTA C 4220.1F, VI, 8.b.	19			19	
19	Sound and Complete Agreement	FTA C 4220.1F, IV, 2.b (6)2; IV, 2.b.(6)4	19			19	
20	No Splitting [Micro-purchase]	FTA C 4220.1F, VI, 3.a.(2)(b)	19			19	
21	Fair and Reasonable Price Determination [Micro-purchase]	FTA C 4220.1F, VI, 3.a.(2)(c)	19			19	
22	Micro-Purchase Davis Bacon	FTA C 4220.1F, VI, 3.a.(1)			19	19	
23	Price Quotations[Small Purchase]	FTA C 4220.1F, VI, 3.b.(2)			19	19	
24	Clear, Accurate, and Complete Specification	FTA C 4220.1F, III, 3.a.(1)(b)(d); VI, 2.a.; VI, 3.c.(2)(c)	19			19	
25	Adequate Competition - Two or More Competitors	FTA C 4220.1F, VI, 3.c.(b); VI, 3.d.(2) (c)	19			19	
26	Firm Fixed Price [Sealed Bid]	FTA C 4220.1F, VI, 3.c.(1)(c)	19			19	

REPORT SUMMARY TABLE

	Element	Basic Requirement	ND	D	NA	Total	Corrective Actions
27	Selection on Price [Sealed Bid]	FTA C 4220.1F, VI, 3.c.(1)(d)	19			19	
28	Discussions Unnecessary [Sealed Bid]	FTA C 4220.1F, VI, 3.c.(1)(e)	19			19	
29	Advertised/Publicized	FTA C 4220.1F, VI, 3.c.(2)(a)	19			19	
30	Adequate Solicitation	FTA C 4220.1F, VI, 3.c.(2)(b)	19			19	
31	Sufficient Bid Time [Sealed Bid]	FTA C 4220.1F, VI, 3.c.(2)(d)	19			19	
32	Bid Opening [Sealed Bid]	FTA C 4220.1F, VI, 3.c.(2)(e)	19			19	
33	Responsiveness [Sealed Bid]	FTA C 4220.1F, VI, 3.c.(2)(f)	19			19	
34	Lowest Price [Sealed Bid]	FTA C 4220.1F, VI, 3.c.(2)(d)			19	19	
35	Rejecting Bids [Sealed Bid]	FTA C 4220.1F, VI, 3.c.(2)(g)	19			19	
36	Evaluation [RFP]	FTA C 4220.1F, VI, 3.d.(2)(b)(d)	19			19	
37	Price and Other Factors [RFP]	FTA C 4220.1F, VI, 3.d.(2)(e)	19			19	
38	Sole Source if Other Award is Infeasible	FTA C 4220.1F, VI, 3.i.(1); VI, 3.i(b); VI	19			19	
39	Cost Analysis Required [Sole Source]	FTA C 4220.1F, VI, 6.a.	16	3		19	Establish Mgt Controls
40	Evaluation of Options	FTA C 4220.1F, IV, 1.d.; VI, 7.b; V, 7.a.(1)(c)1	18	1		19	Establish Mgt Controls
41	Cost or Price Analysis	FTA C 4220.1F, VI, 6.a.(2); VI, 6.b.; VI, 6.a.(3)	18	1		19	Establish Mgt Controls
42	Written Record of Procurement	FTA C 4220.1F, III, 3.d.	19			19	
43	Exercise of Options	FTA C 4220.1F, V, 7.a.(1)(a)(b)(c)2			19	19	
44	Out of Scope Changes	FTA C 4220.1F, VI, 3.i.(1) (b)	18	1		19	Establish Mgt Controls
45	Advance Payments	FTA C 4220.1F, IV, 2.b.(5)(b)1,2; IV, 2.b.(5)(b)2,b; IV, 2.b.(5)(b)2b	19			19	
46	Progress Payments	FTA C 4220.1F, IV, 2.b.(5)(c)	17	2		19	Establish Mgt Controls
47	Time & Materials Contracts	FTA C 4220.1F, VI, 2.c.(2)(b)			19	19	
48	Cost Plus Percentage of Cost	FTA C 4220.1F, VI, 2.c.(2)(a)	19			19	
49	Liquidated Damages Provisions	FTA C 4220.1F, IV, 2.b.(6)(b)1	19			19	
50	Piggybacking	FTA C 4220.1F, V, 7.a.(2)	18	1		19	Establish Mgt Controls
51	Qualifications Exclude Price [A&E]	FTA C 4220.1F, VI, 3.f.(3); VI, 3.f.(3)(b); VI, 3.h.	19			19	
52	Serial Price Negotiations [A&E]	FTA C 4220.1F, VI, 3.f.(3)	19			19	
53	Bid Security [Construction Over \$100,000]	FTA C 4220.1F, IV, 2.h.(1)(b)	19			19	

REPORT SUMMARY TABLE

	Element	Basic Requirement	ND	D	NA	Total	Corrective Actions
54	Performance Security [Construction Over \$100,000]	FTA C 4220.1F, IV, 2.h.(1)(b)	19			19	
55	Payment Security [Construction Over	FTA C 4220.1F, IV, 2.h.(1)(c); IV, 2.h.(1)(e)	19			19	
56	Clauses	FTA C 4220.1F, IV, 2.	19			19	
57	Veterans Hiring Preference	FTA C 420.01F, IV, 2.c.(1)(c)			19	19	

ND - Not Deficient

D - Deficient

NA - Not Applicable

DESCRIPTION OF NOT DEFICIENT ELEMENTS

Element 1 – *Written Standards of Conduct*

- (1) The Common Grant Rules require each recipient to maintain written standards of conduct governing the performance of its employees engaged in the award and administration of contracts.
 - (a) ...no employee, officer, agent, or board member, or his or her immediate family member, partner, or organization that employs or is about to employ any of the foregoing may participate in the selection, award, or administration of a contract supported with FTA assistance if a conflict of interest, real or apparent, would be involved. Such a conflict would arise when any of those previously listed has a financial or other interest in the firm selected for award.
 - (b) The recipient's officers, employees, agents, or board members may neither solicit nor accept gifts, gratuities, favors, or anything of monetary value from contractors, potential contractors, or parties to subagreements. The recipient may set minimum rules when the financial interest is not substantial or the gift is an unsolicited item of nominal intrinsic value.
 - (c) To the extent permitted by State or local law or regulations, such standards of conduct will provide for penalties, sanctions, or other disciplinary action for violation of such standards by the recipient's officers, employees, agents, board members, or by contractors or subrecipients or their agents. [FTA C 4220.1F, III, 1.a,b,c]

Element 2 - *Contract Administration System*

THIRD PARTY CONTRACTING CAPACITY. As part of an FTA recipient's obligation to maintain adequate technical capacity to carry out its project and comply with the Common Grant Rules, the recipient's third party contracting capability must be adequate to undertake its procurements effectively and efficiently in compliance with applicable Federal, State, and local requirements. The Common Grant rules require the recipient to maintain a contract administration system to ensure that it and its third party contractors comply with the terms, conditions, and specifications of their contracts or purchase orders and applicable Federal, State and local requirements. Many FTA recipients assign contracting duties to technical, financial or management personnel. If the recipient lacks qualified personnel within its organization to undertake the various procurement tasks, such as drafting specifications, evaluating contracts, or performing internal audits for the recipient, FTA expects the recipient to acquire the necessary services from sources outside the recipient's organization. When using outside sources, the recipient should take appropriate steps to prevent or mitigate organizational conflicts of interest that would result in conflicting roles that might bias a contractor's judgment or would result in unfair competitive advantage. [FTA C 4220.1F, III, 3]

Element 3 – *Written Protest Procedures*

- (1) FTA expects each recipient to have appropriate written protest procedures, as part of its requirement to maintain or acquire adequate technical capacity to implement the project.

DESCRIPTION OF NOT DEFICIENT ELEMENTS

- (a) Recipients are required “to notify FTA when they receive a third party contract protest to which this circular applies, and to keep FTA informed about the status of the protest.
- (b) The protester must exhaust its administrative remedies by pursuing the recipient’s protest procedures to completion before appealing the recipient’s decision to FTA.
- (c) The protestor must be an “interested party,” that is, “a party that is an actual or prospective bidder whose direct economic interest would be affected by the award or failure to award the third party contract at issue.
- (d) FTA will limit its review of third party contract protests as follows:
 - 1. The recipient does not have protest procedures, or
 - 2. Has not complied with its protest procedures, or
 - 3. Has not reviewed the protest when presented an opportunity to do so.
 - 4. When a Federal law or regulation is involved...”FTA will exercise discretionary jurisdiction over those appeals involving issues important to FTA’s overall public transportation program.
- (e) The protestor must deliver its appeal to the FTA Regional Administrator...within five (5) working days of the date when the protestor has received actual or constructive notice of the recipient’s final decision,” or ...”when the protestor has identified other grounds for appeal to FTA,” such as “the recipient’s failure to have or failure to comply with its protest procedures or failure to review the protest.” [FTA C 4220.1F, VII, 1.a.b.]

Element 4 – Prequalification System

A recipient may prequalify people, firms, or products for participation in its procurements provided that:

- (a) ...lists used in acquiring property and services are current.
- (b) ...lists include enough qualified sources to ensure maximum full and open competition.
- (c) The recipient permits potential bidders or proposers to qualify during the solicitation period (from the issuance of the solicitation to its closing date), as set forth in the Common Grant Rule for governmental recipients. Evaluations for prequalification, however, need not be accelerated or truncated. FTA does not require a recipient to hold a particular solicitation open to accommodate a potential bidder or proposer that submits a person, firm, or product for approval before or during that solicitation. [FTA C 4220.1F, VI, 1.a,b,c]

Element 5 – Procedures for Ensuring Most Efficient and Economic Purchase

Proposed procurements should be reviewed to avoid the purchase of property and services the recipient does not need (including duplicative items and unnecessary options)....Consideration should be given to consolidating or breaking out procurements to obtain a more economical purchase... [FTA C 4220.1F, IV, 1.b]

DESCRIPTION OF NOT DEFICIENT ELEMENTS

Element 8 - *A&E Geographic Preference*

Geographic location may be a selection criterion [in procurements for architectural and engineering (A&E) services] provided an appropriate number of qualified firms are eligible to compete for the contract, given the nature and size of the project. [FTA C 4220.1F, VI, 2.a.(4)(g)]

Element 9 – *Unreasonable Qualification Requirements*

Unreasonable requirements placed on bidders or offerors in order for them to qualify to do business. [FTA C 4220.1F, VI, 2.a.(4)(a)]

Element 10 – *Unnecessary Experience and Excessive Bonding*

Unnecessary experience and excessive bonding requirements...FTA does not require any bonding for rolling stock, services, maintenance operations, or any contracts other than construction.... [FTA C 4220.1F, IV, 2.b.h.(1)]

Element 12 – *Arbitrary Action*

Taking any arbitrary action in the procurement process. [FTA C 4220.1F, VI, 2.a.(4)(j)]

Element 13 – *Brand Name Restrictions*

Example of situation restrictive of competition: Specifying only a 'brand name' product instead of allowing an 'or equal' product to be offered or failing to specify the brand name product's salient characteristics. [FTA C 4220.1F, VI, 2.a.(4)(f)]

- (a) Detailed product specifications should be avoided if at all possible in favor of performance specifications. [FTA C 4220.1F, VI, 2.a.(1)]
- (b) When it is impractical or uneconomical to make a clear and accurate description of the technical requirements of the property... a 'brand name or equal' description may be used as a means to define the performance or other salient characteristics of a specific type of property. The recipient, however, must state the salient characteristics of the named brand that offerors must provide. [FTA C 4220.1F, VI, 2.a.(3)]

Element 14 – *Geographic Preference*

Example of situation restrictive of competition: Specifying statutorily or administratively imposed in-State or local geographical preferences or evaluating bids and proposals in light of such in-State or local geographical preferences. Specifically, an FTA recipient is prohibited ...from limiting their bus purchases to in-State dealers. [FTA C 4220.1F, VI, 2.a.(4)(g)]

DESCRIPTION OF NOT DEFICIENT ELEMENTS

Element 15 – *Period of Performance Limitations*

- (a) To comply with 49 U.S.C 5325 (e)(1), a multi-year third party contract to purchase additional rolling stock and replacement parts may not have options that extend more than five years after the date of the original contract.
- (b) FTA interprets this five-year period as covering the recipient's rolling stock and replacement needs from the first day when the contract becomes effective to those at the end of the fifth year. This means that the contract may not encompass more rolling stock and replacement parts than the recipient needs within five years. The five-year rule does not mean delivery, acceptance, or even fabrication must be completed in five years – only that a contract is limited to purchasing no more than the recipient's rolling stock or replacement parts needs for five years based on the effective date of the contract. [FTA C 4220.1F, IV, 2.e.(12)]

Element 16 – *Written Procurement Selection Procedures*

The Common Grant Rule...requires the recipient to have written procurement procedures. [FTA C 4220.1F, III, 3.a.]

The Common Grant Rules require that each solicitation provide for the following...Identify all factors to be used in evaluating bids or proposals. FTA C 4220.1F, VI, 2.e.]

Element 18 - *Award to Responsible Contractors*

A recipient may award a contract ...only to a 'responsible' contractor capable of successfully performing under the terms and conditions of the contract. To determine responsibility, the recipient must consider the following criteria before awarding the contract:

- (1) Integrity. The contractor's integrity;
- (2) Public Policy. The contractor's compliance with public policy;
- (3) Past Performance. The contractor's past performance;
- (4) Financial and Technical Resources. The contractor's financial and technical resources, and;
- (5) Debarment/Suspension. Contractor's status with respect to DOT regulations, 'Government wide Debarment and Suspension (Nonprocurement),' 49 CFR Part 29. [FTA C 4220.1F, VI, 8.b.]

Element 19 - *Unreasonable Qualification Requirements*

Example of situation restrictive of competition: "Unreasonable requirements placed on bidders or offerors in order for them to qualify to do business" [FTA C 4220.1F, VI, 2.a. (4) (a)]

Element 20 – *No Splitting [Micro-purchases]*

...there should be...no splitting of procurements to avoid competition. [FTA C 4220.1F, VI, 3.a.]

DESCRIPTION OF NOT DEFICIENT ELEMENTS

(c) The Common Grant Rule...advises the recipient to describe technical requirements in terms of 'functions to be performed or performance required, including the range of acceptable characteristics or minimum acceptable standards. [FTA C 4220.1F, III, 3.a.(1)(d)]

(d) In order for sealed bidding to be feasible, the following conditions should be present: A complete, adequate, and realistic specification or purchase description is available. [FTA C 4220.1F, VI, 3.c.(1)(a)]

If this procurement method is used...the invitation for bids will include any specifications and pertinent attachments...in order for the bidder to properly respond. [FTA C 4220.1F, VI, 3.c.(2)(c)]

Element 21 – *Fair and Reasonable Price Determination*

FTA's only documentation requirement for micro-purchases is a determination that the price is fair and reasonable and a description of how the recipient made this determination. [FTA C 4220.1F, VI, 3.a.(2)(c)]

Element 24 - Clear, Accurate, and Complete Specification

(a) Each solicitation must provide a clear and accurate description of the technical requirements for the property or services to be procured. [FTA C 4220.1F, VI, 2.a.]

(b) In competitive procurements, the description may not contain features that unduly restrict competition. [FTA C 4220.1F, III, 3.a.(1)(b)]

(c) The Common Grant Rule ... advises the recipient to describe technical requirements in terms of 'functions to be performed or performance required, including the range of acceptable characteristics or minimum acceptable standards.' [FTA C 4220.1F, III, 3.a.(1)(d)]

(d) In order for sealed bidding to be feasible, the following conditions should be present: A complete, adequate, and realistic specification or purchase description is available. [FTA C 4220.1F, VI, 3.c.(1)(a)]

(e) If this procurement method is used...the invitation for bids will include any specifications and pertinent attachments...in order for the bidder to properly respond. [FTA C 4220.1F, VI, 3.c.(2)(c)]

Element 25 – *Adequate Competition - Two or More Competitors*

In order for sealed bidding to be feasible, the following conditions should be present: ...Two or more responsible bidders are willing and able to compete effectively for the business. [FTA C 4220.1F, VI, 3.c.(1)(b)]

DESCRIPTION OF NOT DEFICIENT ELEMENTS

A Competitive proposal is a procurement method normally conducted with more than one source submitting an offer or proposal. [FTA C 4220.1F, VI, 3.d.(2)(c)]

Element 26 – *Firm Fixed Price [Sealed Bid]*

...the procurement lends itself to a firm fixed price contract. [FTA C 4220.1F, VI, 3.c.(1)(c)]

Element 27 – *Selection on Price [Sealed Bid]*

...the selection of the successful bidder can be made on the basis of price and those price-related factors included in the solicitation. [FTA C 4220.1F, VI, 3.c.(1)(d)]

Element 28 – *Discussions Unnecessary [Sealed Bid]*

No discussion with bidders is needed. [FTA C 4220.1F, VI, 3.c.(1)(e)]

Element 29 – *Advertised/Publicized*

...sealed bidding (is) a procurement method in which bids are publicly solicited. FTA C 4220.1F, VI, 3.c.]

The invitation for bids will be publicly advertised. [FTA C 4220.1F, VI, 3.c.(2)(a)]

Procurement Procedures. The following procedures apply to procurements by competitive proposals: (a) Publicity. The request for proposals is publicly advertised. [FTA C 4220.1F, VI, 3.d.(2)(a)]

Element 30 – *Adequate Solicitation*

Bids shall be solicited from an adequate number of known suppliers... [FTA C 4220.1F, VI, 3.c.(2)(b)]

Procurement Procedures. The following procedures apply to procurements by competitive proposals: (c) Adequate Sources. Proposals are solicited from an adequate number of qualified sources. [FTA C 4220.1F, VI, 3.d.(2)(c)]

Element 31 – *Sufficient Bid Time [Sealed Bid]*

The Common Grant Rule for governmental recipients acknowledges sealed bidding to be a generally accepted procurement method...Procurement using sealed bids is appropriate if: ...Bidders are allowed sufficient time to prepare bids before the date of bid opening. [FTA C 4220.1F, VI, 3.c.(2)(d)]

DESCRIPTION OF NOT DEFICIENT ELEMENTS

Element 32 – *Bid Opening [Sealed Bid]*

All bids will be publicly opened at the time and place prescribed in the invitation for bids. [FTA C 4220.1F, VI, 3.c.(2)(e)]

Element 33 – *Responsiveness [Sealed Bid]*

The Common Grant Rule for governmental recipients acknowledges sealed bidding to be a generally accepted procurement method...Procurement using sealed bids is appropriate if: ...A firm fixed price contract is...awarded to the lowest responsive and responsible bidder. [FTA C 4220.1F, VI, 3.c.(2)(f)]

Element 35 – *Rejecting Bids [Sealed Bid]*

Any or all bids may be rejected if there is a sound, documented business reason. [FTA C 4220.1F, VI, 3.c.(2)(g)]

Element 36 – *Evaluation [RFP]*

If this procurement method is used the following requirements apply: ...

- (a) All evaluation factors will be identified in the procurement documents along with their relative importance; numerical or percentage ratings or weights, however, need not be disclosed... [FTA C 4220.1F, VI, 3.d.(2)(b)]
- (b) The recipient will have a method in place for conducting technical evaluations of the proposals received and for selecting awardees. [FTA C 4220.1F, VI, 3.d.(2)(d)]

Element 37 – *Price and Other Factors*

If this procurement method is used the following requirements apply: ...Award will be made to the responsible firm whose proposal is most advantageous to the recipient's program with price and other factors considered. [FTA C 4220.1F, VI, 3.d.(2)(e)]

Element 38 - *Sole Source if Other Award is Infeasible*

Procurement by noncompetitive proposals may be used only when the award of a contract is infeasible under small purchase procedures, sealed bids, or competitive proposals and at least one of the following circumstances applies. [FTA C 4220.1F, VI, 3.i.(1)]

Element 42 - *Written Record of Procurement*

The Common Grant Rules require the recipient to maintain...written records detailing the history of each procurement, as follows:

DESCRIPTION OF NOT DEFICIENT ELEMENTS

- a. Procurement Method. ...the rationale for the method of procurement, including a sole source justification for any acquisition that does not qualify as competitive;
- b. Contract Type. ...state the reasons for selecting the contract type (fixed price, cost reimbursement, etc.);
- c. Contractor Selection. ...state the reasons for contractor selection or rejection... include a written responsibility determination for the successful contractor.
- d. Cost or Price. Each recipient must evaluate and state its justification for the contract cost or price.” [FTA C 4220.1F, III, 3.d.(1)]

Element 45 – Advance Payments

Advance payments are payments made to a contractor before the contractor incurs costs in the performance of the contract. The following principles and restrictions apply:

- (a) Use of FTA Funds Prohibited. FTA does not authorize the use of Federal assistance to make payments to a third party contractor before the contractor has incurred the costs for which the payments would be attributable....A recipient that seeks to use FTA or local share funds to support advance payments should contact its Regional Office to obtain FTA concurrence. [FTA C 4220.1F, IV, 2.b.(5)(b).1,2]
- (b) Customary Advance Payments. FTA concurrence is required only when advance payment or payments *customarily required* in the market place exceed \$100,000. [The circular notes that advance payments falling into this category would include such things as utility services, and subscriptions to newspapers and magazines.] [FTA C 4220.1F, IV, 2.b.(5)(b)2,b]

A contract change that is not within the scope of the original contract is considered a sole source procurement.... [FTA C 4220.1F, VI, 3.i.(1)(b)]

Element 48 - Cost Plus Percentage of Cost

The Common Grant Rules expressly prohibit the use of the cost plus a percentage of cost and percentage of construction cost methods of contracting. [FTA C 4220.1F, VI, 2.c.(2)(a)]

Element 49 - Liquidated Damages

Delay. FTA has determined that a recipient may use liquidated damages if the recipient reasonably expects to suffer damages through delayed contract completion and the extent or amount of such damages would be difficult or impossible to determine. The rate and measurement period must be specified in the third party contract and may not be excessive. The assessment for damages is usually established at a specific rate per day for each day beyond the contract’s delivery date or performance period, but a measurement period other than a day may be established if appropriate. Any liquidated damages recovered shall be credited to the project account involved unless the FTA permits otherwise. [FTA C 4220.1F, IV, 2.b.(6)(b)1]

DESCRIPTION OF NOT DEFICIENT ELEMENTS

Element 51 - *Qualifications Exclude price [A&E]*

When Required. Qualifications-based proposal procedures are required for projects related to or leading to a construction project. These procedures must be used not only when contracting for architectural and engineering services, but also for program management, construction management, feasibility studies, preliminary engineering, design, architectural, engineering, surveying, mapping, and related services. Recipients shall use qualifications-based competitive proposal procedures [i.e. Brooks Act Procedures when contracting for A&E services as defined in 40 U.S.C. Sections 1101-1104 and 49 U.S.C. Section 5325(b)(1)]. When this procurement method is used, the following requirements apply: [FTA C 4220.1F, VI, 3.f.(3)]

- (a) Qualifications. An offeror's qualifications must be evaluated.
- (b) Price. Price is excluded as an evaluation factor. [FTA C 4220.1F, VI, 3.f.(3)(b)]
- (c) Design-Build. An FTA recipient must procure design-build services through means of qualifications-based competitive proposal procedures based on the Brooks Act...when the preponderance of the work to be performed is considered to be for architectural and engineering, program management, construction management, feasibility studies, preliminary engineering, design, architectural, engineering, surveying, mapping, or related A&E services. (A&E) services...qualifications-based competitive proposal procedures may not be used to procure design-build services when the preponderance of the work to be performed are services other than those listed in the previous sentence, unless required by State law." [FTA C 4220.1F, VI, 3.h.]

Element 52 – *Serial Price Negotiations [A&E and Other Services]*

When this procurement method is used, the following requirements apply:

- (a) Most Qualified. Negotiations are conducted with only the most qualified offeror; and
- (b) Next Most Qualified. Failing agreement on price, negotiations with the next most qualified offeror and, if necessary, negotiations with successive offerors in descending order must be conducted until a contract award can be made to the offeror whose price the recipient believes is fair and reasonable. [FTA C 4220.1F, VI, 3.f.(3)]

Element 53 - *Bid Security [Construction over \$100,000]*

Bonding. The Common Grant Rules require bonds for all construction contracts except to the extent FTA determines that the Federal interest is adequately protected through other arrangements. [FTA C 4220.1F, IV, 2.h.(1)(a)]

Element 54 - *Performance Security [Const. Over \$100,000]*

Bonding. The Common Grant Rules require bonds for all construction contracts except to the extent FTA determines that the Federal interest is adequately protected through other arrangements. FTA's bonding policies are as follows:

DESCRIPTION OF NOT DEFICIENT ELEMENTS

- (a) Performance Bond. Both FTA and the Common Grant Rules require 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. [FTA C 4220.1F, IV, 2.h.(1)(b)]

Element 55 - Payment Security [Const. Over \$100,000]

Bonding. The Common Grant Rules require bonds for all construction contracts except to the extent FTA determines that the Federal interest is adequately protected through other arrangements. FTA’s bonding policies are as follows:

- (a) Payment Bond. A ‘payment bond’ is one executed in connection with a contract to assure payment as required by law of all people supplying labor and material in the execution of the work provided for in the contract. FTA has determined the following payment bond amounts are adequate to protect FTA’s interest and will accept a local bonding policy that meets the following minimums:
- (1) Less Than \$1 Million. Fifty percent of the contract price if the contract price is not more than \$1 million;
 - (2) More Than \$1 Million but Less Than \$5 Million. Forty percent of the contract price if the contract price is more than \$1 million but not more than \$5 million; or
 - (3) More Than \$5 Million. Two and a half million dollars if the contract price is more than \$5 million.” [FTA C 4220.1F, IV, 2.h.(1)(c)]

A recipient that wishes to adopt less stringent bonding requirements, for a specific class of projects, or for a particular project, may submit its policy and rationale to its FTA Regional Office for approval. [FTA C 4220.1F, IV, 2.h.(1)(e)]

Element 56 - Statutory and Regulatory Requirements (Clauses)

The FTA Circular states: “FTA’s Master Agreement contains a current but not all inclusive and comprehensive list of statutory and regulatory requirements that may affect a recipient’s procurement (such as Disadvantaged Business Enterprise (DBE) and, Clean Air requirements). Recipients are responsible for evaluating these requirements for relevance and applicability to each procurement.” [FTA C 4220.1F, IV, 2]

**OMNITRANS
RESPONSE DATED OCTOBER 22, 2015**

ITEM # E5

DATE: April 6, 2016

TO: Board Chair Sam Spagnolo and Members of the Omnitrans Board of Directors

THROUGH: P. Scott Graham, CEO/General Manager

FROM: Maurice A. Mansion, Treasury Manager

SUBJECT: FISCAL YEAR 2016-2017 BUDGET ASSUMPTIONS

FORM MOTION

Approve the assumptions listed below to develop the Operating and Capital Budgets for Fiscal Year 2016 - 2017.

This item was reviewed by the Administrative and Finance Committee at its March 10, 2016 meeting, and recommended for approval by the Board of Directors.

BACKGROUND

A critical component in the development of the Agency's budget is the development of budget assumptions. This information was obtained through research performed and includes searches on the Internet, review of Agency data, including the Service Plan assumptions and the Teamsters' and the Amalgamated Transit Union's Memorandums of Understanding.

Maintenance and Administrative/Support Unit (Teamsters)	Effective Date
MOU End	June 30, 2016
Wage increase: Based on contract negotiation	2.75%
Step progression increase	MOU qualifications
Benefits Package: Package is \$525.00 per pay period; maximum of \$12,600/year.	9/01/2015
Source: MOU effective July 1, 2013 through June 30, 2016	
Negotiations to start.	

Coach Operators (ATU)	Effective Date
MOU End	March 31, 2016
Wage increase: Based on contract negotiation	2.75%
Step progression increase	MOU qualifications
Benefit Package: Package is \$537.50 - Single/Two party per pay	9/01/2015
Period; \$572.50 - Family; Maximum of \$12,900/year and \$13,740 /year.	
Source: MOU effective April 1, 2013 through March 31, 2016	
Currently in negotiations.	
Management /Confidential	Effective Date
Pay for Performance: In accordance with Personnel Policy Manual	FY 2016-17
Benefit Package: In accordance with Personnel Policy Manual	FY 2016-17
Source: Omnitrans Human Resources	
Insurance	Effective Date
Workers' Compensation SIR/IBNR – Stays constant based on Actuarial Analysis	Fiscal Year 2016
SDI: .9%	FY 2016-17
FICA-Medicare 1.45%	FY 2016-17
Source: Omnitrans Finance Department	
CalPERS	Effective Date
12.464% Employer Contribution (2% @55 Plan and 2% @62 Plan) – Miscellaneous Plan	FY 2016-17
Employee contribution covered in employees' benefits package per Personnel Policy Manual and MOU agreements.	
Source: Omnitrans Finance Department	
Unemployment	Effective Date
Annual average expected to remain at 5.9%	December 2015
Source: U.S. Department of Labor	
Riverside/San Bernardino/Ontario CA Metropolitan Statistical Area	
http://www.bls.gov/eag/eag.ca_riverside_msa.htm	
Energy /Fuel Costs	Effective Date
LNG Fuel: \$.6550/gallon for FY 16-17	FY 2016-17
Source: Finance Department	
Unleaded Fuel: \$2.48/gallon for FY 16-17	FY 2016-17
Source: Finance Department	

Consumer Price Index	Effective Date
Inflation of about 3.3%	January 2016
Source: U.S. Department of Labor	
http://www.bls.gov/eag/eag.ca_riverside_msa.htm	

CONCLUSION

Approval of the budget assumptions will allow Omnitrans to develop the budget for Fiscal Year 2017, which will be presented to the Board of Directors for approval in May.

PSG:DW:MM

ITEM # E6

DATE: April 6, 2016

TO: Board Chair Sam Spagnolo and Members of the Omnitrans Board of Directors

THROUGH: P. Scott Graham, CEO/General Manager

FROM: Jennifer M. Sims, Director of Procurement

**SUBJECT: RATIFY CHANGE ORDER 1 – PURCHASE ORDER 4500021954, STAKE
BED TRUCKS MONTH-TO-MONTH LEASE**

FORM MOTION

Ratify Change Order 1 to extend Purchase Order 4500021954 for the lease of five (5) Stake Bed Trucks with Enterprise Fleet Management, of Ontario, CA to April 30, 2016, and increase the amount by an additional \$30,000, plus a 3.27% Cost Allocation Plan (CAP) of \$981 for a total amount of \$30,981 for end of lease settlement fees for a new total not-to-exceed amount of \$45,958.

BACKGROUND

On March 4, 2015, Omnitrans' Board of Directors approved award of a sole source Purchase Order to Enterprise Fleet Management for a month-to-month extension of five (5) Stake Bed Trucks beginning June 1, 2015 and ending no later than November 30, 2015, for a total not-to-exceed amount of \$15,958.20 to allow for the solicitation and delivery of new trucks. The new trucks were delivered January 7, 2016. The final leased truck is scheduled for return by no later than the end of April.

Upon receipt of the new vehicles, the aftermarket equipment and tools installed on the old vehicles needed to be removed and reinstalled on the new trucks before being put into service. Unless there is an economic benefit to take receipt of the vehicles all at once, future deliveries will be staggered to allow sufficient time for the de-commissioning and re-commissioning of equipment and appropriate time added to the procurement process to avoid a recurrence.

Lease settlement fees were higher than anticipated due to mileage overages, chargeable damages, and transport. These trucks are used for the maintenance, cleanup and graffiti abatement by the Stops and Stations staff.

FUNDING SOURCE

FUNDING	GRANT #	YEAR	PROJECT NAME	INTERNAL ORDER	AMOUNT
FTA	CA-90-Y775	2010		D1020602F	\$ 3,481
FTA	CA-90-Z112	2014		D1421101F	\$21,304
STA	12-09-OMNB	2012		D0821101S	\$ 6,196
Total					\$ 30,981

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

Short Range Transit Plan/Strategic Initiative Supported – N/A

CONCLUSION

Ratification of Change Order 1 will allow Omnitrans to settle the leases on five (5) trucks and pay the outstanding invoices.

PSG:JMS:KT

ITEM # E7

DATE: April 6, 2016

TO: Board Chair Sam Spagnolo and Members of the Omnitrans Board of Directors

THROUGH: P. Scott Graham, CEO/General Manager

FROM: Jennifer M. Sims, Director of Procurement

**SUBJECT: AUTHORIZE RELEASE – IFB-MNT16-109
MISCELLANEOUS BULK OILS AND LUBRICANTS**

FORM MOTION

Authorize the CEO/General Manager to release Invitation for Bids IFB-MNT16-109 for the provision of Miscellaneous Bulk Oils and Lubricants for a three (3) year base period and two (2) single year options, beginning July 1, 2016 and ending no later than June 30, 2021.

BACKGROUND

Omnitrans requires lubricants such as motor oil, automatic transmission fluid, gear oil, etc., to perform preventative maintenance on Omnitrans' fleet of revenue vehicles. The awarded supplier(s) will provide and deliver oils and lubricants to Omnitrans' East Valley and West Valley facilities.

The current Contracts' Option Year 2 is due to expire on July 31, 2016. In order to consolidate multiple contracts and include lubricants not currently under contract, a new solicitation is required.

In accordance with the Procurement Policy 2000, Section 2.3.5.1.3 and FTA Circular 4220.1F, Board authorization and use of a formal procurement procedure is required to release Invitation for Bids for procurements for good/services exceeding \$100,000. The Independent Cost Estimate for this project is \$1,046,717 for a five-year period.

FUNDING SOURCE

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

Department Number	1200
Expenditure Codes	504120, 504130

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

Short Range Transit Plan/Strategic Initiative Supported – This procurement supports Omnitrans' Short Range Transit Plan goal to expand, maintain and improve existing vehicles, facilities and passenger amenities.

CONCLUSION

By proceeding with this solicitation, Omnitrans will have the ability to perform preventative maintenance as needed on Omnitrans fleet of revenue vehicles.

PSG:JMS:KT

ITEM # E8

DATE: April 6, 2016

TO: Board Chair Sam Spagnolo and Members of the Omnitrans Board of Directors

THROUGH: P. Scott Graham, CEO/General Manager

FROM: Wendy Williams, Director of Marketing & Planning

**SUBJECT: COOPERATIVE SERVICE AGREEMENTS WITH VICTOR VALLEY
TRANSIT AUTHORITY AND MOUNTAIN TRANSIT**

FORM MOTION

Authorize the CEO/General Manager to sign the Cooperative Service Agreement between Omnitrans and the Victor Valley Transit Authority (VVTa); and.

Authorize the CEO/General Manager to sign the Cooperative Service Agreement between Omnitrans and the Mountain Transit (MT).

This item was reviewed by Omnitrans' special legal counsel. This item was reviewed at the Plans and Programs Committee at its March 24, 2016, meeting, and is being moved forward to the Board without Committee recommendation as a quorum was not present.

BACKGROUND

Omnitrans maintains Cooperative Service Agreements (CSAs) with each of Omnitrans' neighboring transit agencies. These agreements govern the sharing of information, coordination of schedules, maintenance of shared stops and customer transfer agreements. Omnitrans currently has CSAs with Riverside Transit Agency (RTA), Foothill Transit, Victor Valley Transit Agency (VVTa), Orange County Transportation Authority (OCTA), Mountain Transit, Metrolink, and Los Angeles County Metropolitan Transportation Authority (METRO).

As agencies' services and fare practices change, the agreements require updating. During the SANBAG-led Transit Efficiency Study, one of recommendations that was made was to update the CSAs between the county transit operators in order to have similar language for each CSA, which makes it easier for the operators to implement and also easier for customers to understand.

Omnitrans existing CSA with MT was last updated in 1999. The crux of the agreement remains the same in the current CSA. The transfer policy on all multi-use fares (Full-fare, Senior, Disabled, Medicare, Youth and Veteran) is that Mountain Transit will provide Omnitrans riders with a one dollar (\$1) discount on connecting MT services. Omnitrans will offer a free-transfer

to all MT riders with a valid and unexpired pass at a point of connection. Despite one being a \$1 discount and one being free, the relative value of each is similar. Mountain Transit's regular fare for Off-The-Mountain service ranges from \$4.50 to \$10.00 prior to the discount.

Omnitrans existing CSA with VVTA was last updated in 2014. The crux of the agreement remains the same in the current CSA. The transfer policy on all multi-use fares (Full-fare, Senior, Disabled, Medicare, Youth and Veteran) is that VVTA will provide Omnitrans riders with a one dollar (\$1) discount on connecting VVTA services. Omnitrans will offer a free-transfer to all VVTA riders with a valid and unexpired pass at a point of connection. Despite one being a \$1 discount and one being free, the relative value of each is similar. VVTA's regular fare on the BV Link ranges from \$6.00 to \$12.00 depending on distance traveled.

CONCLUSION

Approval of these Cooperative Service Agreements will improve the ease of transferability between Omnitrans and VVTA and between Omnitrans and MT while adding no additional cost to Omnitrans.

PSG:WW:JB

INTERAGENCY TRANSFER COOPERATIVE SERVICE AGREEMENT
Between
OMNITRANS
AND
VICTOR VALLEY TRANSIT AUTHORITY

This Cooperative Agreement ("AGREEMENT") is effective on the _____ day of _____, 2016, by and between Omnitrans ("OMNITRANS"), a public agency formed under a Joint Powers Agreement, whose address is 1700 West Fifth St., San Bernardino, California, 92411, and Victor Valley Transit Authority ("VVTA"), a public agency formed under a Joint Powers Agreement, whose address is address, 17150 Smoketree St., Hesperia, California, 92345. OMNITRANS and VVTA are each a "Party" and collectively the "Parties" as identified herein.

RECITALS:

WHEREAS, the Parties are public transit operators in San Bernardino County and this region is an integrated economic entity resulting in travel demands not necessarily constrained by transit agency jurisdictional boundaries; and

WHEREAS, the Parties desire to enter into this AGREEMENT to facilitate passenger transfers, service planning and interagency coordination between the Parties' systems and thereby provide greater convenience and mobility for public transportation users; and

WHEREAS, the Parties have expressed a desire to continue and enhance cooperative efforts for the provision of public transportation; and

WHEREAS, this AGREEMENT shall supersede any and all previous interagency transfer service agreements between the Parties.

NOW, THEREFORE, OMNITRANS and VVTA in consideration of the mutual covenants hereinafter set forth and intending to be legally bound hereby agree as follows:

1. **Term.** This AGREEMENT shall commence upon execution by the Parties, hereinafter referred to as the "AGREEMENT Effective Date", and shall continue in full force until terminated or amended by the Parties providing a minimum of thirty (30) day written notice to the other Party.
2. **Complete Agreement.** This AGREEMENT, including any exhibits and documents incorporated herein and made applicable by reference, constitutes the complete and exclusive statement of the terms and conditions of the AGREEMENT between OMNITRANS and VVTA concerning interagency transfer cooperative services, and supersedes all prior representations, understandings, and communications between the parties. The above-referenced Recitals are true and correct and are incorporated by reference herein.
3. **Transfer Service Coordination**
 - a. OMNITRANS is the public transit agency serving the San Bernardino Valley, operating local bus routes, express bus routes, sbX rapid bus transit service, OmniGo hometown shuttle service, and Access, a paratransit service for the disabled. OMNITRANS public transit services do not currently travel into the VVTA service territory.
 - b. VVTA is a public transit agency and consolidated transportation services agency providing fixed route bus, paratransit, vanpool and commuter services to the Cities of

Adelanto, Apple Valley, Barstow, Hesperia, Victorville and unincorporated areas of the San Bernardino County high desert.

- c. VVTA's Barstow to Victorville "B-V Link" Lifeline service ("Route 15") connects Barstow and the Victor Valley to bus stop locations in the Cities of San Bernardino and Fontana in the OMNITRANS service territory. Service is currently provided Monday through Friday.
- d. Upon proof of a valid and unexpired VVTA Route 15 one-way ticket or one-day pass or VVTA Monthly MEGA Pass, OMNITRANS shall permit the VVTA passenger to board an OMNITRANS connecting bus at a point of connection to Route 15 (BV-Link) at no charge. The no charge transfer provided for herein cannot be used on OMNITRANS' Access Service.
- e. Upon proof of a valid and unexpired OMNITRANS full cash fare or any valid and unexpired OMNITRAN's 1-Day, 7-Day, or 31-Day pass media, VVTA shall reduce the B-V Link fare for a regular fare passenger by \$1.00.

4. Bus Stops.

- a. The Parties agree to cooperate in the location, installation and maintenance of all jointly used bus stops, including use of the other Party's poles and posts at joint transfer points.
- b. Each Party agrees to be solely responsible for claims or damages arising out of its installation of its bus stop signs or passenger amenities.
- c. The Parties agree to the establishment of bus stops in the other's service area, subject to approval of each specific stop and to all local, state and federal laws, ordinances and regulations.
- d. The Parties shall be responsible for obtaining any required licenses or permits and paying any necessary fees in order to establish bus stops, install amenities or operate service in either service area.
- e. The Parties may negotiate regarding boarding restrictions within their respective service areas where duplication of service or potential revenue loss may occur.

5. Operational Information.

- a. So as to provide greater convenience and mobility for public transit users, the Parties agree to facilitate minimization of passenger waiting time and shall coordinate schedules for connecting routes whenever practical.
- b. Each Party shall inform the other of future plans for changes to existing connecting service/routes, schedules and fares, as well as future plans for new connecting service/routes, schedules and fares, exclusive of temporary demand and/or emergencies, that would affect either Party in their operating area as well as this AGREEMENT.
- c. Each Party shall provide, upon request, data that is readily available that impacts the other Party's stops and boardings, including, but not limited to passenger boardings and alightings by stop.
- d. Each Party shall be responsible for training their drivers/coach operators on the terms, conditions and operating procedures of this AGREEMENT, to best facilitate AGREEMENT implementation.

- 6. **Public Information.** The Parties shall cooperate, to the extent feasible, in providing the general public with specific transit information and in advertising of operations of both Parties' services, in promoting the general use of public transit.

- 7. **Fares.** Fares may vary in accordance with the adopted policies of each Party. The operator of a service shall retain all fares and other revenues collected with respect to that service.

The Parties shall notify each other thirty (30) days in advance of adopting any fare changes that might affect any aspect of transfer privileges.

8. **Claims/Payments.** There shall be no payment by either Party to the other for claims for fare revenues collected by either Party. There shall be no reimbursement of operating expenses by either Party.
9. **Indemnification.**
 - a. Omnitrans, acting as an independent contractor, agrees to indemnify, defend and hold harmless VVTA, its member agencies, officers, directors, employees, and agents from and against any and all claims, liabilities, and actions whether legal, equitable or administrative, and costs and expenses (including attorney's fees and reasonable expenses for litigation or settlement) for any loss or damages, bodily injuries, including death, damage to or loss of use of property caused by the negligent acts, omissions, or willful misconduct by OMNITRANS, its officers, directors, employees, or agents in connection with or arising out of the performance of services under this AGREEMENT. This obligation shall not apply to negligent acts, omissions or willful misconduct of VVTA, its officers, directors, employees, or agents.
 - b. VVTA agrees to indemnify, defend and hold harmless OMNITRANS, its member agencies, officers, directors, employees, and agents from and against any and all claims, liabilities, and actions whether legal, equitable or administrative, and costs and expenses (including attorney's fees and reasonable expenses for litigation or settlement) for any loss or damages, bodily injuries, including death, damage to or loss of use of property caused by the negligent acts, omissions, or willful misconduct by VVTA, its officers, directors, employees, or agents in connection with or arising out of the performance of this AGREEMENT. This obligation shall not apply to negligent acts, omissions or willful misconduct of OMNITRANS, its officers, directors, employees, or agents.
10. **Venue.** This AGREEMENT shall be construed and interpreted solely in accordance with the laws of the State of California.
11. **Binding Provisions.** The persons executing this AGREEMENT on behalf of the Parties hereto warrant that they are duly authorized to execute this AGREEMENT on behalf of said Parties and that, by so executing this AGREEMENT, the Parties hereto are formally bound to the provisions of this AGREEMENT.
12. **Notices.** All notices hereunder and communications required or permitted by this AGREEMENT, or changes thereto, or by law to be served on, given to or delivered to any other Party hereto by any other Party to this AGREEMENT shall be in writing or authorized in writing, and may be sent by regular mail, email or FAX. Any such notice shall be addressed to:

Notices to OMNITRANS:

Name:	Mr. Scott Graham
Title:	Chief Executive Officer/General Manager
Address:	1700 West Fifth St.
City, State Zip:	San Bernardino, California, 92411
Email:	Scott.Graham@omnitrans.org

FAX: 909-889-5779

Notices to VVTA:

Name: Mr. Kevin Kane
Title: Executive Director
Address: 17150 Smoketree St
City, State Zip: Hesperia, California, 92345
Email: kkane@vvta.org
FAX: 760-948-1380

13. Other Provisions.

- a. The headings of all sections of this AGREEMENT are inserted solely for the convenience of reference and are not part of and not intended to govern, limit, or aid in the construction or interpretation of any terms or provision thereof.
- b. The provision of this AGREEMENT shall bind and inure to the benefit of each of the Parties hereto and all successors or assigns of the Parties hereto.
- c. If any term, provision, covenant, or condition of this AGREEMENT is held to be invalid, void or otherwise unenforceable, to any extent, by any court of competent jurisdiction, the remainder to this AGREEMENT shall not be affected thereby, and each term, provision, covenant or condition of this AGREEMENT shall be valid and enforceable to the fullest extent permitted by law.
- d. This AGREEMENT may be executed and delivered in any number of counterparts, each of which, when executed and delivered shall be deemed an original and all of which together shall constitute the same AGREEMENT. Secure electronic signatures will be permitted.
- e. This AGREEMENT may be amended in writing at any time by the mutual consent of the Parties. No amendment shall have any force or effect unless executed in writing by the Parties. The Parties agree that non-financial administrative changes, such as changes in service schedules or locations, etc., may be approved administratively without re-approval by the Agencies' Boards of Directors.
- f. Neither this AGREEMENT, nor any of a Party's rights, obligations or duties hereunder may be assigned in whole or in part by either Party without the prior written consent of the other Party. Any such attempt of assignment shall be deemed void and of no force and effect. Consent to one assignment shall not be deemed consent to any subsequent assignment, nor the waiver of any right to consent to such subsequent assignment.
- g. The Parties warrant that, in the performance of this AGREEMENT, they shall comply with all applicable federal, state and local laws, statutes and ordinances and lawful orders, rules and regulations promulgated thereunder.
- h. Either Party shall be excused from performing its obligations under this AGREEMENT during the time and to the extent that it is prevented from performing by an unforeseeable cause beyond its control, including but not limited to: any incidence of fire, flood, acts of God, commandeering of material, products, plants or facilities by the federal, state or local government, national fuel shortage, or a material act or omission by the other Party, when satisfactory evidence of such cause is presented to the other Party, and provided further that such nonperformance is unforeseeable, beyond the control and is not due to the fault or negligence of the Party not performing.

IN WITNESS WHEREOF, this AGREEMENT constitutes the entire understanding of the Parties hereto, and there are no other requirements, premises, warranties, covenants or undertakings with respect thereto, and have made and executed this AGREEMENT as of the day and year first above written.

OMNITRANS

VICTOR VALLEY TRANSIT AUTHORITY

By: _____
P. Scott Graham
CEO/General Manager

By: _____
Kevin Kane
Executive Director

Date: _____

Date: _____

APPROVED AS TO FORM:

APPROVED AS TO FORM:

By: _____

By: _____

Name/Title: _____ Name/Title: _____

DRAFT

INTERAGENCY TRANSFER COOPERATIVE SERVICE AGREEMENT
Between
OMNITRANS
AND
MOUNTAIN AREA REGIONAL TRANSIT AUTHORITY

This Cooperative Agreement ("AGREEMENT") is effective on the _____ day of _____, 2016, by and between Omnitrans ("OMNITRANS"), a public agency formed under a Joint Powers Agreement, whose address is 1700 West Fifth St., San Bernardino, California, 92411, and Mountain Area Regional Transit Authority ("MT"), a public agency formed under a Joint Powers Agreement, whose address is address, 41939 Fox Farm Road, Big Bear Lake, California, 92315. OMNITRANS and MT are each a "Party" and collectively the "Parties" as identified herein.

RECITALS:

WHEREAS, the Parties are public transit operators in San Bernardino County and this region is an integrated economic entity resulting in travel demands not necessarily constrained by transit agency jurisdictional boundaries; and

WHEREAS, the Parties desire to enter into this AGREEMENT to facilitate passenger transfers, service planning and interagency coordination between the Parties' systems and thereby provide greater convenience and mobility for public transportation users; and

WHEREAS, the Parties have expressed a desire to continue and enhance cooperative efforts for the provision of public transportation; and

WHEREAS, this AGREEMENT shall supersede any and all previous interagency transfer service agreements between the Parties.

NOW, THEREFORE, OMNITRANS and MT in consideration of the mutual covenants hereinafter set forth and intending to be legally bound hereby agree as follows:

1. **Term.** This AGREEMENT shall commence upon execution by the Parties, hereinafter referred to as the "AGREEMENT Effective Date", and shall continue in full force until terminated or amended by the Parties providing a minimum of thirty (30) day written notice to the other Party.
2. **Complete Agreement.** This AGREEMENT, including any exhibits and documents incorporated herein and made applicable by reference, constitutes the complete and exclusive statement of the terms and conditions of the AGREEMENT between OMNITRANS and MT concerning interagency transfer cooperative services, and supersedes all prior representations, understandings, and communications between the parties. The above-referenced Recitals are true and correct and are incorporated by reference herein.
3. **Transfer Service Coordination**
 - a. OMNITRANS is the public transit agency serving the San Bernardino Valley, operating local bus routes, express bus routes, sbX rapid bus transit service, OmniGo hometown shuttle service, and Access, a paratransit service for the disabled. OMNITRANS public transit services do not currently travel into the MT service territory.
 - b. MT is a public transit agency providing fixed route bus, Dial-A-Ride, and fixed route commuter services to the City of Big Bear Lake and unincorporated areas of the San

Bernardino Mountain Communities, including Running Springs, Lake Arrowhead, Crestline and Big Bear City.

- c. MT's provides two Off-The-Mountain "OTM" fixed route commuter services routes:
 - i. "Big Bear OTM" which connects Big Bear Valley and Running Springs to bus stop locations in the Cities of Highland and San Bernardino in the OMNITRANS service territory. Service is provided seven days per week.
 - ii. "RIM OTM" which connects Lake Arrowhead and Crestline to bus stop locations in the City of San Bernardino in the OMNITRANS service territory. Service is currently provided Monday through Saturday.
- d. Upon proof of a valid and unexpired MT OTM transfer, OMNITRANS shall permit the MT passenger to board an OMNITRANS connecting bus at a connecting stop at no charge. The no charge transfer provided from herein cannot be used on OMNITRANS' Access Service.
- e. Upon proof of a valid and unexpired OMNITRANS 1-Day, 7-Day, or 31-Day pass, MT shall reduce the Big Bear or RIM OTM fare for a passenger by \$1.00.

4. Bus Stops.

- a. The Parties agree to cooperate in the location, installation and maintenance of all jointly used bus stops, including use of the other Party's poles and posts at joint transfer points.
- b. Each Party agrees to be solely responsible for claims or damages arising out of its installation of its bus stop signs or passenger amenities.
- c. The Parties agree to the establishment of bus stops in the other's service area, subject to approval of each specific stop and to all local, state and federal laws, ordinances and regulations.
- d. The Parties shall be responsible for obtaining any required licenses or permits and paying any necessary fees in order to establish bus stops, install amenities or operate service in either service area.
- e. The Parties may negotiate regarding boarding restrictions within their respective service areas where duplication of service or potential revenue loss may occur.

5. Operational Information.

- a. So as to provide greater convenience and mobility for public transit users, the Parties agree to facilitate minimization of passenger waiting time and shall coordinate schedules for connecting routes whenever practical.
- b. Each Party shall inform the other of future plans for changes to existing connecting service/routes, schedules and fares, as well as future plans for new connecting service/routes, schedules and fares, exclusive of temporary demand and/or emergencies, that would affect either Party in their operating area as well as this AGREEMENT.
- c. Each Party shall provide, upon request, data that is readily available that impacts the other Party's stops and boardings, including, but not limited to passenger boardings and alightings by stop.
- d. Each Party shall be responsible for training their drivers/coach operators on the terms, conditions and operating procedures of this AGREEMENT, to best facilitate AGREEMENT implementation.

- 6. Public Information.** The Parties shall cooperate, to the extent feasible, in providing the general public with specific transit information and in advertising of operations of both Parties' services, in promoting the general use of public transit.

- 7. Fares.** Fares may vary in accordance with the adopted policies of each Party. The operator of a service shall retain all fares and other revenues collected with respect to that service.

The Parties shall notify each other thirty (30) days in advance of adopting any fare changes that might affect any aspect of transfer privileges.

8. **Claims/Payments.** There shall be no payment by either Party to the other for claims for fare revenues collected by either Party. There shall be no reimbursement of operating expenses by either Party.
9. **Indemnification.**
 - a. Omnitrans, acting as an independent contractor, agrees to indemnify, defend and hold harmless MT, its member agencies, officers, directors, employees, and agents from and against any and all claims, liabilities, and actions whether legal, equitable or administrative, and costs and expenses (including attorney's fees and reasonable expenses for litigation or settlement) for any loss or damages, bodily injuries, including death, damage to or loss of use of property caused by the negligent acts, omissions, or willful misconduct by OMNITRANS, its officers, directors, employees, or agents in connection with or arising out of the performance of services under this AGREEMENT. This obligation shall not apply to negligent acts, omissions or willful misconduct of MT, its officers, directors, employees, or agents.
 - b. MT agrees to indemnify, defend and hold harmless OMNITRANS, its member agencies, officers, directors, employees, and agents from and against any and all claims, liabilities, and actions whether legal, equitable or administrative, and costs and expenses (including attorney's fees and reasonable expenses for litigation or settlement) for any loss or damages, bodily injuries, including death, damage to or loss of use of property caused by the negligent acts, omissions, or willful misconduct by MT, its officers, directors, employees, or agents in connection with or arising out of the performance of this AGREEMENT. This obligation shall not apply to negligent acts, omissions or willful misconduct of OMNITRANS, its officers, directors, employees, or agents.
10. **Venue.** This AGREEMENT shall be construed and interpreted solely in accordance with the laws of the State of California.
11. **Binding Provisions.** The persons executing this AGREEMENT on behalf of the Parties hereto warrant that they are duly authorized to execute this AGREEMENT on behalf of said Parties and that, by so executing this AGREEMENT, the Parties hereto are formally bound to the provisions of this AGREEMENT.
12. **Notices.** All notices hereunder and communications required or permitted by this AGREEMENT, or changes thereto, or by law to be served on, given to or delivered to any other Party hereto by any other Party to this AGREEMENT shall be in writing or authorized in writing, and may be sent by regular mail, email or FAX. Any such notice shall be addressed to:

Notices to OMNITRANS:

Name:	Mr. Scott Graham
Title:	Chief Executive Officer/General Manager
Address:	1700 West Fifth St.
City, State Zip:	San Bernardino, California, 92411
Email:	Scott.Graham@omnitrans.org
FAX:	909-889-5779

Notices to MT:

Name: Ms. Kathy Hawksford
Title: General Manager/Chief Executive Officer
Physical Address: 41939 Fox Farm Road
Mailing Address: PO Box 1501
City, State Zip: Big Bear Lake, California, 92315
Email: khawksford@mountaintransit.org
FAX: 909-963-7200

13. Other Provisions.

- a. The headings of all sections of this AGREEMENT are inserted solely for the convenience of reference and are not part of and not intended to govern, limit, or aid in the construction or interpretation of any terms or provision thereof.
- b. The provision of this AGREEMENT shall bind and inure to the benefit of each of the Parties hereto and all successors or assigns of the Parties hereto.
- c. If any term, provision, covenant, or condition of this AGREEMENT is held to be invalid, void or otherwise unenforceable, to any extent, by any court of competent jurisdiction, the remainder to this AGREEMENT shall not be affected thereby, and each term, provision, covenant or condition of this AGREEMENT shall be valid and enforceable to the fullest extent permitted by law.
- d. This AGREEMENT may be executed and delivered in any number of counterparts, each of which, when executed and delivered shall be deemed an original and all of which together shall constitute the same AGREEMENT. Secure electronic signatures will be permitted.
- e. This AGREEMENT may be amended in writing at any time by the mutual consent of the Parties. No amendment shall have any force or effect unless executed in writing by the Parties. The Parties agree that non-financial administrative changes, such as changes in service schedules or locations, etc., may be approved administratively without re-approval by the Agencies' Boards of Directors.
- f. Neither this AGREEMENT, nor any of a Party's rights, obligations or duties hereunder may be assigned in whole or in part by either Party without the prior written consent of the other Party. Any such attempt of assignment shall be deemed void and of no force and effect. Consent to one assignment shall not be deemed consent to any subsequent assignment, nor the waiver of any right to consent to such subsequent assignment.
- g. The Parties warrant that, in the performance of this AGREEMENT, they shall comply with all applicable federal, state and local laws, statutes and ordinances and lawful orders, rules and regulations promulgated thereunder.
- h. Either Party shall be excused from performing its obligations under this AGREEMENT during the time and to the extent that it is prevented from performing by an unforeseeable cause beyond its control, including but not limited to: any incidence of fire, flood, acts of God, commandeering of material, products, plants or facilities by the federal, state or local government, national fuel shortage, or a material act or omission by the other Party, when satisfactory evidence of such cause is presented to the other Party, and provided further that such nonperformance is unforeseeable, beyond the control and is not due to the fault or negligence of the Party not performing.

IN WITNESS WHEREOF, this AGREEMENT constitutes the entire understanding of the Parties hereto, and there are no other requirements, premises, warranties, covenants or undertakings with respect thereto, and have made and executed this AGREEMENT as of the day and year first above written.

OMNITRANS

By: _____
P. Scott Graham
CEO/General Manager

Date: _____

APPROVED AS TO FORM:

By: _____

Name/Title: _____

MOUNTAIN TRANSIT

By: _____
Kathy Hawksford
General Manager/CEO

Date: _____

APPROVED AS TO FORM:

By: _____

Name/Title: _____

DRAFT

State funds sought for Gold Line rail extension to IE

By Neil Nisperos
neil.nisperos@langnews.com
 @ReporterNeil on Twitter

With the opening of the new Azusa Gold Line station this weekend, sights are set on bringing its trains out to the Inland Empire communities of Claremont and Montclair.

The Metro Gold Line Foothill Extension Construction Authority has plans for the third phase of its light rail system, which would bring the line from Los Angeles through San Gabriel Mountain foothill communities to the train station in Montclair.

But the question over funding remains.

The Los Angeles County Metropolitan Transportation Authority had plans

to place a tax measure on the November 2016 ballot to fund the Gold Line, from Azusa to the Los Angeles-San Bernardino counties line, among other projects, officials said.

It's still crafting the specific language for the ballot measure, officials said.

"The Metro board is currently evaluating what, if anything, to put on the November 2016 ballot, so over the next few months we should be able to see a draft expenditure plan. It would be considered by the board for approval in June," said Lisa Levy Buch, spokeswoman for the Metro Gold Line Foothill Extension Construction Authority.

If the money — about \$1 billion for Phase 3 from

Azusa to Claremont — was made available in January 2017, planners say the project wouldn't be completed until 2023.

There's also the matter of funding for the project past the county line from the Claremont Transit Center a mile away to the Montclair Transit Center.

Funding for that part of the project would be under the oversight of the San Bernardino Associated Governments, or SanBAG, the regional transportation authority in San Bernardino County.

The cost to build the 1½ miles-long line to Montclair, according to SanBAG officials, is \$68 million.

While SanBAG officials said they currently do not

have the funds for construction, agency officials did meet with California State Transportation Administration officials last week to discuss the use of state cap-and-trade revenues for the project.

"(Constructing the line from the county line to Montclair) has been identified as a priority, but the funding is not currently available," said Michelle Adams, a spokeswoman for SanBAG.

"We are in the process of trying to work with L.A. Metro on state grant assistance to cover our portion of the project."

The Foothill Gold Line from Glendora to Montclair will extend the Metro Gold Line 12.3 miles and add six stations in the cities

of Glendora, San Dimas, La Verne, Pomona, Claremont, and Montclair.

Future Gold Line station locations:

- The future Glendora station will be located just south of the city's historic downtown, east of Vermont Avenue.

- The future San Dimas station, and associated 450-space parking structure, will be located east of San Dimas Avenue between Bonita Avenue and Arrow Highway.

- The future La Verne station, will be located north of Arrow Highway and east of E Street, between the University of La Verne and Fairplex.

- The future Pomona station will be located north of the existing Metrolink platform, west of Garey Avenue

and will be a center platform station with tracks on either side of a single platform.

- The future Claremont station will be located at the current Metrolink station with the Metrolink station to be relocated east of College Avenue.

- The future Montclair station will be a center platform design with tracks on either side and will be located to the north of the existing Metrolink platforms.

When the last phase is completed, a trip from Montclair to downtown Pasadena will take just over 40 minutes.

Further to Los Angeles would take about 75 minutes, according to Gold Line officials.

The Sun

March 6, 2016

Metro ExpressLanes helping to ease traffic

Re "Cash flow is a problem for 'Lexus lanes' on Los Angeles-area freeways" (Editorial, Feb. 23):

The editorial citing problems on the Metro ExpressLanes paints a distorted picture of the success of the toll lanes. To date, more than 520,000 transponders have been issued for the Metro ExpressLanes operating on both the Harbor Freeway and the San Bernardino Freeway.

If anything, we are a victim of our own success. Carpools could always use the lanes toll free and since the implementation of the ExpressLanes, more than 100 new van pools have been created to take advantage of the lanes.

Equally important to note is the increase of bus usage, particularly as seen with the growing ridership on the Metro Silver Line, which operates on the ExpressLanes saving commuters time and money in the daily commutes. Based on data from the Caltrans system, the ExpressLanes speeds are consistently higher than speeds on the general purpose lanes, which explains the growing usage of the ExpressLanes.

As we strive to maintain a 45 mph speed on the lanes, in recent months we have noticed that speeds during morning peak periods on the northbound Harbor Freeway ExpressLanes have bogged down. The beauty of the system is the ability to close those lanes to solo drivers until speeds pick back up.

Additional CHP enforce-

ment has been implemented to enforce the rules of using the ExpressLanes, with motorists violating those rules subject to a fine of up to \$400. The net revenue generated by tolls paid is used for transportation improvements along the corridors of the ExpressLanes. We are changing commuter behavior by providing a choice to commuters.

The Metro ExpressLanes offer us the ability to monitor the infrastructure and better manage it. ExpressLanes are just one tool in the transportation tool box to keep the region moving. With price adjustments to encourage solo drivers to perhaps use the lanes in non-peak periods and constant monitoring and enforcement, ExpressLanes are providing the needed mechanism of easing traffic for all.

-- Shahrzad Amiri,
Los Angeles

*The letter writer is Metro's
executive officer for congestion
reduction programs.*

Gold Line rider says long waits, foul air make it more like fool's gold

File this under: "If they can put a man on the moon, why can't they ..."

Micole Alfaro called me Thursday. Nice guy. Rides the Gold Line Foot-hill to his job at Caltrans in downtown Los Angeles. But he has come complaints.

Since Metro opened the service from the Sierra Madre Villa Station to the new terminus at the Azusa Pacific University/Citrus College Station, service has been spotty.



Steve Scauzillo
Columnist

He tells of waiting

at the spanking new Arcadia station near his home at 7:05 a.m. for 20 minutes for a southbound train.

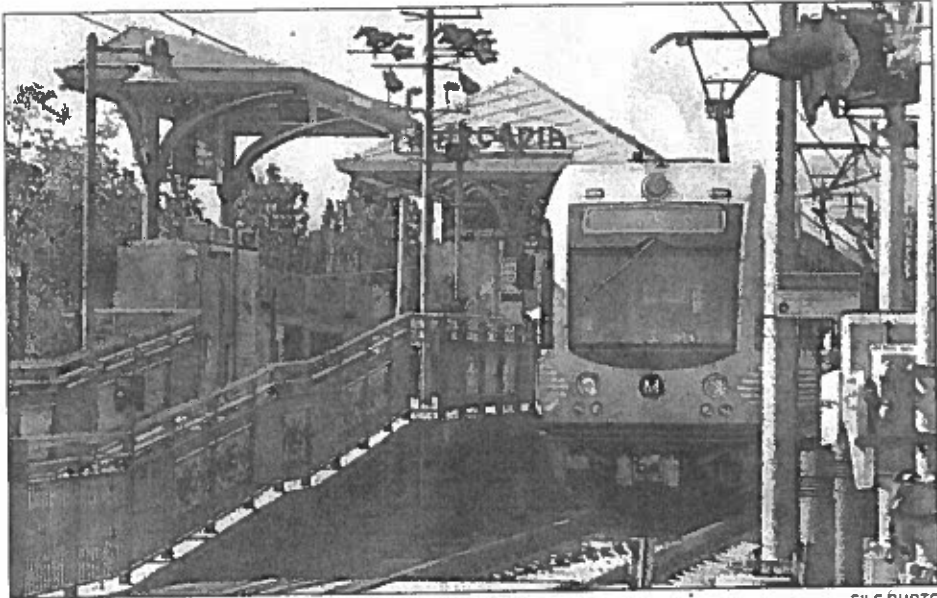
I asked: "The headways are supposed to be 12 minutes."

Alfaro, laughing: "That's bull-----."

I've seen tweets and posts on Metro's The Source blog with similar sentiments. Seems like Metro was overwhelmed by the response from San Gabriel Valley riders to the 11.5-mile train extension and they're still ironing out the wrinkles.

On Friday, Metro CEO Phil Washington backed that up, saying: "We've seen tremendous ridership in our early analysis." That was right after he announced that the *next* Gold Line extension, from APU/Citrus to the Claremont transit center, was a top priority for Metro.

OK, this is what is known as a good problem to have. Too many people are using your new train. Still, Alfaro went on: When boarding the evening train at Union Station, he's noticed trains don't always go to his sta-



FILE PHOTO

A Metro Gold Line train arrives at the Arcadia Station.

tion, Arcadia. "On three occasions, I had to get off at Sierra Madre Villa (in east Pasadena). They just said this train is out of service. So, a bunch of us had to wait for the next train going beyond that point. People looked confused," he said.

Alfaro said it happened three times. That's a big number considering the trains have only been running through Arcadia, Monrovia, Duarte, Irwindale and Azusa for 10 weekdays. Three out of 10? That's 30 percent of his commuting experience.

I took the train Friday to Union Station from Del Mar in Pasadena. As I waited, three northbound trains pulled in, all with different destinations. One said Monrovia, the other said APU/Citrus, the other Sierra Madre Villa. Confusing? Yes.

But I asked Alfaro, 39, if he listened to the announcements when he boarded the train and he said no.

Yup, things are more complicated for Gold Line riders. Trains go to dif-

ferent places. Sometimes they don't always go to the same station.

Alfaro mentioned being jammed in the train like sardines in a can. I distinctly remember him saying something about not being able to move, not unless he wanted that bike handlebar behind him to reach further into his body.

"I got off," he said, disembarking at Sierra Madre Villa. He had a hunch that turned out right. The next train was nearly empty. Plus, it was a new, Kinkisharyo train, the ones with the wider seats and the cool yellow bunting.

Point No. 3: The air inside the train cars is rank. They need to turn up the AC, especially since we've had record heat (hottest February in history) due to global warming.

"So many people in a close space? That is not right to not have it properly ventilated," Alfaro said, adding it's aggravating his allergies so much, he's thinking of pocketing his TAP card and driving.

Now, I haven't experienced these problems but I ride mostly off-peak: to an assignment, to the Noise Within theater at night. Commuters who ride day in, day out, sweat the small stuff.

The most common complaint? Having to show your TAP card to a sheriff deputy. It's like paying for your meal at a restaurant and then having the maitre d' ask for your credit card receipt on the way out.

"We TAP our card at the entrance. Then two or three times someone will ask to scan your card (for proof of payment). You have to pull out your card after you've put your stuff away. What are we, cattle?" Alfaro asked.

Do they put livestock on trains? That wouldn't smell too good.

Steve Scauzillo covers transportation and the environment for the Los Angeles News Group. Follow him on Twitter @stevescaz or email him at steve.scauzillo@langnews.com.

ITEM # F1

DATE: April 6, 2016

TO: Board Chair Sam Spagnolo and Members of the Omnitrans Board of Directors

FROM: P. Scott Graham, CEO/General Manager

SUBJECT: CEO/GENERAL MANAGER'S REPORT

Attended the Redlands Passenger Rail Project meeting on 25 March. Agenda items included branding, FY2017 budgeting, familiarization visit to other transit agencies that have similar rail operations, attendance at APTA Rail Conference, and status of Operations and Maintenance (O&M) Agreement between SANBAG and Omnitrans. Agreement is tentatively scheduled for legal review in May 2016.

Attended the VTrans Board Meeting on 16 March. Presentation was made regarding the progress of merging VTrans employees into Omnitrans. Omnitrans' Human Resources Safety & Regulatory Compliance Department is near completion on this phase of the transition. However, physical relocation may not occur until late April. Legal Counsel Carol Greene is currently working with SANBAG and the VTrans attorney on contractual obligations between SANBAG and Omnitrans for assuming operational/administrative control of the CTSA.

PSG

ITEM # _____ F2

DATE: April 6, 2016

TO: Board Chair Sam Spagnolo and Members of the Omnitrans Board of Directors

THROUGH: P. Scott Graham, CEO/General Manager

FROM: Wendy Williams, Director of Marketing & Planning

**SUBJECT: LOS ANGELES AND SAN BERNARDINO COUNTY INTER-COUNTY
TRANSIT AND RAIL CONNECTIVITY STUDY**

FORM MOTION

Receive and file a presentation from the Southern California Association of Governments (SCAG) on the LA and San Bernardino County Inter-County Transit and Rail Connectivity Study.

BACKGROUND

The February 3, 2016 CEO/General Manager's Report to the Board reported that Omnitrans is a member of the Stakeholder Review Committee for the Los Angeles and San Bernardino Inter-County Transit and Rail Connectivity Study (Inter-County Study) being conducted by AECOM on behalf of SCAG.

Steve Fox, Senior Regional Planner for SCAG, will provide a brief presentation on the Inter-County Study in order to inform Board members of the study and provide Board members with opportunities to make contributions to the study. The presentation and fact sheet are attached to this Board report.

SCAG recently initiated the Inter-County Study in partnership with the Los Angeles County Metropolitan Transportation Authority (Metro) and the San Bernardino Associated Governments (SANBAG). The Inter-County Study focuses on the transportation corridor that connects the eastern San Gabriel Valley in Los Angeles County with the western San Bernardino Valley in San Bernardino County, and includes the Metro Gold Line Foothill Extension Phases 2B (Azusa to Montclair) and 2C (Montclair to Ontario International Airport), the Metrolink San Bernardino Line, and current and future HOV/Express Lanes on the I-10 San Bernardino Freeway. The Inter-County Study area includes portions of the cities of Claremont, La Verne, Montclair, Ontario, Pomona, Rancho Cucamonga and Upland.

A number of significant transportation improvements are under construction and are being planned in this corridor, including the Metro Gold Line extensions, improvements in speed and service to the Metrolink San Bernardino Line and new HOV/Express Lanes on the I-10 San

Bernardino Freeway that will result in continuous HOV/Express Lanes from downtown Los Angeles to Redlands allowing for additional express bus services. Therefore, the main goal of the Inter-County Study is to determine the optimum mix and service levels of light rail, commuter rail, express bus and bus rapid transit (BRT) in the corridor.

The Inter-County Study began late last year and is expected to conclude in the summer of 2017. The Inter-County Study scope's main tasks include:

- determining the current and future transit and rail travel markets in the corridor, including intra- and inter-county travel and travel to and from Ontario International Airport (ONT),
- estimating potential ridership, and the current and future transportation and economic benefits and costs associated with different transit and rail improvement options for the corridor, and
- recommending the optimum mix and service levels of the different transportation modes for cost-effective transit and rail improvements, with a focus on coordination and connectivity that best serves the transportation needs of the residents, workers, and businesses in the Inter-County Study corridor.

FUNDING SOURCE

No financial impact.

Short Range Transit Plan/Strategic Initiative Supported - Omnitrans participation in this study supports SRTP goals *Enhance Omnitrans' network design to increase ridership and minimize costs by reducing redundancy* and *Support the local economy by providing connections to where people want to go.*

CONCLUSION

Receive and file this presentation by SCAG as part of SCAG's outreach to improve and coordinate Inter-County Transit and Rail connections and investments.

PSG:WW:JB



SOUTHERN CALIFORNIA ASSOCIATION OF GOVERNMENTS

Los Angeles-San Bernardino Inter-County Transit and Rail Planning Study

PROJECT OVERVIEW

The Southern California Association of Governments (SCAG), in cooperation with the San Bernardino Associated Governments (SANBAG) and the Los Angeles County Metropolitan Transportation Authority (Metro), is beginning a transit and rail planning study for the corridor connecting the eastern San Gabriel Valley in Los Angeles County with the western San Bernardino Valley in San Bernardino County.

A number of significant transportation improvements have been or are currently being planned in this corridor, including Metro Gold Line light rail transit, Metrolink San Bernardino Line commuter rail, bus rapid transit and Interstate 10 carpool and ExpressLanes. SCAG is seeking to develop a coordinated transit and rail strategy that best serves the transportation needs of the residents, workers, and businesses that rely on this corridor.

The study's objectives are to:

- ▶ Understand the market for transit and rail travel in the corridor, including travel to and from Ontario International Airport (ONT),
- ▶ Estimate the potential benefits and costs associated with different transit and rail improvement options for the corridor, and
- ▶ Recommend a path forward for cost-effective transit and rail improvements, with a focus on coordinating plans for the Metro Gold Line, Metrolink, and access to ONT.

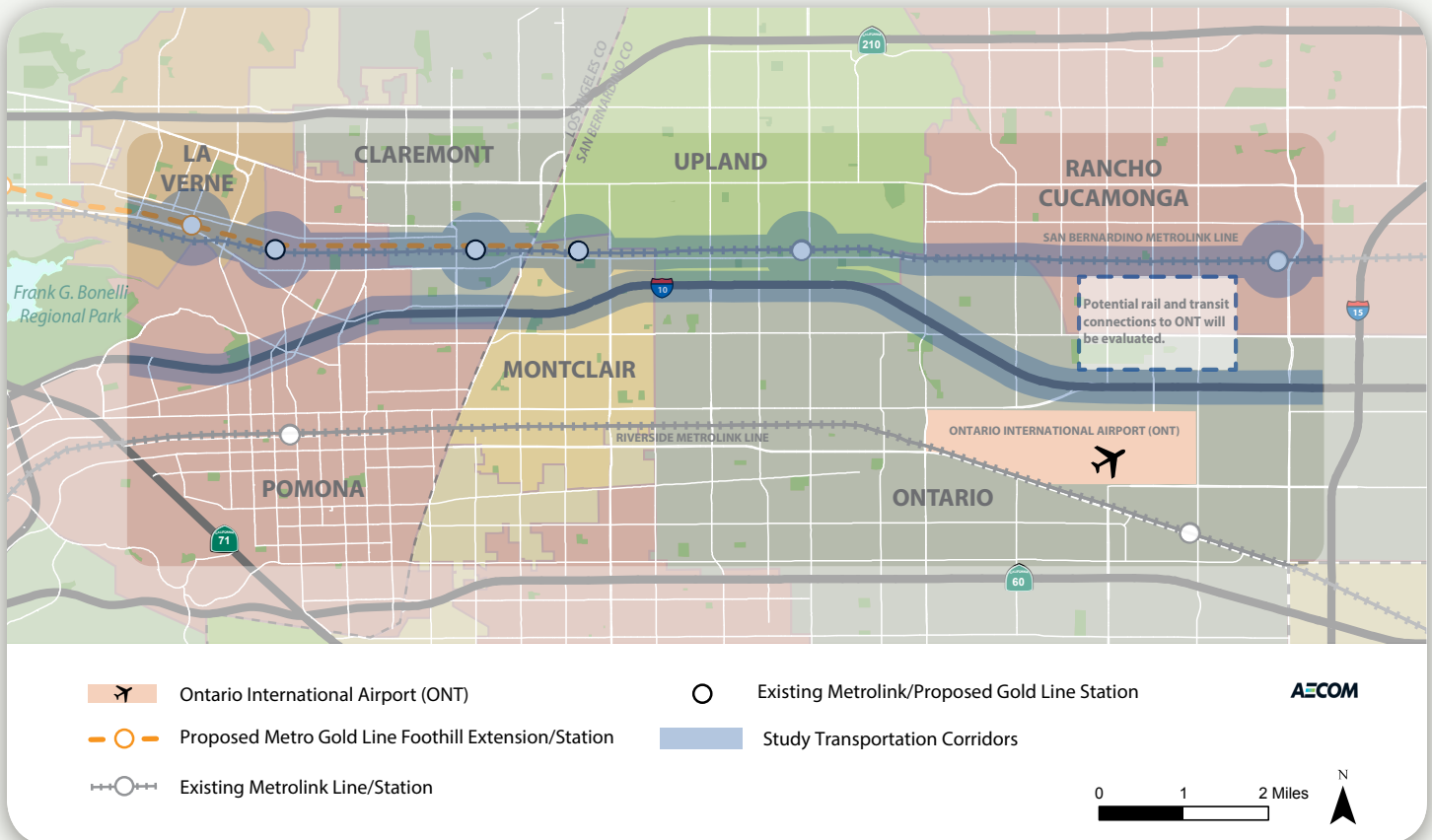


INTER-COUNTY STUDY PROCESS

The Inter-County Study will evaluate the current and future travel needs in the corridor and will make recommendations concerning the optimum mix of different services, including commuter rail, light rail transit, bus rapid transit, and express bus service on the Interstate 10 carpool and ExpressLanes facilities. Potential direct transit and rail connections to ONT will also be identified and evaluated. The study conclusions will be presented to the SCAG Regional Council for approval and the approved recommendations will then be forwarded to Metro and SANBAG. As the implementing agencies in their respective counties, Metro and SANBAG have the discretion to advance any recommended strategies into project development, engineering, and environmental phases consistent with federal and state requirements.

PUBLIC INVOLVEMENT

There will be ongoing opportunities including an on-line survey for public involvement in the study. Two rounds of community meetings will be scheduled at key stages in the study to share information and solicit input and feedback from residents, businesses, and other stakeholders along the corridor.



STUDY AREA

The study corridor area includes portions of the cities of Claremont, La Verne, Montclair, Ontario, Pomona, Rancho Cucamonga and Upland and focuses on the Metro Gold Line Foothill Extension, the Metrolink San Bernardino Line, and the San Bernardino (I-10) freeway.

STUDY SCHEDULE

Note: Schedule Subject to Change

Study Initiation

- Winter 2015 to Spring 2016

Alternatives Development & Refinement

- Summer 2016 to Fall 2016

Alternatives Evaluation

- Winter 2016 to Spring 2017

Study Conclusion & Recommendations

- Summer 2017

CONTACT US

For more information about the study or to learn about upcoming opportunities for public participation, please contact Steve Fox, Project Manager at (213) 236-1855 or fox@scag.ca.gov.



2016 2040 RTPSCS

LOS ANGELES AND SAN BERNARDINO
INTER-COUNTY TRANSIT AND RAIL
CONNECTIVITY STUDY

Omnitrans Board of Directors

April 6, 2016

“Inter-County Study”

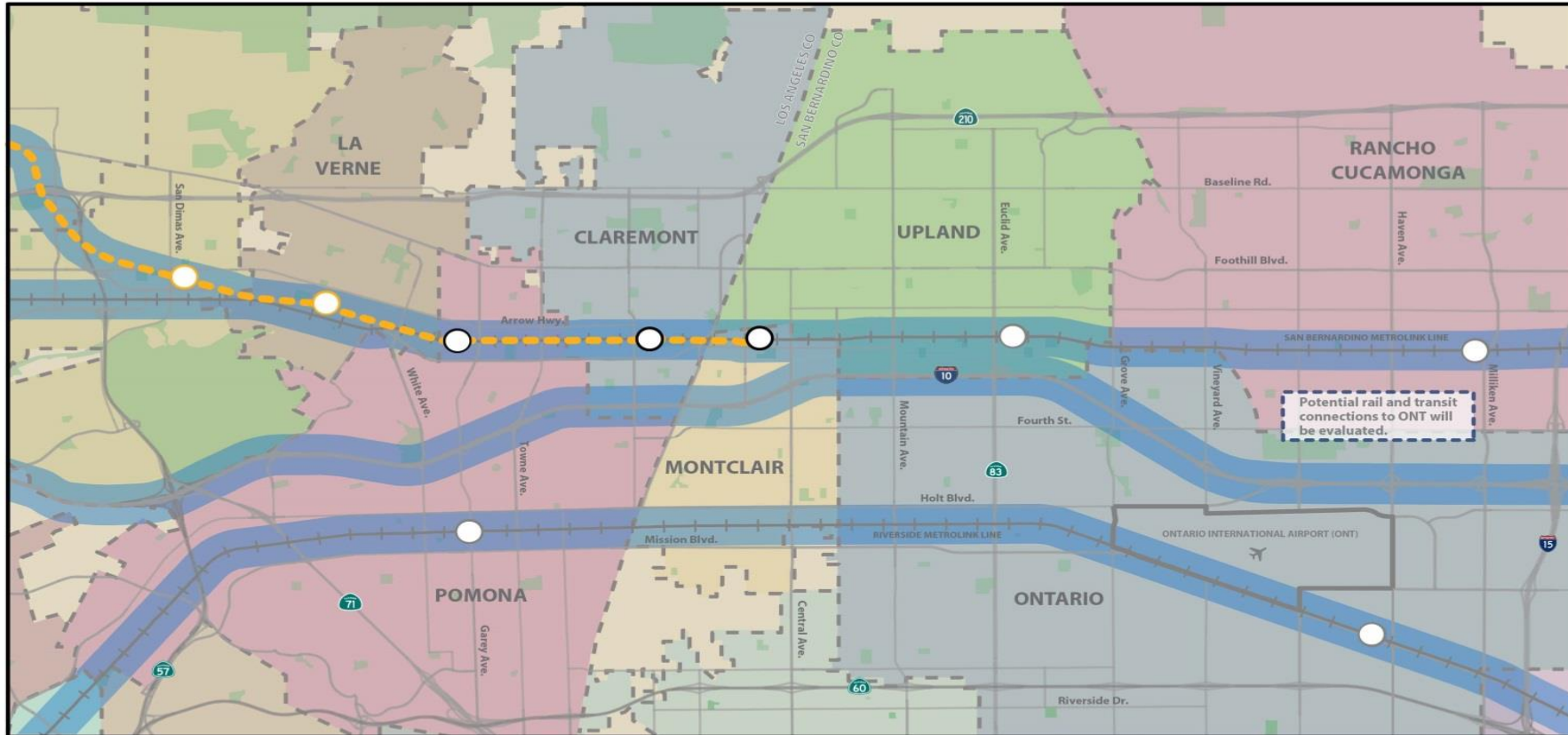
- Significant transportation improvements are under construction or are being planned in the Inter-County Study corridor.
 - Metro Gold Line extensions 2B and 2C
 - Speed and service improvements to the Metrolink San Bernardino Line
 - New HOV/Express Lanes on the I-10 San Bernardino Freeway
- SCAG initiating Inter-County Study in partnership with Metro and San Bernardino Associated Governments (SANBAG).
- **Key Questions:**
- Metro seeks to evaluate the efficiency and effectiveness of providing both light rail transit and commuter rail service in the same corridor.

Inter-County Study

- SANBAG seeks to understand and ensure that San Bernardino County investments in direct rail transit service to Ontario International Airport will benefit San Bernardino County residents.
- SCAG's approach is to conduct a comprehensive corridor-level study as described in the Study Goal and Objectives on the following slides.



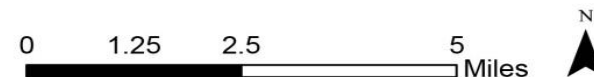
Inter-County Study Project Area and Corridors



Study Transportation Corridors

-  City Boundary
-  Proposed Metro Gold Line Foothill Extension Phase 2B / Station
-  Existing Metrolink Line / Station
-  Existing Metrolink / Proposed Gold Line Station
-  Study Transportation Corridors

AECOM



Inter-County Study Goal

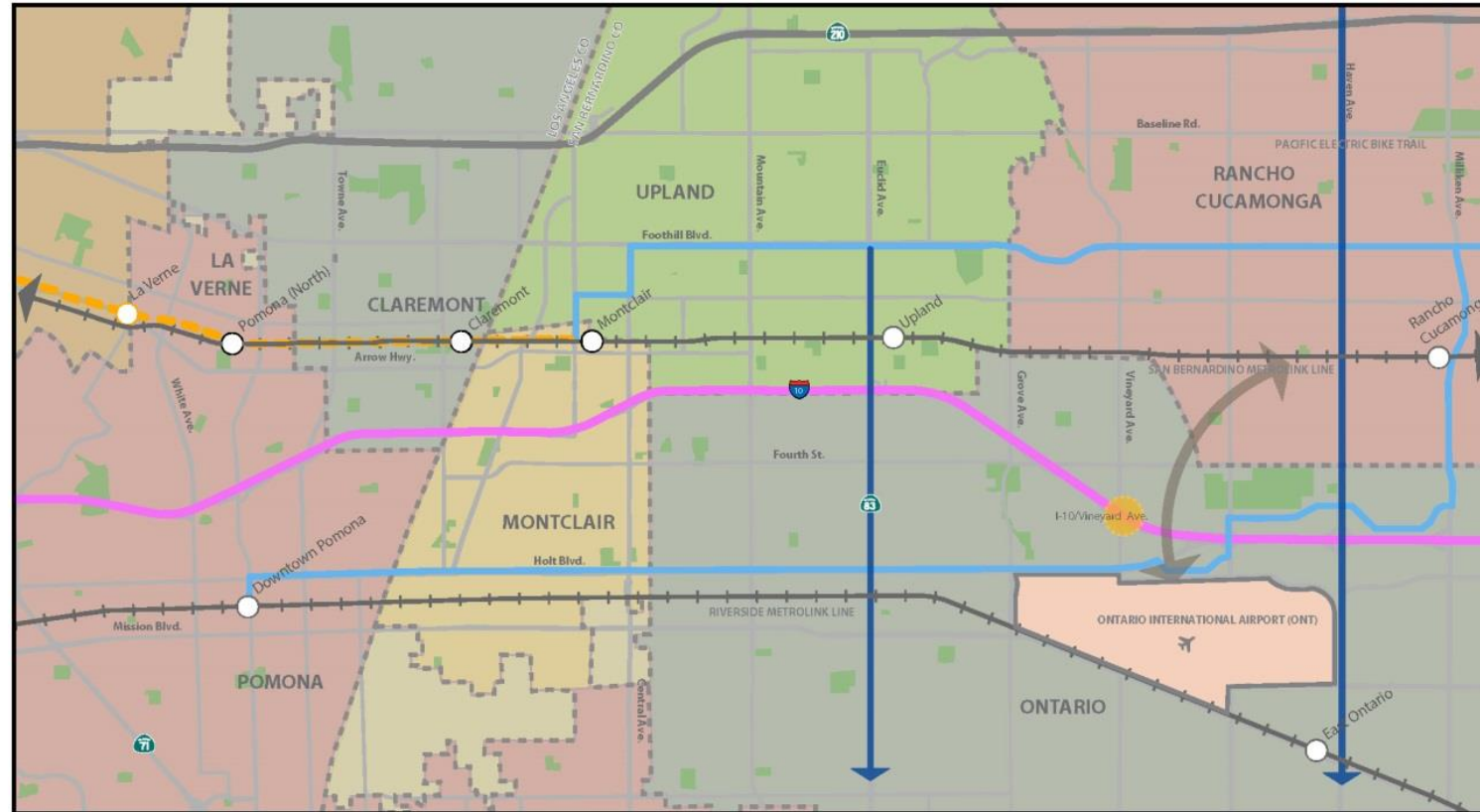


To determine the optimum mix and service levels of commuter rail, light rail, BRT, and express bus in the corridor

Inter-County Study Objectives

- Assess the market for intra- and inter-county transit and rail travel in the corridor, including the geographic distribution of origins for employee and passenger trips to ONT
- Estimate potential ridership, travel and economic benefits, and capital/operating costs associated with transit and rail alternatives in the corridor
- Recommend a path forward for cost-effective transit and rail service to best serve communities along the corridor and to/from ONT, with a focus on coordinating plans for Gold Line, Metrolink, and transit access to ONT

Existing and Planned Transit and Rail Projects

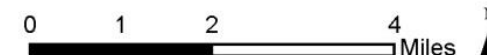


Regional Transportation Projects in Study Area

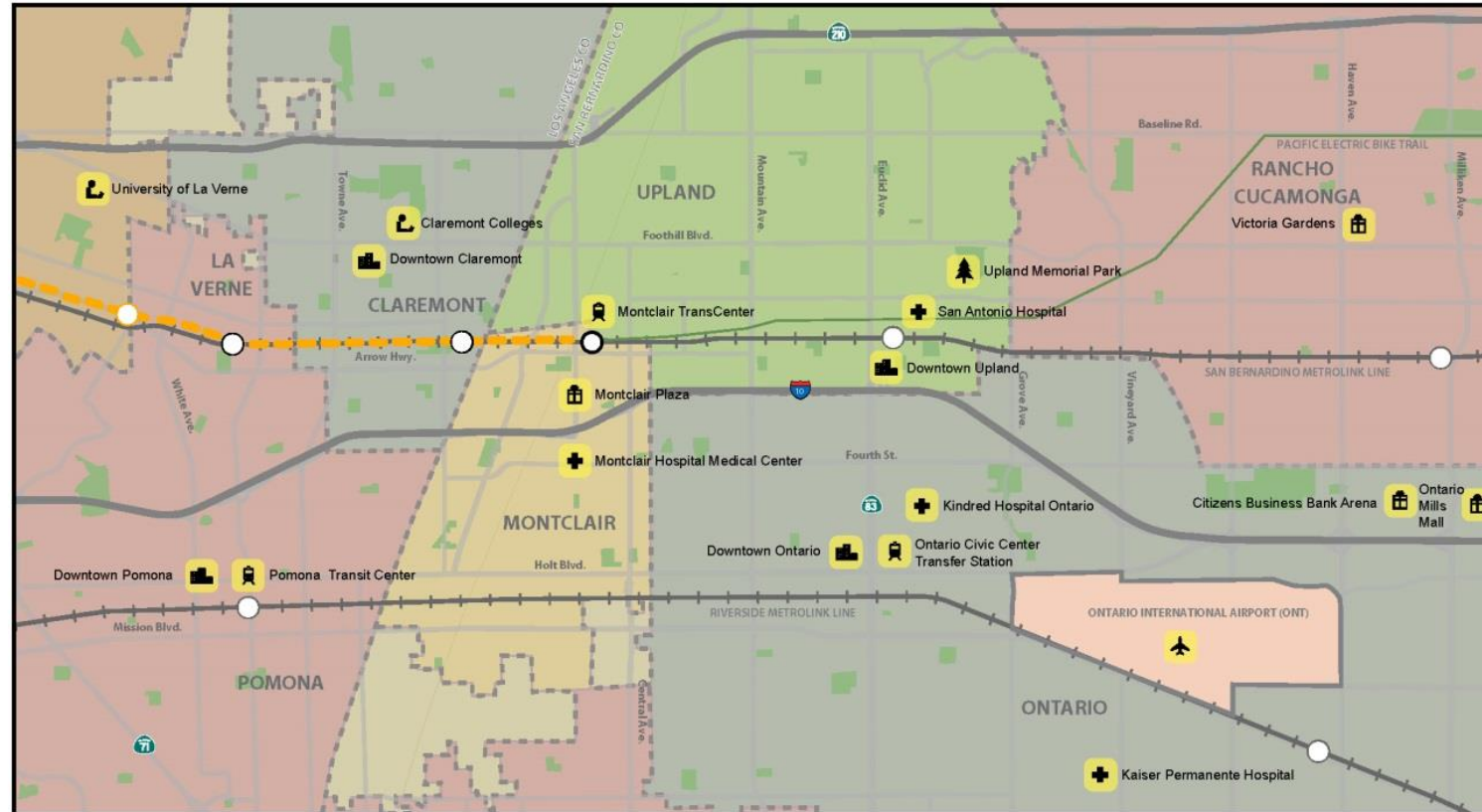
- Ontario International Airport (ONT)
- Proposed Metro Gold Line Foothill Extension Phase 2B / Station
- Existing MetroLink Line / Station
- Existing MetroLink / Proposed Gold Line Station
- BRT
- Future HOT / HOV Lanes

- Passenger Rail Service to ONT (2040)
- Ontario Airport Shuttle (2020)
- Metrolink Service Expansion
- Interchange Improvements
- Express Bus
- City Boundary

AECOM



Activity Centers



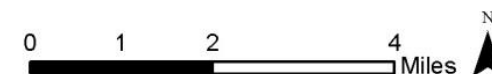
Activity Centers in Study Area

- City Boundary
- Ontario International Airport (ONT)
- Study Transportation Corridors
- Proposed Metro Gold Line Foothill Extension Phase 2B / Station
- Existing Metrolink / Proposed Gold Line Station

- Airport
- Park
- Downtown Center
- Transit Center

- School
- Shopping Center
- Medical

AECOM



Socioeconomics: Population 2012



Population Density 2012

Persons/acre

0 - 5
5 - 15
15 - 25
25 - 37
37 - 56

AECOM

City Boundary

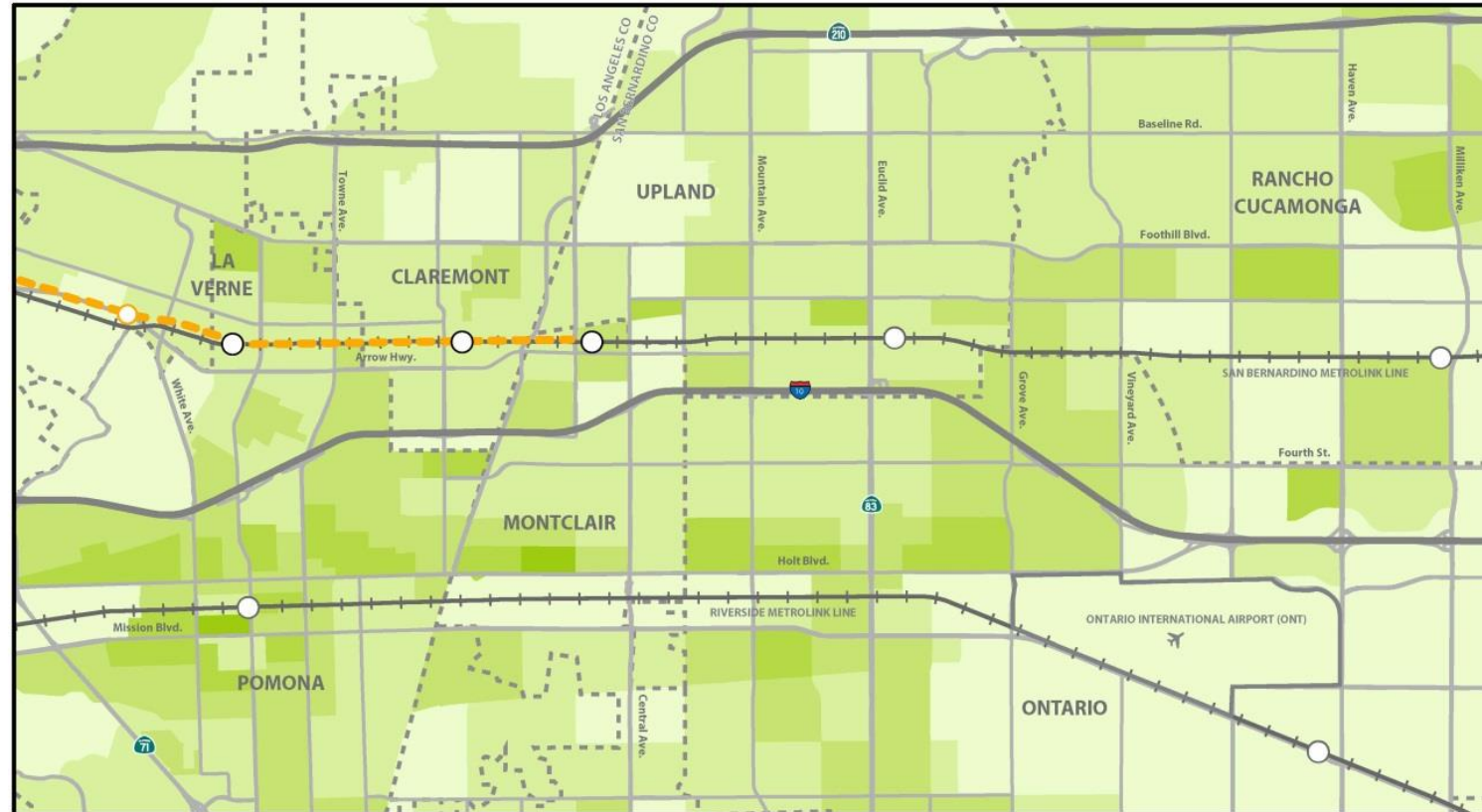
Proposed Metro Gold Line Foothill Extension Phase 2B / Station

Existing Metrolink Line / Station

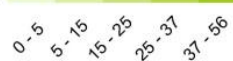
Existing Metrolink / Proposed Gold Line Station

0 1 2 4 Miles

Socioeconomics: Population 2040

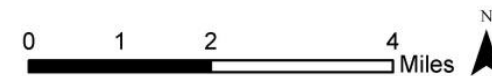


Population Density 2040
Persons/acre

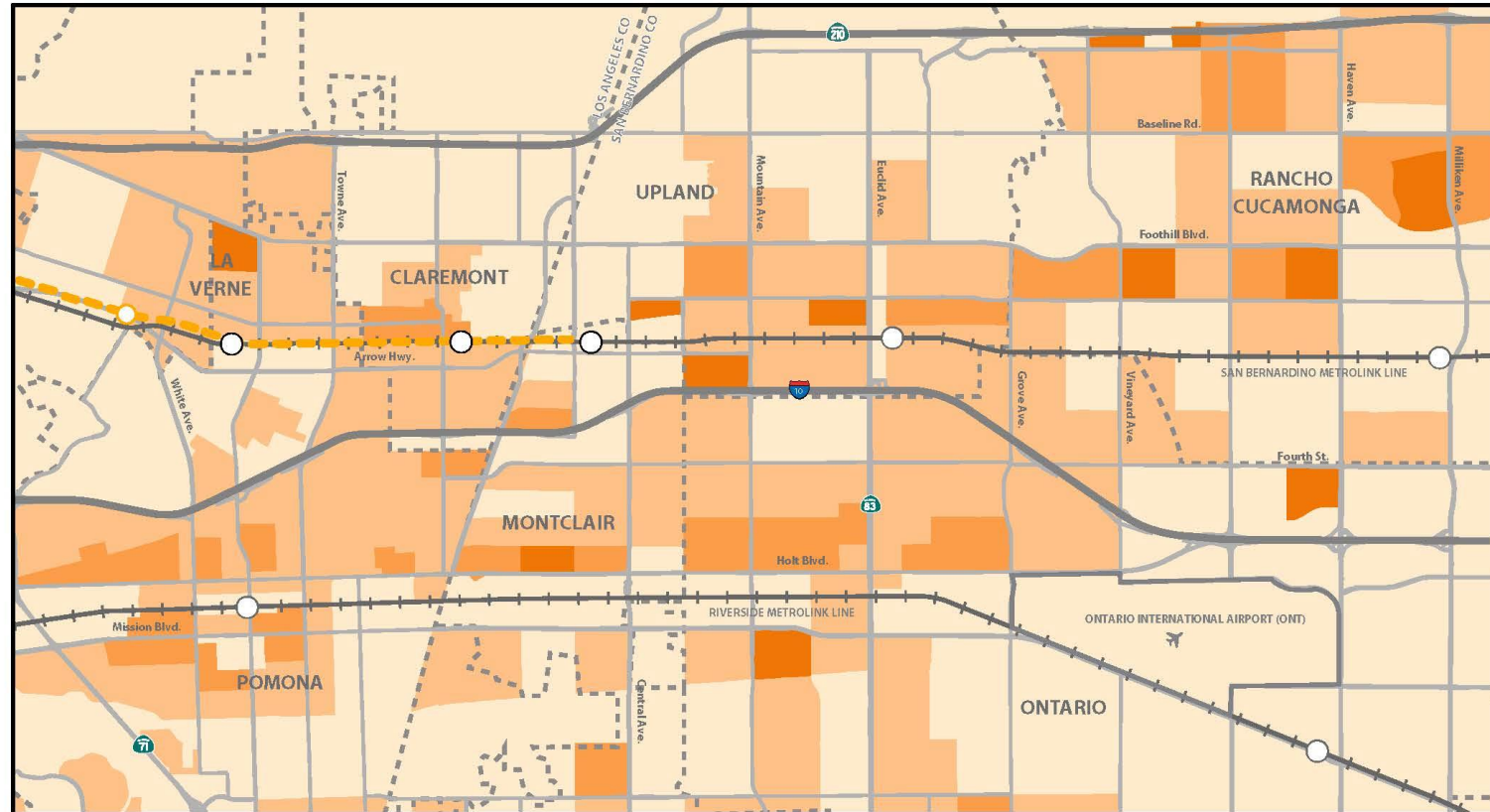


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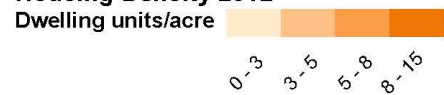
- City Boundary
- Proposed Metro Gold Line Foothill Extension Phase 2B / Station
- Existing Metrolink Line / Station
- Existing Metrolink / Proposed Gold Line Station



Socioeconomics: Housing 2012

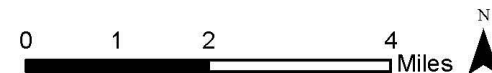


Housing Density 2012

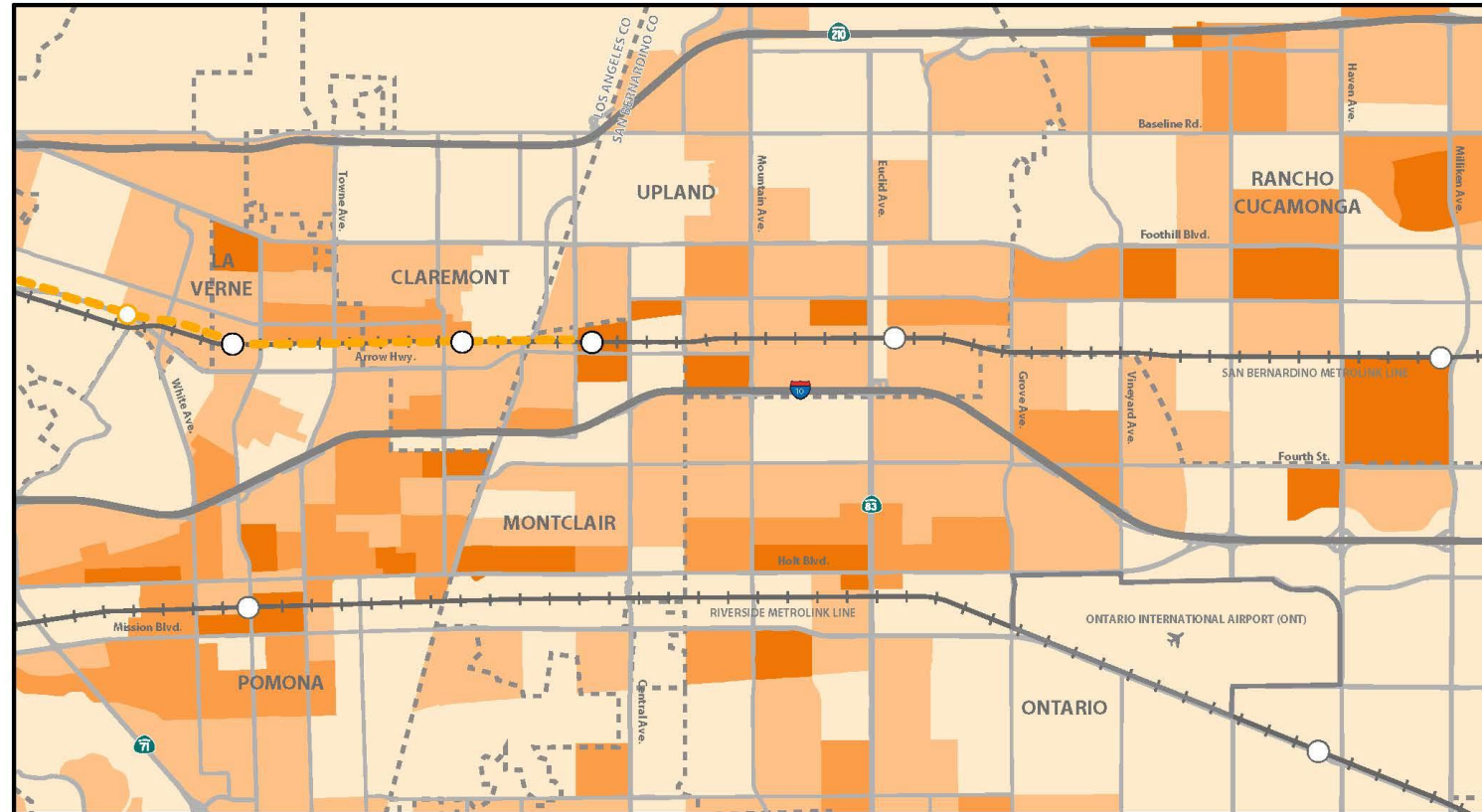


AECOM

- City Boundary
- Proposed Metro Gold Line Foothill Extension Phase 2B / Station
- Existing Metrolink Line / Station
- Existing Metrolink / Proposed Gold Line Station

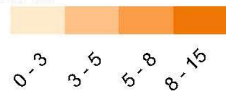


Socioeconomics: Housing 2040



Housing Density 2040

Dwelling units/acre



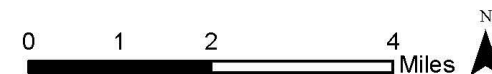
City Boundary

Proposed Metro Gold Line Foothill Extension Phase 2B / Station

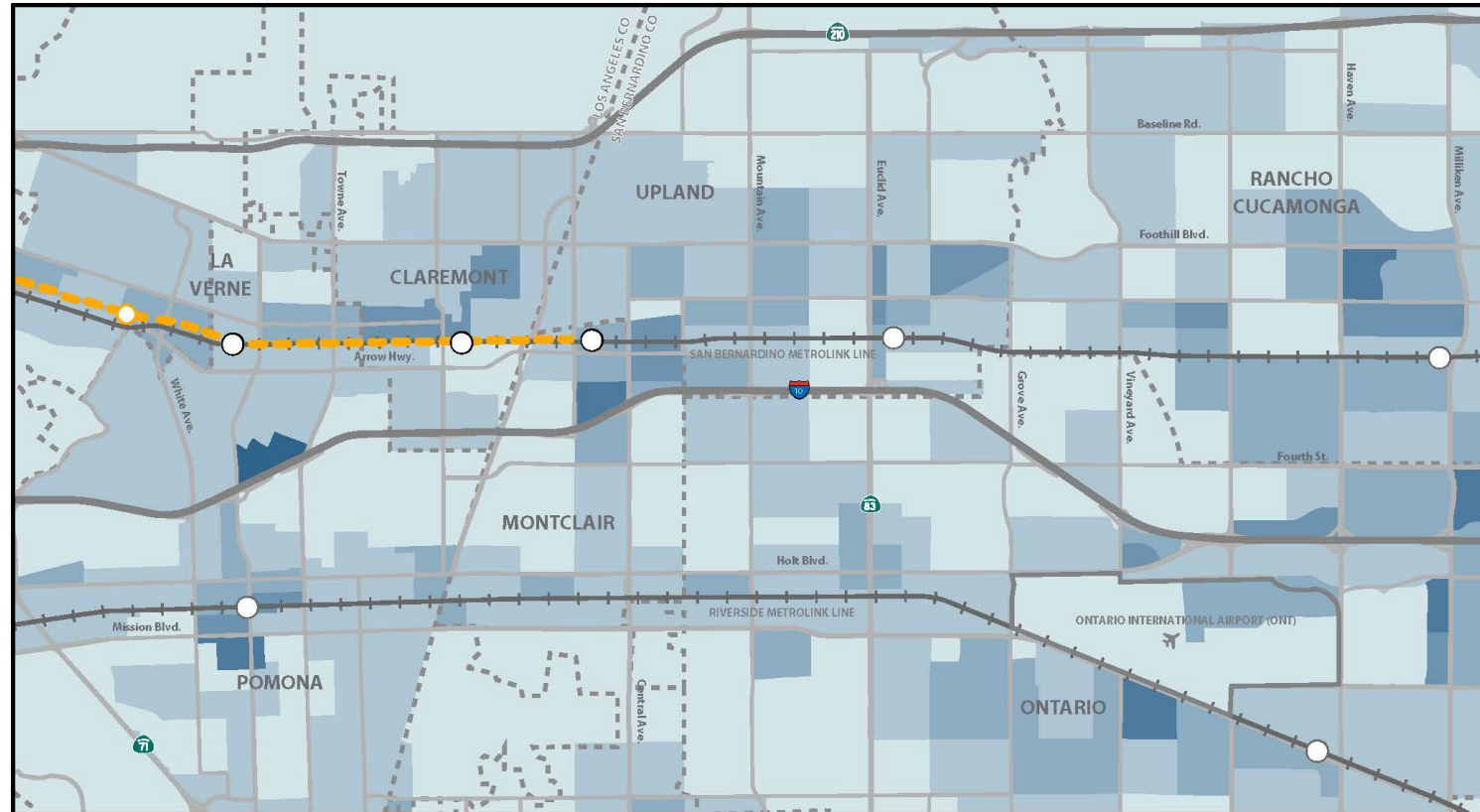
Existing Metrolink Line / Station

Existing Metrolink / Proposed Gold Line Station

AECOM



Socioeconomics: Employment 2012



Employment Density 2012

Jobs/acre

0-2
2-7
7-14
14-24
24-41
41-63

AECOM

City Boundary

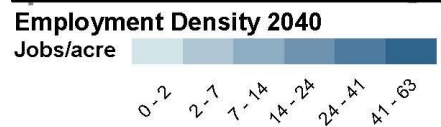
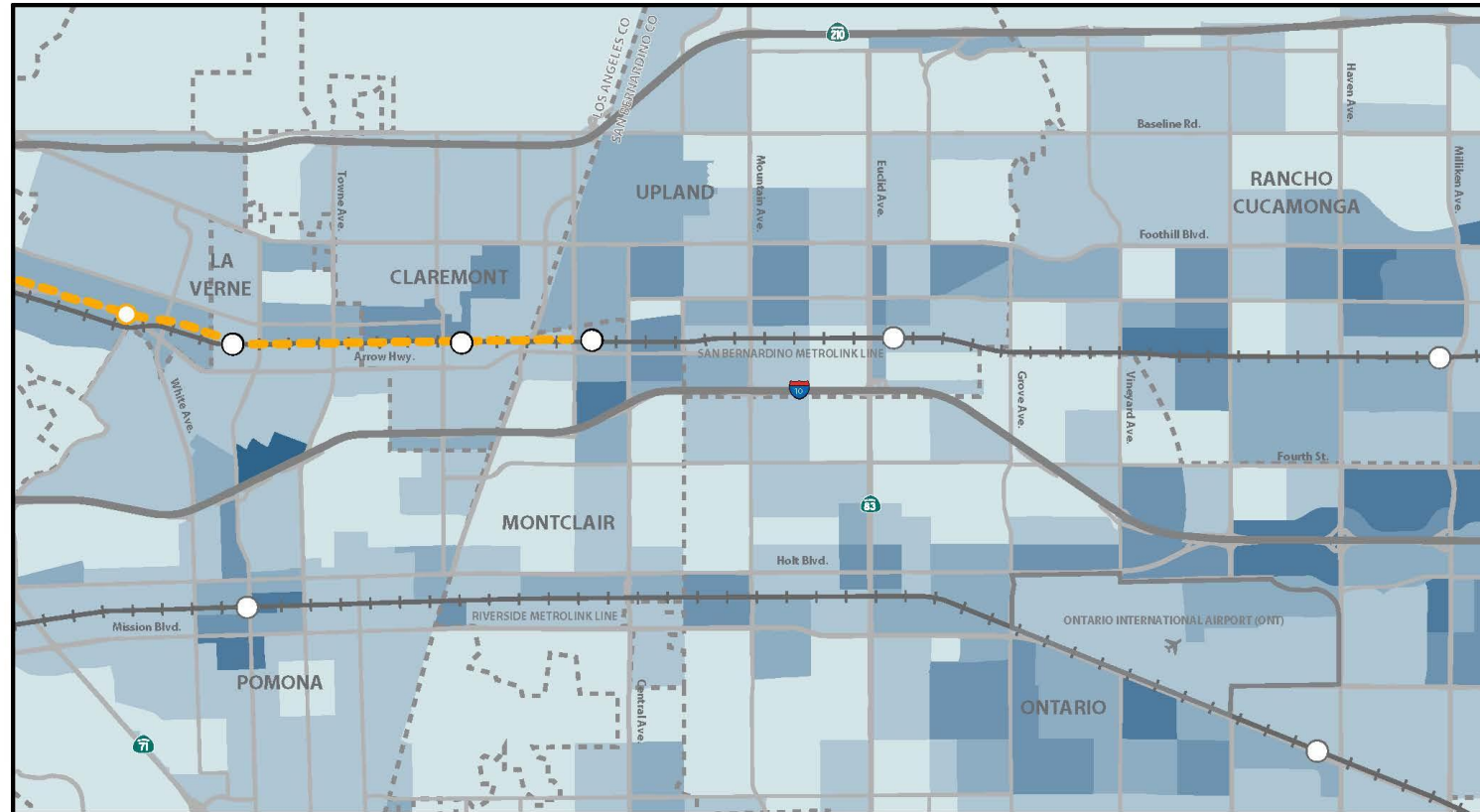
Proposed Metro Gold Line Foothill Extension Phase 2B / Station

Existing Metrolink Line / Station

Existing Metrolink / Proposed Gold Line Station

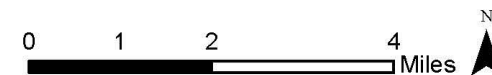
0 1 2 4 Miles

Socioeconomics: Employment 2040



AECOM

- City Boundary
- Proposed Metro Gold Line Foothill Extension Phase 2B / Station
- Existing Metrolink Line / Station
- Existing Metrolink / Proposed Gold Line Station



Inter-County Study Committees

Technical Working Group (TWG)

- Representatives from councils of governments and transit agencies
- Advises project team regarding technical assumptions and methodologies.
- Review and provide input on draft deliverables over the course of the study.

Stakeholder Review Committee (SRC)

- City representatives, transportation agencies, and TWG members
 - Represents various community and stakeholder perspectives.
 - Advises project team.
-
- The SCAG Transportation Committee is the policy decision-making body for the study.

Project Outreach

- Two rounds of community meetings in both counties
- Up to 40 stakeholder meetings/presentations
- Project Website:
<http://www.scag.ca.gov/programs/Pages/InterCountyTransitRail.aspx>
- Project Factsheet
- On-line survey

Inter-County Study Schedule

- ***Study Initiation***
 - Winter 2015 to Spring 2016
- ***Alternatives Development & Refinement***
 - Summer 2016 to Fall 2016
- ***Alternatives Evaluation***
 - Winter 2016 to Spring 2017
- ***Study Conclusion & Recommendations***
 - Summer 2017 to SCAG Transportation Committee and Regional Council
 - Hand Off to Metro and SANBAG



Thank you !

Learn more by visiting www.scag.ca.gov. Contact me at: fox@scag.ca.gov.



ITEM # _____ F3 _____

DATE: April 6, 2016

TO: Board Chair Sam Spagnolo and Members of the Omnitrans Board of Directors

FROM: P. Scott Graham, CEO/General Manager

SUBJECT: PROPOSED STRATEGIC PLAN – FISCAL YEAR 2017 - 2020

FORM MOTION

Adopt the Proposed Fiscal Year 2017-2020 Strategic Plan.

BACKGROUND

Omnitrans contracted with Ms. Jana Evans, Principal/CEO of Exponential-Dynamics, to develop the Fiscal Year 2017 – 2020 Strategic Plan. Ms. Evans most recently worked with Omnitrans to develop the Management Plan for the current fiscal year, and also was the consultant who assisted in the development of the Fiscal Year Year 2009-2014 Strategic Plan. She also worked with staff to develop the Fiscal Year 2017 Management Plan which will be submitted to the Board of Directors in May.

The process began with a planning session held on January 19, 2016, with Members of the Board, members of SANBAG, Board Support staff, and the Omnitrans Senior Leadership Team. The purpose of the session was to develop goals and outcomes. Thereafter, Omnitrans met with the consultant to develop strategies to support the goals, as well as performance indicators for each goal, and external factors that could impact goal attainment.

Once the proposed plan was developed, and in compliance with Federal Transportation Administration (FTA) guidance, Omnitrans initiated a survey to provide an opportunity for stakeholder review and comment. Comments received were reviewed and, if appropriate, were addressed in the proposed plan being presented for adoption.

CONCLUSION

Consultant, Ms. Jana Evans, will provide an overview of the process, the plan and how the plan will be used in the development of annual management plans and budgets, as well as quarterly performance reporting to the Board of Directors.

PSG:VD



OmniTrans

Connecting Our Community.

STRATEGIC PLAN

FY 2017 - 2020

Proposed

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Proposed



Letter from the CEO

To the Members of the Omnitrans Board of Directors and Citizenry of the County of San Bernardino,

The 2017-2020 Omnitrans Strategic Plan maintains a strong commitment to our core mission statement:

“To provide the San Bernardino Valley with comprehensive public mass transportation services which maximize customer use, comfort, safety and satisfaction, while efficiently using financial and other resources in an environmentally manner.”

Our mandate is clear, and to advance our mission Omnitrans must continue to be a public transportation system that embraces the imperatives set out in all six strategic goals contained in the Strategic Plan for FY2017-2020. One goal of particular importance is the “Service and Operations Goal.” It introduces an exciting new opportunity for Omnitrans to improve connectivity throughout the Valley with incorporating the Consolidated Transportation Services Agency (CTSA) and Redlands Passenger Rail Project (RPRP) into its organizational structure. The CTSA will be combined with ADA Services to establish the “Special Transit Services Department”. This new department will centrally coordinate transit services to improve mobility for seniors, Persons with Disabilities and persons of low income. The RPRP will initially provide Diesel Multiple Unit (DMU) rail service to five stations from the Downtown San Bernardino Transit Center to the eastern terminal at the University of Redlands beginning in July 2020. Future RPRP plans call for a rail based transit-oriented development (TOD) corridor that will connect Redlands to Montclair.

In addition to the introduction of the CTSA and Redlands Rail, Omnitrans will focus on strengthening the safety and security posture of our transit system through technology, a strong physical presence, and continuing to build upon relationships with local law enforcement and city leaders. Operationally, Omnitrans will offer new express service, advance the design for the West Valley Connector project, and commit to the availability, affordability, and reliability of all travel options.

Omnitrans is dedicated to making a difference. Not only will service options reflect the needs of the community, but service programs will be sustainable through a sound financial plan. The intended outcome of the financial plan will be to reduce operating costs, increase fare-box recovery, and neutralize the need for fare increases in the immediate future. Never before have the financial investments been so great and our opportunity to enhance the community’s mobility options so clear.

It is time to make a difference as we have done so many times. Omnitrans has built a reputation as “doers”. Let’s “do it”!

Introduction

As the communities of the San Bernardino Valley become more connected, public transportation continues to play an ever-more important role in our cities, towns, and suburbs. It is about people and their access to work, school, family and healthcare. The Omnitrans Strategic Plan for FY2017–2020 reflects forward-looking thinking that sets expectations for our operations and services while preserving the public trust of our customers and communities.

In this Strategic Plan we acknowledge our top priority—safety—and add to it security as an emerging responsibility in support of our mission. At the same time, we demonstrate our commitment to expanding service and operations, as we embrace the role of technology, continue finance and fiscal stewardship, provide purposeful marketing in support of Omnitrans’ growth, and evolve our organizational and workforce practices to achieve excellence.

As a management tool, our Strategic Plan remains a platform for overseeing the growing complexity of Omnitrans’ total portfolio. This document represents a framework for effective decision-making, collaboration and communication. It offers an outcome-based decision-making model which allows our organization to remain flexible and responsive to challenges, as well as to new opportunities such as the Consolidated Transportation Services Agency (CTSA) and the Redlands Passenger Rail Project. In combination with the annual Management Plan, Omnitrans continues a coordinated approach to program and operational management that delivers measurable results. Over the next four years, Omnitrans will continue to raise the bar of performance ever upward.

How to read this plan

This plan is formatted to give the reader a comprehensive, yet understandable snapshot of the Omnitrans’ strategic direction for the fiscal years 2017-2020. It is also important to mention that this plan is the result of a collaborative effort which included Omnitrans’ leadership, its Board, stakeholders, partners and staff.

It begins with the Omnitrans mission statement which defines who we serve, what we do, and how we do it. The mission is a statement of purpose to guide internal operations and decision-making.

This Strategic Plan is organized around its six strategic goals:

1. Safety and Security - Develop and enhance an integrated, responsive safety and security system to protect customers, employees and assets.
2. Service and Operations - Improve and expand public transportation service to our customers and community.
3. Technology - Increase capacity to provide new, innovative technology solutions and enhance existing ones.
4. Finance - Optimize funding opportunities while maintaining fiscal stewardship.
5. Marketing - Increase the awareness and use of Omnitrans within the community we serve.
6. Organizational and Workforce Excellence - Improve organizational systems to cultivate Omnitrans as an employer of choice.

In addition to its measureable goal statement, each goal section contains outcomes, strategies, performance indicators and external factors.

- ✓ The outcomes define what will improve or be accomplished as a result of working toward achieving the objective goal.

- ✓ The strategies represent multi-year actions from which Omnitrans will develop an annual operational plan for achieving the goal.
- ✓ The performance indicators, which are linked to the outcomes, identify what Omnitrans will evaluate in determining progress and achievement. Specific metrics will be developed for each annual Management Plan.
- ✓ The external factors are what might possibly influence Omnitrans' ability to accomplish the strategic goals and performance indicators and measures.

Omnitrans Mission Statement

To provide the San Bernardino Valley with comprehensive public mass transportation services which maximize customer use, comfort, safety, and satisfaction, while efficiently using financial and other resources, in an environmentally sensitive manner.

Shared Values

Integrity
Trust
Loyalty
Family
Learning and Growth
Ethics
Contribution to the Greater Good
Honesty
Community
Health
Treat Others with Dignity
Have Fun

THE STRATEGIC PLAN

Safety and Security Goal

Develop and enhance an integrated, responsive safety and security system to protect customers, employees and assets.

Safety and Security is and will continue to be one of the highest priorities for Omnitrans. Increasing numbers of people are using public transportation, and we are expanding the scope of our services to meet the need. As a result, this highlights the need for proactive measures to reduce the possibility of safety and security incidents.

Through ongoing collaboration with law enforcement agencies, technology, programs and public awareness we will continue to improve the safety and security of our public transportation system in each of the communities we serve. We will employ six broad strategies to achieve our Safety and Security outcomes. Our focus on reducing customer incidents and reducing employee injuries, Omnitrans strives to lead the industry in the level of safety and security provided to its passengers and employees alike.

Outcomes

The Safety and Security Goal has three outcomes.

1. Reduced customer incidents
2. Reduced employee claims
3. Reduced vulnerability/threats to customer security

Strategies

Table 1.1 shows the strategies needed to achieve each outcome.

Outcomes	Strategies
1. Reduced customer incidents	1.1 Improve public awareness of safety practices within the Omnitrans facilities and in service.
2. Reduced employee claims	2.1 Implement technologies and programs that reduce workers' compensation claims and lost work days. 2.2 Ensure accountability and adherence to established safety practices and operating procedures / regulations.
3. Reduced vulnerability/threats to customer security	3.1 Strengthen relationships with local law enforcement agencies to improve security posture. 3.2 Ensure design of facilities and services maximize safety and security objectives. 3.3 Build one-on-one relationships with city leaders and staff to provide a more secure public transportation system in their respective communities.
Table 1.1	

Performance Indicators

Table 1.2 shows the performance indicators that will be used to measure progress toward .

Outcomes	Performance Indicators
1. Reduced customer incidents	<ul style="list-style-type: none"> • Customer safety incidents • Preventable incidents • Customer incident claims • Customer incident cost • Customer safety perception
2. Reduced employee claims	<ul style="list-style-type: none"> • Employee claims • Employee incidents • Lost work days • Overtime paid
3. Reduced vulnerability/threats to customer security	<ul style="list-style-type: none"> • Police incident reports • Coach operator incident reports • Safety/security incident reports
Table 1.2	

External Factors:

Budget: Budgeting for security and security programs and security systems are key in providing adequate safety and security for the facilities and buses.

Excessive turnover: A greater focus on keeping positions filled in the Safety and Security office will enhance the program's consistency and effectiveness.

Service and Operations Goal

Improve and expand public transportation service to our customers and community.

The mobility that public transportation provides has helped to develop San Bernardino Valley as a network of connected communities. Our citizens expect access to adequate, affordable and reliable travel options coordinated to where transportation, housing and commercial development investments exist.

Regrettably, poorly coordinated land use, housing, and commercial development have contributed to a prevalence of low-density, scattered, auto-dependent and inaccessible communities. To achieve our Service and Operations goal, we will encourage policy and practices which support transit-oriented development in proximity to rail stations, bus corridors, or multi-modal transportation centers. Not only will this maximize the value of capital investments in transit, it will support the infrastructure, land availability, housing, services, and amenities needed to support viable mixed use, mixed income, pedestrian-friendly, and walkable communities.

With our Service and Operations goal, Omnitrans is committed to improvements in the public transit user experience, provision of additional pedestrian and bicycle networks, and improved access to transportation for people with disabilities, older adults, and lower income populations. With these improvements, we expect to maintain and offer more affordable and diverse mobility options.

Outcomes

The Service and Operations Goal has three outcomes.

1. Increased number of new riders
2. Decreased barriers to non-riders
3. Improved intermodal connectivity

Strategies

Table 2.1 shows the strategies needed to achieve each outcome.

Outcomes	Strategies
1. Increased number of new riders	1.1 Introduce new service modes and/or adjust service to address needs of non-riders.
2. Decreased barriers to non-riders	2.1 Improve connectivity to attract non-riders. 2.2 Ensure fare alignment with other transit agencies.
3. Improved intermodal connectivity	3.1 Improve ease of use through system connectivity between counties. 3.2 Prepare for additional service modes (i.e., rail). 3.3 Improve mobility options for seniors and persons with disabilities through Consolidated Transportation Services Agency (CTSA). 3.4 Support jurisdictions in planning for transit-oriented development.
Table 2.1	

Performance Indicators

Table 2.2 shows the performance indicators that will be used to measure progress toward the outcomes.

Outcomes	Performance Indicators
1. Increased number of new riders	<ul style="list-style-type: none"> • Commuter ridership • Student ridership • Ridership on new service introduced • Total ridership • On time performance
2. Decreased barriers to non-riders	<ul style="list-style-type: none"> • Wait time for transfers • First/Last mile Connectivity • New fare options • Travel time • On time performance
3. Improved intermodal connectivity	<ul style="list-style-type: none"> • MOU's with other transit agencies, cities, county, and partners • Contract with other transportation providers, cities and counties.
Table 2.2	

External Factors

Community Resistance to Change: We are currently in a car driven, low density environment. Lack of information about the benefits of change and lack of knowledge about how the change would effect the individuals/community impacts the decision to use public transit.

Cost-Benefit Disparity: Gaining support from stakeholders when priorities focus on cost instead of benefits may delay/postpone project developments. The cost of change is often immediate while the benefits are long range.

Transportation Infrastructure for Connectivity: Without the implementation of first/last mile solutions and the failure to enhance Intermodal connectivity, new ridership may be constrained. Expanding demographic usage depends on infrastructure connectivity and multi-agency collaboration.

Technology Goal

Increase capacity to provide new, innovative technology solutions and enhance existing ones.

Technology has an important and varied role in the future of Omnitrans. Technology facilitates a connected, integrated, and automated public transportation system that is information-intensive to better serve the interests of users. Additionally, technology effectively “connects the dots” of information from various factors that affect transportation operations, such as improved transportation safety and mobility, reduced environmental impact, and enhanced productivity through the integration of advanced communications-based information and electronic technologies into the transportation infrastructure and vehicles.

Omnitrans will focus efforts over the next four years to modernize its vehicles, services, and infrastructure due to vehicle attrition, new state and federal mandates, and changing customer trends. Omnitrans will also leverage emerging technologies and partner with other agencies and companies to improve existing business processes and services. Also, we will build an infrastructure to support new advanced technologies in vehicles, customer services, and management systems.

Outcomes

The Technology Goal has three outcomes.

1. Improved customer experience through new technology applications and services
2. Improved efficiencies in business processes
3. Reduced fuel cost/greenhouse gas emissions

Strategies

Table 3.1 shows the strategies needed to achieve each outcome.

Outcomes	Strategies
1. Improved customer experience through new technology applications and services	1.1 Partner with private industry to provide new, affordable technology applications and services. 1.2 Utilize customer input/pilot programs to prioritize new technology funding decisions.
2. Improved efficiencies in business processes	2.1 Expand the use of technology to increase workplace efficiencies and reduce operational costs.
3. Reduced fuel cost/greenhouse gas emissions	3.1 Phase in new bus and non-revenue vehicle technology (CNG/electric). 3.2 Decrease facility energy cost through implementing energy efficient technologies.
Table 3.1	

Performance Indicators

Table 3.2 shows the performance indicators that will be used to measure progress toward outcomes.

Outcomes	Performance Indicators
1. Improved customer experience through new technology applications and services	<ul style="list-style-type: none"> • Customer technology utilization • Time to Implementation of new technology
2. Improved efficiencies in business processes	<ul style="list-style-type: none"> • Worker productivity

	<ul style="list-style-type: none"> • Average time to improve/implement new business processes
3. Reduced fuel cost/greenhouse gas emissions	<ul style="list-style-type: none"> • Operational fuel cost • Greenhouse gas emissions • Facility energy cost
Table 3.2	

External Factors

Budget: Farebox recovery ratio may impact additional IT project operational budgeting and availability of capital funding for major IT projects could impact implementation of new or innovative technologies as they become available.

Support Personnel: A growing number of IT systems (both in house and onboard vehicle systems) that require ongoing support impacts the workload of IT staff for both normal operations and for new capital projects. As more and more technology is added to Omnitrans, there will be a growing need for more IT support personnel to implement and support these new systems as well as an ongoing training program .

Proposed

Finance Goal

Optimize funding opportunities while maintaining fiscal stewardship.

Every \$1 invested in public transportation generates \$4 in economic returns. And yet funding for public transit is constrained, with an estimated \$24 billion funding shortfall nationwide. Travel habits are changing. Providing public transit that works for the future means evolving proactively to optimize funding opportunities for on-going operational sustainability.

With the wave of retirements projected in the near future and an ongoing shift toward technology and customer service, it's imperative to attract and retain young professionals to public transit.

Public transit is heading in a new direction, and the urban mobility landscape is changing rapidly. This is defining the way people move around in the San Bernardino Valley. The changes and challenges facing the transit industry and how public transit strategically reaffirms its role in the Valley will be the focus for the upcoming fiscal year.

Outcomes

The Finance Goal has four outcomes

1. Increased diversification of funding sources
2. Increased sustainable funding sources
3. Improved grant management oversight
4. Improved operational efficiencies

Strategies

Table 4.1 shows the strategies needed to achieve each outcome.

Outcomes	Strategies
1. Increased diversification of funding sources	1.1 Create voice/presence to advocate for new and different funding sources. 1.2 Capitalize partnerships that will expand long term funding.
2. Increased sustainable funding sources	2.1 Invest in resources to leverage funding. 2.2 Leverage infrastructure assets to generate alternative revenue options.
3. Improved grant management oversight	3.1 Invest in grant management software solutions.
4. Improved operational efficiencies	4.1 Improve the return on capital investments and its impact on ongoing operations.
Table 4.1	

Performance Indicators

Table 4.2 shows the performance indicators that will be used to measure progress toward outcomes.

Outcomes	Performance Indicators
1. Increased diversification of funding sources	• Reduced funding risk
2. Increased sustainable funding sources	• Renewable funding sources
3. Improved grant management oversight	• Balanced funding portfolio • Grant wins
4. Improved operational efficiencies	• Cost per revenue hour

	<ul style="list-style-type: none"> • Fare box recovery • Capital project ROI
Table 4.2	

External Factors

Competition from modes of transportation: In addition to cars and rail service, public bus operators must compete with the likes of Uber, Lyft, and Curb that provides an alternative to public transportation for customers.

Loss of industry knowledge: The retirement of the “baby boom” generation is no longer looming – it’s here. Every month, more than a quarter-million Americans turn 65. This trend will have a profound impact on the economy and the public transportation industry.

Proposed

Marketing Goal

Increase the awareness and use of Omnitrans within the community we serve.

Omnitrans strives to attract more people to public transportation to improve overall regional mobility, connectivity and quality of life. Offering quality transportation options that meet community needs is key, but it is imperative that Omnitrans also implement effective marketing strategies to attract and retain customers while maintaining overall community support of Omnitrans services. Increased ridership and market share for transit are among the key performance indicators for any transit agency.

Successful marketing and outreach efforts will help generate a higher level of public awareness of Omnitrans services which leads to increased use of those services. Proactive and consistent customer communications, well-maintained quality passenger amenities and responsive customer service programs are essential to achieving high levels of customer satisfaction which also improves customer retention. Since Omnitrans is supported by tax dollars, we must also work proactively to ensure that the public has a positive opinion of the agency as a vital community asset, even among those who personally do not utilize the system.

Outcomes

The Marketing Goal has three outcomes.

1. Increased ridership
2. Improved public opinion
3. Improved customer experience

Strategies

Table 5.1 shows the strategies needed to achieve each outcome.

Outcomes	Strategies
1. Increased ridership	1.1 Promote services through advertising, publicity, online tools. 1.2 Increase outreach to inform and educate target groups. 1.3 Develop partnerships with businesses and organizations that Omnitrans serve.
2. Improved public opinion	2.1 Communicate positive aspects of Omnitrans to stakeholders and general public.
3. Improved customer experience	3.1 Improve passenger amenities. 3.2 Improve rider communication tools.
Table 5.1	

Performance Indicators

Table 5.2 shows the performance indicators that will be used to measure progress toward outcomes.

Outcomes	Performance Indicators
1. Increased ridership	<ul style="list-style-type: none"> • New riders • Rider retention • Outreach activities • Promotion results • Partnerships created
2. Improved public opinion	<ul style="list-style-type: none"> • Public opinion rating

	<ul style="list-style-type: none"> • Positive media coverage • Positive online rating/comments
3. Improved customer experience	<ul style="list-style-type: none"> • Customer satisfaction rating • Use of rider communication tools • Amount of passenger amenities
Table 5.2	

External Factors

Relative price of gasoline: Transit ridership is influenced by gasoline prices such that when prices fall to recent historic lows more people will choose to drive. When prices increase, especially if they increase dramatically over a short period, people will look for way to reduce automobile use.

High automobile ownership: In the Omnitrans service area the vast majority of people own and have ready access to a personal automobile. A historically low market share for transit in the region also means that potential customers may be unwilling to try transit simply because they are unfamiliar with it.

Suburban environment: A lack of transit-friendly infrastructure and low density suburban land use practices serve to favor automobile transportation over transit.

Availability and cost of parking: While there are exceptions, within the Omnitrans service area, parking is generally readily available and provided at no charge to employees or business patrons.

Organizational and Workforce Excellence Goal

Improve organizational systems to cultivate Omnitrans as an employer of choice.

Omnitrans depends on a highly skilled and qualified workforce, our most valuable asset. We must build a workforce that can meet the challenges of this decade and beyond, especially in light of the pending retirement of many of our eligible employees.

Put people first. Build a capable, diverse, and collaborative workforce of highly-skilled, innovative, and motivated employees by making Omnitrans a workplace of choice through employee empowerment and engagement, learning and development, succession planning, workplace flexibilities, and a healthy and safe workforce.

Outcomes

The Organizational and Workforce Excellence Goal has three outcomes.

1. Increased opportunities for advancement
2. Increased employee satisfaction
3. Reduced staffing vacancies

Strategies

Table 6.1 shows the strategies needed to achieve each outcome.

Outcomes	Strategies
1. Increased opportunities for advancement	1.1 Expand our training programs. 1.2 Create a career advancement/succession program.
2. Increased employee satisfaction	2.1 Maintain competitive wages and benefits. 2.2 Improve the work environment in response to the Employee Satisfaction Survey.
3. Reduced staffing vacancies	3.1 Simplify application process. 3.2 Expedite hiring process. 3.3 Expand ready workforce.
Table 6.1	

Performance Indicators

Table 6.2 shows the performance indicators that will be used to measure progress toward outcomes.

Outcomes	Performance Indicators
1. Increased opportunities for advancement	<ul style="list-style-type: none"> • Tuition reimbursement • Leadership Action Program • Advancement/Training participation vs. Opportunities • Annual number of promotions
2. Increased employee satisfaction	<ul style="list-style-type: none"> • Compensation study (bi-annual) • Employee Satisfaction Survey (bi-annual)
3. Reduced staffing vacancies	<ul style="list-style-type: none"> • Electronic application process • Average time-to-hire

	<ul style="list-style-type: none"> • Applicant data bank • Eligibility list
Table 6.2	

External Factors:

Funding/budget: While funding is no substitute for creative and effective leadership, adequate funding is needed to move the organization to a higher level of organizational and workforce performance. Over the next few years, Omnitrans will need to make a significant commitment to attracting transportation talent, updating the skills of its workforce, and succession planning.

Employment attractiveness: There are several challenges that require government agencies to make more efforts to increase the attractiveness of the jobs. To this end, improving the image of the government sector and transportation seems to be important. To many people, a job in the government sector seems dull, dusty and poorly paid and this image has to be changed to a more realistic image. Motivation is key in overcoming this challenge. Motivation influences many aspects relating to the employee and the workplace. Motivated employees are instrumental in creating an attractive workplace, which will in the future be crucial for successful recruitment, development and retention of the human resources. Motivation is a vital element, when it comes to the development of expertise, tasks and quality at work.

Proposed



OmniTrans

Connecting Our Community.

Strategic Plan FY2017 – 2020

The Way Forward

Today's Briefing of Omnitrans Strategic Plan FY 2017-2020



This briefing will address these questions ...

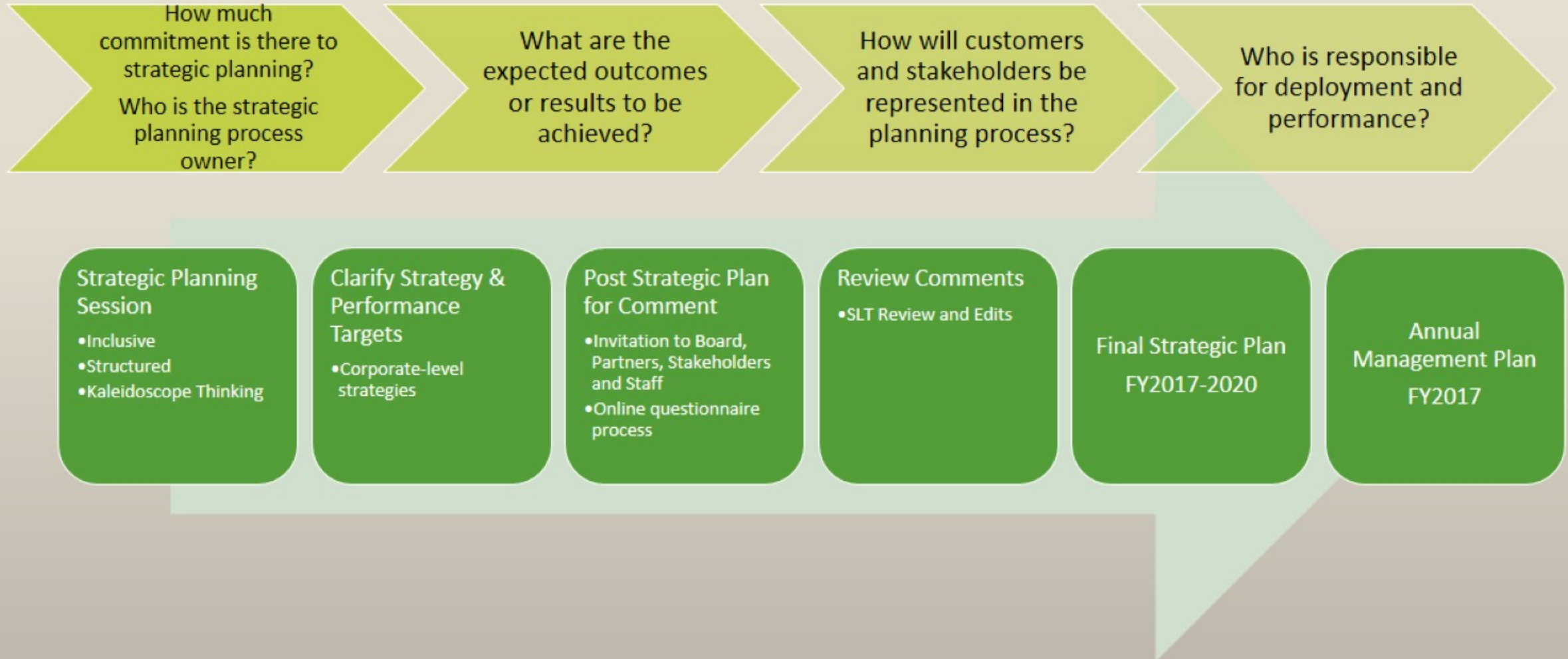


The Process

Not just an event



The Process: Start to Finish



Strategic Planning Session—Set the Goals

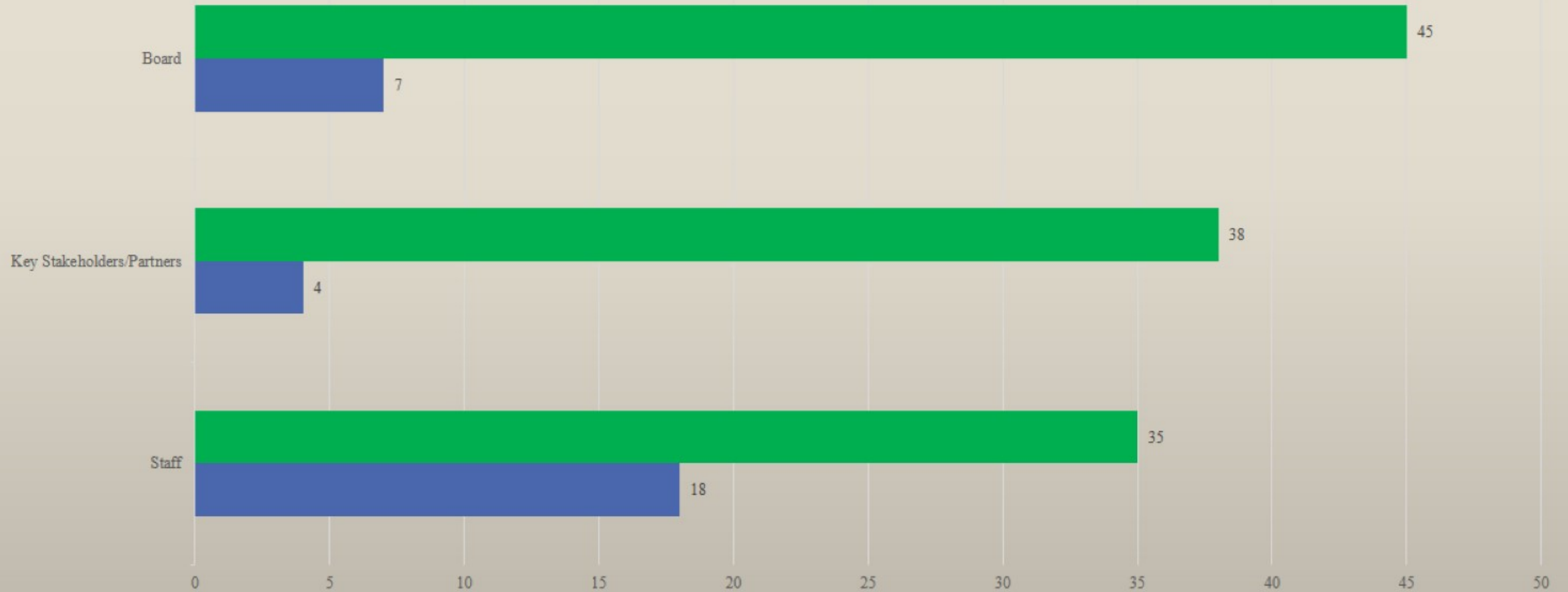
- Safety and Security – Develop and enhance an integrated, responsive safety and security system to protect customers, employees and assets.
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- Organizational and Workforce Excellence - Improve organizational systems to cultivate Omnitrans as an employer of choice.



The Voice of the Customer

Survey Questionnaire Outreach

Response Rate for Comment Questionnaire



	Specific/Simple (1)	Measureable (2)	Achievable (3)	Realistic (4)	Timely (5)	Supports our mission (6)	Total Respondents
Goal 1: Safety and Security-- Develop and enhance the integrated, responsive safety and security system.	57.14% 16	60.71% 17	85.71% 24	78.57% 22	53.57% 15	78.57% 22	28
Goal 2: Service and Operations--Improve and expand public transportation service to our customers and community.	57.14% 16	75.00% 21	75.00% 21	71.43% 20	53.57% 15	85.71% 24	28
Goal 3: Technology-- Increase capacity to provide new, innovative technology solutions and enhance existing ones.	57.14% 16	57.14% 16	71.43% 20	71.43% 20	60.71% 17	75.00% 21	28
Goal 4: Finance--Optimize funding opportunities while maintaining fiscal stewardship.	53.57% 15	67.86% 19	82.14% 23	75.00% 21	53.57% 15	82.14% 23	28
Goal 5: Marketing--Increase the awareness of Omnitrans in the community we serve.	59.26% 16	55.56% 15	96.30% 26	74.07% 20	51.85% 14	85.19% 23	27
Goal 6: Organizational and Workforce Excellence-- Improve organizational systems to cultivate Omnitrans as an employer of choice.	74.07% 20	55.56% 15	66.67% 18	70.37% 19	51.85% 14	85.19% 23	27

The Plan



"HEY! WE'VE NEVER TRIED A 'PITY' STRATEGY BEFORE..."

Strategic Plan Elements



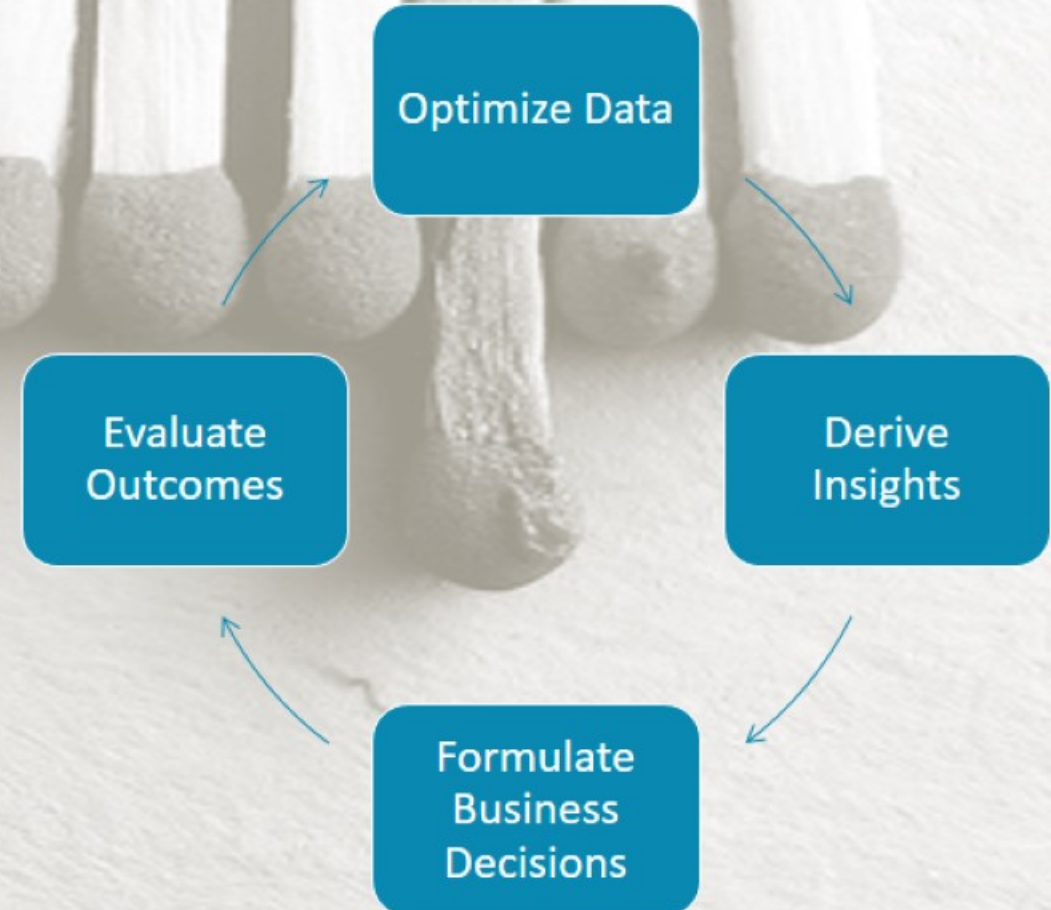
The Performance



"Thanks to my cost-cutting policies, profits are up 59%."

Using Outcomes and Performance Indicators

- **Optimize data** by leveraging business intelligence and analytical tools and technology to gather the right data;
- **Derive** the most valuable **insights** from the data;
- **Formulate** timely, well-informed **business decisions**; and
- **Evaluate outcomes.**



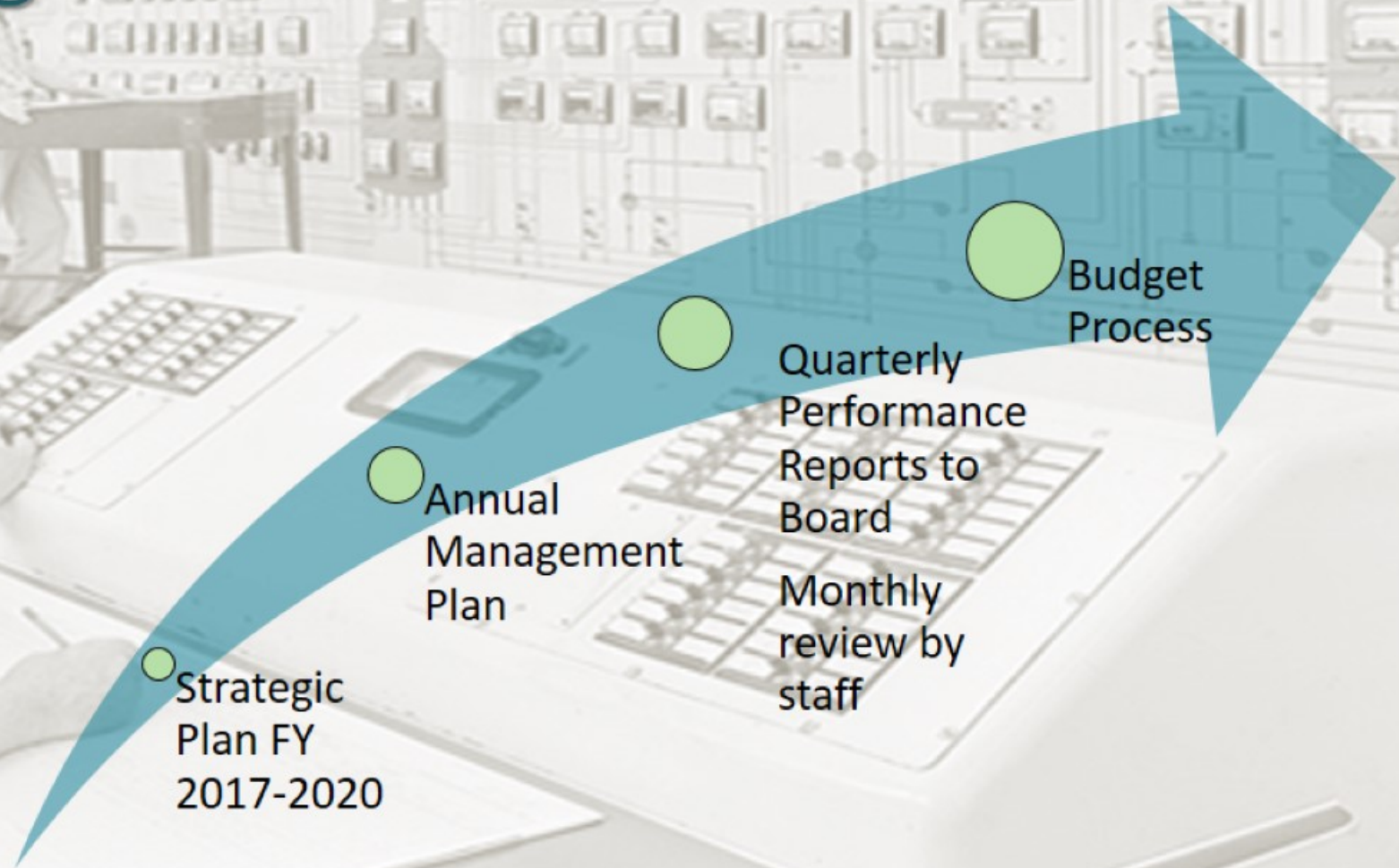
The Importance of Outcomes



Outcomes

- Gauge effectiveness
- Document progress—Increase/Decrease, Improve/Reduce

From Planning to Performance



ITEM # _____ F4 _____

DATE: April 6, 2016

TO: Board Chair Sam Spagnolo and Members of the Omnitrans Board of Directors

THROUGH: P. Scott Graham, CEO/General Manager

FROM: Donald Walker, Director of Finance

SUBJECT: APPROVE SALE OF 28.73 ACRE PROPERTY LOCATED IN RANCHO CUCAMONGA, CALIFORNIA

FORM MOTION

Approve the sale of surplus real property to the highest bidder, Industrial Property Trust, and authorize the Chief Executive Officer/General Manager to proceed with the sale of the 28.73 acre property located at 12400 Arrow Route in Rancho Cucamonga, California (Mid-Valley) (APN #0229-021-60), and sign all documents required to complete the sale of the property.

BACKGROUND

Since the cancellation of Escrow by DCT Industrial, Arrow LLC, Wilmington, DE, Omnitrans requested authorization to offer the property at auction a third time. The change in contract language recommended by both Legal Counsel and San Bernardino Real Estate Services included the following:

- 1) Deposit A: \$2,000,000 – becomes non-refundable after the expiration of the due diligence period (applicable to the purchase price).
- 2) Deposit B: \$250,100 – becomes non-refundable immediately upon acceptance of the bid (includes \$100 independent consideration).
- 3) 12 month entitlement period with an option to extend an additional 6 months upon payment of \$350,000 (non-refundable and applicable to the purchase price). This extension is subject to mutual agreement.

The public auction was held at the County of San Bernardino Government Center, 385 N. Arrowhead Avenue, San Bernardino on Wednesday, March 16, 2016, at 11:00 a. m. Although the appraised value was \$19.1 million, the property was offered at \$21.3 million as in the initial appraisal.

Below is a list of the bidders and their written bid:

1. Goodman Birtcher - \$23,903,245
2. Industrial Property Trust - \$21,300,172.58
3. DCT Industrial - \$23,580,000
4. Hillwood Enterprises - \$21,800,000

Per statute, five percent (5%) was added onto the highest written bid and called for oral bids at the new price \$25,098,407. One bid was received by Industrial Property Trust at the new price. Therefore, Industrial Property Trust was the highest bidder at the auction with a sale price of \$25,098,407. The third auction resulted in an increase of \$43,801.42 over the previous sale price (\$25,098,407 vs. \$25,054,605.58).

The Board of Directors approved the proceeds from the sale to go towards the West Valley Connector Corridor – a rapid bus line from Fontana to Pomona, and the purchase of a three- to five-acre property to accommodate the overflow of coaches and support vehicles associated with the West Valley Connector Corridor (WVCC). Disposition of the proceeds will be brought back to the Board for action after approval by the Federal Transit Administration.

CONCLUSION

Approval of the recommended action will allow Omnitrans to proceed with the sale of Rancho Cucamonga property, with the proceeds used for the West Valley Connector Corridor and the purchase of a three- to five-acre property to accommodate the overflow of coaches and support vehicles used to operate the WVCC.

PSG:DJW

PURCHASE AND SALE AGREEMENT AND ESCROW INSTRUCTIONS FOR AUCTION SALES

This PURCHASE AND SALE AGREEMENT AND ESCROW INSTRUCTIONS (the "Agreement") is dated as of _____, 2016 and is entered into by and between Omnitrans, a joint powers authority ("OMNITRANS") and IPT Arrow Route DC LP, a Delaware Limited Partnership ("BUYER").

RECITALS

A. OMNITRANS is the owner of the fee simple interest in that certain real property (APN 0229-021-60) located at 12400 Arrow Route in the City of Rancho Cucamonga consisting of approximately 28.73 gross acres of vacant land as shown on Exhibit "A" Legal Description and referenced as (the "Property").

B. BUYER, the highest bidder, in accordance with California Government Code Section 25531, "Oral Bids", is able to acquire from OMNITRANS, the property located at 12400 Arrow Route in the City of Rancho Cucamonga (APN 0229-021-60) for the highest bid price of \$25,098,407.

C. OMNITRANS has determined that the Property is surplus to its needs, and is authorized to sell all or a portion of the property to BUYER for the highest bid in accordance with California Government Code Sections 37350 et seq., 54220 et seq and San Bernardino City Municipal Code Section 2.65.010 et seq.

D. OMNITRANS and BUYER agree that the value set by the highest bid on the Property is \$25,098,407 and BUYER agrees the purchase of the property is **AS-IS**.

NOW, THEREFORE, in consideration of the foregoing, and the terms and conditions of this Agreement, OMNITRANS and BUYER hereby agree as follows:

Section 1. Recitals.

The recitals set forth above are true and correct and incorporated herein by this reference.

Section 2. Purchase and Sale of Property.

Subject to all of the terms, conditions and provisions of this Agreement and for the consideration set forth below, OMNITRANS hereby agrees to sell, convey and transfer to BUYER and BUYER hereby agrees to acquire all of the right, title and interest of OMNITRANS in and to the Property (the "Transaction").

The Property will be conveyed to BUYER when the Purchase Price is paid in full in accordance with this Agreement.

Section 3. Consideration.

As a condition to OMNITRANS' performance hereunder, BUYER shall pay to OMNITRANS total consideration in the amount of Twenty-Five Million Ninety-Eight Thousand

Four Hundred Seven Dollars (\$25,098,407.00) ("Purchase Price") for the Property. As part of the auction for the Property, BUYER has deposited with Omnitrans the amount of TWO MILLION AND 00/100 DOLLARS (\$2,000,000) ("Deposit A") and BUYER has deposited with Omnitrans the amount of TWO HUNDRED FIFTY THOUSAND ONE HUNDRED AND 00/100 DOLLARS (\$250,100.00) ("Deposit B"). Deposit A and Deposit B are referred to herein, collectively, as the "Deposit." A portion of the Deposit, in the amount of One Hundred Dollars (\$100.00), will be referred to herein as the "Independent Contract Consideration" and, notwithstanding anything to the contrary contained herein, will not be refundable to the BUYER. From and after the effective date, in the event the transaction contemplated hereby is consummated, the Deposit shall be credited against BUYER's payment obligations hereunder. The Deposit shall be subject to refund to BUYER, or retention by OMNITRANS, on the terms and conditions of this Agreement.

Section 4. BUYER's Option of Opening of Escrow.

(a) All expenses incurred in the transfer of title, including but not limited to escrow, Title Policy (as defined in Section 8, below), documentary stamps and recording fees are to be paid by BUYER.

(b) The transfer and sale of the Property shall take place through escrow (the "Escrow"), and such Escrow shall be administered by Fidelity National Title, 3237 E. Guasti Rd., Ste. 105, Ontario, CA 91761, Attn: Janette DeLap (Phone: 909- 569-0225) ("Escrow Holder"). The Escrow for the Property shall be deemed open ("Opening of Escrow") upon the receipt by the Escrow Holder of a copy of this Agreement executed by OMNITRANS and BUYER. OMNITRANS and BUYER shall each execute this Agreement and open escrow within seven (7) days after approval of this Agreement by the OMNITRANS' Board of Directors. The date of Opening of Escrow shall be memorialized by Escrow Holder in writing delivered to the parties.

(c) While held by OMNITRANS, the Deposit shall be held in a non-interest bearing account. Within three (3) business days of the Opening of Escrow, OMNITRANS shall deliver the Deposit to the Escrow Holder for deposit in an interest-bearing account and interest accruing thereon shall be added to and will become a part of the Deposit, for the account of BUYER. A portion of the Deposit, in the amount of One Hundred Dollars (\$100.00), will be referred to herein as the "Independent Contract Consideration" and notwithstanding anything to the contrary contained herein, will not be refundable to the BUYER. From and after the effective date of this Agreement, in the event the Transaction contemplated hereby is consummated, the Deposit shall be credited against BUYER's payment obligations hereunder. The Deposit shall be subject to refund to BUYER, or retention by OMNITRANS, on the terms and conditions of this Agreement.

(d) If this Agreement is terminated or Escrow is cancelled as a result of a default by OMNITRANS, then OMNITRANS shall be solely responsible to the Escrow Holder for payment of all customary and reasonable escrow cancellation charges to the Escrow Holder without further or separate instruction to the Escrow Holder. If this Agreement is terminated or Escrow is cancelled for any reason other than OMNITRANS' default, then BUYER shall be solely responsible for the payment of all customary and reasonable escrow cancellation charges to the Escrow Holder without further or separate instruction to the Escrow Holder.

Section 5. Entitlement Period

(a) OMNITRANS covenants and agrees that OMNITRANS will reasonably cooperate with BUYER in connection with the processing by BUYER of the entitlements deemed necessary by BUYER for the development of the Property during escrow. OMNITRANS acknowledges that such cooperation shall include whatever actions may be reasonably necessary or helpful to enable BUYER to process its entitlements. Such entitlements to be processed by BUYER shall include, without limitation, the processing of an amendment to the general plan covering the Property, zone change, a tentative subdivision map, a final subdivision map, an environmental impact report, associated development permits and related permits and approvals (collectively "Entitlements"). Such cooperation shall include facilitating BUYER in entering into development agreements, investigating public financing and forming special improvement districts, executing, as may be requested by the City of Rancho Cucamonga or any other governmental agency having jurisdiction over the Property, applications, permits or approvals required for the submittal of the Entitlements and, if applicable, executing the final map, if requested by BUYER, and providing BUYER and BUYER's agents, employees and independent contractors access to the Property to perform any investigations or tests necessary for the processing of such Entitlements and/or evaluating the condition of the Property. The parties acknowledge that the intent of this provision is that OMNITRANS will cooperate with BUYER and participate in such meetings if the City of Rancho Cucamonga or other governmental agencies require the owner of the Property to be in attendance at such meetings. To the extent such attendance is required; BUYER will use reasonable efforts to provide OMNITRANS with advance notice and to schedule such meetings at a time which is reasonably acceptable to OMNITRANS. Upon submittal of any such applications, permits, deeds or maps to OMNITRANS, OMNITRANS shall, no later than seven (7) days after delivery of such documents, deliver the same to BUYER.

(b) As used in this Agreement, the term "Entitlement Period" shall refer to a period of time to expire at 5:00 p.m., Pacific Time, on the date which is twelve (12) months from the Opening of Escrow to allow the BUYER the opportunity to investigate the condition and suitability of the Property for BUYER's intended use. In the event BUYER finds the Property unsatisfactory for any reason, at its sole discretion, BUYER shall notify OMNITRANS and Escrow Holder in writing prior to the expiration of the Entitlement Period and, thereafter, OMNITRANS and BUYER shall have no further obligation to each other, Escrow shall be cancelled and this Agreement shall automatically terminate on the date of such election and the parties shall each be relieved and discharged from all further responsibility or liability under this Agreement; **PROVIDED HOWEVER THAT DEPOSIT A (INCLUDING INTEREST ACCRUED THEREON) SHALL BE RETURNED TO BUYER AND BUYER SHALL PAY ESCROW CANCELLATION CHARGES; AND PROVIDED FURTHER THAT DEPOSIT B (INCLUDING INTEREST ACCRUED THEREON) SHALL BE RETAINED BY OMNITRANS.** BUYER's failure to give written notice of termination to OMNITRANS on or before the expiration of the Entitlement Period shall constitute an election by BUYER to waive the termination right contemplated under this Section 5 and proceed with this Agreement, subject to all the other terms and conditions of this Agreement.

(c) BUYER may extend the Entitlement Period up to an additional six (6) months (subject to OMNITRANS' reasonable approval) in exchange for the BUYER's one-time payment of Three Hundred Fifty Thousand Dollars (\$350,000.00) (the "Extension Consideration") payable to OMNITRANS. The Extension Consideration shall become non-refundable upon payment and in no event shall it be returned to BUYER, except in the event of a default by OMNITRANS. It shall be deposited into escrow and shall be applied toward the

purchase price in the event that escrow closes and shall be retained by OMNITRANS in the event that escrow does not close for reasons other than OMNITRANS' default. Provided BUYER is diligently working through its entitlement process for this site, then SELLER shall not unreasonably withhold its approval of this six (6) month extension with the BUYER. If the Agreement is terminated at the end of the extended Entitlement Period, then Deposit A (including interest accrued thereon) shall be returned to BUYER and Deposit B and the Extension Consideration shall be retained by SELLER.

Section 6. Close of Escrow.

As used herein, "Close of Escrow" means and refers to the close of Escrow for the Property and the transfer of fee title to the Property by OMNITRANS to the BUYER pursuant to grant deed in the form of Exhibit "B" attached hereto (the "Deed"). The Close of Escrow shall take place on the Closing Date. The "Closing Date" shall mean the date on which the conditions set forth in this Agreement for the Close of Escrow for the transfer of the Property have been satisfied, and the Deed is recorded by the Escrow Holder. The Property shall be transferred to BUYER at the Close of Escrow, provided that within the periods of time set forth in this Agreement: (i) BUYER has not terminated this Agreement, (ii) BUYER has accepted the Deed, and (iii) all other conditions of the Close of Escrow set forth in this Agreement have been met and BUYER has paid, or caused to be paid to the Escrow Holder all applicable Escrow costs relating to such closing. The Close of Escrow shall occur on a date designated by BUYER (on advance notice to OMNITRANS) no later than thirty (30) days after the expiration of the Entitlement Period (as same may have been extended as provided above) unless otherwise extended by both parties.

Section 7. Escrow Instructions.

OMNITRANS and BUYER each agree to execute and deliver to the Escrow Holder the customary supplemental written escrow instructions (consistent with the terms of this Agreement) of the Escrow Holder. In the event of a conflict between the additional terms of such customary supplemental escrow instructions of the Escrow Holder and the provisions of this Agreement, this Agreement shall supersede and be controlling.

Section 8. Conveyance of Title.

On or before the Close of Escrow, OMNITRANS shall deliver to the Escrow Holder the Grant Deed, duly executed and acknowledge by OMNITRANS. The Escrow Holder shall be instructed to record the Deed in the Official Records of San Bernardino County, California, if and when the Escrow Holder holds the funds for OMNITRANS as set forth herein and can obtain for BUYER an ALTA owner's extended coverage policy of title insurance ("Title Policy") issued by Fidelity National (the "Title Company") with liability in an amount equal to the Purchase Price together with such endorsements to the policy as may be reasonable requested by BUYER, insuring that fee title to the Property is vested in BUYER, free and clear of options, rights of first refusal or other purchase rights, leases or other possessory interests, lis pendens and monetary liens and/or encumbrances and subject only to:

- (1) non-delinquent real property taxes;
- (2) dedication of streets abutting the Property;
- (3) zoning ordinances;

(4) utility easements common to any subdivision of which the Property is a part; and

(5) such other title exceptions, if any, resulting from documents being recorded or delivered through Escrow in accordance with the provisions of this Agreement.

Section 9. Inspections and Review.

(a) BUYER shall accept the delivery of possession of the Property (including but not limited to, subterranean structures and soil conditions), in an **"AS IS," "WHERE IS" and "SUBJECT TO ALL FAULTS" condition.** BUYER hereby acknowledges that it has relied solely upon its own investigation of the Property and its own review of such information and documentation as it deems appropriate. BUYER is not relying on any statement or representation by OMNITRANS, any employee, official or consultant of OMNITRANS relating to the condition of the Property. OMNITRANS makes no representations or warranties as to whether the Property presently complies with environmental laws or whether the Property contains any hazardous substance. Furthermore, to the extent that OMNITRANS has provided BUYER with information relating to the condition of the Property, OMNITRANS makes no representation or warranty with respect to the accuracy, completeness or methodology or content of such reports or information

(b) From and after the Close of Escrow, BUYER, on behalf of itself and its successors, waives and releases OMNITRANS and its successors and assigns from any and all costs or expenses whatsoever (including, without limitation, attorneys' fees and costs), whether direct or indirect, known or unknown, foreseen or unforeseen, arising from or relating to any of the following matters and conditions relating to the Property which exist as of the date of the Close of Escrow: (i) the physical condition of the Property or any above ground or underground improvements thereon, (ii) the condition of the soils, (iii) the suitability of the soils for the improvement of any proposed project, or (iv) any law or regulation applicable thereto.

(c) BUYER expressly waives any rights or benefits available to it with respect to the foregoing release under any provision of applicable law which generally provides that a general release does not extend to claims which the creditor does not know or suspect to exist in his or her favor at the time the release is agreed to, which, if known to such creditor, would materially affect a settlement. By execution of this Agreement, BUYER acknowledges that it fully understands the foregoing, and with this understanding, nonetheless elects to and does assume all risk for claims known or unknown, described in this Section 9 without limiting the generality of the foregoing:

The undersigned acknowledges that it has been advised by legal counsel and is familiar with the provisions of California Civil Code Section 1542, which provides as follows:

"A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS WHICH THE CREDITOR DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING THE RELEASE, WHICH IF KNOWN BY HIM OR HER, MUST HAVE MATERIALLY, AFFECTED HIS OF HER SETTLEMENT WITH THE DEBTOR."

The undersigned, being aware of this Code section, hereby expressly waives any rights it may have thereunder, as well as

under any other statutes or Common law principles of similar effect.

Initials of BUYER: _____

(d) The provisions of this Section 9 shall survive the Close of Escrow, and shall be binding upon BUYER.

(e) OMNITRANS shall assist and cooperate with BUYER in endeavoring to remove title exceptions unacceptable to BUYER, but OMNITRANS shall have no obligation to cause such objections to be removed or to expend any sums in such endeavor, except that OMNITRANS shall remove all monetary liens and encumbrances created by or as a result of OMNITRANS' activities.

(f) OMNITRANS covenants not to further encumber and not to place any further liens or encumbrances on the Property, including, but not limited to, covenants, conditions, restrictions, easements, liens, options to purchase, rights of first offer options to lease, leases, tenancies, or other possessory interests.

(g) OMNITRANS also covenants not to authorize or permit others to take any action that adversely affects the physical condition of the Property or its soils.

Section 10. Closing Costs, Prorations, Possession.

(a) BUYER shall pay the premium for the ALTA extended coverage Title Policy, cost of procuring a survey and all requested ALTA survey policy endorsements, the cost of recording the Deed and any documentary or other transfer taxes payable on account of the conveyance of the Property to BUYER.

(b) BUYER shall pay one hundred percent (100%) of the Escrow Holder's charges and fees which may be charged by the Escrow Holder in connection with the Close of Escrow.

(c) BUYER shall be entitled to exclusive possession of the Property immediately upon the Close of Escrow.

(d) All prorations shall be made in accordance with customary practice in San Bernardino County, except as otherwise expressly provided in this Agreement. All prorations shall be on an "actual day" basis and a three hundred sixty-five (365) day year.

Section 11. Representations and Warranties.

(a) OMNITRANS hereby makes the following representations, covenants and warranties:

(1) Power and Authority. OMNITRANS has the legal power, right and authority to enter into this Agreement and to execute the instruments and documents referenced herein, and to consummate the Transaction contemplated hereby.

(2) Requisite Action. OMNITRANS has taken all requisite action and obtained all requisite consents in connection with entering into this Agreement and the

instruments and documents referenced herein and the consummation of the Transaction contemplated hereby, and no consent of any other party is required.

(3) Enforceability of Agreement. The persons executing this Agreement and any instrument or document referenced herein for or on behalf of OMNITRANS have been duly authorized to so act on behalf of OMNITRANS and this Agreement and any such instrument or document is valid and legally binding on OMNITRANS and enforceable against OMNITRANS in accordance with their respective terms.

(4) No Litigation. There is no pending or, to the best of OMNITRANS' knowledge, threatened claims, action, allegations or lawsuit of any kind, whether for personal injury, property damage, property taxes, or otherwise, that could affect the Property.

(5) No Violation. Neither the execution of this Agreement or the other instruments and documents referenced herein nor the performance by OMNITRANS of its obligations hereunder and thereunder shall result in a breach or constitute a default under any agreement, document, instrument or other obligation to which OMNITRANS is a party or by which OMNITRANS may be bound or a breach or violation under law, statute, ordinance, rule, governmental regulation, state constitution, or any writ, injunction, order or decree of any court or governmental body applicable to OMNITRANS, the Property or the Transaction contemplated hereby.

(6) Operation and Condition Pending Closing. Between the date of this Agreement and the Close of Escrow hereunder, OMNITRANS will continue to manage, operate and maintain the Property in the same manner as existed prior to the execution of this Agreement.

(7) Contracts. There are no contracts or agreements to which OMNITRANS is a party relating to the operation, maintenance, development, improvement or ownership of the Property which will survive the Close of Escrow.

All representations and warranties contained in this Section 11(a) are true and correct on the date hereof and on the Closing Date and shall survive the Close of Escrow.

(b) Warranties and Representations by BUYER. BUYER hereby makes the following representations, covenants and warranties and acknowledges that the execution of this Agreement by OMNITRANS has been made in material reliance by OMNITRANS on such covenants, representations and warranties:

(1) BUYER has the legal right, power and authority to enter into this Agreement and the instruments and documents referenced herein and to consummate the Transaction contemplated hereby. The persons executing this Agreement and such other instruments as may be referenced herein on behalf of BUYER hereby represent and warrant that such persons have the power, right and authority to bind BUYER.

(2) BUYER has taken all requisite action and obtained all requisite consents in connection with entering into this Agreement and the instruments and documents referenced herein and subject to the provisions set forth above, the consummation of the Transaction contemplated hereby, and no consent of any other party is required.

(3) This Agreement is, and all instruments and documents to be executed by BUYER pursuant to this Agreement shall be, duly executed by and are or shall be valid and legally binding upon BUYER and enforceable in accordance with their respective terms.

(4) Neither the execution of this Agreement nor the consummation of the Transaction contemplated hereby shall result in a breach of or constitute a default under any other agreement, document, instrument or other obligation to which BUYER is a party or by which BUYER may be bound, or a breach or violation under law, statute, ordinance, rule governmental regulation or any writ, injunction, order or decree of any court or governmental body applicable to BUYER.

All representations and warranties contained in this Section 11(b) are true and correct on the date hereof and on the Closing Date and shall survive the Close of Escrow.

Section 12. Conflict of Interest.

No member, official or employee of either party having any conflict of interest, direct or indirect, related to this Agreement and the use and development of the Property shall participate in any decision relating to the Agreement. The parties represent and warrant that they do not have knowledge of any such conflict of interest.

Section 13. Nonliability of Officials and Employees.

No officer, official or employee of OMNITRANS shall be personally liable to BUYER, or any successor in interest of such other party, in the event of any default or breach or for any amount which may become due hereunder, or on any obligations under the terms of this Agreement.

Section 14. Indemnification.

BUYER agrees to indemnify and hold OMNITRANS and its officers, employees and agents harmless from and against all damages, judgments, costs, expenses and attorney's fees arising from or related to any act or omission of BUYER in performing its obligations hereunder, including such that arise as the result of BUYER's investigations of the Property; provided that such indemnity shall not extend to pre-existing adverse conditions that are merely discovered by BUYER or the displacement or disturbance of hazardous substances not placed on the Property by BUYER or its consultants. OMNITRANS shall give BUYER written notice of the occurrence of a claim, litigation or other matters for which OMNITRANS seeks indemnity under this Section as promptly as practicable following OMNITRANS knowledge of the occurrence of such matter and OMNITRANS shall reasonably cooperate with BUYER in the defense of any such claim or matter and shall not take any action that would adversely affect BUYER's defense of such matter.

Section 15. Default.

(a) Default by BUYER; Limitation on Liability; Liquidated Damages. **IF BUYER REFUSES OR FAILS TO CONSUMMATE THE CLOSE OF ESCROW UNDER THIS AGREEMENT FOR ANY REASON OTHER THAN: (I) THE FAILURE OF AN EXPRESS CONDITION PRECEDENT TO BUYER'S OBLIGATION TO CLOSE, OR (II) ANY OTHER EXPRESS RIGHT OF BUYER SET FORTH IN THIS AGREEMENT TO TERMINATE THIS AGREEMENT, AND IF BUYER FAILS TO CURE ANY SUCH FAILURE TO COMPLETE THE**

CLOSE OF ESCROW WITHIN TEN (10) DAYS FOLLOWING RECEIPT OF A WRITTEN NOTICE FROM OMNITRANS INDICATING THE NATURE OF ANY DEFAULT ON THE PART OF BUYER, OMNITRANS SHALL THEN RETAIN THE DEPOSIT PLUS ANY INTEREST ACCRUED THEREON. THE PARTIES HAVE AGREED THAT OMNITRANS' ACTUAL DAMAGES, IN THE EVENT OF A DEFAULT BY BUYER, WOULD BE EXTREMELY DIFFICULT OR IMPRACTICABLE TO DETERMINE. OMNITRANS AND BUYER AGREE THAT THE DEPOSIT IS A FAIR AND REASONABLE AMOUNT TO BE RETAINED BY OMNITRANS AS AGREED AS LIQUIDATED DAMAGES IN LIGHT OF OMNITRANS' REMOVAL OF THE PROPERTY FROM THE MARKET AND THE COSTS INCURRED BY OMNITRANS, AND SHALL NOT CONSTITUTE A PENALTY OR A FORFEITURE.'

BY PLACING ITS INITIALS BELOW, EACH PARTY SPECIFICALLY CONFIRMS THE ACCURACY OF THE STATEMENTS MADE ABOVE AND THE FACT THAT EACH PARTY WAS REPRESENTED BY COUNSEL WHO EXPLAINED, AT THE TIME THIS AGREEMENT WAS MADE, THE CONSEQUENCES OF THIS LIQUIDATED DAMAGES PROVISION.

INITIALS: Seller: _____ Buyer: _____

(b) Default By Seller; Other Failure To Consummate Agreement. IN THE EVENT OF ANY DEFAULT BY ON THE PART OF OMNITRANS UNDER THIS AGREEMENT, WHICH OMNITRANS FAILS TO CURE WITHIN TEN (10) DAYS FOLLOWING RECEIPT OF A WRITTEN NOTICE FROM BUYER INDICATING THE NATURE OF ANY DEFAULT ON THE PART OF OMNITRANS, BUYER SHALL HAVE THE RIGHT, IN BUYER'S SOLE DISCRETION AND AS ITS SOLE AND ONLY REMEDIES HEREUNDER TO THE EXCLUSION OF ALL OTHER POTENTIAL REMEDIES, TO EITHER (I) TERMINATE THIS AGREEMENT AND RECEIVE THE DEPOSIT PLUS ANY INTEREST ACCRUED THEREON (LESS THE INDEPENDENT CONTRACT CONSIDERATION) IN WHICH EVENT THIS AGREEMENT SHALL AUTOMATICALLY TERMINATE AND BE OF NO FURTHER FORCE OR EFFECT AND NEITHER PARTY SHALL HAVE ANY FURTHER RIGHTS OR OBLIGATIONS HEREUNDER, OTHER THAN PURSUANT TO ANY PROVISION HEREOF WHICH EXPRESSLY SURVIVES THE TERMINATION OF THIS AGREEMENT; or (II) BRING AN ACTION FOR SPECIFIC PERFORMANCE, PROVIDED, HOWEVER, THAT ANY SUCH ACTION FOR SPECIFIC PERFORMANCE SHALL BE FILED AND SERVED BY BUYER WITHIN THIRTY (30) DAYS OF THE DATE OF THE ALLEGED OMNITRANS' DEFAULT, IT BEING THE INTENT OF THE PARTIES HERETO THAT ANY FAILURE OF BUYER TO MEET THE TIME DEADLINE SET FOR FILING SHALL BE DEEMED TO BE BUYER'S ELECTION TO WAIVE AND RELINQUISH ANY RIGHTS TO ENFORCE SPECIFIC PERFORMANCE OF THIS AGREEMENT.

INITIALS: Seller: _____ Buyer: _____

Section 16. Successor and Assigns.

BUYER will not assign its rights, duties or obligations under this Agreement without the prior written consent of SELLER, which consent SELLER may grant or withhold in its sole and absolute discretion. For purposes hereof, any sale or transaction hereinafter involving a transfer of fifty percent (50%) or more of the equity/ownership interests in BUYER will be deemed an assignment. Notwithstanding the foregoing, and subject to any permitted assignee's ability to represent, warrant and certify those matters contained in Section 11(b), BUYER will have the right, after giving written notice to SELLER, to assign this Agreement to an entity which is affiliated with and controlled by BUYER. For the purpose of the preceding sentence, "affiliated

with and controlled by BUYER" means an ownership or equity interest of greater than fifty percent (50%) in such entity by BUYER, with BUYER having the authority to direct the actions of such entity. Such written notice will include the name and address of such entity and will set forth, as applicable, all shareholders, officers, general partners, managing members or similar agents exercising managerial authority over the entity. Any such assignee entity will assume all duties and obligations of BUYER pursuant to this Agreement; however, any such assignment of BUYER's interest in this Agreement will not relieve BUYER of any duties, obligations or liabilities hereunder.

Section 17. Exchange.

A party (the "Exchanging Party") may structure this transaction as a like kind exchange under Internal Revenue Code Section 1031 (an "Exchange") at such party's sole cost and expense. The other party (the "Cooperating Party") shall reasonably cooperate therein provided that (i) the Closing Date shall in no event be delayed as a result of, or conditioned upon, such party's Exchange, (ii) the Cooperating Party shall incur no additional costs, expenses or liabilities in connection with the Exchanging Party's Exchange, (iii) the Cooperating Party shall not be required to take title to or contract for the purchase or sale of any other property, (iv) the Exchanging Party shall remain fully liable and shall not be relieved of any duties, obligations or liabilities hereunder, and (v) the Exchanging Party shall indemnify, defend and hold the Cooperating Party harmless from and against any and all loss, cost, damage or expense (including reasonable attorneys' fees) incurred by the Cooperating Party relating to or arising out of the Cooperating Party's participation in such Exchange. If the Exchanging Party uses a qualified intermediary to effectuate the Exchange, any assignment of the rights or obligations of the Exchanging Party hereunder shall not relieve, release or absolve the Exchanging Party of its duties, obligations or liabilities to the Cooperating Party and hereunder. The Exchanging Party shall give written notice to the Cooperating Party not less than ten (10) business days prior to the Closing Date if it desires to effectuate an Exchange. In the event both Purchaser and Seller elect to structure this transaction as an Exchange, each shall be an "Exchanging Party" as to its Exchange and a "Cooperating Party" as to the Exchange of the other party.

Section 18. Miscellaneous.

(a) This Agreement may be executed in multiple counterparts, each of which shall be deemed an original and together shall constitute one and the same agreement, with one counterpart being delivered to each party hereto.

(b) All periods of time referred to in this Agreement shall include all Saturdays, Sundays and state or national holidays, provided that if the date or last date to perform any act or give any notice with respect to this Agreement shall fall on a Saturday, Sunday or state or national holiday, such act or notice may be timely performed or given on the next succeeding day which is not a Saturday, Sunday or state or national holiday.

(c) The unenforceability, invalidity, or illegality of any provision of this Agreement shall not render the other provisions hereof unenforceable, invalid or illegal.

Section 19. Additional Agreements; Further Assurances.

Each of the parties hereto shall execute and deliver such documents as the other party shall reasonably request in order to consummate and make effective the Transaction, provided,

however the execution and delivery of such documents shall not result in any additional liability or cost to the executing party.

Section 20. Entire Agreement.

(a) This Agreement and the exhibits attached hereto constitute the entire understanding and Agreement of the parties.

(b) This Agreement integrates all of the terms and conditions mentioned herein or incidental hereto with respect to the Property.

(c) The headings to the sections and paragraphs of this Agreement are for convenience of reference only, do not form a part of this Agreement and shall not in any way affect its interpretation.

(d) Unless otherwise indicated, references in this Agreement to Sections, paragraphs, clauses and exhibits are to the same contained in or attached to this Agreement and all attachments referenced in this Agreement are incorporated in this Agreement by this reference as though fully set forth in this Section.

Section 21. Approval.

(a) Board of Directors. This agreement is subject to, and will have no force or effect until and unless first approved by the OMNITRANS Board of Directors. The execution of this Agreement by the parties designated for OMNITRANS in the signature block set forth herein shall constitute an acknowledgment by OMNITRANS that the Board of Directors of OMNITRANS has approved this Agreement.

(b) Administrative Approvals. Following its approval by the Board of Directors, this Agreement shall be administered by the Chief Executive Officer/General Manager of OMNITRANS ("CEO") or his or her designee. Except where the terms of this Agreement expressly require the approval of a matter or the taking of any action by the Board of Directors, any matter to be approved by the OMNITRANS shall be deemed approved, and any action to be taken by the OMNITRANS shall be deemed taken, upon the written approval by the CEO (or designee). The CEO or designee shall have the authority to issue interpretations with respect to this Agreement and to determine whether any action requires the approval of the Board of Directors.

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IN WITNESS WHEREOF, the parties hereto have duly executed this Agreement as of the dates set forth below.

BUYER:

IPT ARROW ROUTE DC LP,
a Delaware limited partnership

By: IPT Arrow Route DC GP LLC,
a Delaware limited liability company,
its general partner

By: Build-To-Core Industrial Partnership I SoCal Development Holdco LLC,
a Delaware limited liability company,
its sole member

By: Build-To-Core Industrial Partnership I LP,
a Delaware limited partnership,
its sole member

By: IPT BTC I GP LLC,
a Delaware limited liability company,
its general partner

By: IPT Real Estate Holdco LLC,
a Delaware limited liability company,
its sole member

By: Industrial Property Operating Partnership LP,
a Delaware limited partnership,
its sole member

By: Industrial Property Trust Inc.,
a Maryland corporation,
its general partner

By: _____
Name:
Title:

SELLER:

OMNITRANS,
a joint powers authority

By: _____
Sam Spagnolo, Chair

Date: _____

Omnitrans Board of Directors

By: _____
P. Scott Graham, CEO/General Manager
Secretary, Omnitrans Board of Directors

Date: _____

Approved as to Legal Form:

By: _____
Carol Greene
Legal Counsel for Omnitrans

Date: _____

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EXHIBIT "A"

LEGAL DESCRIPTION

That certain real property located in the city of Rancho Cucamonga, County of San Bernardino, State of California, more particularly described as follows:

That portion of the northwest $\frac{1}{4}$ of section 8, township 1 south, range 6 west, San Bernardino base and meridian, according to the official plat of said land, described as follows:

Commencing at the southeast corner of the northwest $\frac{1}{4}$ of said section 8; thence north 30 chains, thence west 20 chains, thence south 30 chains, thence east 20 chains to the point of beginning.

Excepting therefrom all that portion lying northwesterly of the southeasterly line of the state highway as established in that certain final order of condemnation, a certified copy of which was recorded February 13, 1975 in Book 8615, page 992, official records.

Also excepting therefrom all that portion conveyed to Southern Surplus Realty Co., a California corporation, by deed recorded October 2, 1973 in Book 8279, page 59, official records.

Also excepting therefrom a triangular shaped parcel, being a portion of the northwest $\frac{1}{4}$ of section 8, township 1 south, range 6 west, San Bernardino base and meridian, bounded on the east by the east line of the northwest $\frac{1}{4}$ of said section 8, bounded on the northwest by the southeasterly line of the state highway (Devore Freeway) as established by final order of condemnation, a certified copy of which was recorded February 13, 1975 in book 8615, page 992, official records of San Bernardino County, and bounded on the south by a line running easterly from the intersection of southeasterly line of the state highway, with the easterly line of that portion conveyed to Southern Surplus Realty Company, a California corporation, by deed recorded October 2, 1973 in book 8279, page 59, official records of San Bernardino County, to the southwest corner of the south $\frac{1}{2}$ of the south $\frac{1}{2}$ of the northwest $\frac{1}{4}$ of the northeast $\frac{1}{4}$ of said section 8.

EXHIBIT "A"
LEGAL DESCRIPTION

The land referred to herein is situated in the State of California, County of San Bernardino and described as follows:

That certain real property located in the City of Rancho Cucamonga, County of San Bernardino, State of California, more particularly described as follows:

That portion of the Northwest quarter of Section 8, Township 1 South, Range 6 West, San Bernardino Base and Meridian, according to the Official Plat of said land, described as follows:

Commencing at the Southeast corner of the Northwest quarter of said Section 8;

Thence North 30 chains;

Thence West 20 chains;

Thence South 30 chains;

Thence East 20 chains to the point of beginning;

Excepting therefrom all that portion lying Northwesterly of the Southeasterly line of the State Highway as established in that certain Final Order of Condemnation, a certified copy of which was recorded February 13, 1975 in [Book 8615 page 992](#) of Official Records;

Also Excepting therefrom all that portion conveyed to Southern Surplus Realty Co., a California corporation, by deed recorded October 2, 1973 in [Book 8279 page 59](#) of Official Records;

Also Excepting therefrom a triangular shaped parcel, being a portion of the Northwest quarter of Section 8, Township 1 South, Range 6 West, San Bernardino Base and Meridian, bounded on the East by the East line of the Northwest quarter of said Section 8, bounded on the Northwest by the Southeasterly line of the State Highway (Devore Freeway) as established by Final Order of Condemnation, a certified copy of which was recorded February 13, 1975 in [Book 8615 page 992](#) of Official Records, and bounded on the South by a line running Easterly from the intersection of Southeasterly line of the State Highway, with the Easterly line of that portion conveyed to Southern Surplus Realty Company, a California corporation, by deed recorded October 2, 1973 in [Book 8279 page 59](#) of Official Records, to the southwest corner of the South half of the South half of the Northwest quarter of the Northeast Quarter of said Section 8.

APN: 0229-021-60

Exhibit "B"

Grant Deed

RECORDING REQUESTED BY:

WHEN RECORDED MAIL TO:

IPT Arrow Route DC LP
4675 MacArthur Ct., Ste. 625
Newport Beach, CA 92660

Record without fee subject to
Gov't Code 6103

CITY OF RANCHO CUCAMONGA

A.P.N: 0229-021-60

GRANT DEED

Dept. Code: 11200

The undersigned grantor(s) declare(s):

DOCUMENTARY TRANSFER TAX \$0.00

- ☐ computed on full value of property conveyed, or
☐ computed on full value less liens and encumbrances remaining at the time of sale
☐ Unincorporated Area ☒ City of Rancho Cucamonga

FOR A VALUABLE CONSIDERATION, receipt of which is hereby acknowledged, **OMNITRANS**, a joint powers authority, hereby GRANT(S) to **IPT ARROW ROUTE DC LP**, a Delaware Limited Partnership, its rights, title, and interest in the Real Property in the City of Rancho Cucamonga, in the County of San Bernardino, California, described as follows:

SEE EXHIBIT "A" LEGAL DESCRIPTION ATTACHED HERETO AND MADE A PART HEREOF

Omnitrans, a joint powers authority

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

Date: _____

MAIL TAX STATEMENTS TO PARTY SHOWN ON FOLLOWING LINE

IPT Arrow Route, DC LP	4675 MacArthur Ct., Ste. 625	Newport Beach, CA 92660
Name	Street Address	City & State

ITEM # F5

DATE: April 6, 2016

TO: Board Chair Sam Spagnolo and Members of the Omnitrans Board of Directors

THROUGH: P. Scott Graham, CEO/General Manager

FROM: Jennifer M. Sims, Director of Procurement

**SUBJECT: AUTHORIZE CONTRACT AMENDMENT 5
SOLE SOURCE CONTRACT OPS16-107 TRAPEZE SOFTWARE
LICENSE AND MAINTENANCE MASTER AGREEMENT**

FORM MOTION

Authorize the CEO/General Manager to execute Amendment 5 to Sole Source Contract OPS16-107 to Trapeze Software Group, Inc., Cedar Rapids, IA, to add Trapeze DriverMate Application Software, Training, Maintenance and related travel expenses, in the amount of \$300,497, plus a five (5) percent contingency of \$15,025, and a 3.27% Cost Allocation Plan (CAP) of \$10,318 for a total not-to-exceed amount of \$325,840.

BACKGROUND

Omnitrans' paratransit fleet is equipped with Trapeze TransitMaster Voice and Data Communications Systems. The communication system provides emergency and non-emergency voice communications while recording and transmitting real-time service data to and from the dispatch control center. The Trapeze system interfaces with the Trapeze PASS software for trip scheduling and dispatching.

Trapeze DriverMate application will replace the TransitMaster system, IVLU (Integrated Vehicle Logic Unit), GPS (Global Positioning System), and radio antennae for paratransit services. DriverMate is designed specifically for demand response service and provides data that is more useful to paratransit operations and its customers. This software includes a smart phone application for passengers to check the status of their Access ride and receive reservation reminder calls the evening prior to scheduled appointments. The new application is more reliable for demand response service delivery, and will allow the agency to implement less costly mobile computing technology to capture more accurate, relevant and useful real-time paratransit service data.

This Contract includes application software to be installed on 107 paratransit vehicles, software licenses, implementation services and a five (5) year maintenance service agreement. Trapeze will conduct onsite training on the use of the software equipment.

In accordance with FTA Circular 4220.1F, Section VI-17, procurement by noncompetitive proposals may be used when the manufacturer is the sole provider of the items compatible with existing equipment/systems and when the equipment/systems are not interchangeable with similar parts and equipment from other manufacturers. Trapeze DriverMate is the only software of its type that integrates with Trapeze PASS. Trapeze Software Group is the principal owner and sole provider of this licensing.

Price is deemed fair and reasonable as the bid is \$15,410 less than the Independent Cost Estimate of \$341,250.

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

FUNDING SOURCE

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

FUNDING	GRANT #	YEAR	PROJECT NAME	INTERNAL ORDER	AMOUNT
FTA	CA-90-Z112	2014	DriverMate	A1420401F	\$ 260,672
Prop 1B	Prop 1B	2014	DriverMate	A1420401B	\$ 65,168
Total					\$ 325,840

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

Short Range Transit Plan/Strategic Initiative Supported – Strategic Initiative 2 – New Bus Technology.

CONCLUSION

By proceeding with this award, Omnitrans will have the ability to improve productivity and provide better service to paratransit passengers.

PSG:JMS:KT

CONTRACT AMENDMENT #5

THIS AMENDMENT is made effective this _____ day of _____, 2016 between:

1. **Trapeze Software Group, Inc.** with a place of business at 5265 Rockwell Drive NE, Cedar Rapids, Iowa 52402, (“Trapeze”); and
2. **Omnitrans**, a joint powers authority (“Licensee”), with its principal place of business at 1700 West Fifth Street, San Bernardino, California 92411-2499, U.S.A.

WHEREAS Trapeze and Licensee intend to amend the Software License Agreement dated September 21st, 2001 (the “Agreement”), in order to add the product listed on Exhibit A-5 (“Exhibit A-5 Product”) to the list of licensed products.

NOW THEREFORE Trapeze and Licensee agree as follows:

Amendment to Agreement

1. The Exhibit A-5 Product is added to the scope of the Agreement. Exhibit A-5 attached hereto is added to the Exhibit A attached to the Agreement.
2. The Exhibit A-5 Product is licensed and limited under the License Agreement dated September 21st, 2001, and pricing, payments, and implementation will be according to the Project Budget and Scope of Work, attached hereto as Exhibit B.
3. The acceptance procedure for the Exhibit A-5 Product shall be as follow:

Upon completing the delivery, installation, and testing of the Exhibit A-5 Product on five (5) devices, Trapeze will notify Licensee in writing. Licensee will then have ten (10) business days in which to conduct acceptance tests in order to ensure that the Exhibit A-5 Product operates in all material respects as specified in the Documentation. At the end of this period, Licensee will be deemed to accept the Exhibit A-5 Product unless Trapeze receives prior written notice outlining the nature of the perceived defects in the Exhibit A-5 Product.

Notwithstanding the above, Licensee will be deemed to accept the Exhibit A-5 Product when the Licensee puts the Software into operational and functional use. Without limiting the foregoing, the Software will be deemed to be in operational and functional use when the Licensee first uses the Software to support its then current operations in full business commercial capacity. Upon the deemed acceptance of the Software in accordance with this paragraph, Licensee will provide Trapeze with a written acknowledgement to confirm such acceptance.

4. The warranty period for the Exhibit A-5 Product shall be for ninety (90) days following installation on five (5) devices.

5. All remaining terms, conditions, and covenants of the Agreement remain unchanged.

IN WITNESS WHEREOF, the parties have caused this Contract Amendment to be signed by their duly authorized representatives as of the date above.

TRAPEZE SOFTWARE GROUP, INC.:

By: _____

Name: _____

Title: _____

Date: _____

OMNITRANS:

By: _____

Name: _____

Title: _____

Date: _____

EXHIBIT A-5

Item	Products	Description & Configuration	License Date
1.	Trapeze PASS-Driver Mate	In-vehicle mobile application enabling communication between dispatchers and drivers	Effective date of this Amendment

1. Software is licensed for a paratransit operation of up to 110 equipped paratransit vehicles.
2. Third Party Runtime licenses, if required to operate the Software, are not included.
3. Proposed software solution is designed for the Windows 2000/XP operating environments, with an ODBC database infrastructure (the Malteze Transit Database) designed by and proprietary to Trapeze, configured for the Oracle 8/MS SQL database engine.
4. Third Party data, hardware and system/operating software are not included within the license granted under this Agreement and are not included in the License fees.
5. Upon request, Trapeze will assist in reviewing hardware specifications; however the Licensee is responsible for purchasing hardware and any other pre-requisite products. Any hardware that must be tested by Trapeze may require additional service days not included in this Agreement.
6. Any components may be operated on any of the licensed workstations within a configuration approved by Trapeze. Licenses for additional local or remote workstations may be purchased at the then current rates.

EXHIBIT B-5

STATEMENT OF WORK: PASS-DRIVERMATE

The following information defines the implementation services to be provided by Trapeze for the PASS-DriverMate Software as well as the effort that will be required from Omnitrans (Licensee or Customer) staff and resources.

Unless otherwise indicated, Trapeze will provide 'standard' implementation services (project management, operational review, testing, installation, training, etc.) as defined by Trapeze. Any special requirements will be considered a change request and processed through our standard change request system.

OVERVIEW

This implementation involves the following high level tasks:

1. Operational Review
2. Software Installation and Configuration
3. System Administrator Training
4. Driver Trainer Training
5. Go-live Support

The key assumptions that Trapeze has employed while determining the level of effort involved with this implementation are presented below.

- Omnitrans is responsible for the purchase, installation and mounting of Android tablet devices
- Only tablet devices that have been preapproved by Trapeze shall be purchased
- Licensee is responsible for the purchase and installation of any required server hardware (servers shall be preconfigured to Trapeze's specifications)
- Software will be delivered 'off-the-shelf'.
- Licensee is responsible for the purchase and maintenance of wireless data plans from a public wireless carrier (200MB per vehicle, per month: pooled plan)

The remainder of this Statement of Work (SOW) provides details concerning the tasks and effort required to support the tasks described above.

In addition, it is assumed this Software will take advantage of existing Trapeze infrastructure, data sources and software unless otherwise stated.

Project Budget

The project budget presented below includes all licenses, implementation services (install, training, testing, go-live etc) to bring Licensee live with the Software products described in this document.

Item	Description	Driver Mate (Android Devices)
1	Licenses	\$124,634
2	Implementation Services	\$59,250
3	Expenses	\$9,175
Total		\$193,059

Notes:

- ✓ Software products are licensed for up to **110 equipped** paratransit vehicles

Long Term Support

Item	Description	Driver Mate (Android Devices)
1	Warranty (1 Year)	<i>Included</i>
2	1st Year Maintenance	\$24,927
3	2 nd Year Maintenance	\$26,173
4	3 rd Year Maintenance	\$27,482
5	4 th Year Maintenance	\$28,856

Note:

1. The warranty for the application begins upon Software Installation.

Payment Terms

Below are the payment milestones to be followed throughout the implementation.

Milestone	Description	
Milestone 1:	Due upon contract signing	100% of licenses
Milestone 2:	Due upon delivery of draft Operational Review document	25% of services and expenses
Milestone 3:	Due upon installation of Software in Licensee's test environment.	25% of services and expenses

Milestone 4:	Due upon delivery of initial training session.	25% of services and expenses
Milestone 5:	Due upon Software Acceptance	25% of services and expenses

Notes:

1. Software Acceptance is as defined in the contractual agreement.
2. Milestones will be invoiced and due on a per individual Software component basis.

TIMEFRAME

This implementation can be completed within six (6) months from NTP. During the operational review, a project plan will be prepared for each Software module.

TRAPEZE IMPLEMENTATION SERVICES

The implementation services below will be provided by Trapeze. All implementation services, materials and training will be provided in English, unless otherwise stated.

Project Design

Project design will involve a series of meetings and conference calls with Licensee's project team to discuss the following items:

- Existing infrastructure (back office, network, cellular, etc.)
- Current operational environment (policies/procedures) as they relate to the Customer Information process.
- Software configuration.
- Testing and Training requirements.
- Finalize project timelines
- Final project plan, test, training and transition strategies.

A document (the Operational Review document) will be prepared outlining the understanding gained from the meetings, identifying the deliverables and timing for the implementation. The Trapeze Project Manager (PM) will coordinate a meeting with the Licensee's project team to review the initial responses to the document within five (5) days of delivery by Trapeze.

Individual Product Specific Requirements

- Trapeze Consumer Mobile Base License
 - MDT Server, Proxy Server, AVL Agent with Workstation Features
- DriverMate for Android
 - Application Specifically for Android

Software Installation

Back Office

Trapeze will install the Software remotely on the Licensee's network. The Software will be installed once (1) within the test environment. Trapeze will also provide assistance with transitioning the Software to the production environment.

In-Vehicle

Trapeze will train Licensee to load and configure the in-vehicle/remote Software.

Training

Training provided will be based on Trapeze standard training agendas. Training sessions will vary in length dependent on topic.

- Up to half a day of Admin Training
- Up to three (3) days of Dispatch Training
- Up to one (2) days of Driver Training.

In addition to training, Trapeze will provide one (1) digital copy of all available user manuals. Licensee is free to create copies of the manual for their users. Trapeze will also provide printed and electronic material in the form of 'quick reference guides' for certain aspects of the Software.

Users will also have access to recorded training videos and online sessions provided through mytrapeze.com, as described in our standard support documentation.

Trapeze Off-Site Services

Trapeze will provide Project Management and Off-Site Support services for up to six (6) months from delivery of tablet devices at Licensee. These services will include

- The Trapeze PM will provide bi-weekly reports to Licensee's PM. These reports will be based on Trapeze standards and will include: project team information, current status and next steps.
- For the duration of the implementation the Trapeze technical product expert will be available for consultation off-site via phone or email.

LICENSEE SERVICES

The following tasks will be the responsibility of the Licensee. These items will need to be completed in order to support the successful introduction of the new functionality.

Prior to any work being performed by Trapeze, Licensee will be required to execute the Trapeze license and maintenance amendments and provide an executed purchase order (PO) for the value of the project.

Operational Review

Licensee's staff will be required to participate in the Operational Review. In advance of the conference calls, Licensee's staff may be required to collect information and respond to a simple survey.

Within five (5) days of delivering the operational review, the Trapeze PM will schedule a meeting to review the document. It's encouraged that Licensee review the document internally prior to the meeting.

Training

Licensee's resources are encouraged to participate in all training sessions related to their field, as outlined in the Operational Review.

Ideal training environments include:

- Networked computer for each trainee, connected to the test system.
- White board and markers
- LCD projector
- Tablets for trainees and trainer

If the items above are not available, Trapeze will work with Licensee to identify alternative arrangements.

Note: Licensee is free to record any training provided by Trapeze to be used solely for its internal business purposes.

Acceptance Testing

The final phase of the implementation will be acceptance testing. This involves Licensee utilizing the Software in the production environment to ensure the Software responds accurately to users input and the features and functions of the Software work as specified.

We estimate the duration of user acceptance for this implementation to be approximately two (2) weeks.

LICENSEE'S RESOURCE REQUIREMENTS

The table below identifies the resource requirements for the Licensee.

Resource	Description	Time Dedication	Tasks
Project Manager	The project manager coordinates all	20% of time for duration of project.	<ul style="list-style-type: none">○ Coordinate the scheduling of all of the Licensee's resources.

Resource	Description	Time Dedication	Tasks
	efforts between Licensee and Trapeze.		<ul style="list-style-type: none"> ○ Coordination of conference calls and meetings, as required. ○ Prepare training facilities. ○ Coordinate training sessions. ○ Coordinate completion of data development. ○ Coordinate completion of user acceptance testing. ○ Payment of Trapeze invoice in a timely fashion (30 days from milestone completion).
Subject Matter Expert	Someone with intimate knowledge of the operator processes and procedures	25% of time for duration of project.	<ul style="list-style-type: none"> ○ Participation in the completion of the Operational Review. ○ Participation in all training sessions. ○ Assist PM with completion of user acceptance testing and data development.
System Administrator		10% of their time for the duration of the project.	<ul style="list-style-type: none"> ○ Procure and configure hardware to a 'Trapeze Ready State' (i.e. operating system and RDBMS installed, connected to the network, servers and workstations configured, etc. as per each Software product's Tech Sheet (where available)). ○ Participate in System Administration training.
Testers	Responsible for user acceptance testing	50% of their time during the testing phase of the project.	<ul style="list-style-type: none"> ○ Execute user acceptance testing.
End Users		50% of their time during the training and transition phase of the project.	<ul style="list-style-type: none"> ○ Participate in end user training.

APPENDIX A: TRAPEZE PASS DRIVERMATE FOR ANDROID

Trapeze DriverMate is an affordable, easy to deploy alternative to demand response mobile computing. It uses handheld Android smartphones and tablets such as the Samsung Galaxy or the Motorola Xoom to connect vehicles, the dispatch center and the 'back office' in real-time. With DriverMate you get the overall same functionality as with MDC's, but without the pricey or potentially lengthy implementation.

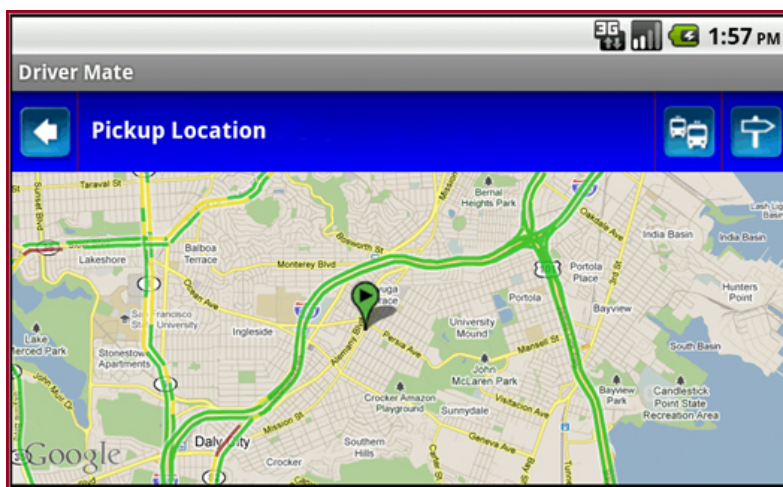
Designed to be flexible and simple, it helps agencies who are looking to control costs, improve productivity and provide better service to their passengers. This turn-key solution can help paratransit operators achieve measurable goals, such as same-day bookings, fewer denials, improved on-time performance and an overall increase in passenger trips per hour.

DriverMate integrates mobile, communication and enterprise technologies to enable instant, on-the-fly decision making, as well as long-range planning. Rapid deployment and immediate results ensure a smooth transition and quick time to value.

The Key Benefits of

PASS DriverMate

- Affordable, Quick Time to Value
- Increased Efficiency
- Streamlined Processes



Trapeze PASS DriverMate: Key Benefits and Features

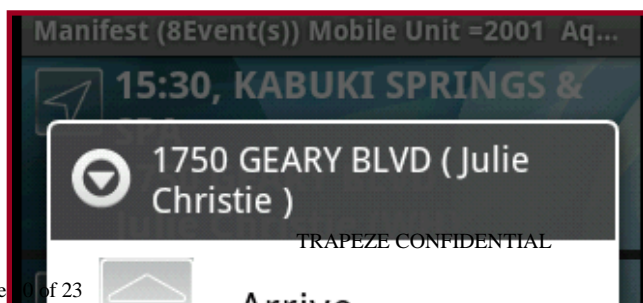
Customer Experience: City of Regina

"One other notable difference for 2007 was that our trips were up by 2,300 and our vehicle operating hours decreased by 650 hours. The [savings into dollars] conversion would be approximately \$20,000."

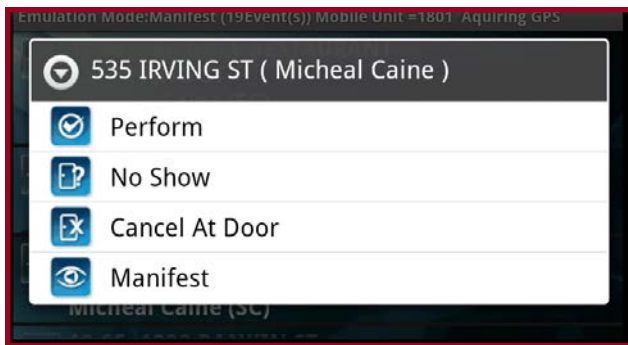
Jamie Halpenny, Paratransit Officer, City of Regina's Transit Department

Affordable, Quick Time to Value. Savings associated with productivity improvements gained through mobile computing solutions often pay for the projects within three to five years.

Omnitrans SLA Amendment # 5 DriverMate



Some demand response operators have realized overall productivity gains of 5–10 percent or more.



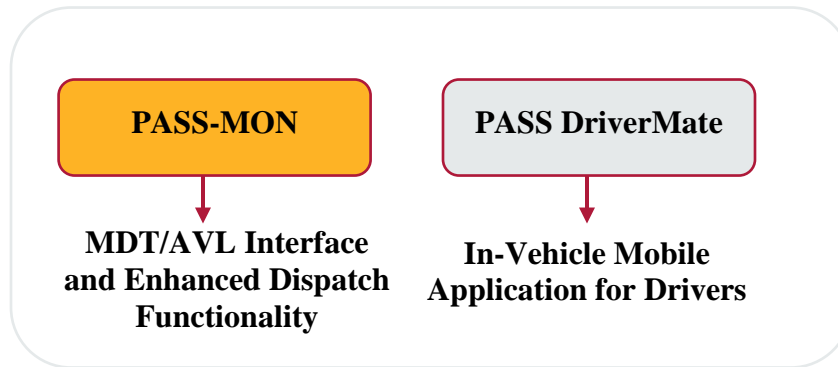
Increased Efficiency. The system has the potential to significantly improve passengers per hour ratio and can reduce dispatcher/driver radio traffic by as much as 80 percent.

Streamlined Processes. The system lets agencies redeploy their resources by eliminating the need for manual data entry and paper work. It minimizes the risk of human error with automated trip planning for operators. The system leads to better on-time performance rates and reduced or eliminated service denials.



Trapeze PASS DriverMate: Feature Description

The Trapeze mobile computing solution proposed for this project consists of two main components: enhancements to the existing Trapeze PASS dispatching and addition of AVL monitoring (desktop product), and the mobile unit application which resides on the in-vehicle unit (in-vehicle application).



These two components are discussed below.

Dispatch Center Application (PASS-MON)

Applications for the desktop enhance the current Trapeze PASS dispatch system by providing tools that enable wireless data communication between drivers and dispatchers. PASS-MON provides two-way data messaging capabilities and GPS data communication to provide 'real-time' vehicle positioning and schedule adherence information. More specifically, the product adds three components to the existing dispatch functionality.

DriverMate Server

This application integrates the PASS scheduling and dispatching software with Mobile Computing Units, enabling communication via a public or private data network that employs the TCP/IP communications standard. Integrated with the Trapeze dispatch system, this component enables:

- Trip, AVL and odometer data exchange between the back-office and the mobile computer
- Configuration of how many trips a driver is able to see based on number of trips or time period
- Configuration of how often AVL data is received
- Notification when a driver has arrived early or late for a pickup
- Additional configuration parameters to control performance
- Logging of data exchanged for troubleshooting

DriverMate Dispatch Functionality

The following DriverMate dispatch features and functionality are enabled:

Dispatch to Mobile Data Computer	Mobile Data Computer to Dispatch
<ul style="list-style-type: none">▪ Electronic Manifest▪ Automatic Dispatch of Add-ons▪ Automatic Dispatch of Cancells/ No-shows▪ Dispatch of Event Modifications▪ Two-Way Text Messaging	<ul style="list-style-type: none">▪ Arrive/Perform Status and Times▪ Driver Cancel or No Show Request▪ Fare Collected▪ Updated Passenger Information▪ Odometer Entries▪ Vehicle Location Monitoring (AVL)▪ Speed and Direction Data▪ Driver Log-On/Log-Off Notification

DriverMate Center

The DriverMate Center facilitates two-way communications between the dispatcher and drivers. More importantly, this includes notification of exceptions such as no-shows and early/late trip arrivals. Among the types of messages received are:

- Vehicle Emergency
- Schedule Adherence (Trip Early / Trip Late)
- Canned or freeform Text Messages
- Driver Log-On /Log-Off
- System Messages and Alerts
- No-show and Cancel Request

	Time	Type	Vehicle	Mdt	VehStatus	Details	Comments
1	9:52	LONS	A102	1802	D4-2	Logon Successful	Login success!(123)
2	9:53	EMG	A102	1802	D4-2(EMG)	Emergency	Toggle Done Reset
3	9:55	TrE	A102	1802	D4-2	Heather Thomas EST: 9:55 375, CLIFTON ST, OAKLAND, CA	TripTimeEarly/Late:Trip Early
4	9:56	TrE	A102	1802	D4-2	Heather Thomas EST: 9:55 375, CLIFTON ST, OAKLAND, CA	TripTimeEarly/Late:Trip Early
5	9:57	TrE	A102	1802	D4-2	Sonny James EST: 9:59 5941, COLBY ST, OAKLAND, CA	TripTimeEarly/Late:Trip Early
6	9:57	NS	A102	1802	D4-2	Sonny James EST: 9:59 SCH:11:15 5941, COLBY ST, OAKLAND, CA	Driver Req Client No Show
7	10:00	CTX	A102	1802	D4-2	Heavy Traffic Please Contact	CannedMsg
8	10:00	FTX	A102	1802	D4-2	TEST	FreeText
9	10:02	SYS		-1		System Message	MdtSrv: the Communication to SchSrv is
10	10:30	LOFF	A102	1802	D4-2	Veh Logoff by Driver	Driver Logoff the Veh
11	10:39	LONS	A102	1802	D4-2	Logon Successful	Login success!(123)
12	13:31	LOFF	A102	1802	D4-2	Veh Logoff by Driver	Driver Logoff the Veh
13	13:32	LONS	A106	1806	D4-6	Logon Successful	Login success!(123)
14	13:34	LONS	A109	1809	D5-2	Logon Successful	Login success!(123)
15	15:58	TrL	A106	1806	D4-6	EST:15:58 Main Depot	TripTimeEarly/Late:Trip Late
16	16:03	NS	A106	1806	D4-6	Sam Elliot EST:16:05 SCH:15:30 DAMAMI 759, COLUMBU	Driver Req Client No Show
17	16:07	CTX	A106	1806	D4-6	Please Contact Me By Phone	CannedMsg

Message can be color coded by type. An audio alert can also be associated with selected message types for priority exceptions.

Actions available to the dispatcher

- Send a text message
- Manually log vehicles on/off
- Filter messages by Vehicle or Run Group
- View message histories
- Cancel or No Show a trip that a driver has requested a Cancel or No Show for
- View Client Info screen
- Jump to Run Itinerary
- Jump to Client Itinerary

Schedule Editor

DriverMate Dispatch features in Schedule Editor enables automatic entries of real time performance data including Actual Arrive Time, Actual Depart Time, Odometer, and Fare Collected. The real-time data provides timely notification of possible Schedule Adherence violations.

Annotations in the screenshot:

- Automatic Status updates:** Points to the 'Status' column.
- Automatic entries of times:** Points to the 'Est', 'Arr', and 'Dep' columns.
- Automatic entry of Fare Collected:** Points to the 'FareCollec' column.
- Automatic update of Estimated times for schedule adherence:** Points to the 'Est' column.
- Automatic odometer entry:** Points to the 'Odom' column.

Run	Seq	SubT	Act	Space	OB	Client	Location	Sched	Est	Arr	Dep	FareTyp	FareAmou	FareToCc	FareCollec	ReqL	Odom	Slack	Evlt
G7-5	DM	P	REG	P	AM1	Ross, Joe	LALITA THAI REST	16:00	16:18	16:18	16:18	STA	2.00	2.00	2.00		12000.0		
G7-5	DM	P	REG	P	AM1,SC1	Stewart, Jimm	BLUE SKY CAFE, 9	16:15	16:22	16:20	16:29	STA	2.00	2.00	2.00		12004.0	1	
G7-5	P	AVL	AM1,SC1					16:31	16:31	16:31	16:31		0.00	0.00	0.00				
G7-5	DM	A	REG	D	SC1	Ross, Joe	272 HOLYOKE ST	16:33	16:31			STA	2.00	2.00	2.00		12007.0		
G7-5	DM	S	REG	D		Stewart, Jimm	2668 GRIFFITH ST	16:45				STA	2.00	2.00	2.00				
G7-5	DM	S	REG	P	TR1	Lewis, Carl	JOANIE'S RESTAU	17:00	16:50			STA	2.00	2.00	0.00				
G7-5	DM	S	REG	D		Lewis, Carl	746 MINNA ST	17:18				STA	2.00	2.00	0.00				
G7-5	DM	S	REG	P	AM1	Leonard, Rot	SAN FRANCISCO C	16:30	17:26			STA	2.00	2.00	0.00				
G7-5	...	S	REG	P	AM1,TR1	James, Harry	HARVEY'S, 1582 FI	16:30	17:38			STA	2.00	2.00	0.00				
G7-5	...	S	REG	D	TR1	Leonard, Rot	695 6TH ST	18:12				STA	2.00	2.00	0.00				
G7-5	...	S	REG	D		James, Harry	1667 46TH AVE	18:33				STA	2.00	2.00	0.00				
G7-5	...	S	In				Main Depot	18:30	19:02				0.00	0.00	0.00				

Text Messaging Dialogue

The "Send Message" feature can be accessed from the Workstation or the DiverMate Center. Messages can be sent to one or multiple vehicles.

Dispatchers can choose from a predefined list of canned messages that can be customize and changed at anytime. Dispatchers can compose a message from scratch, or combine a canned message with their own.

Vehicle(s): 10150

Free Text / Canned Msg:

Canned:

- YES, 10-4
- NEGATIVE
- WHAT IS YOUR 10-20?
- CONTACT DISPATCH ASAP
- NS REQUEST RECEIVED, PLS STAND BY**
- WHAT IS YOUR ETA TO NEXT LOCATION?
- GO ON STAND-BY
- PLEASE SEE DISPATCH WHEN YOU ARE E
- ADD-ONS COMING YOUR WAY

To be sent:

NS REQUEST RECEIVED, PLS
STAND BY, I AM CALLING THE
CLIENT NOW

Page 15 of 23

Normal Message

TRAPEZE CONFIDENTIAL

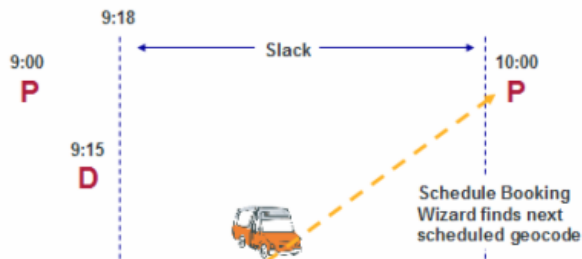
Send

AVL AGENT

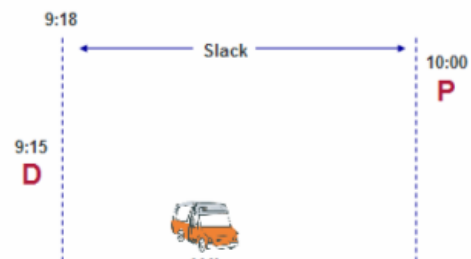
The AVL Agent improves system scalability by allowing processing of AVL data to be handled separately from other data received from the mobile data computer. In addition, this server component adds a new real-time function to scheduling:

- The Trapeze PASS Schedule Server recognizes the vehicle's last known location. Currently, the Schedule Server does not consider "in-transit" location reported by AVL information when offering solutions.
- Same day solutions would be based upon current vehicle location rather than geocoded events. This also makes it easier to "find" a vehicle in a certain area, especially during vehicle slack times when the exact whereabouts of a vehicle may not be known.

Current Scheduling Method



With AVL Agent



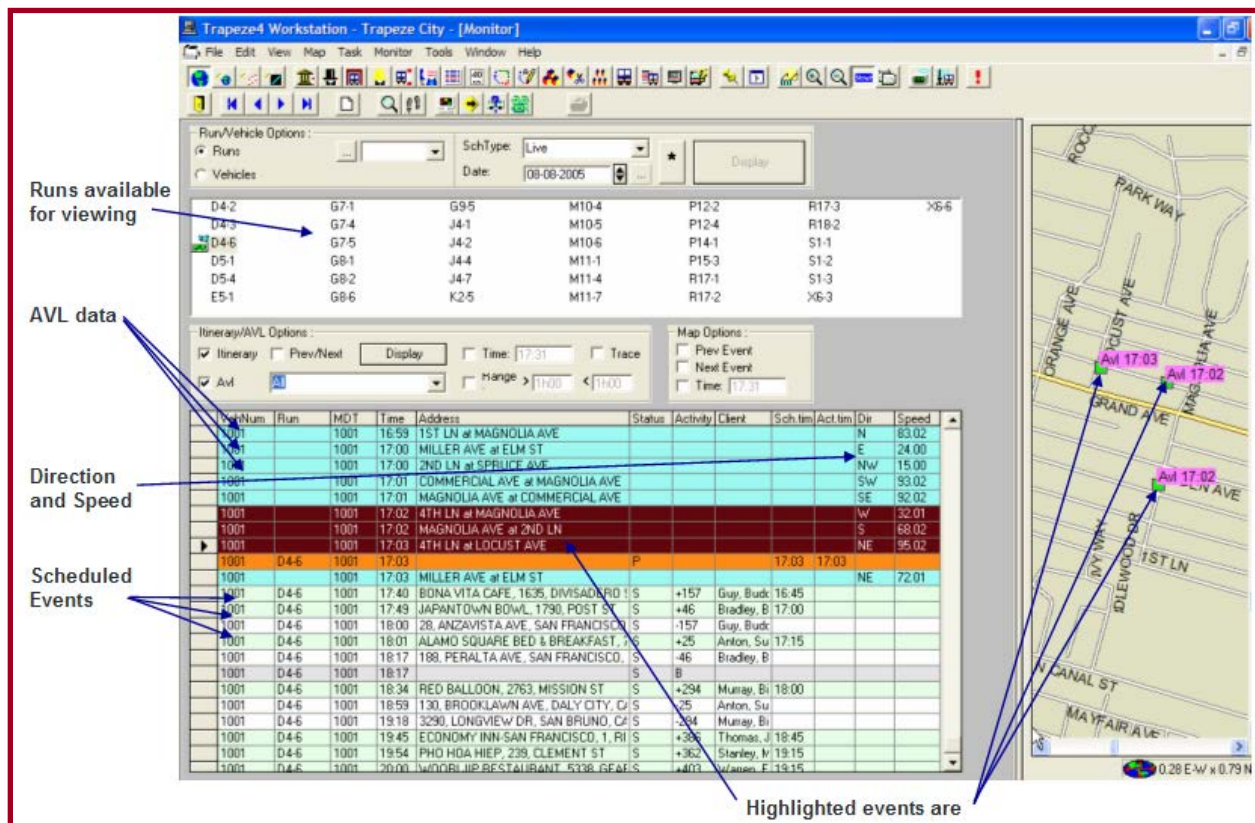
Schedule Booking Wizard screen showing the last known AVL for this vehicle

Schedule Booking Wizard													
Wizard Edit View Map													
Client Day RE RT RL ST NT ET Location Run Viol													
Franklin, Aretha 08-08-2005 15:45 14:35 14:35 15:10 ALTA LOMA MIDDLE SCHOOL; 11 D4-6 SL20													
15:34 1490, JENEVEIN AVE, SAN BRUNO D4-6													
#	Run	Desc	+SE	+ST	+SL	-ET	Trav	T	Fare	Viol	Weight	Provider	Cost
1	D4-6	P	14:20	14:35	14:50	15:15	23	0		SL1	339.46	AC	0.00
2	S1-3	P	14:20	14:35	14:50	14:57	22	0			632.50	XYZ	0.00
3	P14-1	P	14:20	14:35	14:50	14:57	22	0			705.52	AC	0.00
4	S1-3	P	14:20	14:35	14:50	14:44	24	0		OB8	827.13	XYZ	0.00
5	R17-1	P	14:20	14:35	14:50	14:57	22	0			1581.31	CRC	0.00
Run Act ST ET Location Viol SchSt													
D4-6 Out 13:30 13:30 Main Depot P													
D4-6 P 13:30 13:34 1122, NOE ST, SAN FRANCISCO, CA P													
D4-6 P 13:20 13:46 1276, UNION ST, SAN FRANCISCO, CA COV P													
D4-6 D 13:49 RENDEZVOUS CAFE; 1760, POLK ST P													
D4-6 D 14:36 P&P HUNAN RESTAURANT; 61, BAY CT H015, COV P													
D4-6 AVL 14:38 14:38 P													
D4-6 P 14:30 14:43 ALDO'S RESTAURANT; 3560, CALLAN BLVD NS													
D4-6 P 14:35 14:51 ALTA LOMA MIDDLE SCHOOL; 116, ROMN. AL													
D4-6 D 15:15 1490, JENEVEIN AVE, SAN BRUNO, CA S													
D4-6 P 16:45 16:58 BONA VITA CAFE; 1635, DIVISADERO ST S													
D4-6 P 17:00 17:06 BOWL; 1790, POST ST S													
D4-6 D 17:18 28, ANZAVISTA AVE, SAN FRANCISCO, CA S													
D4-6 P 17:15 17:22 ALAMO SQUARE BED & BREAKFAST; 719, SCOTT ... S													
D4-6 D 17:41 188, PERALTA AVE, SAN FRANCISCO, CA S													
D4-6 P 18:00 17:45 RED BALLOON; 2763, MISSION ST S													
D4-6 D 18:10 120 BROOKLYN AVE, BAYVIEW, CA c													

Vehicle Location Monitor

The Vehicle Location Monitor supports the integration of the 'real-time' GPS information with the PASS scheduling software, providing up-to-the-minute information about driver runs and vehicle locations. Dispatchers can use the Monitor screen to:

- View the location of any vehicle on the system map in real time.
- View speed and direction associated with AVL data (if data is available from provider).
- Check the status of a vehicle in relation to future trips.
- View the itinerary of a run based on a user defined time span.
- Monitor the schedule adherence of a vehicle/run.
- View multiple vehicles/runs at any one time.
- Review historical AVL data.
- Produce a turn list and send to a MDT.
- Set properties to customize the appearance of the monitor screen and GIS.



PASS DRIVERMATE FOR DRIVERS

The Trapeze PASS DriverMate for drivers is designed to run on the tablet computers or smartphones included in our pricing. The application performs several key real-time functions to increase overall dispatch and passenger transport efficiency, safety and effectiveness:

- As an electronic manifest for drivers;
- As a voiceless communications tool between drivers and dispatchers;
- As a security tool by interfacing with alarms to alert dispatch and by AVL monitoring; and,
- As an automatic data transmission device, transferring information such as trip arrival times, GPS coordinates and vehicle systems status back to the Trapeze system.

Easier Transition for Drivers

Since the application is developed by Trapeze, the manifest data – for example, passenger, space and fare type designations -is displayed exactly as you have customized within the Trapeze Workstation. Simple graphic icons provide one-touch access to different screens or perform actions. This plus the ability to create a “Training Manifest” that operates stand-alone makes it easier to train the drivers for a smoother transition to a paperless manifest environment.

Customizable Interface

Developed in XML, the application's user interface can be customized to accommodate your requirements. For example, if passengers' telephone numbers do not need to be displayed on manifest, the system can be configured to not show this information.

Actions available to the driver

The basic driver functionality of this application is scalable and includes:

- Driver log-in/log-off
- Manifest display
- Trip Arrive and Perform
- Fare collected
- Trip Cancel request
- Passenger No-Show request
- Receive text messages from Dispatch
- Canned text messaging to Dispatch

PASS DriverMate also includes these advanced driver action functions:

- Group Arrive and Perform
- Fare type changes
- Add-on of additional passenger at pickup
- Free text messaging to Dispatch
- Request Next Day's Run

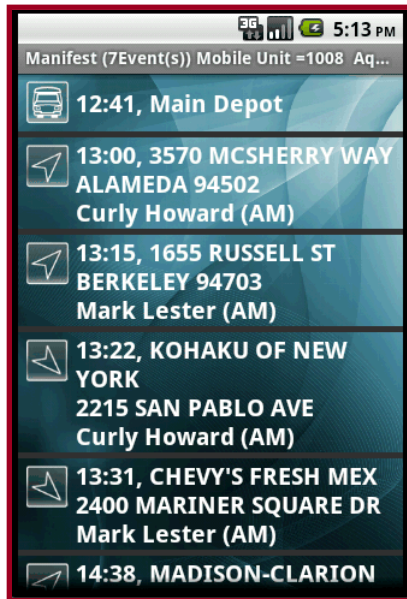
Manifest Display

The same elements displayed on your existing paper manifest can be displayed in PASS DriverMate. The number of lines of events viewed at one time can be customized to your specifications. The elements displayed can include items such as:

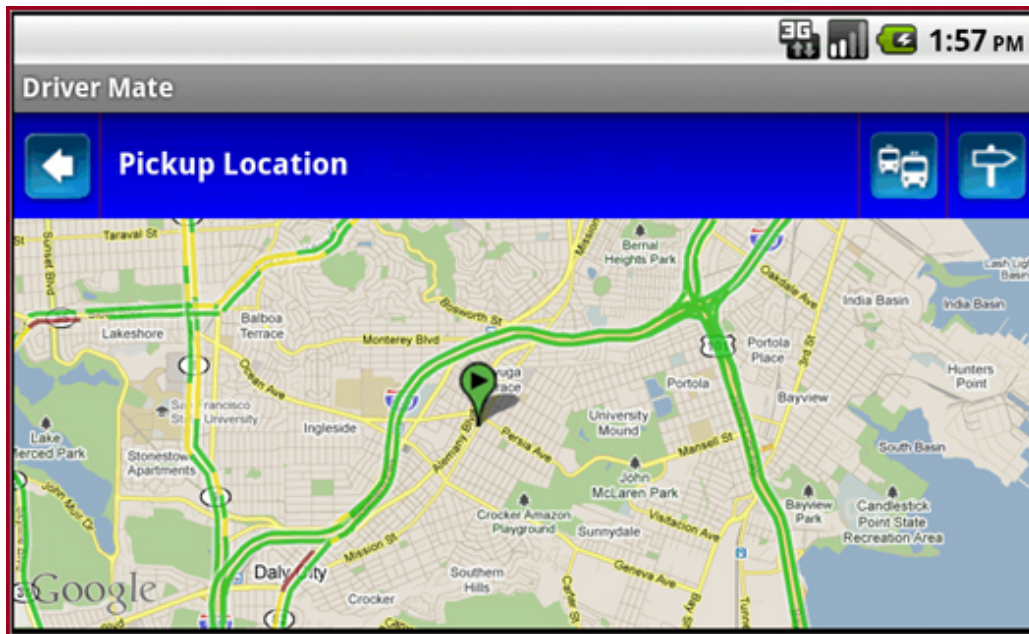
- Client Name
- Client Code
- Number of Passengers
- Street Address
- Address (Location) Comment
- Phone Number
- Pickup Time
- Scheduled Window
- Equipment (Space) Type
- Fare Type and Amount
- Mobility Aids
- Client Comments



Below, left: **Itinerary Screen** (Manifest Display); Right: **Event Details Screen**



Navigational Mapping



Accessing the Navigational Map

On the manifest screen, the user is able to select the event you want to view on the map and easily tap the Map icon. The map appears together with a turn list describing the route to the event location. The red

arrow pinpoints the direction of the location where the client is to be picked up or dropped off. The turn list on the right section of the screen provides instructions on where to turn on the route starting from where the vehicle is located to the destination point.

Using the Map

PASS DriverMate allows you to view a map of the geographic service area provided by the agency. With the map, you can zoom to the location of a specific event (e.g., the address of a client in your itinerary for pick-up). Also, the navigation functionality features a dynamic toolbar which allows the driver to manipulate different zoom functions, a toggling between split screen or full view for mapping and turn list directions when the vehicle is stationary.

Configuration Options

- **Pop-up Notification** – Configure pop-up notifications for add-on trips, trip modifications, cancellations and mail messages.
- **Audio Notification** – Configure audio notifications for add-on trips, trip modifications, cancellations and mail messages.
- **No-Show Timer** – PASS DriverMate can be configured with a timer so that after “arriving” at a pickup, it does not allow a driver to request a No-Show until the timer has expired.
- **Odometer** – Odometer entry can be configured to be required at logon only or for every event. This can be interfaced with a vehicle’s odometer and the readings can be automatically entered into Trapeze.
- **Driver Training Manifests (Emulation Mode)** – Create and set up a stand-alone training manifest that operates in PASS DriverMate. This negates the need for a Trapeze-trained personnel to assist in setting up training for the drivers. Drivers and driver trainers can have hands-on practice using PASS DriverMate whenever and as often as required.
- **Over-the-air upgrades** – Any PASS DriverMate software updates to your fleet are easy to make with our over-the-air upgrade process. There’s no need to physically board each vehicle to make updates, saving time and resources.

Trapeze Proxy Server

The Proxy Server transmits the data between each instance of the PASS DriverMate application and the Trapeze MDT Server (part of PASS-MON), connecting using a wireless networking using TCP/IP protocol. Setting up the Proxy Server and PASS DriverMate is as simple as entering an IP Address and MDT ID of your choosing.

Optional Features

Other features available as optional items include:

- Swipe Cards
- Other fare/vehicle mechanisms

MOBILE COMPUTING USING GPRS FOR DRTS SYSTEMS

Introduction

The communication concept is that the Mobile Data Computing device (MDT or MDC) always initiates a connection to get the information from the Trapeze System versus the Trapeze System trying to reach the MDT. This “pull” model is more robust in an environment where a physical communication channel is not reliable (i.e. broken connections are frequent). It is also much easier to implement and troubleshoot. This mode is widely used in the internet world: all desktop and mobile browsers initiate requests to a server. These units (clients) do not listen for incoming requests.

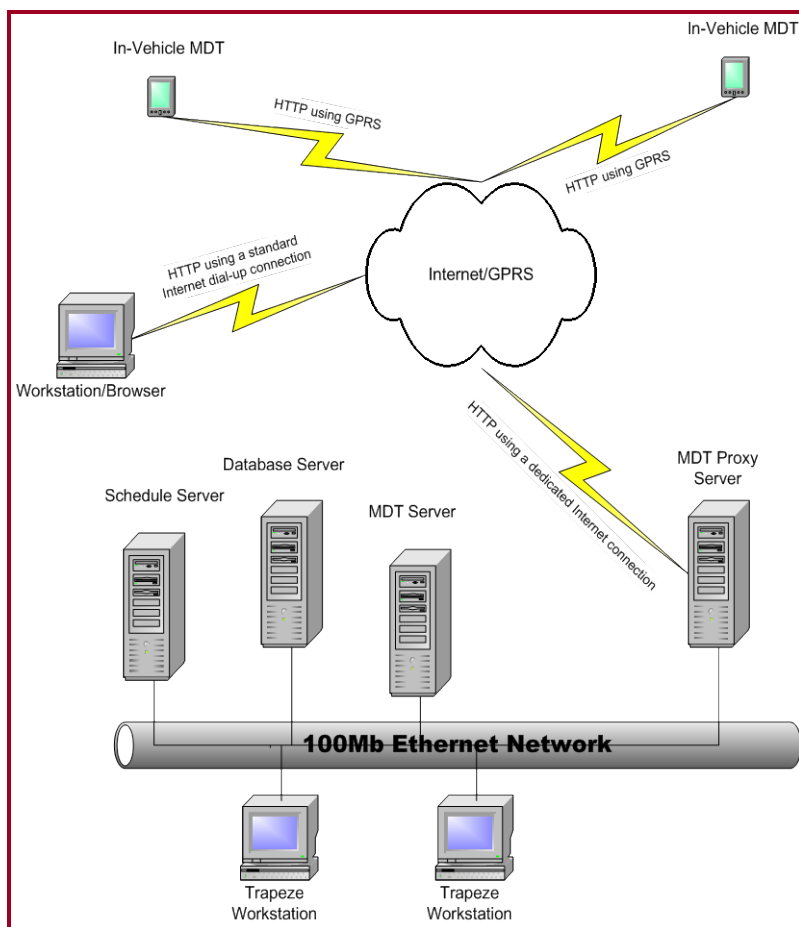
Delivery Times

The MDT sends/receives data (i.e. Arrival/Perform Times, GPS information, etc.) to/from the Trapeze System at a user defined time interval or when the driver hits a command button that requires information exchange. On the other hand, the Trapeze System queues data that needs sending to the MDT unit. This information stays in the queue until the MDT initiates the timed connection request.

Design

The diagram below is an overall view of the system. The center piece, Trapeze MDT Proxy Server, works as a buffer between the MDT's and the Trapeze MDT server. It is a host that serves information to the clients upon request (The MDT server and MDT's act as clients). A workstation dialed into the Internet can also monitor/administer/troubleshoot the host (MDT Proxy Server) remotely.

Below: Overall view of the system



MDT'S AND MDT SERVER

Since the MDT's and the MDT Server are "true clients", calls are made to the MDT Proxy Server to send/receive messages. The MDT server can be installed anywhere on the Network as long as it can reach the MDT Proxy via TCP/IP and communicate with the Trapeze Database and Scheduling Server. A recommended deployment would be to have the MDT Proxy Server installed on the machine that is reachable from the Internet (external network) and the MDT Server installed behind the firewall.

MDT Server Setup Details

- Database connectivity IS required. System Data Source Names needs to be created to reach the Trapeze Databases.
- A mapped network drive letter that is consistent with the Trapeze Workstation installation. For example, all Trapeze Workstations may be mapped to "W". The Trapeze MDT Server then requires the same mapping.
- Specify MDT Proxy Server Host address and port number

MDT Setup Details

- Specify MDT Proxy Server Host address and port number

ITEM # _____ F6

DATE: April 6, 2016

TO: Board Chair Sam Spagnolo and Members of the Omnitrans Board of Directors

THROUGH: P. Scott Graham, CEO/General Manager

FROM: Jennifer M. Sims, Director of Procurement

**SUBJECT: AUTHORIZE AWARD – CONTRACT MNT16-100
BRAKE SHOE RELINING SERVICES**

FORM MOTION

Authorize the CEO/General Manager to award Contract MNT16-100 to Franklin Truck Parts Inc., of Commerce, CA, for the provision of Brake Shoe Relining Services, for a three (3) year base period with two (2) single option years, ending no later than April 2021, in the amount of \$617,823, plus a ten percent contingency of \$61,770, for a total not-to-exceed amount of \$679,469.

BACKGROUND

Omnitrans requires Brake Shoe Relining Services to ensure the safety and proper maintenance of Omnitrans' bus fleet. These services shall include inspection of brake assemblies and relining or providing new brake shoes and drums. The brake assemblies will be returned to Omnitrans for installation.

On February 3, 2016, Omnitrans' Board of Directors approved release of the Invitation for Bids IFB-MNT16-100. Notices were published in two (2) local newspapers of general circulation and posted on Omnitrans' online bidding system. Two (2) bids were received by the March 11, 2016, deadline and both were found to be responsive and responsible.

Listed below are the bid prices:

Company	Bid*
Franklin Truck Parts, Inc.	\$617,823
American Moving Parts, LLC	\$663,936

*Pricing inclusive of sales tax, delivery and all applicable fees

Award is recommended to the lowest responsive and responsible bidder. Price is deemed fair and reasonable as the bid of \$617,699 is \$119,259 less than the Independent Cost Estimate of \$736,958 was based on historical unit pricing and usage.

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

FUNDING SOURCE

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

Department	1200
Expenditure Code	504010

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

Short Range Transit Plan/Strategic Initiative Supported - This procurement supports Omnitrans' Short Range Transit Plan goal to expand, maintain and improve existing vehicles, facilities and passenger amenities.

CONCLUSION

Award of this contract will allow Omnitrans to ensure the safety and proper maintenance of Omnitrans' bus fleet.

PSG:JMS:KT



CONTRACT AGREEMENT

between

Franklin Truck Parts, Inc.
6925 Bandini Boulevard
Commerce, CA 90040

CONTRACT DOCUMENTS

CONTRACT NO. MNT16-100

BRAKE SHOE RELINING SERVICES

(hereinafter "CONTRACTOR")
Telephone: (323) 726-1034
Fax: (323) 888-0438

And

Contract Amount: \$364,493

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

Omnitrans Project Manager:

Name: Rick Barone
Title: Materials Manager
Telephone: (909) 379-7402
Fax: (909) 379-7107
Email: rick.barone@omnitrans.org

Contract Administrator:

Name: Krystal Turner
Title: Contract Administrator
Telephone: (909) 379-7202
Fax: (909) 379-7402
Email: krystal.turner@omnitrans.org



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ATTACHMENT A – SCOPE OF WORK

ATTACHMENT B – REGULATORY REQUIREMENTS

ATTACHMENT C - PRICING

This Agreement is made and entered into as of this _____ day of April, 2016 by and between Omnitrans (hereinafter referred to as "OMNITRANS") and Franklin Truck Parts, Inc. (hereinafter referred to as "CONTRACTOR").

RECITALS

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

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

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

1. SCOPE OF WORK

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

2. PERIOD OF PERFORMANCE

The term of this Agreement shall be from the date of execution of this Agreement and continue in effect through April _____, 2019, 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 April ____, 2019 Through April ____, 2021, which period encompasses the Initial Term, Option Year 1 and Option Year 2.

3. CONTRACT OPTIONS

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

4. COMPENSATION

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

OMNITRANS' maximum cumulative payment obligation under this Agreement shall not exceed Three Hundred Sixty Four Thousand, Four Hundred Ninety Three Dollars (\$364,493), 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 Turner,
Contract Administrator

To CONTRACTOR:

Franklin Truck Parts, Inc.
6925 Bandini Boulevard
Commerce, CA 90040
Attn: Derrick Pinnecker,
General 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: Rick Barone.

- 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>
Derrick Pinnecker	General Manager

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

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

9. DISPUTE RESOLUTION

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

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

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

10. TERMINATION FOR CONVENIENCE

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

11. TERMINATION FOR BREACH OF AGREEMENT

- A. If CONTRACTOR fails to perform any of the provisions of this Agreement or so fails to make progress as to endanger timely performance of this Agreement, OMNITRANS may give CONTRACTOR written notice of such default. If CONTRACTOR does not cure such default or provide a plan to cure such default which is acceptable to OMNITRANS within the time permitted by OMNITRANS, then OMNITRANS may terminate this Agreement due to CONTRACTOR's breach of this Agreement.
- B. If a federal or state proceeding for relief of debtors is undertaken by or against CONTRACTOR, or if CONTRACTOR makes an assignment for the benefit of creditors, then OMNITRANS may immediately terminate this Agreement.
- C. If CONTRACTOR violates Section 28, Compliance with Lobbying Policies, of this Agreement, then OMNITRANS may immediately terminate this Agreement.
- D. In the event OMNITRANS terminates this Agreement as provided in this Section, OMNITRANS may procure, upon such terms and in such manner as OMNITRANS may deem appropriate, Work similar in scope and level of effort to those so terminated, and CONTRACTOR shall be liable to OMNITRANS for all of its costs and damages, including, but not limited, any excess costs for such Work.
- E. All finished or unfinished documents and materials produced or procured under this Agreement shall become OMNITRANS' property upon date of such termination.

- F. If, after notice of termination of this Agreement under the provisions of this Section, it is determined for any reason that CONTRACTOR was not in default under the provisions of this Section, or that the default was excusable under the terms of this Agreement, the rights and obligations of the parties shall be the same as if the notice of termination had been issued pursuant to Section 10, Termination for Convenience.
- G. The rights and remedies of OMNITRANS provided in this Article shall not be exclusive and are in addition to any other rights and remedies provided by law or under this Agreement.

12. ASSIGNMENT

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

13. SUBCONTRACTING

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

Subcontractor's Name and Address	Work to Be Performed
N/A	N/A
<hr/>	<hr/>
<hr/>	<hr/>
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14. INDEPENDENT CONTRACTOR

CONTRACTOR's relationship to OMNITRANS in the performance of this Agreement is that of an independent Contractor. CONTRACTOR's personnel performing Work under this Agreement shall at all times be under CONTRACTOR's exclusive direction and control and shall be employees of CONTRACTOR and not employees of OMNITRANS. CONTRACTOR shall pay

all wages, salaries and other amounts due its employees in connection with this Agreement and shall be responsible for all reports and obligations respecting them, such as social security, income tax withholding, unemployment compensation, workers' compensation and similar matters.

15. INSURANCE

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

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

Additional Insured:

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

16. INDEMNITY

CONTRACTOR shall indemnify, defend and hold harmless OMNITRANS, and its member agencies, and their officers, directors, employees and agents from and against any and all liability, expense (including, but not limited to, defense costs

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

17. REVISIONS IN SCOPE OF WORK

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

18. RIGHTS IN TECHNICAL DATA

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

19. OWNERSHIP OF REPORTS AND DOCUMENTS

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

20. OWNERSHIP RIGHTS

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

21. WORK FOR HIRE

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

22. SUBMITTAL OF CLAIMS BY CONTRACTOR

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

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

23. EQUAL OPPORTUNITY

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

24. STANDARD OF PERFORMANCE

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

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

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

26. DISQUALIFYING POLITICAL CONTRIBUTIONS

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

27. COMPLIANCE WITH LAW

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

28. COMPLIANCE WITH LOBBYING POLICIES

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

29. PUBLIC RECORDS ACT

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

30. WAIVER/INVALIDITY

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

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

31. FORCE MAJEURE

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

32. CONFIDENTIALITY

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

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

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

34. GOVERNING LAW

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

35. MODIFICATIONS TO AGREEMENT

Unless specified otherwise in the Agreement, this Agreement may only be modified by written mutual consent evidenced by signatures of representatives

authorized to enter into and modify the Agreement. In order to be effective, amendments may require prior approval by OMNITRANS' Board of Directors, and in all instances require prior signature of an authorized representative of OMNITRANS.

36. LICENSING, PERMITS AND INSPECTION COSTS

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

37. PRECEDENCE

Conflicting provisions hereof, if any, shall prevail in the following descending order of precedence: (1) the provisions of this Agreement, (2) Attachment A, Scope of Work, (3) Attachment B, Regulatory Requirements, (4) provisions of IFB-MNT16-100 and (5) CONTRACTOR's bid dated March 11, 2016.

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

FRANKLIN TRUCK PARTS, INC.

P. SCOTT GRAHAM
CEO/General Manager

DERRICK PINNECKER
General Manager

DATE

Federal Tax I.D. No. 95-2907239

DP____
CM____

ATTACHMENT A – SCOPE OF WORK
MNT16-100
BRAKE SHOE RELINING SERVICES

I. OBLIGATIONS OF THE CONTRACTOR

A. RESPONSIBILITIES

1. Contractor shall provide all equipment and labor necessary to complete brake relining services.
2. Contractor shall coordinate pick-up/ delivery with Omnitrans' designee.
3. Contractor's invoices/ packing slips shall use Omnitrans' designated material numbers.
4. Contractor shall sign for all parts picked up from Omnitrans.
5. Omnitrans expects to receive all finished product within seven (7) working days and will sign for all parts received from the Contractor.
6. Omnitrans will maintain its brake systems in accordance with Federal Motor Vehicle Safety Standards (FMVSS).
7. This document in its entirety and its attachments comprise the statement of specifications and requirements for Brake Shoe Relining Services. All items or features not specifically mentioned which are necessary or are normally furnished in order to provide a complete service, shall be furnished by the Contractor at the proposed price(s) and shall conform in quality of material and workmanship to that usually provided by the practice indicated in this specification.

II. FLEET INVENTORY AND USAGE

A. DESCRIPTION

1. This program will include all Omnitrans urban transit buses: New Flyer of America. The following description identifies the brake series, as manufactured by MAN.
2. Average usage from last year's fleet. New Flyer (2001 & 2003, 2005, 2009 & 2011):
 - i. Front – MAN Axle P series shoes, 6 3/8" wide
 - ii. Rear – MAN Axle W series shoes, 8 3/4" wide
 - iii. Omnitrans S/C 30841 Front Relines – 250
 - iv. Omnitrans S/C 30858 Rear Relines – 600

III. REQUIREMENTS

A. GENERAL

1. Contractor shall provide quality assurance plan to Omnitrans for approval.
2. The following conditions/requirements shall apply for the term of the contract.

ATTACHMENT A – SCOPE OF WORK
MNT16-100
BRAKE SHOE RELINING SERVICES

B. PARTS SUPPLIED

Contractor shall comply with The American Public Transportation Association (APTA) Recommended Practice for Transit Bus Brake Shoe Rebuild APTA BTS-SS-RP-003-07. Access at the following link:

<http://www.apta.com/resources/standards/Documents/APTA%20BTS-BC-RP-003-07.pdf>

C. CORE EXCHANGE

1. Only Omnitrans' cores are to be used for Omnitrans brake assemblies. The Contractor shall supply containers suitable for holding dirty used shoe assembly cores without leaking contaminants. Containers shall be picked up weekly, at a minimum, at the East Valley Facility:

Omnitrans
1700 W. 5th Street
San Bernardino, CA 92411

2. If the shoe and lining assemblies cannot be produced within the stipulated time, (2 weeks from time of core pick up) then Omnitrans reserves the right to procure replacement shoe and lining assemblies similar to those specified in this Specification from another source, and the Vendor will be liable for all excess costs, including shipping charges.
3. Shoes shall be inspected to meet all American Public Transportation association APTA BTS-SS-RP-003-07 specifications for transit bus brake shoe rebuilds, including but not limited to, table stretch, table flatness, table arch, pin bore, roller seats, web width and damage.
4. Contractor shall notify procurement staff of the quantity of "relineable and unrelined" shoes by part number within forty-eight (48) hours of pickup.
5. In the case where a shoe is not relined, contractor shall provide a new brake shoe and reline the same. The cost shall be in accordance with the costs shown in the Line Item pricing section. All shoes deemed not relined, shall be marked "Reject" and returned to Omnitrans for inspection prior to disposal.

D. SPECIFICATIONS

Specification Conformance

1. The Vendor must conform to the specifications contained herein, and to the applicable specifications of APTA BTS-SS-RP-003-07, Dated 5/5/2007, and shall not deviate from these specifications unless written permission is first obtained from Omnitrans.
2. Prior to relining, each shoe shall be cleaned, inspected and painted.

ATTACHMENT A – SCOPE OF WORK
MNT16-100
BRAKE SHOE RELINING SERVICES

3. All brake shoes shall be relined in pairs (a pair constitutes an upper and lower shoe).
4. Fastening by bolt or rivet is approved.
5. Bolt fastening shall be at original equipment manufacturer (O.E.M.) torque specifications.
6. Riveting shall be by pressure sensitive. (Stroke sensing equipment is not acceptable).
7. Each lining shall be at 0.850 +/- .015 unfinished size.
8. Each shoe assembly shall be identified by a sticker or other approved method indicating, contractor name, date of inspection (day/month/year), Omnitrans' material number, and quality control inspector.

E. CLEANING AND PRIMING

The brake shoes shall be shot blasted and cleaned of all old paint, oxidation and existing brake lining. Cleaning shall be under rigid monitoring and control to prevent excessive abrading of any critical shoe features. Brake shoes must be treated following the instructions and guidelines identified in APTA BTA-SS-RP-003-07 (approved 5/5/07), Section 8 – Corrosion Inhibitor Treatment of Brake Shoes within four (4) Hours after shot blasting to prevent premature oxidation of the bare metal.

F. BOLTING/RIVETING, INSPECTION AND ASSEMBLY PROCEDURES

1. The bolting or riveting process and quality control procedure shall conform to APTA BTS-SS-RP-003-07, Section 10.2.1.
2. Perform final inspection per BTS-SS-RP-003-07, Section 12. Visible cracks or separation of the brake linings (as specified) after riveting are not acceptable.
3. Brake shoes must have all new anchor pin bushings installed and be properly sized for anchor pin clearance at every reline. Contractor shall inspect MAN rollers and pins for wear and replace as needed. Only OEM or approved equal parts may be used.

G. DRUMS

Contractor shall supply cut front and rear drums to match reline shoes.

1. Omnitrans Material Number 32987 DRUM ;NF 16.10" I.D. FRONT BRAKE
 - i. 6312397-20NFA2
 - ii. 74040B
2. Omnitrans Material Number 32979 DRUM ;NF 16.10" I.D. REAR BRAKE

ATTACHMENT A – SCOPE OF WORK
MNT16-100
BRAKE SHOE RELINING SERVICES

- i. 6312400-15NFA
- ii. 74089B

H. WARRANTY

1. All brake assemblies shall be warranted against premature wear-out, lining cracking, Loose Rivets, decomposing, etc. during the warranty period of 12 months, 30,000 miles or the life of the lining (normal wear), whichever comes first. Brake assemblies shall be warranted for defect of workmanship and material.
2. Omnitrans will be compensated if a brake reline occurs when 50% or more of the wear portion of the brake lining remains due to brake lining cracking or breakage. The contractor will replace the linings at no charge and reimburse Omnitrans six (6) labor hours.
3. Omnitrans brake shop personnel will inspect all delivered rebuilt brake shoe assemblies per the scope of work. Contractor shall not exceed a 5% inspection failure rate per quarter annually. Contractor shall reimburse Omnitrans 50% of all Quality Control labor hours expended per quarter annually, at the rate \$60.00 per hour.

I. MISCELLANEOUS

Shoe and drum axle kits shall be installed on 1/2 pallets and shrink-wrapped accordingly. The hardware and shoes shall be inside each drum, respectively.

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 \$100,000 and to contracts over \$100,000 for materials & supplies for steel, iron, or manufactured products.

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

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

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

RR-16

CARGO PREFERENCE*

A. Applicability

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

B. USE OF UNITED STATES FLAG VESSELS

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

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

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

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

RR-17 FLY AMERICA

A. Applicability

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

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

RR-18 CONTRACT WORK HOURS AND SAFETY STANDARDS ACT *

A. Applicability

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

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

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

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

RR-19

DISADVANTAGED BUSINESS ENTERPRISE (DBE) 49 CFR Part 26

Disadvantaged Business Enterprises

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

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

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

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

RR-20

ADA ACCESS

A. Applicability

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

B. Access Requirements for Persons with Disabilities

Contractor shall comply with:

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

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

RR-21

ALCOHOL AND DRUG-FREE WORKPLACE PROGRAM *

A. Applicability

This Article applies to federally funded contracts for transit operations.

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

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

C. Certificate of Compliance

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

D. Drug and Alcohol Testing Program

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

E. Alcohol and Drug Free Workplace Program

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

TRANSIT EMPLOYEE PROTECTIVE ARRANGEMENTS *

A. Applicability

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

B. General Transit Employee Protective Requirements

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

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

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

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

If FTA has determined that this Contract involves transit operations financed in whole or in part with Federal assistance authorized by 49 U.S.C. § 5311, Contractor shall comply with the terms and conditions of the Special Warranty for the Nonurbanized Area

Program agreed to by the U.S. Secretaries of Transportation and Labor, dated May 31, 1979, and the procedures implemented by U.S. DOL or any revision thereto.

E. Indemnity

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

**RR-23
BONDING REQUIREMENTS**

Applicability to Contracts

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

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

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

Background and Application

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

incorporated into a single clause (*see* 29 CFR 3.11) enumerated at 29 CFR 5.5(a) and reproduced below.

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

Clause Language

Davis-Bacon and Copeland Anti-Kickback Acts

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(2) That each laborer or mechanic (including each helper, apprentice, and trainee) employed on the contract during the payroll period has been paid the full weekly wages earned, without rebate, either directly or indirectly, and that no deductions have been made either directly or

indirectly from the full wages earned, other than permissible deductions as set forth in Regulations, 29 CFR part 3;

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

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

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

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

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

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

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

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

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

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

be responsible for the compliance by any subcontractor or lower tier subcontractor with all the contract clauses in 29 CFR 5.5.

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

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

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

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

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

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

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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 of damage.

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

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

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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					
MNT16-100					
BRAKE SHOE RELINING SERVICES					
Item Number					
1	Drum; Nf 16.10" I.D. Rear Brake Drum	1050	EA	\$ 149.41	\$ 156,880.50
2	Drum; Nf 16.10" I.D. Front Brake Drum	360	EA	\$ 128.88	\$ 46,396.80
3	Front Reline Brake Shoes	750	EA	\$ 48.65	\$ 36,487.50
4	Rear Reline Brake Shoes	1800	EA	\$ 53.35	\$ 96,030.00
5	Roller Assy; Nf Front & Rear	60	EA	\$ 12.95	\$ 777.00
6	Core Charge	1	EA	\$ 142.50	\$ 142.50
7	Sales Tax @8.25%	1	LOT		\$ 27,767.17
8	Subtotal				\$ 336,571.80
9	Total Base Years 1-3				\$ 364,481.47
10	Drum; Nf 16.10" I.D. Rear Brake Drum	350	EA	\$ 155.78	\$ 54,523.00
11	Drum; Nf 16.10" I.D. Front Brake Drum	120	EA	\$ 132.50	\$ 15,900.00
12	Front Reline Brake Shoes	250	EA	\$ 45.88	\$ 11,470.00
13	Rear Reline Brake Shoes	600	EA	\$ 57.85	\$ 34,710.00
14	Roller Assy; Nf Front & Rear	20	EA	\$ 13.85	\$ 277.00
15	Core Charge	1	EA	\$ 148.00	\$ 148.00
16	Sales Tax @8.25%	1	LOT		\$ 9,642.60
17	Subtotal				\$ 116,880.00
18	Total Option Year 1				\$ 126,670.60
19	Drum; Nf 16.10" I.D. Rear Brake Drum	350	EA	\$ 155.78	\$ 54,523.00
20	Drum; Nf 16.10" I.D. Front Brake Drum	120	EA	\$ 132.50	\$ 15,900.00
21	Front Reline Brake Shoes	250	EA	\$ 45.88	\$ 11,470.00
22	Rear Reline Brake Shoes	600	EA	\$ 57.85	\$ 34,710.00
23	Roller Assy; Nf Front & Rear	20	EA	\$ 13.85	\$ 277.00
24	Core Charge	1	EA	\$ 148.00	\$ 148.00
25	Sales Tax @8.25%	1	LOT		\$ 9,642.60
26	Subtotal				\$ 116,880.00
27	Total Option Year 2				\$ 126,670.60
	Grand Total				\$ 617,823

ITEM # H1

DATE: April 6, 2016

TO: Members of the Omnitrans Board of Directors

FROM: Sam Spagnolo, Board Chair

**SUBJECT: APPROVE AMENDED EMPLOYMENT AGREEMENT WITH
CHIEF EXECUTIVE OFFICER/GENERAL MANAGER**

FORM MOTION

Approve the Amended Employment Agreement for P. Scott Graham, Chief Executive Office/General Manager, effective February 5, 2016.

BACKGROUND

In January 2016, the Board of Directors adopted the Evaluation Form to be used in evaluating the CEO/General Manager, as well as appointed the Board Chair as Chief Negotiator to negotiate any amendments to the Employment Agreement between Omnitrans and the CEO/General Manager. Subsequently, the Evaluation Form was then emailed and mailed to all Board Members for completion and responses were returned to Legal Counsel for compilation.

In accordance with Board action, Vice Chair Ron Dailey and I met with Mr. Graham, Monday, February 22, 2016, to discuss the evaluation and negotiate the terms of his Employment Agreement. The resultant Employment Agreement, on file with the Recording Secretary, requires approval by the Board of Directors.

Changes to the Employment Agreement include:

- CEO/General Manager now pays PERS full employee contribution
- Salary Increase in accordance with Personnel Policy Management Confidential Guidelines
- Recognition of Additional Job Duties associated with the Consolidated Transportation Services Agency
- No changes to sick leave, vacation, deferred comp or other benefits recommended.

SS:VD