



BOARD OF DIRECTORS MEETING
WEDNESDAY, DECEMBER 4, 2013 – 8:00 A.M.
OMNITRANS METRO FACILITY
1700 WEST 5TH STREET
SAN BERNARDINO, CA 92411

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

A. CALL TO ORDER

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

B. ANNOUNCEMENTS/PRESENTATIONS

1. Next Board Meeting: Wednesday, January 8, 2014, at 8:00 a.m.
Omnitrans Metro Facility Board Room

C. COMMUNICATIONS FROM THE PUBLIC

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

D. POSSIBLE CONFLICT OF INTEREST ISSUES

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

E. CONSENT CALENDAR

The following items are expected to be routine and non-controversial. The Board will act upon them at one time without discussion, unless the Board directs that an item be held for further discussion under Agenda Item F, Discussion Items. Any person wishing to address consent items should address the Board under Agenda Item E12, Action on Consent Calendar.

- | | |
|----------------------------------------------------------------------------------------------------------------------|----|
| 1. Approve Board Minutes – November 6, 2013 | 6 |
| 2. Receive and File Administrative & Finance Committee Minutes – October 15, 2013 | 12 |
| 3. Receive and File Agency Management Report – October 2013 | 16 |
| 4. Receive and File Construction Progress Report No. 22 through October 25, 2013 – sbX E Street Corridor BRT Project | 25 |



BOARD OF DIRECTORS MEETING
WEDNESDAY, DECEMBER 4, 2013 – 8:00 A.M.
OMNITRANS METRO FACILITY
1700 WEST 5TH STREET
SAN BERNARDINO, CA 92411

E. CONSENT CALENDAR CONTINUED	
5. Receive and File Comprehensive Operational Analysis of Omnitrans	40
6. Authorize Interim CEO/General Manager to Execute Downtown San Bernardino Passenger Rail Project Funding Agreement with San Bernardino Associated Governments (SANBAG)	43
7. Authorize Interim CEO/General Manager to Execute Memorandum of Understanding for Section 5339 Bus and Bus Facilities Formula Grant Program with San Bernardino Associated Governments (SANBAG)	61
8. Authorize Interim CEO/General Manager to Execute Bus Bridge Agreement with Southern California Regional Rail Authority (SCRRA)	84
9. Authorize Additional Spend Authority, Contract IPMO14-116, As Needed Scheduling Services for sbX E Street Corridor BRT and Vehicle Maintenance Facility Projects	92
10. Authorize Award – Purchase Order for sbX Service Truck	94
11. Press Articles and Letters of Interest to the Board	96
12. 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. Approve Proposed Charter for Operations and Safety Board Committee	118
3. Ratify Award, Purchase Order ITS14-113, Tape Backup Library System	121
4. Authorize Interim CEO/General Manager to Execute San Bernardino Transit Center Funding Agreement with San Bernardino Associated Governments (SANBAG)	123
5. Authorize Award, Contract MNT14-79, Personal Protective Equipment	155
6. Authorize Award, Contract MNT13-100, Bus Tire Lease and Tire Services	205
7. Authorize Release, Invitation for Bids IFB-MNT14-24, Towing Services	267
8. Authorize Release, Invitation for Bids IFB-MNT14-106, Wireless Mobile Column Lifts	269
9. Authorize Release, Invitation for Bids IFB-MNT14-133, Batteries	271
G. PUBLIC HEARINGS	
1. Public Hearing – Federal Transit Administration Section 5307 and Section 5339 Funds for Fiscal Year 2014	273
H. BOARD BUSINESS	
Closed Session	
1. Conference with Labor Negotiator, P. Scott Graham, concerning labor negotiations with Teamsters Local Union No. 166 regarding the Maintenance and Administrative Support Unit, pursuant to Government Code Section 54957.6	



**BOARD OF DIRECTORS MEETING
WEDNESDAY, DECEMBER 4, 2013 – 8:00 A.M.
OMNITRANS METRO FACILITY
1700 WEST 5TH STREET
SAN BERNARDINO, CA 92411**

Closed Session continued

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

I. REMARKS AND ANNOUNCEMENTS

J. ADJOURNMENT

ITEM # D1
DATE: December 4, 2013

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

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

FROM: Jennifer M. Sims, Director of Procurement

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

Staff hereby provides a listing of principals and subcontractors associated with action items on the agenda for the Board of Director's Meeting scheduled December 4, 2013.

Item No.	Contract	Principals & Agents	Subcontractors
E9	Authorize Additional Spend Authority Contract IPMO140116, As Needed Scheduled Services	<i>APSI Construction Management</i> Irvine, CA Ashok Apte President	N/A
E10	Authorize Award Purchase Order for sbX Service Truck	<i>Fairview Ford Sales, Inc.</i> San Bernardino, CA Todd Eff Fleet Manager	N/A
F3	Ratify Award Purchase Order ITS14-113 Tape Backup Library System	<i>Dell, Inc.</i> Round Rock, TX Nichole Cooper Inside Account Manager	N/A
F5	Authorize Award Contract MNT14-79 Personal Protective Equipment	<i>Magid Glove and Safety Manufacturing</i> Chicago, IL Ian Quan Governmental Sales and Bid Specialist	N/A
F6	Authorize Award	<i>Bridgestone Americas Tire</i>	

Item No.	Contract	Principals & Agents	Subcontractors
	Contract MNT13-100 Bus Tire Lease and Tire Services	<i>Operations, LLC</i> <i>Nashville, TN</i> <i>D. Warren Dickenson</i> <i>Manager Mileage Sales</i>	

PSG/JS

ITEM # E1

**BOARD OF DIRECTORS' MEETING
MINUTES
NOVEMBER 6, 2013**

A. CALL TO ORDER

Chair Alan Wapner called the regular meeting of the Omnitrans Board of Directors to order at 8:00 a.m., Wednesday, November 6, 2013, at the Omnitrans Facility located at 1700 West 5th Street, San Bernardino, California.

1. Invocation
2. Pledge of Allegiance
3. Roll Call – Self-introductions were made.

BOARD MEMBERS PRESENT

Councilmember Alan Wapner, City of Ontario – Chair
Mayor Pro Tem Sam Spagnolo, City of Rancho Cucamonga – Vice Chair
Councilmember Ron Dailey, City of Loma Linda
Mayor Paul Eaton, City of Montclair
Mayor Pro Tem Paul Foster, City of Redlands
Councilmember Frank Gonzales, City of Colton
Supervisor Josie Gonzales, County of San Bernardino
Vice Mayor Ed Graham, City of Chino Hills
Mayor Pat Morris, City of San Bernardino
Mayor Ray Musser, City of Upland
Councilmember Ed Palmer, City of Rialto
Supervisor James Ramos, County of San Bernardino
Councilmember Dick Riddell, City of Yucaipa
Mayor Pro Tem John Roberts, City of Fontana
Supervisor Janice Rutherford, County of San Bernardino
Mayor Walt Stanckiewicz, City of Grand Terrace
Mayor Dennis Yates, City of Chino

BOARD MEMBERS NOT PRESENT

Mayor Pro Tem Penny Lilburn, City of Highland
Supervisor Robert Lovingood, County of San Bernardino
Supervisor Gary Ovitt, County of San Bernardino

OMNITRANS' ADMINISTRATIVE STAFF PRESENT

Scott Graham, Interim CEO/General Manager
Diane Caldera, Interim Director of Operations
Jack Dooley, Director of Maintenance
Marge Ewing, Director of Human Resources
Sam Gibbs, Director of Internal Audit Services
Jacob Harms, Director of Information Technology
Milind Joshi, sbX Program Manager
Anna Rahtz, Acting Director of Planning & Development Services
Jennifer Sims, Director of Procurement
Don Walker, Director of Finance
Wendy Williams, Director of Marketing
Jeremiah Bryant, Service Planning & Scheduling Manager
Ray Maldonado, Employee Relations Manager
Maurice Mansion, Treasury Manager
Eugenia Pinheiro, Contracts Manager
Christine Van Matre, Contracts Administrator
Alesia Atkinson, Contracts Administrator
Joanne Cook, Contracts Administrator
Mark Crosby, Loss Prevention Supervisor
Vicki Dennett, Assistant to CEO/General Manager
Lourdes Sandoval, Administrative Secretary

OTHER

Carol Greene, Legal Counsel

B. ANNOUNCEMENTS/PRESENTATIONS

Chair Wapner said the next regular meeting is scheduled Wednesday, December 4, 2013, at 8:00 a.m.

Employee of the Quarter was presented to Marketing Specialist Juno Carlson.

C. COMMUNICATIONS FROM THE PUBLIC

Angela Hatley, Vice President Client Services, York Services Group, Inc., regarding contract #HR13-182 – Workers' Compensation Claims Administration Services – York believes there is a conflict of interest directly related to the RFP process, selection, and award of the contract for TPA services to proposer Pacific Claims Management.

Luke Conner Sr., San Bernardino, stated that Route 3 & 4 need to be on time and they should consider dividing the line so buses are on time. Drivers need help and wages need to be increased. Cameras on the bus are not enough protection.

Jennie Rodezno, Highland, has been a rider of Access for 11 years. Ms. Rodezno expressed her frustration with the Access service, from reservations and dispatch to service not being on time and rude drivers.

D. CONFLICT OF INTEREST

None.

E. CONSENT CALENDAR

- 1) Approve Board Minutes – October 2, 2013
- 2) Receive and File Administrative & Finance Committee Minutes – September 9, 2013
- 3) Receive and File Agency Management Report – September 2013
- 4) Receive and File Construction Progress Report #21 through September 25, 2013, sbX E Street Corridor BRT Project
- 5) Receive and File Quarterly Report – sbX E Street Corridor BRT Project – September 2013
- 6) Receive and File sbX E Street Corridor BRT Project Public Outreach Process and Property/Business Owner Issues Report
- 7) Receive and File Director of Finance Quarterly Report – Forward Fuel Purchases through September 2013
- 8) Receive and File Key Performance Indicators – Fiscal Year 2014 First Quarter Report
- 9) Receive and File Affirmative Action Status Report as of October 17, 2013
- 10) Reappoint Board Vice Chair Spagnolo to Serve Three Year Term on Consolidated Transportation Services Agency Board of Directors (VTrans)
- 11) Authorize Solicitation for Appraisal of Omnitrans' Property located at 12300 Arrow Route, Rancho Cucamonga, California (Mid-Valley)
- 12) Adopt Title VI Service Equity Analysis of sbX Green Line Service
- 13) Authorize Interim CEO/General Manager to Execute Revised Agreement between Inland Empire United Way and Omnitrans
- 14) Adopt Revisions to Personnel Policy #103, Standards of Ethical Conduct, and Personnel Policy #109, Conflict of Interest
- 15) Authorize Sole Source Purchase of Software Maintenance Services for Financial & Operational Reporting to SANBAG
- 16) Press Articles and Letters of Interest to the Board

On motion by Member Eaton, seconded by Member Musser and carried, the Consent Calendar was approved.

F. DISCUSSION ITEMS

- 1) CEO/General Manager's Report

Interim CEO/General Manager Graham reviewed the CEO/General Manager's report for September 2013, including the announcement of Anna Rahtz, Acting Director of

Planning as the recipient of the Mass Transit 40 Under 40 Award and Omnitrans received the AQMD Clean Air Award.

2) Adopt Proposed Board Meeting Calendar for 2014

M/S/C (Musser/Spagnolo) to adopt the proposed Board Meeting Calendar for 2014.

3) Adopt Resolution No. 269-13 Approving the Transit Mutual Assistance Compact (TRANSMAC) Agreement for Public Transit Providers

M/S/C (Morris/Spagnolo) to adopt Resolution No. 269-13 approving the Transit Mutual Assistance Compact (TransMAC) Agreement for public transit providers and authorize the Interim CEO/General Manager to execute all necessary documents for the Agreement.

4) Authorize Award, Contract No. IPMO14-103, On-Call Stormwater Prevention Pollution Plan (SWPPP) Oversight Services for sbX E Street Corridor and Vehicle Maintenance Facility Project

M/S/C (Morris/Dailey) to authorize the Interim CEO/General Manager to award Contract IPMO14-103 to Whitson CM Contracting and Management Inc., of San Diego, California, for the provision of On-Call Stormwater Prevention Pollution Plan (SWPPP) Oversight Services for the sbX E Street Corridor and Vehicle Maintenance Facility Project beginning November 11, 2013, for a period of ten (10) months, with an option to extend the term for an additional one-year period, ending no later than August 11, 2015, on an on-call basis with a total amount not-to-exceed \$79,750.00, plus the 3.27% Cost Allocation Plan (CAP) of \$2,608.00, for a total not-to-exceed amount of \$82,358.00.

5) Authorize Award, Contract No. IPMO14-105, On-Call Environmental Support for sbX E Street Corridor and Vehicle Maintenance Facility Project

M/S/C (Musser/Roberts) to authorize the Interim CEO/General Manager to award Contract IPMO14-105 to Crable and Associates, Environmental Consultants, of Altadena, California, for the provision of On-Call Environmental Support for the sbX E Street Corridor and Vehicle Maintenance Facility Project beginning November 11, 2013, for a period of ten (10) months, with an option to extend the term for an additional one-year period, ending no later than August 11, 2015, on an on-call basis with a total amount not-to-exceed \$97,900.00, plus the 3.27% Cost Allocation Plan (CAP) of \$3,201.00 for a total not-to-exceed amount of \$101,101.00.

6) Authorize Award, Contract No. HR14-07, Pre-Employment Background Checks

M/S/C (Eaton/Musser) to authorize the Interim CEO/General Manager to award Contract HR14-07 to Summit Security Services, Inc., dba Summit of California, Uniondale, New York, for the provision of Pre-employment Background Checks beginning December 1, 2013 and ending no later than November 30, 2015, in the aggregate amount of \$54,648,

and the authority to exercise three one-year options, extending the contracts to no later than November 30, 2018, in the aggregate amount of \$27,324 for each of the option years, totaling \$136,620, plus a 10% contingency of \$13,662, for a five year not-to-exceed amount of \$150,282, should all option years be exercised.

- 7) Authorize Award, Contract No. HR13-182, Workers' Compensation Claims Administration Services

M/S/C (Morris/Musser) to authorize the Interim CEO/General Manager to award Contract HR13-182 to Pacific Claims Management, LLC of Fresno, CA for the provision of Workers' Compensation Claims Administration Services for a base period of three years beginning December 1, 2013 and ending no later than November 30, 2016, for a three year total of \$570,024, with the authority to exercise two one year options, beginning December 1, 2016 and ending November 30, 2018. The five year contract amount is \$950,040, plus a ten percent contingency of \$95,004, for a total contract amount not-to-exceed \$1,045,044.

Member Ramos abstained.

- 8) Authorize Release, Request for Proposals RFP-ITS14-82, Automatic Passenger Counter

M/S/C (Yates/Eaton) to authorize the Interim CEO/General Manager to release Request for Proposals RFP-ITS14-82, for the provision of Automatic Passenger Counters for the sbX articulated buses beginning February 2014 and ending no later than July 2019.

- 9) Authorize Release, Request for Proposals RFP-SAS14-09, Security Services

M/S/C (Yates/Eaton) to authorize the Interim CEO/General Manager to release Request for Proposals RFP-SAS14-09, for the provision of Security Patrol Services for the sbX Green Line corridor, stations, and park and rides beginning February 24, 2014, and Security Services for Omnitrans' fixed-route and paratransit operations facilities beginning July 1, 2014, with the base year period ending June 30, 2016, and three single option years ending June 30, 2019.

- 10) Authorize Release, Request for Proposals RFP-MNT14-81, Compressed Natural Gas (CNG) Fuel Cylinder Replacement

M/S/C (Yates/Eaton) to authorize the Interim CEO/General Manager to release Request for Proposals RFP-MNT14-81 for the provision of the Compressed Natural Gas (CNG) Fuel Cylinder Replacement for eleven forty-foot buses.

- 11) Authorize Release, Invitation for Bids IFB-MNT14-13, Landscaping Services

M/S/C (J.Gonzales/Eaton) to authorize the Interim CEO/General Manager to release Invitation for Bids, IFB-MNT14-13 for the provision of Landscaping Services for a three (3) year base contract, and two (2) one-year options beginning January 13, 2014, and ending no later than January 12, 2019.

G. PUBLIC HEARING

1. Call for Public Hearing – Federal Transit Administration Section 5307 and Section 5339

M/S/C (Morris/Musser) to approve a Call for a Public Hearing concerning the Federal Transit Administration (FTA) §5307 and §5339 for Fiscal Year 2014, to be held at 8:00 a.m., Wednesday, December 4, 2013, at the Omnitrans Metro Facility, 1700 West Fifth Street, San Bernardino, CA 92411.

H. BOARD BUSINESS

Closed Session

1. Conference with Labor Negotiator, P. Scott Graham, concerning labor negotiations with Teamsters Local Union No. 166 regarding the Maintenance and Administrative Support Unit, pursuant to Government Code Section 54957.6
2. Conference with Labor Negotiator, P. Scott Graham, concerning labor negotiations with Amalgamated Transit Union Local No. 1704 regarding the Coach Operator Unit, pursuant to Government Code Section 54957.6

The Board adjourned to Closed Session at 8:42 a.m. The Board reconvened at 9:11 a.m. Chair Wapner said there was no reportable action taken during Closed Session.

I. REMARKS AND ANNOUNCEMENTS

Interim CEO/General Manager Graham reported that the Executive Committee supported rescinding the wage freeze for Management Confidential employees effective July 1, 2014 and requested the support from the full Board.

Chair Wapner reported that with the addition of the Operation & Safety Committee the three policy committees will be recasted and requested Board Members to notify him of which committee they would like to serve. He wants participation by all members on a committee.

J. ADJOURNMENT

The Board adjourned at 9:14 a.m. The next regular meeting is scheduled for December 4, 2013, at 8:00 a.m., with location posted on the Omnitrans website and at Omnitrans' San Bernardino Metro Facility.

Lourdes Sandoval, Recording Secretary

ITEM # E2

**ADMINISTRATIVE & FINANCE COMMITTEE
MINUTES
OCTOBER 15, 2013**

A. CALL TO ORDER

The Administrative & Finance Committee meeting was called to order by Chair Pat Morris at 11:02 a.m. on October 15, 2013.

Committee Members Present

Mayor Pat Morris, City of San Bernardino – Chair
Councilmember Frank Gonzales, City of Colton
Vice Mayor Ed Graham, City of Chino Hills
Councilmember Dick Riddell, City of Yucaipa
Mayor Pro Tem John Roberts, City of Fontana
Councilmember Alan Wapner, City of Ontario

Committee Members Absent

Mayor Paul Eaton, City of Montclair
Mayor Pro Tem Paul Foster, City of Redlands
Supervisor Gary Ovitt, County of San Bernardino
Mayor Walt Stanckiewicz, City of Grand Terrace

Omnitrans Administrative Staff Present

Scott Graham, Interim CEO/General Manager
Diane Caldera, Interim Director of Operations
Wendy Williams, Director of Marketing
Sam Gibbs, Director of Internal Audit Services
Don Walker, Director of Finance
Jacob Harms, Director of IT
Anna Rahtz, Acting Director of Planning & Development Services
Milind Joshi, sbX Program Manager
Maurice Mansion, Treasury Manager
Eugenia Pinheiro, Contracts Manager
Jeremiah Bryant, Service Planning & Scheduling Manager
Scott Begg, Planner I
Carol Angier, Administrative Secretary

B. ANNOUNCEMENTS/PRESENTATIONS

The next Committee Meeting is scheduled Tuesday, November 12, 2013, at 11 a.m.

C. COMMUNICATIONS FROM THE PUBLIC

There were no comments from the public.

D. POSSIBLE CONFLICT OF INTEREST ISSUES

There were no conflicts of interest.

E. AGENDA ITEMS

1. Approve Administrative & Finance Committee Minutes of September 9, 2013

M/S (Graham/Roberts) to approve the minutes of the September 9, 2013 Committee meeting. Motion was unanimous by members present.

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

Director of Finance Walker said 45 percent of Omnitrans' fuel is hedged under the current contract. There was a gain of \$1,862 for September. Since February 2012, there was a loss of \$42,545 on settled hedge positions. There is an unrecognized gain of \$41,613 through June 2014. This will give Omnitrans a loss of less than \$1,000. CNG fuel prices are expected to remain above the hedge. Staff will make a recommendation whether or not to extend the hedge within the next eight months.

This was a receive and file agenda item.

3. Receive & Forward to Board of Directors, Construction Progress Report No. 21 through September 25, 2013 – sbX E Street Corridor BRT Project

sbX Program Manager Joshi said sbX service is still expected to start April 30, 2014. To date, we are \$4.5 million under budget. He showed Power Point presentations of the construction for the sbX corridor and Vehicle Maintenance Facility (VMF) construction. Approximately 85 percent of the sbX construction is completed. Chair Morris asked if the VMF construction would delay start of sbX service, and sbX Program Manager said it would not.

This was a receive and file agenda item.

4. Adopt Proposed 2014 Committee Meeting Schedule

M/S (Gonzales/Graham) to adopt the proposed Administrative & Finance Committee Meeting Schedule for 2014. The current meeting schedule is proposed to remain the same as 2013 with meetings scheduled the second Monday of each month (unless otherwise noted) and beginning at 11 a.m. Motion was unanimous by members present.

Member Graham asked if the committee meetings could be scheduled in conjunction with SANBAG meetings to avoid taking two trips to this area. Chair Morris asked staff to check into the possibility of doing this.

5. Recommend to Board of Directors, Authorize Interim CEO/General Manager to Execute Revised Agreement Between Inland Empire United Way and Omnitrans

Interim CEO/General Manager Graham said Omnitrans' current funding agreement for the Inland Empire United Way did not match SANBAG's Call for Projects funding award. Therefore, the

agreement needs to be modified by a total of \$9,056 to match SANBAG's final approved budget for the project.

M/S (Graham/Wapner) to recommend the Board of Directors authorize the Interim CEO/General Manager to execute a revised funding agreement with Inland Empire United Way for the purchase of hardware and software to expand the capacity of the 2-1-1 system and create a new Veterans' One Click transportation service regional coordination information center for the San Bernardino County for an additional sum of \$9,056, bringing the total contract amount to of \$404,744. Motion was unanimous by members present.

6. Recommend to Board of Directors, Adoption of Title VI Service Equity Analysis of sbX Green Line Service

Planner I Begg said Omnitrans is required by the FTA to report triennially regarding compliance with Title VI requirements to demonstrate no discrimination for low income and minority residents in the area. The FTA also requires that Omnitrans prepare a Title VI Service Equity Analysis six months before service starts. The proposed service changes include start of sbX Green Line service and changes to Routes 2 and 7. An analysis was done for the proposed service changes using demographic data within a half-mile walking distance of the sbX corridor and Routes 2 and 7. It was found the changes will not negatively impact service to those within walking distance of the sbX stations, but will, in fact, provide a higher Low Income/Minority (LIM) proportion than with any other measure. Therefore, these changes comply with Title VI requirements.

M/S (Gonzales/Wapner) to recommend to the Board of Directors adoption of the Title VI Service Equity Analysis of sbX Green Line and accompanying changes to Routes 2 and 7. Motion was unanimous by members present.

7. Recommend to Board of Directors, Adopt Revision to Personnel Policy #103, Standards of Ethical Conduct, and Personnel Policy #109, Conflict of Interest

Interim CEO/General Manager Graham said a review was conducted on Personnel Policies #103 and #109. While both policies hold very high standards, it was recommended that language be added to both policies addressing the State of California Form 700, Statement of Economic Interests. The language states the CEO/General Manager must approve any vendor gifts for any staff member. Member Graham asked if this was for all employees, and Interim CEO/General Manager Graham said yes.

M/S (Graham/Roberts) to recommend to the Board of Directors adoption of the proposed changes to Personnel Policy #103, Standards of Ethical Conduct, and Personnel Policy #109, Conflict of Interest, effective November 6, 2013. Motion was unanimous by members present.

8. Recommend to Board of Directors, Authorize Interim CEO/General Manager to Solicit Appraisal for Omnitrans' Property located at 12300 Arrow Route, Rancho Cucamonga, California (Mid-Valley)

Interim CEO/General Manager Graham said staff had discussions with FTA on how to dispose of the Omnitrans property in Rancho Cucamonga, called the Mid-Valley site. Staff also discussed how Omnitrans can use the funding from that land sale for transit-related projects. FTA stated that an appraisal of the land site must be done to present to the Board for approval before sending it to the FTA for review.

M/S (Graham/Riddell) to recommend the Board of Directors authorize the Interim CEO/General Manager to solicit quotes from qualified appraisers who are experienced in the valuation and

evaluation of commercial and industrial properties to appraise Omnitrans' property located at 12300 Arrow Route, Rancho Cucamonga, California (Mid-Valley). Motion was unanimous by members present.

Member Graham asked if service to Butterfield Ranch in Chino Hills had been considered by staff. Interim CEO/General Manager Graham said all requests for circulator services by member cities will be taken to the Board for approval within two months. A committee is being formed to review all requests and will present recommendations to the Board at that time. Member Graham said a new Senior Center will open soon in Chino Hills, and he asked if a bus stop could be installed near the facility. Service Planning & Scheduling Manager Bryant said several service stops were requested in that location, and more stops will be added. He will check to determine if these stops will be near the Senior Center. Member Graham said considerable construction will be taking place along OmniGo Route 65. Service Planning & Scheduling Manager Bryant said he will be in touch with the city to get updates on this construction.

The Administrative & Finance Committee meeting adjourned at 11:37 a.m. The next Administrative & Finance Committee Meeting is scheduled for Tuesday, November 12, 2013 at 11:00 a.m., with location posted on the Omnitrans website and at Omnitrans' San Bernardino Metro Facility.

Carol Angier, Recording Secretary

ITEM # E3

AGENCY MANAGEMENT REPORT

October 2013
FISCAL YEAR 2014

Agency Results

Operating Revenue

October total Operating Revenue of \$5,786,579 is 177,262 under budget. Year-to-Date (YTD) Operating Revenue of \$24,449,300 is \$593,936 over budget. The negative monthly variance is driven by the reclassification and recognition of cost for new Access vehicles from the State of CA. The YTD variance is primarily driven by the same item and the recognition of the CNG fuel tax credit.

Operating Expense

October Operating Expense of \$6,776,960 is \$813,119 or 14% over budget. YTD Operating Expense of \$22,250,157 is \$1,605,207 or 7% under budget. The negative monthly variance is driven by the month of October having an extra pay period. The YTD variance is driven by labor, fringe benefits, material and supplies, services and occupancy all coming in under budget.

Ridership

During the month of October, Omnitrans carried a total of 1,497,716 passengers. This consisted of 1,452,227 on Fixed Route service and 45,489 on Demand Response routes. YTD Ridership is 5,424,618, which reflects a total system decrease of 3.6% when compared to the same period last year.

Revenue Hours/Revenue Miles

During the month of October, Omnitrans provided a total of 70,473 revenue hours reflecting a decrease of .49% versus the same period last year. Omnitrans logged a total of 953,172 revenue miles during the month, reflecting a decrease of 1.47% when compared to same period last year. YTD Omnitrans provided a total of 269,217 revenue hours reflecting a decrease of .39% versus the same period last year. Also, YTD Omnitrans logged a total of 3,686,707 revenue miles reflecting an increase of .07% when compared to same period last year.

Farebox Recovery Ratio

October farebox revenue for Fixed Route/Omnalink is \$1,154,720 versus \$1,245,883 for the same period last year. This is a decrease of 7.32%. The farebox recovery ratio for the month is 20.89%. YTD farebox revenue for Fixed Route/Omnalink is \$4,451,011 versus \$4,405,188 for the same period last year. This is an increase of 1.04%. YTD farebox recovery ratio is 24.61%.

October farebox revenue for Access is \$120,412 versus \$122,038 for the same period last year. This is a decrease of 1.33%. Farebox recovery ratio for the month is 9.95%. YTD farebox revenue for Access is \$526,953 versus \$519,965 for the same period last year. This is an increase of 1.34%. YTD farebox recovery ratio is 13.04%.

Financials

Total Salaries and Benefits of \$3,840,174 are \$382,257 over budget for the month of October. YTD Salaries and Benefits of \$13,143,111 are \$688,558 or 5% under budget. The negative monthly variance is driven by the month of October having an extra pay period. YTD variance is primarily driven by headcount being less than planned.

Total Services are \$331,651 or \$74,463 over budget in October. YTD Total Services are \$589,581 or \$439,175 under budget. The negative monthly variance is driven by professional services being higher than planned. The YTD variance is principally driven by professional services being less than planned.

Materials and Supplies are \$780,332 or \$6,227 over budget in October. YTD Materials and Supplies are \$2,826,805 or \$269,613 under budget. The negative monthly variance is driven by rolling stock parts being higher than planned. The YTD variance is principally driven by CNG fuel being less than planned.

Purchased Transportation is \$836,306 or \$75,994 over budget in October. YTD Purchased Transportation is \$2,812,376 or \$228,872 under budget. The current month variance is driven by October having two more operating days than a typical month. YTD variance is driven by favorable pricing in the current contract based on milestones being met.

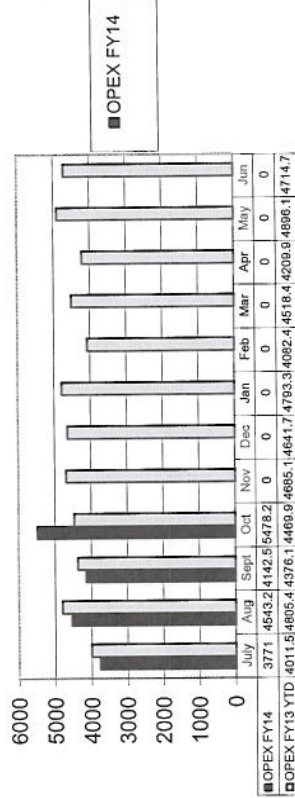
Other Expenses are \$949,948 or \$270,529 over budget in October. YTD Other Expenses are \$2,757,168 or \$39,489 over budget. The negative current month and YTD variances are principally driven by the timing of the capital projects and the cost allocation plan being lower than planned.

**PERFORMANCE STATISTICS
FISCAL YEAR 2014
October 2013**

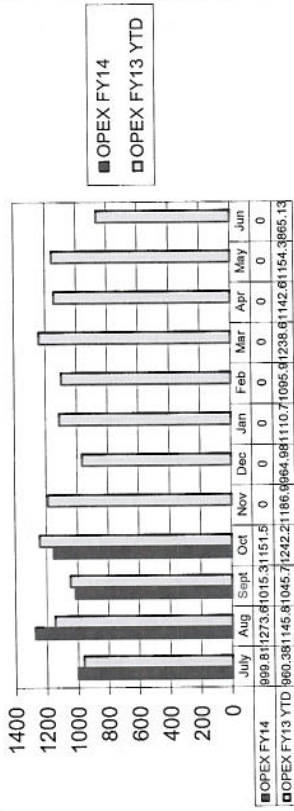
	<u>Current Month</u>		<u>YR/YR</u>	<u>Year-To-Date</u>		<u>YR/YR</u>
	<u>October 2013</u>	<u>October 2012</u>	<u>inc/(dec)</u> <u>CURRENT</u>	<u>October 2013</u>	<u>October 2012</u>	<u>inc/(dec)</u> <u>YTD</u>
Total Passenger Revenue & Subsidy						
Fixed Route	\$1,151,483	\$1,242,245	-7.3%	\$4,440,152	\$4,394,070	1.0%
Demand Response	\$123,649	\$125,676	-1.6%	\$537,723	\$531,083	1.3%
Total Passengers						
Fixed Route	1,452,227	1,554,164	-6.6%	5,253,813	5,458,635	-3.8%
Demand Response	45,489	45,623	-0.3%	170,805	168,338	1.5%
Farebox Recovery Ratio						
Fixed Route/OmniLink	20.89%	27.63%		24.61%	24.74%	
Access	9.95%	11.38%		13.04%	12.99%	
Total Passengers per Revenue Hour						
Fixed Route	26.7	28.7	-6.9%	25.0	26.2	-4.6%
Demand Response	2.8	2.7	3.2%	2.9	2.7	6.1%
Revenue per Passenger						
Fixed Route	0.79	0.80	-0.8%	0.85	0.80	5.0%
Demand Response	2.72	2.75	-1.3%	3.15	3.15	-0.2%
Cost per Passenger						
Fixed Route	3.77	2.88	31.2%	3.41	3.24	5.5%
Demand Response	27.70	24.39	13.6%	24.56	24.62	-0.3%
Cost per Revenue Hour						
Fixed Route	100.70	82.49	22.1%	85.51	84.92	0.7%
Demand Response	78.40	66.87	17.3%	70.41	66.56	5.8%

	<u>Actual</u>	<u>Target</u>
On Time Performance		
Fixed Route	85.36%	90%
Demand Response	88.19%	90%
Headcount	619	669
(includes PT Operators, excludes IPMO)		

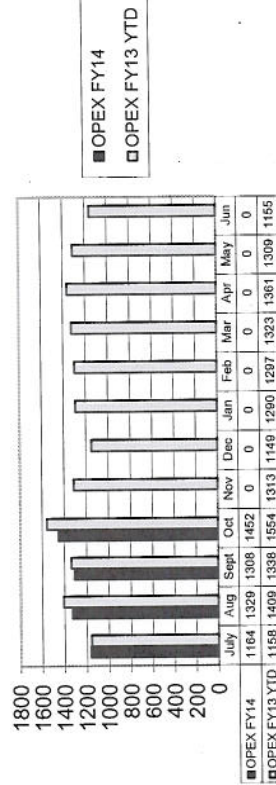
Fixed Route Operating Expense Thousands



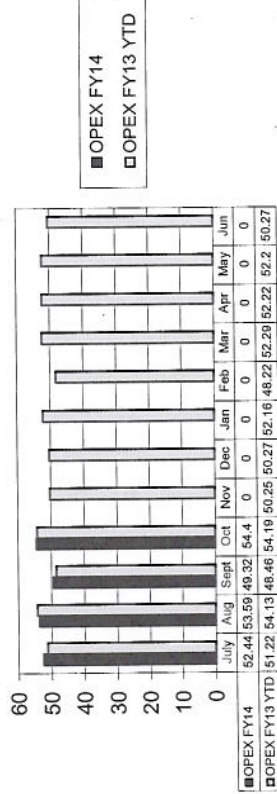
Fixed Route Passenger Revenue Thousands



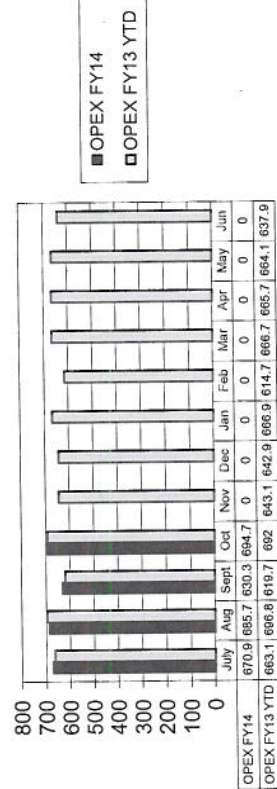
Fixed Route Ridership Thousands



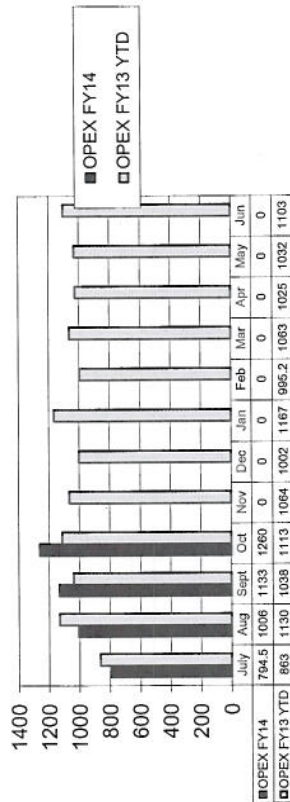
Fixed Route Revenue Hours Thousands



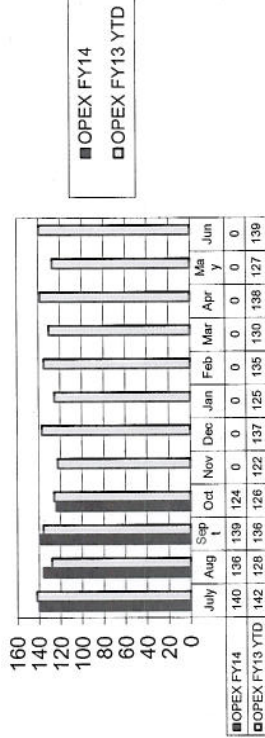
Fixed Route Revenue Miles Thousands



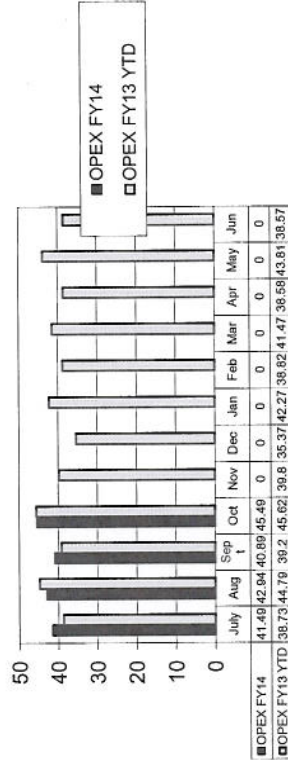
Demand Response Operating Expense Thousands



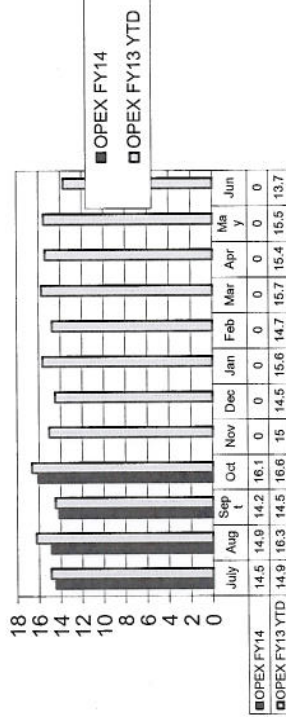
Demand Response Passenger Revenue Thousands



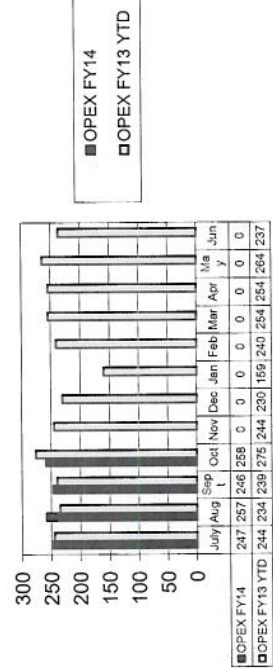
Demand Response Ridership Thousands



Demand Response Revenue Hours Thousands



Demand Response Revenue Miles Thousands



DATE: December 4, 2013

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

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

FROM: Mae Sung, Accounting Manager

SUBJECT: INVESTMENT STATUS

FORM MOTION

Receive and file this report on the status of the Agency's investments.

BACKGROUND & SUMMARY

California Government Code requires the monthly reporting of investments of public agency funds to its governing body.

SUMMARY

All of the Agency's investments are invested with the Local Agency Investment Fund (LAIF) and Union Bank. Please refer to the attachment for the investment activity of the Agency for the month of October, 2013. Sufficient funds are available to meet the obligations of the Agency for the next thirty days.

PSG:MS

OMNITRANS
Treasurer's Report
Month ending October 2013

Institution - Investment Type	Description	Starting Balance	Deposits	Disbursements	Interest Yield	Ending Balance
Cash and Investments Under the Direction of the Treasurer						
Local Agency Investment Fund		\$ 10,984,218.58			0.25%	
				\$ (4,300,000.00)	0.25%	
				\$ (1,800,000.00)	0.27%	
	QTR Interest	\$ 8,988.01			0.26%	
				\$ 3,200,000.00	0.27%	
				\$ 2,000,000.00	0.26%	
				\$ (300,000.00)	0.26%	
		\$ 10,993,206.59		\$ (1,200,000.00)		
Net LAIF Funds				\$ 9,793,206.59		\$ 9,793,206.59
Fair Marketing Value	Fair Value Factor				1.000567320	\$ 9,798,762.47
Union Bank Money Market GMRA		\$ 1,858,525.11				
	Interest	\$ 48.51			0.03%	
		\$ 1,858,573.62		\$ -		
				\$ 1,858,573.62		
				\$ 1,858,573.62		\$ 1,858,573.62
Citybank Morgan Stanley Futures Account		\$ 240,062.81				
	Gain/Loss for month			\$ (13,352.80)		
		\$ 240,062.81		\$ (13,352.80)		
				\$ 226,710.01		\$ 226,710.01
		\$ 1,736,758.54				
	Passenger	\$ 1,317,325.25				
	Grants' Revenue	\$ 7,353,603.35				
	Miscellaneous Revenue	\$ 24,383.56				
	Transfers From (To) LAIF	\$ 6,400,000.00		\$ (5,200,000.00)		
	Transfers From (To) Money Market	\$ -				
	Transfers From (To) Morgan Stanley Futures Account					
	Accounts Payable			\$ (7,624,653.35)		
	Payroll and Payroll Taxes			\$ (3,024,300.43)		
	Employee Benefits			\$ (735,138.55)		
	Bank Service Charge			\$ (7,522.64)		
		\$ 16,832,070.70		\$ (16,591,614.97)		
Net Union Bank Operating Funds				\$ 240,455.73		\$ 240,455.73
		\$ 3,700.00				
Petty Cash				\$ 3,700.00		\$ 3,700.00

Cash and Investments Under the Direction of Fiscal Agents

Wachovia Bank N.A.	\$ 75,000.00					
Workmens' Comp. Adjuster						
York Insurance Services						\$ 75,000.00
Total Cash & Investments						\$ 12,203,201.83

I hereby certify that the investment portfolio of OMNITRANS complies with its investment policy and the California Government Code Sections pertaining to the investment of local agency funds and Union Bank of California. Pending any future actions by the Omnitrans Board or any unforeseen catastrophe, OMNITRANS has an adequate cash flow to meet its expenditure requirements for the next six months.

Prepared by: _____
Mae Sung, Accounting Manager

Approved by: _____
P. Scott Graham, Interim CEO/General Manager, Treasurer

@ Source of Market Value: California State Pooled Money Investment Board Report.

(1) Union: "Summary of Market Value" posted on monthly fiscal agent statements.

(2) LAIF: "Pooled Money Investment Account Market Valuation".

Master Control Account is the controlling account for all the zero balance accounts with

Union including: Accounts Payable Account (General Account) and Payroll Account.

Interest earned by the Master Control account is used as a partial offset to the monthly bank service charges.

DATE: December 4, 2013

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

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

SUBJECT: PAYROLLS AND WARRANTS FOR OCTOBER 2013

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

Payroll Period	Amount	Register #
09/18/13-10/01/13	\$300,460.72	20
10/02/13-10/15/13	\$310,345.50	21
10/16/13-10/29/13	\$302,470.59	22

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

Payroll Period	Amount	Register #
09/09/13-09/22/13	\$827,621.44	20
09/23/13-10/06/13	\$830,737.55	21
10/07/13-10/20/13	\$842,204.40	22

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

Register Date	Amount	Register #
10/01/2013	\$4,275,702.00	646
10/03/2013	\$852,376.12	647-648
10/11/2013	\$993,506.54	649
10/17/2013	\$345,131.40	650
10/25/2013	\$557,270.05	651
10/31/2013	\$600,667.24	652

I, P. Scott Graham, Interim CEO/General Manager of Omnitrans, declare that the above Register of Demands has been audited as required by Section 37202 and 37208 of the Government Code, and said documents are accurate and correct.

PSG: ms

ITEM # E4

DATE: December 4, 2013

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

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

FROM: Andres Ramirez, sbX Construction Manager

SUBJECT: **CONSTRUCTION PROGRESS REPORT NO. 22 THROUGH
OCTOBER 25, 2013 - sbX E STREET CORRIDOR BRT PROJECT**

FORM MOTION

Receive and file Construction Progress Report No. 22 for the sbX E Street Corridor BRT Project through October 25, 2013.

This item was reviewed by the Administrative & Finance Committee at its November 12, 2013, meeting, and recommended to the Board of Directors for receipt and file.

BACKGROUND

This is Construction Progress Report No. 22 for the sbX E Street Corridor Project.

CONCLUSION

Receive and file Construction Progress Report No.22 for the sbX E Street Corridor BRT Project through October 25, 2013.

PSG:AR

Attachment



sbX E Street Corridor Bus Rapid Transit (BRT) Project

Construction Progress Report No. 22

As of October 25, 2013

Submitted By:

JACOBS

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

Contractor Contract No.: IPMO11-5

Project Manager: Roger Hatton, P.E.

Resident Engineer Karim Varshochi, P.E.
(Corridor)
Anni Larkins, P.E.
(VMF)

Omnitrans Construction
Manager: Andres Ramirez
Construction Manager

TABLE OF CONTENTS

- I. Project Status Summary
 - A. Project Description – sbX Corridor
 - B. Summary Status Update – sbX Corridor
 - C. Upcoming Work – sbX Corridor
 - D. Concerns - sbX Corridor
 - E. Project Description - Vehicle Maintenance Facility (VMF)
 - F. Summary Status Update – Vehicle Maintenance Facility (VMF)
 - G. Upcoming Work – Vehicle Maintenance Facility (VMF)
 - H. Concerns - Vehicle Maintenance Facility (VMF)
- II. Project Schedule
 - A. Summary of Project Schedule - sbX Corridor
 - B. Summary of Project Schedule – Vehicle Maintenance Facility (VMF)
- III. RFIs, Submittals, and Non-Conformance Reports
 - A. sbX Corridor
 - B. Vehicle Maintenance Facility (VMF)
- IV. Safety
- V. Project Budget and Cost
- VI. Change Orders and Claims
 - A. VMF Change Orders
 - B. sbX Corridor Change Orders
- VII. Project Photographs
 - A. sbX Corridor Photos
 - B. Vehicle Maintenance Facility (VMF) Photos

I. PROJECT STATUS SUMMARY

A. Project Description – sbX Corridor

The sbX E Street Corridor BRT Project is a 15.7-mile-long transit improvement project that will connect the northern portion of the City of San Bernardino with the City of Loma Linda. Over the past four years, the sbX E Street Corridor Bus Rapid Transit (BRT) Project has evolved as the highest priority corridor identified in the System-Wide Transit Corridor Plan for the San Bernardino Valley.

The Refined LPA includes:

- 15.7 mile corridor
- 5.4 miles of exclusive center-running BRT lanes
- 10.3 miles of mixed flow BRT operation
- 16 BRT station locations, 6 center stations and 10 curb stations
- 23 station boarding structures
- 4 park-and-ride facilities with a total of 610 parking spaces
- Transit signal priority (TSP) applications at select key intersections

B. Summary Status Update – sbX Corridor

In October, the Contractor completed installation of the platform pavers at Carnegie and Tippecanoe stations and continued installation of base pavers at the Anderson Redlands and Anderson Prospect stations. Contractor also completed parking lot paving at Anderson Park-and-Ride and street paving at south bound Anderson Station.

The contractor also completed energizing SCE services for nine stations and work continued on energizing the balance of the remaining.

Two catch basins on Hospitality Lane were completed and station concrete and canopy installation completed on the Baseline Station. At the Court Station, station concrete, bus pads, and canopy installation was completed.

Installation of electric equipment for stations and traffic signals continued. Installing irrigation and landscape at Hospitality Lane median islands.

C. Accomplishments – sbX Corridor

- Energizing SCE services for nine stations completed.
- Began installing station canopies.
- Completed the CSUSB Station and prepared for testing and commissioning scheduled on October 29, 2013.

D. November Work – sbX Corridor

- Continue installation of station canopies.
- Relocation of the Cross-Connect on the north side of Hospitality Lane, west of Hunts Lane.
- Complete AC cap paving and striping.
- Construct parkway drain, low walls, and bus pad at Baseline station north bound.
- Complete center median landscape on Hospitality Lane.
- Systems start up and integration.
- Continue with testing and commissioning (locally and system wide).

E. Project Description – Vehicle Maintenance Facility (VMF)

The Omnitrans' Vehicle Maintenance Facility is 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 building, 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.

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

In October 2013, the Agency continued use of the temporary fuel island (Building D).

The Contractor completed safe-off and equipment removal at the existing fuel island (Building C) during the first week in October 2013. Demolition of the building and surrounding slab-on-grade completed on October 18, 2013. The product lines for the underground storage tanks (UST) were removed in their entirety, along with the UST's, on October 25, 2013. Soil sampling and testing for contamination was performed during the UST removal work on October 25, 2013; also on October 28, 2013. Testing to date indicates non-detect results, however final results are pending.

Overhead rough-in utility work for electrical, HVAC, plumbing and mechanical at Maintenance Building A is complete, and the Contractor started demolition of the slab inside the building on October 10, 2013. The opening for the new rollup door was cut and excavation of the new pits is ongoing.

The existing battery room was demolished on October 18, 2013 as part of the slab demolition work inside Building A. Metal stud framing, drywall, and rough-in electrical work at the new Battery Room at Building A resumed mid October 2013. Construction of the catch basin for the emergency eyewash/shower to be performed by the Agency.

The existing bus wash facility (Building B) was turned over for safe-off and demolition work effective October 21, 2013. Temporary bus wash services

started on October 21, 2013 and are being directly coordinated between the Agency and the vendor, Fleetwash.

The Contractor completed installation of the guide rails for the new thirty-yard trash compactor during the week of October 14, 2013. The compactor with the added cart-dump attachment was delivered and installed on October 22, 2013. Startup and testing of the compactor performed on October 23, 2013. Final inspection, testing, training and turnover expected to occur during the week of October 28, 2013.

G. Accomplishments – Vehicle Maintenance Facility (VMF)

- Demolished the existing Fuel Island (Bldg. C) and surrounding slab-on-grade.
- Removed the underground storage tanks (UST's) and product lines. Soil testing performed on October 25, 2013 indicates non-detect results, however final results are pending.
- Demolished the slab-on-grade and existing battery room inside Maintenance Building A. Excavation for the new pits is ongoing.
- Delivered and installed the thirty-yard trash compactor. Testing, training and turn over planned to be completed by October 31, 2013.
- Started temporary bus wash services and turned over existing bus wash facility (Building B) to Contractor effective October 21, 2013.

H. November Work – Vehicle Maintenance Facility (VMF)

- Contractor expected to complete excavation, and start formwork and concrete placement for the new bus lift pits in Maintenance Building A.
- Shaft construction, drywall installation, and electrical work at the new Battery Room at Building A will continue.
- Pending results of soil sampling for contaminants associated with the UST removal work, the Contractor expected to remove of the existing footings for the demolished Building C.
- Safe-off and demolition of existing Building B and the remaining slab-on-grade is expected to start. Once this demolition work is complete, grading of the site will start in preparation for construction of the new buildings.

II. PROJECT SCHEDULE

The CM team and the Contractors are using the latest scheduling tools (Primavera V. P6), available to manage the project schedule.

Due to the actual field conditions (E Street Corridor and the VMF), many construction activities needed re-sequencing, resulting in several revisions in the baseline schedules submitted. As a proactive approach, the CM team has created an internal schedule as a guiding tool used to monitor and manage the construction progress.

A. Summary of Project Schedule – sbX Corridor

The schedule updates are being submitted on time. However, before accepting them, the CM team is scrutinizing the validity of the durations, especially the delays indicated by the Contractor.

The August update was submitted and rejected. A meeting was held on October 25, 2013 with the Contractor discussing the August schedule and why it was rejected. The Contractor is to revise and resubmit their August schedule based on comments received at this meeting.

Summary of Project Schedule – Vehicle Maintenance Facility (VMF)

The Contractor submitted a combined August/September 2013 Monthly Schedule Update on October 8, 2013. The schedule update shows the project behind schedule, with approximately (+/-) 212-calendar days of negative float projecting a Substantial Completion Date in early/mid July 2014; however, it is expected that the recent demolition activities and early turnover of the existing bus wash facility (Building B) will result in improvements to the schedule. Comments to the September 2013 schedule update were returned on October 24, 2013 and submission of the October 2013 schedule update is anticipated no later than November 15, 2013.

The Contractor and CM are meeting weekly to update schedule progress and to assess upcoming work and durations, and potential risks, to ensure further delays can be avoided.

III. REQUESTS FOR INFORMATION (RFIs), SUBMITTALS, AND NON-CONFORMANCE REPORTS (NCRs)**A. sbX Corridor**

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

Total RFIs – 955	Total Submittals – 756	Total NCRs - 22
Total Open – 13	Total Open – 22	Total Open - 4

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

B. Vehicle Maintenance Facility (VMF)

To date, the CM team has met the required timelines and no delay has come about as a result of submittal and RFI responses (totals are as of September 25, 2013).

Total RFIs – 144	Total Submittals – 297	Total NCRs – 7
Total Open – 5	Total Open – 10	Total Open – 1

IV. SAFETY

The project team considers safety to be the utmost priority. As such, the entire project team works towards a “no-lost time” goal on a daily basis.

SbX Corridor - As of October 25, 2013 there are 355,311 “no-lost time” hours.

VMF - As of October 25, 2013 there are 7975 “no-lost time” hours.

V. PROJECT BUDGET AND COST**TOTAL PROGRAM BUDGET**

BUDGET AS OF SEPTEMBER 30, 2013

Approved Budget	\$191,706,000
Cost to Date	\$131,825,236
Estimate to Complete	\$ 55,446,806
Estimate at Completion	\$187,272,042

SBX CORRIDOR PROJECT COSTS - AS OF SEPTEMBER 30, 2013

	CURRENT AUTHORIZED	CURRENT INVOICES PAID	REMAINING CONTRACT BALANCE
Jacobs	\$11,852,647	\$7,568,400	\$4,284,247
Parsons	\$18,097,876	\$16,841,587	\$1,256,289
Griffith/Comet	\$82,633,801	\$59,446,089	\$23,187,712
Total	\$112,584,324	\$83,856,076	\$28,728,248

VMF CORRIDOR PROJECT COSTS - AS OF SEPTEMBER 30, 2013

	CURRENT AUTHORIZED	CURRENT INVOICES PAID	REMAINING CONTRACT BALANCE
STV Inc.	\$1,046,132	\$901,757	\$144,375
USS Cal Builders	\$11,231,796	\$2,538,991	\$8,692,805
Total	\$12,277,928	\$3,440,748	\$8,837,180

SBX CORRIDOR CONTRACT TIME

Activity	Days	Date
Notice to Proceed		11/21/11
Calendar Days per Original Contract	730	
Original Completion Date		12/21/13
Calendar Days Completed as of October 25, 2013	673	
CCO Time Extension to Date	0	
Required Completion Days/Date as of October 25, 2013	57	12/21/13
Forecasted Completion Date as of October 25, 2013		TBD*
Percent Time Elapsed	92%	

VMF CONTRACT TIME

Activity	Days	Date
Notice to Proceed		12/10/12
Calendar Days per Original Contract	425	
Original Completion Date		02/08/14
Calendar Days Completed as of September 25, 2013	247	
CCO Time Extension to Date	0	
Required Completion Days/Date as of September 25, 2013	178	02/08/14
Forecasted Revenue Start Date as of September 25, 2013		04/30/14
Percent Time Elapsed	58%	

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

CHANGE ORDERS**SBX CORRIDOR CONTRACT CHANGE ORDERS - As of September 25, 2013**

Change Order Status	Amount Approved
Approved Change Orders	\$17,626,194
Pending Change Orders	\$870,556
Potential Change Orders	\$2,600,000
Total	\$21,096,750

VMF CONTRACT CHANGE ORDERS - As of September 25, 2013

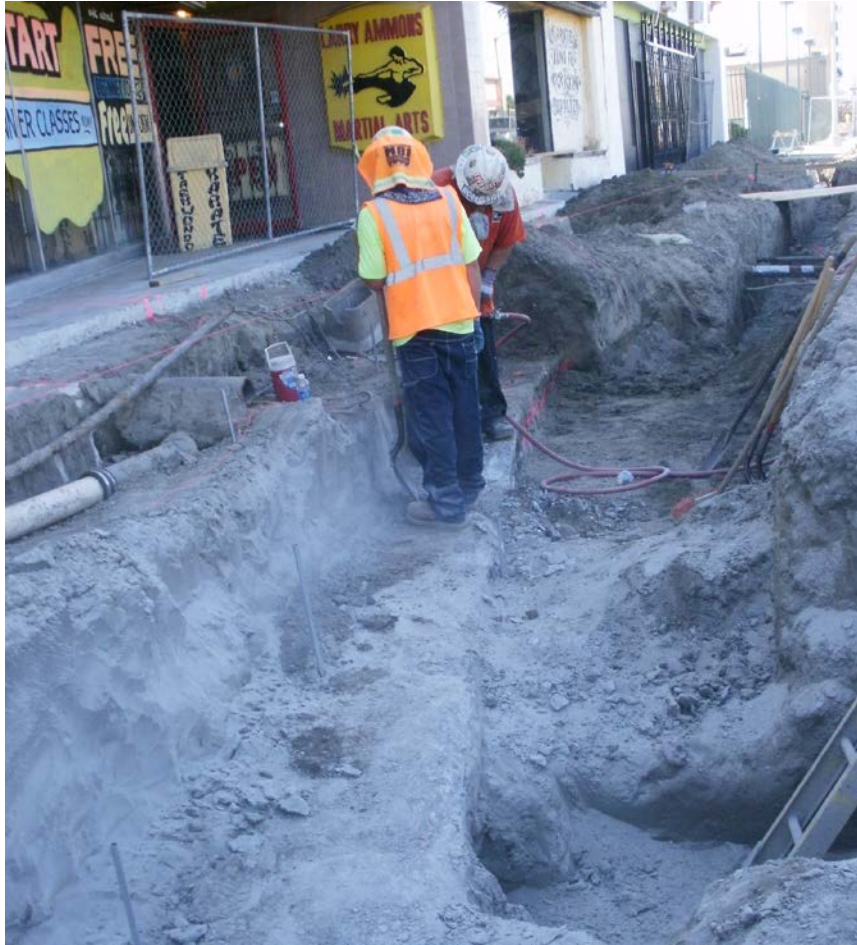
Change Order Status	Amount
Approved Change Orders	\$577,547
Pending Change Orders	\$94,050
Potential Change Orders	\$1,473,058
Total	\$2,144,655

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

Upon the approval of the final to date schedule, an analysis will be completed to determine the effect of the change orders on the scheduled completion date.

VI. Project Photographs

SBX CORRIDOR PROGRESS PHOTOS



1. ATT Chipping Encasement



2. North Mall Station – Railing for Entrance Ramp

VMF PROGRESS PHOTOS**1. Removal of the Underground Storage Tanks (UST)****2. Demolition of the existing Fuel and Vacuum Station**

IPMO/sbX Project Cost Report
Period Ended 9/30/13

Description	Current Budget	Expenditures \$	%	Remaining Budget	Estimate to Complete	Estimate at Completion	Budget Forecast Variance
BRT Construction	84,637,000	59,522,432	70.3%	25,114,568	27,463,484	86,985,916	(2,348,916)
Vehicle Maintenance Facility (VMF) Construction	8,131,000	2,538,991		5,592,009	12,118,182	14,657,173	(6,526,173)
Vehicles - Design & Manufacturing	16,628,000	14,800,861	89.0%	1,827,139	1,537,869	16,338,730	289,270
ROW Acquisition Services	10,357,000	10,792,120	104.2%	(435,120)	946,280	11,738,400	(1,381,400)
3rd Party Utilities Design & Relocation	1,003,000	970,965	96.8%	32,035	135,152	1,106,117	(103,117)
BRT Design	17,849,400	16,841,587	94.4%	1,007,813	1,256,289	18,097,876	(248,476)
VMF Design	1,007,600	916,157	90.9%	91,443	529,775	1,445,932	(438,332)
Other Professional, Technical & Management Services	34,020,000	25,442,123	74.8%	8,577,877	11,459,775	36,901,898	(2,881,898)
SUB-TOTAL	173,633,000	131,825,236		41,807,764	55,446,806	187,272,042	(13,639,042)
Unallocated Contingency	18,073,000	-		18,073,000	4,433,958	4,433,958	13,639,042
TOTAL	191,706,000	131,825,236	68.8%	59,880,764	59,880,764	191,706,000	-

**IPMO/sbX Project
Through 9/30/13**

Standard Cost Category (SCC)	Description	Approved Current Budget	Expenditures \$ %		Remaining Budget	Estimate to Complete	Estimate at Completion	Budget Forecast Variance
10	GUIDEWAY & TRACK ELEMENTS	19,725,000	13,718,068	69.5%	\$ 6,006,932	\$ 5,666,510	\$ 19,384,578	\$ 340,422
10.02	Guideway: At-grade semi-exclusive (allows cross-traffic)	\$ 18,353,000	11,911,991	64.9%	\$ 6,441,009	\$ 5,213,342	\$ 17,125,333	\$ 1,227,667
10.03	Guideway: At-grade in mixed traffic	\$ 1,372,000	1,806,077	131.6%	\$ (434,077)	\$ 453,168	\$ 2,259,245	\$ (887,245)
20	STATIONS, STOPS, TERMINALS, INTERMODAL	14,917,000	9,230,648	61.9%	\$ 5,686,352	\$ 5,105,431	\$ 14,336,079	\$ 580,921
20.01	At-grade station, stop, shelter, mall, terminal, platform	14,917,000	9,230,648	61.9%	\$ 5,686,352	\$ 5,105,431	\$ 14,336,079	\$ -
30	SUPPORT FACILITIES: YARDS, SHOPS, ADMIN. BLDGS	\$ 8,131,000	2,538,991	31.2%	\$ 5,592,009	\$ 12,118,182	\$ 14,657,173	\$ (6,526,173)
30.02	Light Maintenance Facility	\$ 4,265,000	1,972,796	46.3%	\$ 2,292,204	\$ 9,313,227	\$ 11,286,023	\$ (7,021,023)
30.05	Yard and Yard Track	\$ 3,866,000	566,195	0.0%	\$ 3,299,805	\$ 2,804,955	\$ 3,371,150	\$ 494,850
40	SITEWORK & SPECIAL CONDITIONS	34,271,000	21,210,168	61.9%	\$ 13,060,832	\$ 8,359,133	\$ 29,569,301	\$ 4,701,699
40.01	Demolition, Clearing, Earthwork	\$ 4,741,000	281,559	5.9%	\$ 4,459,441	\$ 174,000	\$ 455,559	\$ 4,285,441
40.02	Site Utilities, Utility Relocation	\$ 4,993,000	8,022,386	160.7%	\$ (3,029,386)	\$ 2,911,727	\$ 10,934,113	\$ (5,941,113)
40.05	Site structures including retaining walls, sound walls	\$ 90,000	67,969	75.5%	\$ 22,031	\$ 98,283	\$ 166,252	\$ (76,252)
40.06	Pedestrian / bike access and accommodation, landscaping	\$ 6,925,000	2,156,873	31.1%	\$ 4,768,127	\$ 2,501,802	\$ 4,658,675	\$ 2,266,325
40.07	Automobile, bus, van accessways including roads, parking lots	\$ 3,601,000	3,410,945	94.7%	\$ 190,055	\$ 836,404	\$ 4,247,349	\$ (646,349)
40.08	Temporary Facilities and other indirect costs during construction	\$ 13,921,000	7,270,436	52.2%	\$ 6,650,564	\$ 1,836,917	\$ 9,107,353	\$ 4,813,647
50	SYSTEMS	\$ 16,727,000	16,334,513	97.7%	\$ 392,487	\$ 4,191,790	\$ 20,526,303	\$ (3,799,303)
50.02	Traffic signals and crossing protection	\$ 10,810,000	5,660,202	52.4%	\$ 5,149,798	\$ 837,834	\$ 6,498,036	\$ 4,311,964
50.05	Communications	\$ 4,210,000	7,317,583	173.8%	\$ (3,107,583)	\$ 1,110,684	\$ 8,428,267	\$ (4,218,267)
50.06	Fare collection system and equipment	\$ 1,707,000	3,356,728	196.6%	\$ (1,649,728)	\$ 2,243,272	\$ 5,600,000	\$ (3,893,000)
	Pending Change Orders					\$ 2,965,772	\$ 2,965,772	\$ (2,965,772)
	Risk					\$ 1,310,000	\$ 1,310,000	\$ (1,310,000)
Construction Subtotal (10-50)		93,771,000	63,032,388	67.2%	\$ 30,738,612	\$ 39,716,818	\$ 102,749,206	\$ (8,978,206)
60	ROW, LAND, EXISTING IMPROVEMENTS	\$ 6,532,000	\$ 5,861,800	89.7%	\$ 670,200	\$ 1,237,465	\$ 7,099,265	\$ (567,265)
60.01	Purchase or lease of real estate	\$ 6,327,000	5,764,436	91.1%	\$ 562,564	\$ 1,129,829	\$ 6,894,265	\$ (567,265)
60.02	Relocation of existing households and businesses	\$ 205,000	97,364	47.5%	\$ 107,636	\$ 107,636	\$ 205,000	\$ -
70	VEHICLES	\$ 16,628,000	\$ 14,800,861	89.0%	\$ 1,827,139	\$ 1,537,869	\$ 16,338,730	\$ 289,270
70.04	Bus	\$ 15,448,000	14,800,861	95.8%	\$ 647,139	\$ 630,821	\$ 15,431,682	\$ 16,318
70.06	Non-revenue vehicles	\$ 250,000	-	0.0%	\$ 250,000	\$ -	\$ -	\$ 250,000
70.07	Spare parts	\$ 930,000	-	0.0%	\$ 930,000	\$ 907,048	\$ 907,048	\$ 22,952
80	PROFESSIONAL SERVICES	56,702,000	48,130,187	84.9%	\$ 8,571,813	\$ 12,954,654	\$ 61,084,841	\$ (4,382,841)
80.01	Preliminary Engineering	\$ 12,921,000	12,876,525	99.7%	\$ 44,475	\$ 17,502	\$ 12,894,027	\$ 26,973
80.02	Final Design	\$ 7,261,000	6,658,659	91.7%	\$ 602,341	\$ 1,480,257	\$ 8,138,916	\$ (877,916)
80.03	Project Management for Design and Construction	\$ 15,997,000	10,128,595	63.3%	\$ 5,868,405	\$ 4,594,105	\$ 14,722,700	\$ 1,274,300
80.04	Construction Administration & Management	\$ 6,632,000	7,568,400	114.1%	\$ (936,400)	\$ 4,284,248	\$ 11,852,648	\$ (5,220,648)
80.05	Professional Liability and other Non-Construction Insurance	\$ 1,112,000	-	0.0%	\$ 1,112,000	\$ 500,000	\$ 500,000	\$ 612,000
80.06	Legal; Permits; Review Fees by other agencies, cities, etc.	\$ 10,596,000	10,898,008	102.9%	\$ (302,008)	\$ 1,332,542	\$ 12,230,550	\$ (1,634,550)
80.07	Surveys, Testing, Investigation, Inspection	\$ 1,463,000	-	0.0%	\$ 1,463,000	\$ 25,000	\$ 25,000	\$ 1,438,000
80.08	Start up	\$ 720,000	-	0.0%	\$ 720,000	\$ 721,000	\$ 721,000	\$ (1,000)
Subtotal (10-80)		\$ 173,633,000	\$ 131,825,236	75.9%	\$ 41,807,764	\$ 55,446,806	\$ 187,272,042	\$ (13,639,042)
90	UNALLOCATED CONTINGENCY	18,073,000	-	0.0%	\$ 18,073,000	\$ 4,433,958	\$ 4,433,958	\$ 13,639,042
Subtotal (10-90)		191,706,000	131,825,236	68.8%	\$ 59,880,764	\$ 59,880,764	\$ 191,706,000	\$ -
100	FINANCE CHARGES	-			\$ -	\$ -	\$ -	\$ -
TOTAL PROJECT COST (10-100)		191,706,000	131,825,236	68.8%	\$ 59,880,764	\$ 59,880,764	\$ 191,706,000	\$ -

ITEM # E5

DATE: December 4, 2013

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

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

FROM: Anna Rahtz, Acting Director of Planning and Development Services

SUBJECT: **COMPREHENSIVE OPERATIONAL ANALYSIS OF OMNITRANS**

FORM MOTION

Receive and file the final Revenue and Cost Projections for the Comprehensive Operational Analysis (COA).

BACKGROUND

On November 6, 2013, the SANBAG Board of Directors received and filed the final Revenue and Cost Projections for Omnitrans as the remaining closeout item from the COA of Omnitrans. The proposed revenue and cost projections are being used by Omnitrans in the development of the FY2015-2020 Short Range Transit Plan, called OmniConnects. Since the projected revenue and costs play a vital role in the recommendations that will come out of OmniConnects, it is important that all stakeholders are aware of the cooperatively agreed to financial projections.

In February 2011, SANBAG entered into a contract with AECOM to conduct a Comprehensive Operational Analysis (COA) of Omnitrans. In January 2012, SANBAG Board approved the formation of an Ad-hoc Committee to review the findings of the COA and determine viable solutions to operational funding deficits that had been identified in the COA. The Ad-hoc Committee consisted of members from both the Omnitrans and SANBAG Boards.

At the direction of the Ad-hoc Committee, staff from both SANBAG and Omnitrans worked together, using the COA as a basis, to identify several projected revenue funding scenarios through Fiscal Year 2019/2020 with varying levels of risk. Based on these scenarios, the Ad-hoc Committee decided to move forward with a moderate revenue funding projection. The chosen scenario consisted of increasing Local Transportation Funds (LTF) at an annual escalation factor of 3% and using the full available amount of State Transit Assistance Population (STA-Pop) funds, estimated at \$3.1 million annually, for operating expenses.

Traditionally the STA-Pop funds have been used for capital expenses in San Bernardino County. However, the California Public Utility Code Section 99314.6 allows the use of STA-Pop funds for operating expenses so long as certain efficiency standards are maintained. The chosen funding scenario requires Omnitrans maintain certain efficiencies related to total operating cost

per revenue vehicle hour. Generally, the efficiency conditions require that total operating cost per vehicle hour cannot grow faster than the inflation rate measured by a regional consumer price index. The Ad-hoc Committee was informed that there are no additional funds available to backfill STA-Pop if the efficiency standards are not met.

The Ad-hoc Committee agreed with Omnitrans staff recommendations to increase fare revenues and modify the COA cost projections. These cost modifications included: reflecting no wage increases in Fiscal Year 2013/2014; a net reduction of \$1 million in operating costs deducted to reflect the savings to Route 2 with implementation of sbX (cost projections already included the cost increases related to sbX operations) starting in Fiscal Year 2014/2015; and the addition of \$500,000 starting in Fiscal Year 2014/2015 for the operations of the San Bernardino Transit Center.

Attachment A reflects the final financial scenario approved by the Ad-Hoc Committee. Based on revenue and cost projections assumed by the Ad-hoc Committee, the analysis shows an average operating deficit of approximately \$2.5 million dollars annually, totaling approximately \$13 million through FY 2019/2020. Attachment A also shows a capital surplus of approximately \$1.5 million annually is estimated, totaling approximately \$11 million in FY 2019/2020.

At the direction of the Ad-hoc Committee, Omnitrans staff is currently reviewing their internal operations to find efficiencies to bridge the operational funding deficit while maintaining the existing service levels in addition to the funding needs of operating the E Street sbX BRT service. The final plan to close this gap will be brought to the Omnitrans Board as part of OmniConnects, the FY2015-2020 Short Range Transit Plan.

CONCLUSION

Staff recommends that the Board of Directors receive and file the final Revenue and Cost Projections from the COA.

SG:AR:JB

ATTACHMENT A

Revenue Projection Omnitrans Operating and Capital Expenses

Revised Revenue Projections - LTF & Measure I at FY 2014 level then escalated at 3%								
Modified COA Revenues	Fiscal Year							
	2014 ¹	2015	2016	2017	2018	2019	2020	Total
LTF	\$36.35	\$37.44	\$38.56	\$39.72	\$40.91	\$42.14	\$43.40	\$278.53
Measure I - BRT								
Measure I - S&D	\$5.10	\$5.30	\$5.60	\$5.80	\$6.10	\$6.40	\$6.70	\$41.00
STA-Operator ⁶	\$1.10	\$0.90	\$0.91	\$0.90	\$0.90	\$0.90	\$0.90	\$6.51
STA-Population ⁵	\$2.98	\$3.10	\$3.10	\$3.10	\$3.10	\$3.10	\$3.10	\$21.58
Federal	\$10.90	\$10.90	\$10.90	\$10.90	\$10.90	\$10.90	\$10.90	\$76.30
Other	\$0.39	\$0.70	\$0.70	\$0.70	\$0.70	\$0.70	\$0.70	\$4.59
Fares ²	\$14.76	\$17.20	\$17.40	\$17.70	\$18.70	\$18.90	\$19.20	\$123.86
Total Operating Revenue	\$71.58	\$75.54	\$77.17	\$78.82	\$81.31	\$83.04	\$84.91	\$552.37
Omnitrans Cost Projections	\$71.58	\$76.00	\$79.30	\$81.10	\$83.70	\$85.60	\$87.90	\$565.18
Corresponding Shortfall	\$0.00	-\$0.46	-\$2.13	-\$2.28	-\$2.39	-\$2.56	-\$2.99	-\$12.81

Notes:

1 - FY 14 cost projections adjusted to reflect no wage increases and updated budget numbers

2 - Fare revenue has been adjusted based on input from Omnitrans staff.

3 - Starting in FY 15, \$1 million was deducted from Bus costs to reflect the reduction of service on Rt. 2 with implementation of sbX

4 - O&M costs for SB Transit Center have been added.

5 - Use of STA -Population funds for operations requires compliance with efficiency standards defined in CPUC Section 99314.6 related to total operating cost per revenue hour annual increase to CPI.

6 - STA - Operator funds were updated to reflect current FY14 budget allocation and projected operator allocation.

Capital Revenue Sources	2014	2015	2016	2017	2018	2019	2020	Total
FTA Section 5307	\$6.04	\$6.04	\$6.04	\$6.04	\$6.04	\$6.04	\$6.04	\$42.28
FTA Section 5310	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00
FTA Section 5339	\$3.53	\$1.76	\$1.76	\$1.76	\$1.76	\$1.76	\$1.76	\$14.09
CMAQ	\$5.20	\$5.15	\$5.18	\$6.66	\$5.56	\$5.47	\$7.62	\$40.84
STA - Population Allocation	\$0.17	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.17
Proposition 1B PTMISEA*	\$7.90	\$4.05	\$4.22	\$2.94	\$4.34	\$4.67	\$2.72	\$30.84
Proposition 1B Transit Security	\$0.13	\$0.13	\$0.13	\$0.13	\$0.13	\$0.13	\$0.13	\$0.91
Measure I Express Bus & BRT	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00
Total Capital Revenue	\$22.97	\$17.13	\$17.33	\$17.53	\$17.83	\$18.07	\$18.27	\$129.13
Omnitrans Capital Costs Projection	\$20.34	\$15.73	\$15.93	\$16.13	\$16.43	\$16.93	\$17.13	\$118.62
Corresponding Surplus	\$2.63	\$1.40	\$1.40	\$1.40	\$1.40	\$1.14	\$1.14	\$10.51

ITEM # E6

DATE: December 4, 2013

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

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

FROM: Anna Rahtz, Acting Director of Planning and Development Services

SUBJECT: **DOWNTOWN SAN BERNARDINO PASSENGER RAIL PROJECT -
FUNDING AGREEMENT WITH SANBAG**

FORM MOTION

Authorize the Interim CEO/General Manager to execute a Funding Agreement to pass through an amount not to exceed \$22,306,000 to San Bernardino Associated Governments (SANBAG) for the Downtown San Bernardino Passenger Rail Project (DSBPRP) and to act as Omnitrans' authorized representative for the term of this agreement.

Omnitrans' legal counsel reviewed and approved the agreement. This item was reviewed by the Administrative and Finance Committee at its November 12, 2013 meeting, and recommended to the Board of Directors for approval.

BACKGROUND

SANBAG is proposing to extend Metrolink commuter passenger rail service approximately one mile east from its current terminus at the existing San Bernardino Metrolink Station/Santa Fe Depot (Depot) to new Metrolink commuter rail platforms at the proposed San Bernardino Transit Center near the intersection of Rialto Avenue and E Street in the City of San Bernardino. The project will consist of double tracking, relocation of station platforms at the Depot, construction of a pedestrian bridge at the Depot, reconfiguration of the Depot parking lot, and two station platforms at the San Bernardino Transit Center. The project is referred to the Downtown San Bernardino Passenger Rail Project (DSBPRP).

SANBAG has allocated \$12,000,000 of FTA §5307 funds and \$10,306,000 of Congestion Mitigation and Air Quality (CMAQ) funds for the DSBPRP. Because Omnitrans is the designated FTA grantee for the San Bernardino Valley, the funds must be included in Omnitrans' Fiscal Year 2014 FTA grant application and then passed through from Omnitrans to SANBAG. SANBAG will manage the project as a subgrantee and will fulfill all the responsibilities of a subgrantee per FTA regulations and guidelines, as outlined in the Agreement.

FUNDING SOURCES

The below-listed funding sources are capital funds allocated by SANBAG for the DSBPRP. SANBAG will provide the required 20% local match obligation in the amount of \$5,576,500, from SANBAG's available local and state funding sources.

<u>FUNDING</u>	<u>GRANT NUMBER</u>	<u>FISCAL YEAR</u>	<u>PROJECT NAME</u>	<u>AMOUNT</u>
FTA	CA-90-Z112	2014	Downtown San Bernardino Passenger Rail Project	\$ 12,000,000
CMAQ	CA-95-X257	2014	Downtown San Bernardino Passenger Rail Project	\$ 10,306,000
			TOTAL	\$ 22,306,000

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

CONCLUSION

The DSBPRP will be an integral part of a multimodal transportation hub at the San Bernardino Transit Center at E Street and Rialto Avenue in downtown San Bernardino, facilitating transfers between Metrolink passenger rail to Los Angeles and Orange counties, sbX Green Line bus rapid transit service on E Street, 13 local Omnitrans bus routes, and other regional bus services.

PSG:AR

Attachment



CONTRACT SUMMARY SHEET

Contract No. R 14038 Amendment No. _____

By and Between

San Bernardino County Transportation Commission and Omnitrans

Contract Description Pass through funds - Downtown San Bernardino Passenger Rail Project

Board of Director's Meeting Date: December 4, 2013

Overview of BOD Action:

Is this Sole-Source procurement? ☐ Yes ☒ No

CONTRACT OVERVIEW

Original Contract Amount	\$	22,306,000	Original Contingency Amount	\$	
Revised Contract Amount <i>Inclusive of prior amendments</i>	\$		Revised Contingency Amount <i>Inclusive of prior amendments</i>	\$	
Current Amendment Amount	\$		Contingency Amendment	\$	
TOTAL CONTRACT VALUE	\$	22,306,000	TOTAL CONTINGENCY VALUE	\$	
TOTAL BUDGET AUTHORITY (contract value + contingency)				\$	22,306,000

Contract Start Date

November 6, 2013

Current Contract Expiration Date

June 30, 2019

Revised Contract Expiration Date

Has the contract term been amended? ☒ No ☐ Yes - please explain.

FINANCIAL INFORMATION

☐ Budget authority for this contract currently exists in Task No. 0352 for DSBPRP

☐ A Budget Amendment is required.

How are we funding current FY? Through local funding but will be reimbursed through this contract

☒ Federal Funds

☐ State Funds

☐ Local Funds

☐ TDA Funds

☐ Measure I Funds

Provide Brief Overview of the **Overall** Funding for the duration of the Contract:

This funding from Section 5307 & CMAQ will be used for construction of the DSBPRP.

☐ Payable ☒ Receivable

CONTRACT MANAGEMENT INFORMATION

Check all applicable boxes:

☐ Retention? If yes, indicate % ____.

☐ Disadvantaged Business Enterprise (DBE) Goal ____ %

Project Manager (Print Name)

Signature

Date

Task Manager (Print Name)

Signature

Date

Dir. of Fund Admin. & Programming (Print Name)

Signature

Date

Contract Administrator (Print Name)

Signature

Date

Chief Financial Officer (Print Name)

Signature

Date

CONTRACT No. R14038

**The San Bernardino County Transportation Commission (SANBAG)
1170 West 3rd Street, 2nd Floor
San Bernardino, California 92410-1715
DUNS 78-299-1368
CFDA 20.507
And**

**OMNITRANS
1700 West 5th Street
San Bernardino, California 92411**

**FEDERAL FUNDING SUBGRANTEE AGREEMENT
FOR THE DOWNTOWN SAN BERNARDINO PASSENGER RAIL PROJECT**

I. PARTIES AND TERM

- A. This Federal Funding Subgrantee Agreement (“AGREEMENT”) is entered by and between SAN BERNARDINO COUNTY TRANSPORTATION COMMISSION (“SANBAG”) and OMNITRANS, a joint powers authority (“OMNITRANS”) (together, the “PARTIES”).
- B. The Term of this AGREEMENT will commence on the Effective Date and, terminate upon the completion of the disbursement of the funds obtained from the grants and the completion of all reports, updates or any other documentation or responsibility of OMNITRANS related to the grants or June 30, 2019, whichever is earlier.

II. RECITALS

- A. WHEREAS, the purpose of the AGREEMENT is to outline the roles and responsibilities related to administration of the federal funding grants for federal funds SANBAG has allocated to the Downtown San Bernardino Passenger Rail Project (“DSBPRP”).
- B. WHEREAS, SANBAG will use federal funding for construction of DSBPRP. The DSBPRP will extend Metrolink commuter passenger rail service

approximately one mile east from the current terminus at the existing San Bernardino Metrolink/Santa Fe Depot (“DEPOT”) located at 1170 West 3rd Street, San Bernardino to E Street in the City of San Bernardino. The project will consist of double tracking, relocation of station platforms at the DEPOT, construction of a pedestrian bridge, reconfiguration of the DEPOT parking as well as construction of two station platforms at the San Bernardino Transit Center; and

- C. WHEREAS, OMNITRANS, as the Federal Transit Administration grantee, pursuant to the terms of this Agreement, will submit a §5307 grant application to the Federal Transit Administration (“FTA”) for Fiscal Year 2014 with respect to obtaining funding for the DSBPRP; and
- D. WHEREAS, work that will be reimbursed under the terms of this Agreement may not be invoiced until the grant application is approved and funding is made available to OMNITRANS by the FTA; and
- E. WHEREAS, SANBAG will be considered the Subgrantee for purposes of the grant agreement, and SANBAG and its Contractors will be responsible for complying with all provisions of the grants and of applicable federal, state and local laws and regulations (“APPLICABLE LAW”) necessary in order to qualify for the funding for, and to undertake, the DSBPRP.

NOW THEREFORE, in consideration of the foregoing recitals and the terms and conditions herein, the parties agree as follows:

III. OMNITRANS’ RESPONSIBILITIES.

- A. OMNITRANS, as the FTA Grantee, will submit a Fiscal Year 2014 §5307 grant application to the FTA with respect to obtaining funding for the

DSBPRP (\$12,000,000 in § 5307 funds and \$10,306,000 in Congestion Mitigation Air Quality funds).

- B. OMNITRANS will sign the grant documents resulting from the foregoing grant application submittal, upon the receipt of such assurances from SANBAG as OMNITRANS may reasonably require.
- C. OMNITRANS, as the FTA Grantee responsible for subgrantee oversight, will conduct site visits at least annually, and attend pertinent meetings related to the DSBPRP.
- D. OMNITRANS will reimburse SANBAG for the DSBPRP expenditures up to the amount available from any grant received for the DSBPRP, in conformity with the following procedure:
 - a. SANBAG shall submit a Disbursement Request to OMNITRANS by the fifteenth day of each month which consists of a written invoice to OMNITRANS specifying the amount requested to be disbursed, the purpose of the disbursement, and such additional supporting documentation and background information as OMNITRANS may reasonably require (“Disbursement Request”), including the following:
 - 1. The total amount incurred and a statement that 80% of the total amount expended in each billing period is being billed to OMNITRANS to be paid with FTA funds;
 - 2. A detailed breakdown of work tasks completed; and
 - 3. A detailed breakdown of labor, material, direct, and indirect costs, including backup information such as time sheets, copies of checks, and copies of receipts, as necessary to satisfy FTA audit requirements.

b. Each Disbursement Request shall be accompanied by a written certification by SANBAG's Director of Transit and Rail that such Disbursement will not constitute any violation of the terms of the grant, or of APPLICABLE LAW, and that SANBAG will use the Disbursement for the purpose indicated in the Disbursement Request.

c. Within five (5) business days of the receipt of a Disbursement Request and accompanying certification, OMNITRANS shall notify SANBAG as to any additional supporting documentation and background information it requires.

d. First week of the following month, after receiving a Disbursement Request, OMNITRANS shall: (i) disburse (including through electronic transfer of funds, if so requested, and if SANBAG provides the necessary information by the date of execution of this Agreement) all or that portion of the requested funds which it reasonably believes it can disburse without violating the terms of either the grant or APPLICABLE LAW; and (ii) if applicable, notify SANBAG why it reasonably believes that it is unable to disburse some or all of the requested funds without violating the terms of either the grant or APPLICABLE LAW.

e. To the extent that the FTA advises OMNITRANS that a disbursement of funds would constitute a violation of the terms of either the grant or of APPLICABLE LAW, OMNITRANS shall have no obligation to disburse such funds. If OMNITRANS has any question as to whether any disbursement will be in violation of any provision of either the grant or of APPLICABLE LAW, notwithstanding SANBAG's certification, it shall be entitled to receive at SANBAG's expense, a legal opinion from competent counsel of its choice to resolve any such question.

f. OMNITRANS shall have no liability to SANBAG for any refusal to disburse funds so long as OMNITRANS has acted in good faith and reasonable belief that such disbursement of funds would constitute a

violation of the terms of the grant or of APPLICABLE LAW. OMNITRANS, upon receipt of a legal opinion from counsel of OMNITRANS' choice supporting the disbursement, will release the requested funds within five (5) days.

- E. OMNITRANS shall prepare and submit to the FTA on a timely basis all required periodic reports and milestone updates, so long as it timely receives all necessary information from SANBAG.
- F. OMNITRANS shall conduct itself so that any aspect of OMNITRANS' participation in this Agreement and the actions required of it hereunder, will be in compliance with the terms of the grant which is being sought and with APPLICABLE LAW.
- G. OMNITRANS shall comply with all requirements of the FTA 2013 Master Agreement, found at <http://ftateamweb.fta.dot.gov/static/Agreements/2012-19-MASTER.pdf>, including submission to FTA on a quarterly basis, of reports that document the status of the DSBPRP's implementation progress, including task completion status and budget status.

IV. SANBAG's RESPONSIBILITIES.

- A. SANBAG has or will have, prior to the necessity of expending them, all funds necessary to provide the local matching funds required to receive a FTA §5307 grant (the "Match Obligation"). The approximate amount of the Match Obligation for the DSBPRP is \$5,576,500. SANBAG will submit evidence of the dollar amount and source(s) of the Match Obligation funds, as OMNITRANS may reasonably require. SANBAG may utilize its payment of staff salaries, benefits and expenses in administrative support for the DSBPRP to satisfy its Match Obligation.
- B. SANBAG shall provide to OMNITRANS all information that is reasonably needed for the §5307 grant application submission. Additionally, to the best

of SANBAG's knowledge, the submittal of the contemplated FTA §5307 application by OMNITRANS on behalf of the SANBAG will not constitute any violation of APPLICABLE LAW.

- C. SANBAG shall conduct itself so that all aspects of the DSBPRP, and any aspect of SANBAG's participation in this Agreement and the actions contemplated of it by this Agreement, will be in compliance with the terms of the grant and with APPLICABLE LAW, including laws or regulations related to planning studies.
- D. SANBAG will use the disbursements for the purposes indicated in its Disbursement Requests and will certify to OMNITRANS for each Disbursement Request, that to the best of its knowledge such Disbursement will not constitute any violation of either the provisions of the grant or of APPLICABLE LAW.
- E. SANBAG shall be responsible for all duties relative to the construction phase of the DSBPRP, including complying with all bidding and contract administration requirements relative to construction of a public works project, with all due diligence and in a skillful and competent manner. SANBAG represents and warrants to OMNITRANS that it and/or its contractors has or will have all licenses, permits, qualifications and approvals of whatever nature that are legally required to perform the work required to complete the DSBPRP. SANBAG further represents and warrants that it and/or its contractors shall keep in effect all such licenses, permits, and other approvals during the term of this Agreement.
- F. SANBAG and its contractor(s) shall comply with all requirements of the FTA 2013 Master Agreement, found at <http://ftateamweb.fta.dot.gov/static/Agreements/2012-19-MASTER.pdf>, including submission to OMNITRANS on a quarterly basis, of reports that

document the status of the DSBPRP's implementation progress, including task completion status, budget status, and adherence to project schedule.

- G. SANBAG and its contractor(s) shall agree to comply with 49 U.S.C. §5323(j) and FTA regulations, "Buy America Requirements," 49 C.F.R. Part 661, and any amendments thereto.
- H. SANBAG and its contractor(s) shall agree to comply with 31 U.S.C. §1352(a) and "New Restrictions on Lobbying" 49 C.F.R. Part 20, and any amendments thereto, pertaining to the use of Federal funds for lobbying.
- I. SANBAG and its contractor(s) will provide Omnitrans the required signed Self-Certification Form by July 31 of each year, in accordance with FTA audit requirements.
- J. SANBAG and its contractor(s) will provide Omnitrans a copy of its annual single audit for each fiscal year, in accordance with FTA audit requirements.
- K. SANBAG shall notify OMNITRANS of any changes in the scope or description of the DSBPRP.
- L. SANBAG shall claim full ownership of the DSBPRP, and maintain and perform upkeep of all portions of the completed DSBPRP in accordance with FTA requirements.
- M. SANBAG shall provide to OMNITRANS all information needed for quarterly DSBPRP reporting and milestone updates in a timely manner to allow OMNITRANS enough time to prepare and submit to the FTA on a timely basis all required or requested FTA reports and updates, but in no event to be received later than fifteen (15) days prior to the required date of submission to the FTA of such report or update.

- N. SANBAG shall maintain all books, papers, records, and accounting records including but not limited to all direct and indirect costs allocated to the DSBPRP, cost proposals with backup data, and all other material relating to the DSBPRP. SANBAG shall, upon request, make all such materials available to OMNITRANS or its designee at any reasonable time during the term of the Agreement and for three (3) years from the date of final payment by SANBAG for DSBPRP expenses and costs, for auditing, inspection, and copying. Any contract entered into as a result of this Agreement, shall contain all of the provisions of this paragraph.
- O. SANBAG shall insure that all aspects of the DSBPRP and any aspect of SANBAG's participation in this Agreement and the actions contemplated of it by this Agreement will be in compliance with the terms of the grants which are being sought and with all APPLICABLE LAW.

V. MISCELLANEOUS

- A. Designation of Authority. The CEO/General Manager of OMNITRANS, or his/her designee, shall exercise the rights of OMNITRANS under this Agreement including, without limit, accepting the certifications of SANBAG required under the terms of this Agreement. The Executive Director of SANBAG, or his/her designee, shall exercise the rights of SANBAG under this Agreement; however, any certifications of SANBAG required under the terms of this Agreement shall be provided only by the Executive Director or such other representative of SANBAG as specified by action of SANBAG's governing body.
- B. Insurance and Bonding Requirements. SANBAG shall require that any contractor providing services with respect to the DSBPRP obtain and maintain insurance of the type and in the amounts that OMNITRANS would require of its contractors performing similar services for a project similar to DSBPRP for the longer period of: 1) the duration of this Agreement; or 2)

for the duration of such contractor's involvement in the DSBPRP. All insurance policies shall name OMNITRANS and its directors, officers, employees and volunteers as additional named insureds, as appropriate for the type of policy. Further, SANBAG will require that any contractors provide bid, performance and payment bonds as are required by applicable Federal, State or local law.

- C. Mutual Indemnity. The PARTIES agree that each Party shall responsible for its own actions, and the actions of its officers, employees, agents, and volunteers in the performance of the construction of the DSBPRP and Agreement. Each Party shall indemnify, defend and hold harmless all other Parties and their officers, employees, agents, and volunteers from any cost, expense, fine, penalty, claim, demand, judgment, loss, injury and/or liability of any kind or nature, including personal injury, death or property damage, or regulatory violation(s) asserted or otherwise, whether in contract or in tort, that may arise from, directly or indirectly, or be in any way caused by any wrongful or negligent act, error, or omission of the indemnifying Party, its officers, employees, agents, or volunteers in the performance of the construction of the DSBPRP or this Agreement, including without limitation the payment of all consequential damages and reasonable attorneys' fees, expert witness fees and other related costs and expenses of defense. The sole exception to the indemnifying Party's obligation to indemnify shall be for acts of negligence or willful misconduct of the indemnified Party, its officers, employees, agents, or volunteers. This is a comparative negligence provision and each Party shall bear their own costs to the extent to which they are each negligent. The indemnifying Party shall defend, at its own cost, expense and risk, any and all such aforesaid suits, actions or other legal proceedings of every kind that may be brought or instituted against the indemnified Party, its officers, employees, agents, or volunteers. The indemnifying Party shall pay and satisfy any judgment, award or decree that may be rendered against the indemnified Party, its officers, employees,

agents, or volunteers in any such suits, actions or other legal proceedings. Each PARTIES obligation to indemnify shall not be restricted to the terms or limitations of its self-insurance coverage or to any insurance proceeds, if any, received.

D. Loss of Funding. In the event that none of the funding identified in Section III is available due to a complete loss in funding for the PROJECT, OMNITRANS will have no obligation to make payment to SANBAG for any services performed.

E. Legal Fees. The PARTIES shall be responsible for all legal fees associated with this agreement and the DSBPRP.

F. Force Majeure.

a. An "Uncontrollable Force" (force majeure) is any occurrence beyond the control of a Party which causes that Party to be unable to perform its obligations hereunder and which a Party has been unable to overcome by the exercise of due diligence, including but not limited to, flood, drought, earthquake, storm, fire, pestilence, lightning and other natural catastrophes, epidemic, war, riot, civil disturbance or disobedience, strike, labor dispute, action or inaction of legislative bodies, judicial bodies, or regulatory agencies, or other proper authority, excepting the governing body of the Party asserting the Uncontrollable Force, which may conflict with the terms of this Agreement.

b. Subject to Section G (a), neither Party shall be considered to be in default in the performance of any of the agreements contained in this Agreement when and to the extent failure of performance shall be caused by an Uncontrollable Force.

c. If either Party because of an Uncontrollable Force is rendered wholly or partly unable to perform its obligations under this Agreement, the

Party shall be excused from whatever performance is affected by the Uncontrollable Force to the extent so affected provided that: (i) the nonperforming Party within one week after the occurrence of the Uncontrollable Force, gives the other Party written notice describing the particulars of the occurrence; (ii) the suspension of performance is of no greater scope and of no longer duration than is required by the Uncontrollable Force; (iii) the nonperforming Party uses its best efforts to remedy its inability to perform (this subsection shall not require the settlement of any strike, walkout, lockout, other labor disputes or any other dispute on terms which, in the sole judgment of the Party involved in the dispute, are contrary to its interest, it being understood and agreed that the settlement of any disputes shall be at the sole discretion of the Party having the difficulty); and (iv) when the nonperforming Party is able to resume performance of its obligations under this Agreement, that Party shall give the other Party written notice to that effect.

d. If either Party's ability to perform cannot be corrected when the Uncontrollable Force is caused by the actions or inactions of legislative bodies, judicial bodies, or regulatory agencies or other proper authority, the Parties agree to meet in good faith to determine if this Agreement may be amended to comply with the legal or regulatory change which caused the nonperformance of the Parties.

- G. Authorization. OMNITRANS represents that the terms and execution of this Agreement have been duly authorized by OMNITRANS' governing Board and that the persons signing this Agreement on its behalf have the necessary authority to do so. SANBAG represents that the terms and execution of this Agreement have been duly authorized by SANBAG's governing body and that the persons signing this Agreement on its behalf have the necessary authority to do so.

- H. Headings. All paragraph headings throughout this Agreement are for convenience of reference only.
- I. Additional Documents. Each of the Parties shall execute such additional documents as the other Party may reasonably request in order to carry out or implement any of the provisions of this Agreement, which request shall not be unreasonably refused.
- J. Litigation Expenses. If after this Agreement is in effect, any action or proceeding of any nature shall be commenced seeking to enforce, construe or rescind, or otherwise relating to this Agreement, the prevailing party in any such action or proceeding shall be entitled to recover from the other, in addition to all other sums recoverable, its reasonable litigation expenses, including reasonable attorney's fees, expert witness fees and other related expenses and costs.
- K. Entire Agreement. This Agreement constitutes the sole and entire agreement between the parties hereto, and no modification, alteration or amendment shall be binding unless expressed in writing signed by the Parties. No representation, warranty, covenant, inducement or obligation not included in this Agreement shall be binding, and this Agreement supersedes all prior negotiations, agreements, arrangements and undertakings among the Parties hereto with respect to the matters set forth in this Agreement. It is the intent of the Parties that this Agreement is an integrated agreement and that no evidence may be introduced to vary in any manner its terms and conditions.
- L. Accuracy of Representations. As of the date each signed this Agreement, the representations herein of both Parties are true and correct in all material respects.

M. Originals and Copies. This Agreement with the Exhibits attached hereto may be executed in counterparts, each of which shall be deemed an original. In any action or proceeding, an exact and correct copy may be used in lieu of an original.

N. Construction of Agreement.

a. Equal Construction. This Agreement shall not be construed in favor of or against a Party by reason of participation or lack of participation of that Party or its counsel in the drafting of this Agreement. This Agreement shall be interpreted and construed as drafted by all Parties with equal participation in the drafting hereof.

b. Internal Consistency. The Parties intend that the terms of this Agreement are all internally consistent with each other and should be construed to that end.

O. Notices. All notices hereunder shall be in writing and shall be effective upon receipt. All notices and communications, including invoices, between the Parties to this Agreement shall be either personally delivered, sent by first-class mail, return receipt requested, or sent by overnight express delivery service, postage or other charges fully prepaid, as follows:

OMNITRANS 1700 West Fifth Street San Bernardino, CA 92411 Attention: Anna Rahtz	SANBAG San Bernardino Associated Governments 1170 W. 3 rd Street, 2 nd Floor San Bernardino, CA 92410-1715 Attention: Mitchell A. Alderman, PE
------------------------------------------------------------------------------------------	----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------

P. No Third Party Beneficiaries. There are no third party beneficiaries to this Agreement. Other than the Parties, no person, political subdivision, agency, board, department, division or commission shall be entitled to bring an administrative or judicial proceeding to enforce or interpret its terms.

Q. Amendments. In the event that the PARTIES determine that the provisions of the AGREEMENT should be altered, the PARTIES may execute an amendment to add, delete, or amend any provisions of this AGREEMENT. All such amendments must be in the form of a written instrument signed by the original signatories of the AGREEMENT, or their successors or authorized designees.

-----SIGNATURES ON FOLLOWING PAGE-----

In witness whereof the PARTIES have executed this AGREEMENT on the dates written below and this AGREEMENT is effective upon execution of the AGREEMENT by SANBAG (“Effective Date”).

OMNITRANS

SANBAG

By: _____

P. Scott Graham, Interim CEO/General
Manager

Date: _____

By: _____

W.E. Jahn, SANBAG Board President

Date: _____

APPROVED AS TO FORM:

By: _____

| Carol Greene,
OMNITRANS Legal Counsel

Date: _____

APPROVED AS TO FORM:

By: _____

Eileen Monaghan Teichert,
SANBAG General Counsel

Date: _____

ITEM # E7

DATE: December 4, 2013

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

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

FROM: Anna Rahtz, Acting Director of Planning and Development Services

SUBJECT: **MEMORANDUM OF UNDERSTANDING FOR SECTION 5339 BUS
AND BUS FACILITIES FORMULA GRANT PROGRAM**

FORM MOTION

Authorize the Interim CEO/General Manager to execute a Memorandum of Understanding (MOU) between Omnitrans and San Bernardino Associated Governments (SANBAG) for Section 5339 Bus and Bus Facilities Formula Grants Program.

Omnitrans' legal counsel reviewed and approved the agreement. This item was reviewed by the Administrative and Finance Committee at its November 12, 2013 meeting, and recommended to the Board of Directors for approval.

BACKGROUND

Pursuant to the new two-year transportation reauthorization bill that was signed into law on July 6, 2012, the Moving Ahead for Progress in the 21st Century Act (MAP-21), funding is authorized for the Section 5339 Bus and Bus Facilities Formula Grants Program for the Federal Fiscal Year (FFY) 2012/2013 and FFY 2013/2014. The funding can be used for the purchase of buses or for bus facility projects.

SANBAG, acting in its capacity as the San Bernardino County Transportation Commission, is responsible for identifying any and all eligible subrecipients of Section 5339 Program funds within the county, and sub-allocating the funds among eligible subrecipients. SANBAG has identified Omnitrans as the only eligible subrecipient because these funds are only available to fixed route operators in the Valley Subarea.

The Memorandum of Understanding clarifies the roles and responsibilities of all parties with regard to administration and implementation of the Section 5339 Program. The MOU has no direct financial impact, as it is separate from the sub-allocation of funds (estimated at \$1.7 million in FFY 2012/2013 and \$1.7 million in FFY 2013/2014).

CONCLUSION

By authorizing execution of the MOU, Omnitrans will be able to use the Section 5339 grant funds for buses and/or bus facilities.

PSG:AR

Attachment

MEMORANDUM OF UNDERSTANDING No. C14041
BETWEEN
SAN BERNARDINO ASSOCIATED GOVERNMENTS
AND
OMNITRANS
FOR THE
SECTION 5339 BUS AND BUS FACILITIES GRANTS PROGRAM

This Memorandum of Understanding (MOU or Agreement) is entered into on the Effective Date by and between San Bernardino Associated Governments, acting in its capacity as the San Bernardino County Transportation Commission (SANBAG) and Omnitrans, a California Joint Powers Authority, (collectively referred to as “Parties”) with respect to the following facts.

RECITALS

WHEREAS, the Southern California Association of Governments (SCAG) is a joint powers agency formed pursuant to Title 1, Division 7, Chapter 5 of the California Government Code (Section 6500 et seq.) and is the Metropolitan Planning Organization (MPO) recognized under 23 United States Code (U.S.C.) Section 134 and 49 U.S.C. Section 5303;

WHEREAS, SCAG is responsible for developing Regional Transportation Plans and Federal Transportation Improvement Programs (FTIPs), pursuant to 23 U.S.C. Section 134 et seq., 49 U.S.C. Section 5303 et seq., California Government Code Section 65080 et seq., and California Public Utilities Code Section 130300 et seq., and applicable regulations and guidance;

WHEREAS, SCAG is the Designated Recipient (as defined in 49 U.S.C Section 5302(4)) of Federal Transit Administration (FTA) Urbanized Area Formula Grants under 49 U.S.C. Section 5307 (Section 5307 Program) for the following large urbanized areas (UZAs) with populations of 200,000 or more (according to the latest U.S. Census) in San Bernardino County: Los Angeles-Long Beach-Anaheim (UZA 2), Riverside-San Bernardino (UZA 22);

WHEREAS, San Bernardino Associated Governments, acting in its capacity as the San Bernardino County Transportation Commission, (referred to herein as a “CTC” or “SANBAG”) is responsible for developing short-range Transportation Improvement Programs (TIPs) for San Bernardino County in coordination with SCAG and the municipal transit operators (pursuant to California Public Utilities Code Section 130303 et seq.), and for submitting its TIPs to SCAG for recommended inclusion in the FTIP;

WHEREAS, pursuant to the new two-year transportation reauthorization bill that was signed into law on July 6, 2012, the Moving Ahead for Progress in the 21st Century Act (MAP-21; P.L. 112-141), funding is authorized for the 49 U.S.C Section 5339 Bus and Bus Facilities Formula Grants Program (Section 5339 Program);

WHEREAS, the Federal Fiscal Year (FFY) is the accounting period for the federal government which begins on October 1 and ends on September 30;

WHEREAS, MAP-21 authorizes funding for the Section 5339 Program for FFY 2012/2013 and FFY 2013/14 for capital projects to replace, rehabilitate, and purchase buses and related equipment, as well as to construct bus-related facilities;

WHEREAS, the Section 5339 Program replaces the FTA Bus and Bus Facilities discretionary grants program previously under 49 U.S.C. Section 5309(b)(3);

WHEREAS, FTA guidance specifies that the Designated Recipient of Section 5339 Program funds for large UZAs shall be the same as the Designated Recipient of Section 5307 Program funds for such areas;

WHEREAS, SCAG, as the Designated Recipient of Section 5307 funds is also the Designated Recipient of 5339 Program funds for large UZAs identified herein within the SCAG region, and must apply to FTA on behalf of eligible Subrecipients for allocations of Section 5339 Program funds;

WHEREAS, SCAG is further responsible for administering Section 5339 Program funds allocated to Subrecipients;

WHEREAS, the SANBAG is responsible for identifying any and all eligible Subrecipients of Section 5339 Program funds in San Bernardino County;

WHEREAS, the SANBAG is further responsible for sub-allocating Section 5339 Program funds among eligible Subrecipients identified by SANBAG within the county consistent with the Section 5339 Program formula, and notifying SCAG and Subrecipients of such sub-allocations and changes to such sub-allocations;

WHEREAS, Omnitrans is an eligible recipient identified by SANBAG within its county consistent with the Section 5339 Program formula;

WHEREAS, SANBAG and all other Subrecipients of Section 5339 Program funds are responsible for compliance with all applicable grant requirements set forth in the FTA Master Agreement and annual FTA Certifications and Assurances;

WHEREAS, SCAG shall prepare the allocations of Section 5339 Program funds apportioned by FTA for large UZAs identified herein that do not expand over more than one county, and the inter-county allocations of Section 5339 Program funds apportioned by FTA for large UZAs identified herein that expand over more than one county (County and Inter-county Allocations). The County and Inter-county Allocations shall be consistent with the formula set forth in subparagraph (d) of 49 U.S.C Section 5339;

WHEREAS, SCAG shall include with the Notice of Final County and Inter-County Allocations to SANBAG, the "Grant Certification Form," attached hereto and incorporated herein as Exhibit "A." The Grant Certification Form includes as attachments, the FTA Certifications and

Assurances (Attachment A-1) in addition to the Opt-Out Form (Attachment A-2) as described in Section 2.2;

WHEREAS, upon receipt of the Notices of Sub-allocations from SANBAG as set forth in paragraph 2 of Section 2.1 of this Agreement, SCAG shall transmit “funding split” letters notifying FTA of the sub-allocations of 5339 Program funds to Subrecipients in UZAs identified herein;

WHEREAS, SCAG shall issue a “Call for Applications” at least biannually setting forth the application process and deadline for Subrecipients to submit Section 5339 Program grant applications to SCAG. SCAG shall combine and submit Subrecipient grant applications received by such deadline into FTA’s Electronic Grant Management System in addition to submitting quarterly Milestones/Progress Reports and Federal Financial Reports to FTA; submitting Final/Close-out Reports to FTA; drawing-down grant funds on a reimbursement-basis, upon receipt and approval of a Subrecipient’s invoice, via FTA’s Electronic Clearing House Operation (ECHO) System; and paying Subrecipients’ approved invoices pursuant to Section 2.2, paragraph 5, of this Agreement;

WHEREAS, upon receipt of grant applications submitted to SCAG by the applicable deadline (set forth in SCAG’s Call for Applications), SCAG shall submit grant applications directly to FTA, contingent upon SCAG’s receipt of the following required documentation: the Grant Certification Form (Exhibit A) signed by Omnitrans’ duly authorized representative; the FFY 2013 FTA Certifications and Assurances (Attachment A-1), attached to the Grant Certification Form or subsequent annual FTA Certifications and Assurances (published in the Federal Register), as applicable, signed by Omnitrans’ duly authorized representative and its attorney; and any further documentation requested by SCAG or FTA to ensure compliance with the grant requirements;

WHEREAS, SCAG shall track grant activity of Section 5339 Program funds at UZA levels and share the balances with Subrecipients, CTCs, and FTA upon request or as needed, but not less frequently than once per quarter of the FFY;

WHEREAS, all references to “days” shall mean calendar days, unless otherwise specified, in notification periods set forth herein; and

WHEREAS, this MOU is entered into by SANBAG and Omnitrans in order to clarify the roles and responsibilities of the parties with regard to implementation of the Section 5339 Program, and to be consistent with roles and responsibilities of SANBAG, SCAG and Subrecipients set forth in the SCAG/SANBAG Memorandum of Understanding (MOU No. M-016-13).

NOW, THEREFORE, THE PARTIES HEREBY MUTUALLY AGREE AS FOLLOWS:

1. Incorporation of Recitals

- 1.1.** The foregoing Recitals are hereby incorporated into and made part of this Agreement.

2. Roles and Responsibilities

2.1. Role and Responsibilities of SANBAG

- 1) Review of Proposed County and Inter-County Allocations: Upon receipt from SCAG of the Notice of Proposed County and Inter-County Allocations, SANBAG shall review and provide comments to SCAG as needed within thirty (30) days.
- 2) Sub-Allocations: SANBAG shall identify eligible Subrecipients of Section 5339 Program funds within San Bernardino County and shall sub-allocate funds consistent with the formula set forth in U.S.C Section 5339(d), pursuant to the following process:
 - a. SANBAG shall provide a "Notice of Sub-allocations" to SCAG and to Omnitrans, within thirty (30) days of receiving the Notice of Final County and Inter-County Allocations from SCAG. The Notice of Sub-allocations shall include but is not limited to the following information, and all available funds shall be sub-allocated (without a remaining balance):
 - i. Full name of the Subrecipient,
 - ii. Dollar amounts of sub-allocations to each Subrecipient,
 - iii. FFY of funding sub-allocations, and
 - iv. Any other information requested by FTA.
 - b. SANBAG shall be responsible for coordinating and obtaining signed Certification Forms or Opt-Out Forms as described in Section 2.2, paragraphs 9 and 10, of this Agreement, from all eligible Subrecipients identified by SANBAG in San Bernardino County, and ensuring that such timely submitted forms are submitted to SCAG prior to SCAG's submittal of the grant applications.
- 3) Funding Exchanges: SANBAG shall be responsible for managing and approving any exchanges of such funds with other federal, state, and/or local funds within the same UZA, in accordance with applicable federal, state and/or local requirements. SANBAG shall further notify SCAG of any and all revised sub-allocations within fifteen (15) days from the date of such revisions, to reflect any funding exchanges or in the event that any identified eligible Subrecipient opts-out of receiving its sub-allocation pursuant to Section 2.2, paragraph 10. SANBAG further agrees to provide SCAG with documentation of any exchanges of funds, upon request of SCAG or FTA.
- 4) Short-range Programming: SANBAG shall be responsible for programming eligible projects in its short-range TIPs that are submitted to SCAG for recommended inclusion in the FTIP.

2.2. Role and Responsibilities of Omnitrans

- 1) Definition of "Subrecipient": For purposes of this Agreement, "Subrecipient" shall mean an eligible public agency or private nonprofit organization engaged in public transportation and identified by SANBAG as serving and being located in San Bernardino County, to receive a sub-allocation of Section 5339 Program funds awarded by FTA, contingent upon meeting federal requirements and requirements set forth in this Section 2.2. Omnitrans agree to submit any grant applications for this program to SCAG in accordance with the Call for Applications process established by SCAG.
- 2) Certifications and Assurances: By signing this Agreement Omnitrans hereby agrees to accept responsibilities and comply with the requirements stated in this Agreement including but not limited to this Section 2.2.
- 3) Applications and Grant Management Process: Omnitrans is responsible for submitting grant applications through SCAG's Call for Applications process to receive Section 5339 Program funds awarded by FTA to implement eligible, capital projects, contingent upon meeting federal requirements and requirements set forth in this Section 2.2. Omnitrans shall not submit grant applications on behalf of sub-tier recipients. All grant applications for projects eligible for funding as described herein, must be submitted by Omnitrans through SCAG's Call for Applications process. All requested revisions or amendments to approved applications must be submitted to SCAG.
- 4) Grant Requirements: The responsibilities of Omnitrans include, but are not limited to, the following:
 - a. FTA Master Agreement: Omnitrans agrees to comply in the same capacity as the "Recipient" with applicable terms and conditions of the FTA Master Agreement, FTA MA (19) dated October 1, 2012 (www.fta.dot.gov/documents/19-Master.pdf) and any agreement which supersedes and replaces it.
 - b. Annual FTA Certifications and Assurances: By signing the FFY 2013 FTA Certifications and Assurances, attached hereto and incorporated herein as Attachment "A-1," Omnitrans certifies in the same capacity as the "Applicant" that it shall comply with the applicable annual FTA Certifications and Assurances (published annually in the Federal Register). Upon publication of the FFY 2014 FTA Certifications and Assurances form, and for each additional FFY for which Congress authorizes and appropriates Section 5339 Program funds, Omnitrans shall sign and submit a copy of such form to SCAG prior to applying for any of such funds.
 - c. Documentation: Omnitrans shall submit to SCAG any documentation reasonably requested by SCAG to assure the validity of all above-referenced Certifications and Assurances.

d. Transit Asset Management Plans: Omnitrans agrees to the following:

- i. It will develop a Transit Asset Management Plan that complies with:
 - a) 49 U.S.C. Section 5326 et seq. and Section 5339(a)(4), as amended by MAP-21;
 - b) Federal regulations pertaining to the National Transit Asset Management System required to be issued by 49 U.S.C. Section 5326(d), as amended by MAP-21;
 - c) Performance Measures and Targets required to be issued by 49 U.S.C. Section 5326(c)(1); and
 - d) Other applicable Federal laws and regulations
- ii. It will develop a Transit Asset Management Plan that is consistent with Federal guidance developed or to be developed to implement 49 USC Section 5326, as amended by MAP-21.
- iii. It will provide progress and performance reports as required by 49 U.S.C. Section 5326(c)(3), as amended by MAP-21.
- iv. Transit Asset Management Plans shall at minimum include capital asset inventories and condition assessments, and investment prioritization. Omnitrans shall further report on the condition of its system and any change in condition since the last report and submit such reports into the FTA's National Transit Database (NTD). Omnitrans shall submit to SCAG performance measures and targets adopted as part of such plans, and any other related documentation requested by SCAG.

5) Invoices. Upon approval of SCAG's grant applications by FTA and commencement of approved projects under the Section 5339 Program, Omnitrans shall submit invoices to SCAG for reimbursement of incurred, eligible and allowable grant program costs. Such costs shall comply with all applicable federal cost principles and other related requirements, and shall serve as the only costs eligible for reimbursement by SCAG. Upon approval of invoices by SCAG, SCAG shall draw-down funds on a reimbursement basis from FTA's ECHO System, and shall pay Omnitrans upon receipt of payment by FTA.

- a. Invoices shall comply with the Invoice Format set forth in Exhibit "B," attached hereto and incorporated herein by this reference. The required, local cash match (20%) shall be deducted by Omnitrans and reflected in each Invoice. The Authorized Representative of Omnitrans agrees to sign the Cash Match Certification Statement on each Invoice. All invoices shall be submitted at least quarterly and no more frequently than monthly, and contain the following information:

- i. Name of Subrecipient expending the Section 5339 Program funds;

- ii. UZA name and number for which the project funds are being reported;
 - iii. A listing of the FTA grant number(s) being reported, with their respective project budget line item (ALI Codes), project category, approved FTA amount, and description of the funded projects;
 - iv. Invoice period and corresponding Progress Report in narrative format; and
 - v. Explanation if there is no activity.
 - b. All invoices shall be submitted by Omnitrans to the following email address: AccountsPayable@scag.ca.gov.
 - c. SCAG shall maintain final approval authority of invoices submitted under this Agreement.
- 6) Quarterly Reports: Omnitrans shall submit Quarterly Reports to SCAG which contain the following information, and any additional information as may be required by SCAG or FTA:
- a. Name of Subrecipient expending the Section 5339 Program funds;
 - b. UZA name and number for which the funds are being reported;
 - c. A listing of the FTA grant number(s) being reported, with their respective project budget line item (ALI Codes), project category, approved FTA amount, and description of the funded projects; and
 - d. Federal Fiscal Year (FFY) Quarterly Milestones/Progress Reports in a narrative format.

Quarterly Reports shall be submitted no later than fifteen (15) days after each FFY quarter has ended, to the attention of Alfonso Hernandez (or other person identified by SCAG), SCAG Grants Administrator. SCAG shall promptly notify all parties in the event of a change in the person identified in this paragraph as the recipient of the Quarterly Reports.

- 7) Audits: In accordance with the FTA Master Agreement and applicable federal law and regulations, Omnitrans agrees to retain and require its contractors and other third party participants to retain complete and readily accessible records related in whole or part to the Section 5339 Program ("Records"). Records required to be retained include but are not limited to data, documents, reports, statistics, leases, third party contracts or agreements, arrangements, and other supporting materials related to those records.
- a. Omnitrans shall retain Records for the period required under the FTA Master Agreement, and shall make the Records available for inspection and audit by

representatives of SCAG, the State, or the Federal Government upon request. Copies of the Records shall be made and furnished to SCAG upon request at no cost to SCAG.

- b. Any costs for which Omnitrans receives payment that is determined by a subsequent audit or other review by SCAG, State or Federal authorities to be unallowable under, but not limited to, OMB Circular A-87; 48 CFR, Chapter 1, Part 31; or 49 CFR, Part 18, are to be repaid by Omnitrans within thirty (30) days of Omnitrans receiving notice of audit findings and a written demand for reimbursement from SCAG. Should Omnitrans fail to reimburse unallowable costs due SCAG within thirty (30) days of demand, or within such other period as may be agreed between both parties hereto, SCAG is authorized to withhold future payments due to Omnitrans.
- 8) Reports and Forms: Upon approval of grant applications by FTA, as applicable, Omnitrans shall submit to SCAG the following reports and forms which relate to the Section 5339 Program:
- a. Quarterly Milestones/Progress Reports during the current FFY;
 - b. Disadvantaged Business Enterprise (DBE) reports and all other reports and documentation required by FTA;
 - c. Final/Close-out Reports;
 - d. IRS W-9 Form;
 - e. Banking information which includes name of the financial institute, ACH routing number, and account number; and
 - f. Any other documents or reports requested by FTA or SCAG.
- 9) Grant Certification Form: Omnitrans shall execute and submit to SCAG, in advance of submitting a grant application for Section 5339 Program funds to SCAG and no later than fifteen (15) days after receiving a Notice of Sub-allocations from SANBAG, a signed Grant Certification Form (Exhibit A) including a signed FFY 2013 FTA Certifications and Assurances (Attachment A-1). Upon publication of the FFY 2014 FTA Certifications and Assurances, and for each additional FFY for which Congress authorizes and appropriates Section 5339 Program funds, Omnitrans shall sign and submit a copy to SCAG of the applicable FTA Certifications and Assurances form, prior to applying for such funds. SCAG shall not allocate and SANBAG shall not sub-allocate, as applicable, any Section 5339 Program funds to a Subrecipient who has not executed a Grant Certification Form and applicable FTA Certifications and Assurances form.
- 10) Opt-Out Option: In the event Omnitrans elects not to apply for Section 5339 Program funds and does not execute the Grant Certification Form described in

paragraph 9 of this Section 2.2, Omnitrans may sign and return the Opt-Out Form (Attachment A-2). Should Omnitrans elect to opt-out, as described herein, Omnitrans shall sign and return to SCAG's Grants Administrator the required Opt-Out Form within thirty (30) days of receiving the Notice of Sub-Allocations from SANBAG. Upon receipt by SCAG of the Opt-Out Form signed by Omnitrans' duly authorized representative or upon the lapse of the thirty (30)-day notification period, SCAG and SANBAG shall initiate the process to sub-allocate the applicable Section 5339 Program funds among other eligible Subrecipients within the SCAG regional boundaries and according to the statutory formulas set forth under 49 U.S.C. Section 5339, as applicable and as amended from time to time. In any event, this Agreement shall remain fully binding and enforceable among the signatory parties.

3. General Provisions

3.1. Term of Agreement:

This Agreement shall commence on the Effective Date of the Agreement and continue in full force unless a party withdraws from this Agreement or this Agreement is terminated in accordance with Section 3.7.

3.2. Drafting:

This Agreement has been prepared, reviewed and endorsed by the Parties.

3.3. Amendments:

This Agreement may be amended only by the execution by the Parties of a written amendment.

3.4. Jurisdiction and Venue:

This Agreement shall be deemed an Agreement under the laws of the State of California and for all purposes shall be interpreted in accordance with such laws. All parties hereby agree and consent to the exclusive jurisdiction of the courts of the State of California and that the venue of any action brought hereunder shall be in San Bernardino County, California.

3.5. Non-assignment:

No party may assign this Agreement, or any part thereof, without the written consent of each party to this Agreement.

3.6. Indemnity:

Omnitrans agrees to indemnify, defend and hold harmless SANBAG and its officers, agents and employees from and against any and all claims, demands, costs, or liability arising from or connected with intentional or negligent acts, errors or omissions, any violations of law, or any violations of the terms and conditions of this Agreement (including non-compliance with the FTA Master Agreement and annual FTA Certifications and Assurances) attributable to performance of the responsibilities as set forth in this MOU by Omnitrans or its officers, agents, employees, contractors and subcontractors, except to the extent caused by the negligence or willful misconduct of SANBAG.

3.7. Withdrawal and Termination:

- 1) Any party may withdraw from this Agreement upon thirty (30) days written notice to the other party, provided that the notice of withdrawal sets forth the effective date of withdrawal and the reason for withdrawal. Additionally, the notice of withdrawal shall provide that the Parties meet during the period prior to the effective date of withdrawal to try to resolve any dispute, if applicable. In the event that the withdrawal is for cause, the withdrawal shall not be effective if the party cures the default in its performance within the thirty (30) day period.
- 2) SANBAG shall notify SCAG of the withdrawal from this Agreement of Omnitrans and shall administer and sub-allocate Section 5339 Program funds to eligible Subrecipients, as applicable.
- 3) SANBAG may terminate this Agreement at any time, upon thirty (30) days written notice to Omnitrans provided that the notice of termination sets forth the effective date of termination. Such termination clause may be invoked by SANBAG in the following circumstances including but not limited to: in the event that the Section 5339 Program is no longer funded by Congress and the fund balances have been exhausted, or in the event that SCAG is no longer a designated recipient of Section 5339 Program funds for a UZA or UZAs identified herein and SANBAG is no longer eligible to sub-allocate Section 5339 funds.

3.8. Disputes:

Except as otherwise provided in this Agreement, any dispute arising under this Agreement which is not disposed of by mutual agreement shall be decided through binding arbitration by a three (3) member panel in accordance with the rules of the American Arbitration Association.

3.9. Counterparts:

This Agreement may be executed in counterparts, each of which shall be an original, but all of which shall constitute one instrument.

3.10. Contact List:

The names and contact information for the grants administrator representing each party are identified in the Grants Administrator Contacts List, attached hereto and incorporated herein as Exhibit "C."

3.11. Notice:

Any notice or notices required or permitted to be given pursuant to this Agreement may be personally served on the other party by the party giving such notice, or may be served by certified mail, return receipt requested, to the names and addresses attached hereto and incorporated herein as Exhibit "D."

3.12. Entire Agreement:

This Agreement contains the entire agreement and understanding of the Parties relating to the subject matter hereof, and the Parties have made no agreement or representation relating to the subject matter hereof which are not set forth herein.

3.13 Effective Date:

This Agreement is effective on the date executed by SANBAG.

IN WITNESS WHEREOF, the Parties hereto have caused this Agreement to be executed by their duly authorized representatives on the dates set forth below.

San Bernardino Associated Governments

By: _____
Ray Wolfe
Executive Director

Date: _____

Approved as to Form:

Eileen Monaghan Teichert
General Counsel

Date: _____

Omnitrans

By: _____
Scott Graham
Chief Executive Officer

Date: _____

Approved as to Form:

By: _____
(Insert Name Here)
General Counsel

Date: _____

EXHIBIT A

GRANT CERTIFICATION FORM

Section 5339 Bus and Bus Facilities Grants Program (Section 5339 Program)

This Grant Certification Form is required to be signed by all Subrecipients of Section 5339 Program Funds, pursuant to the Memorandum of Understanding among the Southern California Association of Governments (SCAG) and County Transportation Commissions for the Section 5339 Bus and Bus Facilities Formula Grants Program.

1. **Definition of "Subrecipient":** For purposes of administering the Section 5339 Program, "Subrecipient" shall mean an eligible public agency or private nonprofit organization engaged in public transportation and identified by the CTC serving the county in which such public entity or nonprofit organization is located, to receive a sub-allocation of Section 5339 Program funds awarded by FTA, contingent upon meeting federal requirements and requirements set forth in Section 2.3 of MOU No. M-016-13. "Subrecipients" may include CTCs. All Subrecipients shall agree to submit grant applications for this program to SCAG in accordance with the Call for Applications process established by SCAG.
2. **Applications and Grant Management Process:** Subrecipients are responsible for submitting grant applications through SCAG's Call for Applications process to receive Section 5339 Program funds awarded by FTA to implement eligible, capital projects, contingent upon meeting federal requirements and requirements set forth in Section 2.3 of MOU No. M-016-13. Subrecipients shall not submit grant applications on behalf of sub-tier recipients. All grant applications for projects eligible for funding as described herein, must be submitted by Subrecipients through SCAG's Call for Applications process.
3. **Grant Requirements:** The responsibilities of Subrecipients include, but are not limited to, the following:
 - a. **FTA Master Agreement:** Each Subrecipient agrees to comply in the same capacity as the "Recipient" with applicable terms and conditions of the FTA Master Agreement, FTA MA (19) dated October 1, 2012 (www.fta.dot.gov/documents/19-Master.pdf) and any agreement which supersedes and replaces it.
 - b. **Annual FTA Certifications and Assurances:** The Subrecipient agrees to sign the Federal Fiscal Year (FFY) 2013 FTA Certifications and Assurances, attached hereto and incorporated herein as Attachment "A-1." Each Subrecipient certifies in the same capacity as the "Applicant" that it shall comply with the applicable annual FTA Certifications and Assurances (published annually in the Federal Register). Upon publication of the FFY 2014 FTA Certifications and Assurances, and for each additional FFY for which Congress authorizes and appropriates Section 5339 Program funds, each Subrecipient shall sign and submit a copy of such form to SCAG prior to applying for any of such funds.
 - c. **Documentation:** Each Subrecipient shall submit to SCAG any documentation reasonably requested by SCAG to assure the validity of all above-referenced FTA Certifications and Assurances.
 - d. **Transit Asset Management Plans:** Each Subrecipient shall agree to the following:
 - i. It will develop a Transit Asset Management Plan that complies with:
 1. 49 U.S.C. Section 5326 et seq. and Section 5339(a)(4), as amended by MAP-21;
 2. Federal regulations pertaining to the National Transit Asset Management System required to be issued by 49 U.S.C. Section 5326(d), as amended by MAP-21;
 3. Performance Measures and Targets required to be issued by 49 U.S.C. Section 5326(c)(1); and
 4. Other applicable Federal laws and regulations;
 - ii. It will develop a Transit Asset Management Plan that is consistent with Federal guidance developed or to be developed to implement 49 USC Section 5326, as amended by MAP-21.
 - iii. It will provide progress and performance reports as required by 49 U.S.C. Section 5326(c)(3), as amended by MAP-21.
 - iv. Transit Asset Management Plans shall at minimum include capital asset inventories and condition assessments, and investment prioritization. Subrecipients shall further report on the condition of their system and any change in condition since the last report and submit such reports into the FTA's National Transit Database (NTD). The Subrecipient shall submit to SCAG performance

measures and targets adopted as part of such plans, and any other related documentation requested by SCAG.

4. Invoices. Upon approval of SCAG's grant applications by FTA and commencement of approved projects under the Section 5339 Program, Subrecipients shall submit invoices to SCAG for reimbursement of incurred, eligible and allowable grant program costs. Such costs shall comply with all applicable federal cost principles and other related requirements, and shall serve as the only costs eligible for reimbursement by SCAG. Upon approval of invoices by SCAG, SCAG shall draw-down funds on a reimbursement basis from FTA's ECHO System, and shall pay the Subrecipient upon receipt of payment by FTA.
 - a. Invoices shall comply with the Invoice Format set forth in the Call for Applications instructions which shall be provided by SCAG. The required, local cash match (20%) shall be deducted by the Subrecipient and reflected in each Invoice. The Authorized Representative of each Subrecipient agrees to sign the Cash Match Certification Statement on each Invoice. All invoices shall be submitted at least quarterly and no more frequently than monthly, and contain the following information:
 - i. Name of Subrecipient expending the Section 5339 Program funds;
 - ii. UZA name and number for which the project funds are being reported;
 - iii. A listing of the FTA grant number(s) being reported, with their respective project budget line item (ALI Codes), project category, approved FTA amount, and description of the funded projects;
 - iv. Invoice period and corresponding Progress Report in narrative format; and
 - v. Explanation if there is no activity.
 - b. All invoices shall be submitted by Subrecipients to the following email address: AccountsPayable@scag.ca.gov.
 - c. SCAG shall maintain final approval authority of invoices submitted under this Agreement.
5. Quarterly Reports. Each Subrecipient shall submit Quarterly Reports to SCAG which contain the following information, and any additional information as may be required by SCAG or FTA:
 - a. Name of Subrecipient expending the Section 5339 Program funds;
 - b. UZA name and number for which the funds are being reported;
 - c. A listing of the FTA grant number(s) being reported, with their respective project budget line item (ALI Codes), project category, approved FTA amount, and description of the funded projects; and
 - d. Federal Fiscal Year (FFY) Quarterly Milestones/Progress Reports in a narrative format.

Quarterly Reports shall be submitted no later than fifteen (15) days after each FFY quarter has ended, to the attention of Alfonso Hernandez (or other person identified by SCAG), SCAG Grants Administrator. SCAG shall promptly notify all Subrecipients in the event of a change in the person identified in this paragraph as the recipient of the Quarterly Reports.

6. Audits. In accordance with the FTA Master Agreement and applicable federal law and regulations, Subrecipients agree to retain and require its contractors and other third party participants to retain complete and readily accessible records related in whole or part to the Section 5339 Program ("Records"). Records required to be retained include but are not limited to data, documents, reports, statistics, leases, third party contracts or agreements, arrangements, and other supporting materials related to those records.
 - a. Subrecipients shall retain Records for the period required under the FTA Master Agreement, and shall make the Records available for inspection and audit by representatives of SCAG, the State, or the Federal Government upon request. Copies of the Records shall be made and furnished to SCAG upon request at no cost to SCAG.
 - b. Any costs for which a Subrecipient receives payment that is determined by a subsequent audit or other review by SCAG, State or Federal authorities to be unallowable under, but not limited to, OMB Circular A-87; 48 CFR, Chapter 1, Part 31; or 49 CFR, Part 18, are to be repaid by the Subrecipient within thirty (30) days of such Subrecipient receiving notice of audit findings and a written demand for reimbursement from SCAG. Should the Subrecipient fail to reimburse unallowable costs due SCAG within thirty (30) days of demand, or within such other period as may be agreed between both parties hereto, SCAG is authorized to withhold future payments due to the Subrecipient.

7. Reports and Forms: Upon approval of grant applications by FTA, as applicable, Subrecipients shall submit to SCAG the following documents and reports which relate to the Section 5339 Program:
- Quarterly Milestones/Progress Reports during the current FFY;
 - Disadvantaged Business Enterprise (DBE) reports and all other reports and documentation required by FTA;
 - Final/Close-out Reports;
 - IRS W-9 Form;
 - Banking information which includes name of the financial institute, ACH routing number, and account number; and
 - Any other documents or reports requested by FTA or SCAG.
8. Sub-allocations Process: The Subrecipient hereby understands and agrees that it shall execute and submit to SCAG, in advance of submitting a grant application for Section 5339 Program funds to FTA and no later than fifteen (15) days after receiving a Notice of Sub-allocations from the CTC serving the county in which the Subrecipient is located, this Grant Certification Form and the FFY 2013 FTA Certifications and Assurances, signed by the duly authorized representative of the Subrecipient. Upon publication of the FFY 2014 FTA Certifications and Assurances, and for each additional FFY for which Congress authorizes and appropriates Section 5339 Program funds, each Subrecipient shall sign and submit a copy to SCAG of the applicable FTA Certifications and Assurances form, prior to SCAG's submittal of an application for such funds. SCAG shall not allocate and the CTCs shall not sub-allocate, as applicable, any Section 5339 Program funds to a Subrecipient who has not executed a Grant Certification Form and applicable FTA Certifications and Assurances form.
9. Opt-Out Option: In the event an eligible Subrecipient, excluding a CTC who is a Subrecipient, elects not to apply for Section 5339 Program funds and does not execute the Grant Certification Form, the Subrecipient may elect to sign and return the attached Opt-Out Form, attached hereto and incorporated herein as Attachment "A-2." A Subrecipient that elects to opt-out, as described herein, shall sign and return to SCAG's Grants Administrator the attached Opt-Out Form within thirty (30) days of receiving the Notice of Sub-Allocations from the CTC serving the county in which the Subrecipient is located. Upon receipt by SCAG of the Opt-Out Form signed by a Subrecipient's duly authorized representative or upon the lapse of the 30-day notification period, SCAG and the respective CTC shall initiate the process to sub-allocate the Section 5339 Program funds among other eligible Subrecipients within the SCAG regional boundaries and according to the statutory formulas set forth under 49 U.S.C. Section 5339, as applicable and as amended from time to time.
10. Indemnity: The Subrecipient agrees to indemnify, defend and hold harmless SCAG and its respective officers, agents and employees from and against any and all claims, demands, costs, or liability arising from or connected with intentional or negligent acts, errors or omissions, any violations of law, or any violations of the terms and conditions of this Certification Form (including non-compliance with the FTA Master Agreement and annual FTA Certifications and Assurances) attributable to performance of the responsibilities as set forth herein by the Subrecipient or its officers, agents, employees, contractors and subcontractors, except to the extent caused by the negligence or willful misconduct of SCAG.

SIGNING BELOW, on behalf of the Subrecipient, I declare under penalty of perjury that the Subrecipient has duly authorized me to sign this Grant Certification Form, and bind the recipient's compliance. Thus, the Subrecipient agrees to comply with all requirements set forth herein.

Signature of Authorized Representative

Signature

Date

Name of Subrecipient

Address

Return Form To:

Alfonso Hernandez, SCAG Grants Administrator
818 W. 7th Street, 12th Floor
Los Angeles, CA 90017
hernande@scag.ca.gov

ATTACHMENT A-1
**FEDERAL FISCAL YEAR 2013 CERTIFICATIONS AND ASSURANCES
FOR FEDERAL TRANSIT ADMINISTRATION ASSISTANCE PROGRAMS**

Name of Applicant: _____

The Applicant agrees to comply with applicable provisions of Groups 01 – 24. _____

OR

The Applicant agrees to comply with applicable provisions of the Groups it has selected:

<u>Group</u>	<u>Description</u>	
1.	Required Certifications and Assurances for Each Applicant.	_____
2.	Lobbying.	_____
3.	Private Sector Protections.	_____
4.	Procurement and Procurement System.	_____
5.	Rolling Stock Reviews and Bus Testing.	_____
6.	Demand Responsive Service.	_____
7.	Intelligent Transportation Systems.	_____
8.	Interest and Finance Costs and Leasing Costs.	_____
9.	Transit Asset Management and Agency Safety Plans.	_____
10.	Alcohol and Controlled Substances Testing.	_____
11.	Fixed Guideway Capital Investment Program (New Starts, Small Starts, and Core Capacity) and Capital Investment Program in Effect before MAP-21.	_____
12.	Bus and Bus Facilities Program.	_____
13.	Bus/Bus Facilities Programs.	_____
14.	Urbanized Area Formula Programs and Job Access and Reverse Commute (JARC) Program.	_____
15.	Seniors/Elderly/Individuals with Disabilities Programs and New Freedom Program.	_____
16.	Rural/Other Than Urbanized Areas/Appalachian Development/Over-the-Road Bus Accessibility Programs.	_____
17.	Public Transportation on Indian Reservations and “Tribal Transit Programs.”	_____
18.	Low or No Emission/Clean Fuels Grant Programs.	_____
19.	Paul S Sarbanes Transit in Parks Program.	_____
20.	State Safety Oversight Program.	_____
21.	Public Transportation Emergency Relief Program.	_____
22.	Expedited Project Delivery Pilot Program.	_____
23.	Infrastructure Finance Programs.	_____

FEDERAL FISCAL YEAR 2013 FTA CERTIFICATIONS AND ASSURANCES SIGNATURE PAGE
(Required of all Applicants for FTA funding and all FTA Grantees with an active Capital or Formula Project)

AFFIRMATION OF APPLICANT

Name of Applicant: _____

Name and Relationship of Authorized Representative: _____

BY SIGNING BELOW, on behalf of the Applicant, I declare that the Applicant has duly authorized me to make these Certifications and Assurances and bind the Applicant's compliance. Thus, the Applicant agrees to comply with all Federal statutes and regulations, and follow applicable Federal guidance, and comply with the Certifications and Assurances as indicated on the foregoing page applicable to each application its authorized representative makes to the Federal Transit Administration (FTA) in Federal Fiscal Year 2013, irrespective of whether the individual that acted on its Applicant's behalf continues to represent the Applicant.

FTA intends that the Certifications and Assurances the Applicant selects on the other side of this document should apply, as provided, to each Project for which the Applicant seeks now, or may later seek FTA funding during Federal Fiscal Year 2013.

The Applicant affirms the truthfulness and accuracy of the Certifications and Assurances it has selected in the statements submitted with this document and any other submission made to FTA, and acknowledges that the Program Fraud Civil Remedies Act of 1986, 31 U.S.C. 3801 *et seq.*, and implementing U.S. DOT regulations, "Program Fraud Civil Remedies," 49 CFR part 31, apply to any certification, assurance or submission made to FTA. The criminal provisions of 18 U.S.C. 1001 apply to any certification, assurance, or submission made in connection with a Federal public transportation program authorized by 49 U.S.C. chapter 53 or any other statute

In signing this document, I declare under penalties of perjury that the foregoing Certifications and Assurances, and any other statements made by me on behalf of the Applicant are true and accurate.

Signature: _____ Date: _____

Full Name: _____

Authorized Representative of Applicant: _____

AFFIRMATION OF APPLICANT'S ATTORNEY

For (Name of Applicant): _____

As the undersigned Attorney for the above named Applicant, I hereby affirm to the Applicant that it has authority under State, local, or tribal government law, as applicable, to make and comply with the Certifications and Assurances as indicated on the foregoing pages. I further affirm that, in my opinion, the Certifications and Assurances have been legally made and constitute legal and binding obligations on the Applicant.

I further affirm to the Applicant that, to the best of my knowledge, there is no legislation or litigation pending or imminent that might adversely affect the validity of these Certifications and Assurances, or of the performance of its FTA Project or Projects.

Signature: _____ Date: _____

Full Name: _____

Attorney for Applicant: _____

Each Applicant for FTA funding and each FTA Grantee with an active Capital or Formula Project must provide an Affirmation of Applicant's Attorney pertaining to the Applicant's legal capacity. The Applicant may enter its signature in lieu of the Attorney's signature, provided the Applicant has on file this Affirmation, signed by the attorney and dated this Federal fiscal year.

ATTACHMENT A-2
Opt-Out Form

Name of Eligible Subrecipient (Public Entity):

The Public Entity named above hereby elects not to sign the Grant Certification Form required under the Memorandum of Understanding among the Southern California Association of Governments (SCAG) and County Transportation Commissions (CTCs) for the Section 5339 Bus and Bus Facilities Grants Program.

The Public Entity understands and agrees that SCAG shall not be obligated to allocate and that the County Transportation Commission (CTC), serving the county in which the Public Entity is located, shall not be obligated to sub-allocate Section 5339 Program funds to any entity which elects not to sign the Grant Certification Form. Such Public Entity that elects to opt-out shall sign and return this Opt-Out Form to SCAG's Grants Administrator within thirty (30) days of receiving notification from the respective CTC of the Subrecipients' sub-allocation amount(s) ("Notice of "Sub-allocations").

The Public Entity agrees and understands that SCAG will initiate, upon receipt of this Opt-Out Form signed by the duly authorized representative of the Public Entity or upon the lapse of the 30-day notification period set forth above (whichever occurs first), the process to sub-allocate the Section 5339 Program funds among other eligible Subrecipients within the SCAG regional boundaries and according to the statutory formulas set forth under 49 U.S.C. Section 5339, as applicable and as amended from time to time.

Signature of Authorized Representative Date

Name

Name of Public Entity

Address

Any Eligible Subrecipient that elects to opt-out of receiving 5339 Program Funds shall sign and return this Opt-Out Form to SCAG's Grants Administrator at the following address within thirty (30) calendar days of receiving the Notice of Sub-allocations:

Alfonso Hernandez, SCAG Grants Administrator
818 W. 7th Street, 12th Floor
Los Angeles, CA 90017
hernande@scag.ca.gov

Exhibit B

Invoice Format

[illegible]

Exhibit C
Grants Administrator Contacts List

The Southern California Association of Governments

Full Name: Alfonso Hernandez

Title/Dept: Senior Budget and Grants Analyst, Finance

Mailing Street Address: 818 W. 7th Street, 12th Floor

City, State and Zip Code: Los Angeles, CA 90017

Phone: 213-236-1897

Email: hernande@scag.ca.gov

San Bernardino Associated Governments

Full Name: Vanessa Jezik

Title/Dept: Transportation Programming Analyst

Mailing Street Address: 1170 W. 3rd Street, 2nd Floor

City, State and Zip Code: San Bernardino, CA 92410-1715

Phone: 909-884-8276

Email: vjezik@sanbag.ca.gov

Omnitrans

Full Name:

Title/Dept:

Mailing Street Address:

City, State and Zip Code:

Phone:

Email:

Exhibit D
Notices

Mr. Hasan Ikhata
Executive Director
Southern California Association of Governments
818 West 7th Street, 12th Floor
Los Angeles, CA 90017-3435

Mr. Raymond Wolfe
Executive Director
San Bernardino Associated Governments
1170 W. 3rd Street, 2nd Floor
San Bernardino, CA 92410-1715

Mr. Scott Graham
Interim CEO/General Manager
Omnitrans
1700 W. Fifth Street
San Bernardino, CA 92411

ITEM # E8

DATE: December 4, 2013

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

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

FROM: Anna Rahtz, Acting Director of Planning and Development Services

SUBJECT: **BUS BRIDGE AGREEMENT BETWEEN OMNITRANS AND SOUTHERN CALIFORNIA REGIONAL RAIL AUTHORITY (SCRRA)**

FORM MOTION

Authorize the Interim CEO/General Manager to sign the Cooperative Service Agreement with Southern California Regional Rail Authority (SCRRA) for Bus Bridge Service (attached).

Omnitrans Legal Counsel has reviewed and approved this contract.

BACKGROUND

Omnitrans and SCRRA (Metrolink) seek to renew the contract for bus bridge service. A bus bridge is when a bus operator provides back-up service to a rail operator in the event of a rail service disruption due to an emergency, construction or some other event.

This bus bridge agreement lays out the notification, approval and funding provisions so that bus service can be dispatched quickly to minimize delay for rail passengers. The bus bridge agreement does not compel Omnitrans to extend service at the expense of Omnitrans' own service, but provides an opportunity to use available resources for the overall benefit of the transit network.

Omnitrans entered into the current three year agreement in September 2010. The new agreement will remain in effect for three years through December 2016, which is in FY2017. The only substantive change from the current agreement is an update to the hourly cost for FY2014 to FY2017.

FINANCIAL IMPACT

Omnitrans will invoice SCRRA for the fully allocated costs for bus bridge service based on Omnitrans' fixed route cost per revenue hour. In FY2014, this cost is budgeted at \$95.76 per hour. Accounting for 3.8 percent escalation per year, the hourly rate will be \$99.40 in FY2015, \$103.18 in FY2016, and \$107.10 in FY2017. The agreement shall not exceed \$50,000 per year unless the agreement is amended in writing with the mutual consent of both parties.

CONCLUSION

Staff recommends that the Board of Directors authorize the Interim CEO/General Manager to sign the Cooperative Service Agreement with SCRRRA for bus bridge service.

SG:AR:JB

COOPERATIVE AGREEMENT NO. MU141-14
BETWEEN
SOUTHERN CALIFORNIA REGIONAL RAIL AUTHORITY
AND
OMNITRANS
FOR
BUS BRIDGE SERVICE

THIS AGREEMENT, is effective as of this ____ day of ____, 2013, by and between the Southern California Regional Rail Authority, One Gateway Plaza, Floor 12, Los Angeles, California 90012, a California joint powers Authority (hereinafter referred to as "SCRRA") and Omnitrans, 1700 West Fifth Street, San Bernardino, California 92411, a California joint powers authority (hereinafter referred to as "OMNITRANS").

RECITALS:

WHEREAS, SCRRA and OMNITRANS desire to enter into a Cooperative Agreement for bus bridge service;

WHEREAS, OMNITRANS agrees to provide bus bridge service during service disruptions of commuter rail service (Metrolink), by deploying buses to transport passengers between stations (hereinafter referred to as SERVICE);

WHEREAS, OMNITRANS agrees to perform SERVICE when requested and if resources are available;

WHEREAS, OMNITRANS shall place higher priority on service disruptions which occur on Metrolink routes within OMNITRANS service areas, except for those affecting OMNITRANS's own transit operations;

WHEREAS, SCRRA agrees to reimburse OMNITRANS for the costs associated with the SERVICE based on OMNITRANS's hourly rate (cost per service hour; \$95.76 in FY 2013-14, \$99.40 in FY2014-15, \$103.18 in FY2015-2016, \$107.10 in FY2016-2017) for the bus service; and

WHEREAS, this Cooperative Agreement (hereinafter referred to as "AGREEMENT") defines the specific terms, conditions, and roles and responsibilities between SCRRA and OMNITRANS only as they may relate to SERVICE and no other purpose.

NOW, THEREFORE, in consideration of the mutual promises, covenants and conditions contained herein, it is mutually understood and agreed by SCRRA and OMNITRANS as follows:

ARTICLE 1. COMPLETE AGREEMENT

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 SCRRA and OMNITRANS concerning the SERVICE 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.

ARTICLE 2. RESPONSIBILITIES OF OMNITRANS

OMNITRANS agrees to the following responsibilities for the SERVICE:

A. To perform SERVICE as resources are available.

B. To invoice SCRRA for costs associated with the SERVICE based on OMNITRANS's hourly rate (cost per service hour; \$95.76 in FY 2013-14, \$99.40 in FY2014-15, \$103.18 in FY2015-2016, \$107.10 in FY2016-2017) for the bus service.

C. To indemnify, defend and hold harmless SCRRA, its member agencies, officers, directors, employees, and agents from and against any and all claims (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 this Agreement.

ARTICLE 3. RESPONSIBILITIES OF SCRRA

SCRRA agrees to the following responsibilities for the SERVICE:

A. SCRRA management shall make a formal request for the bus bridge service to OMNITRANS by calling the established special contact number at (909) 379-7232 or the back-up line at (909) 379-7239.

B. Each request submitted by SCRRA for the SERVICE must be approved by OMNITRANS's on duty dispatcher.

C. SCRRA shall reimburse OMNITRANS for the costs associated with the SERVICE based on OMNITRANS's hourly rate (cost per service hour; \$95.76 in FY 2013-14, \$99.40 in FY2014-15, \$103.18 in FY2015-2016, \$107.10 in FY2016-2017) for the bus service.

D. To pay OMNITRANS within 30 calendar days of receipt of the invoice for costs of SERVICE.

E. To indemnify, defend and hold harmless OMNITRANS, its officers, directors, employees, and agents from and against any and all claims (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 SCRRA, its officers, directors, employees, or agents in connection with or arising out of the performance of this Agreement.

ARTICLE 4. IT IS MUTUALLY UNDERSTOOD AND AGREED:

All parties agree to the following mutual responsibilities regarding the SERVICE:

A. This AGREEMENT shall commence upon execution by both parties, and shall continue in full force unless terminated as provided in this Agreement.

B. This Agreement may be amended in writing at any time by the mutual consent of both parties. No amendment shall have any force or effect unless executed in writing by both parties.

C. SCRRA or OMNITRANS may terminate this Agreement, without cause, by delivering written notice of termination to the other party not less than sixty (60) calendar days before the date of termination.

D. 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.

E. 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 and shall be deemed duly served, given or delivered upon 1) hand delivery of said notices in person or 2) by depositing said notices in the U.S. mail, registered, or certified mail (return receipt requested and first-class postage prepaid) and addressed as follows or as later changed in a manner required by this section:

To SCRRA:	To OMNITRANS:
Southern California Regional Rail Authority	OMNITRANS
One Gateway Plaza, Floor 12 Los Angeles, CA 90012 ATTN: Albert Scala Chief Project & Contract Compliance Officer	1700 West Fifth Street San Bernardino, CA 92411 ATTN: Frank Quass Operations Services Supervisor
Tel: (213) 452-0474; Fax: (213) 452-0425	Tel: (909) 379-7212; Fax: (909) 379-7143
Email: ScalaA@scrra.net	Email: _Frank.Quass@omnitrans.org____

Any notice that is addressed and delivered in the manner herein provided shall be conclusively presumed to have been duly given to the party to which it is addressed at the close of business, local time of the recipient, 1) upon delivery if by hand delivery, and 2) on the third day after the day it is so placed in the mail or as evidenced by the return receipt requested card which ever is later. Any party may change their address for the purposes of this Agreement by giving notice of the change in the manner required by this section, to the other party.

F. 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.

G. The provision of this Agreement shall bind and insure to the benefit of each of the parties hereto and all successors or assigns of the parties hereto.

H. 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.

I. 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. Facsimile signatures will be permitted.

J. 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.

K. Both 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.

L. 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.

M. This Agreement has a not-to-exceed amount of \$50,000, and a period of three years from the effective date of this agreement. Amount shall not be exceeded unless amended in writing by the mutual consent of both parties.

This AGREEMENT shall be made effective upon execution by both parties.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement No. MU141-14 to be executed on the date first above written.

**SOUTHERN CALIFORNIA REGIONAL OMNITRANS
RAIL Authority**

By: _____
Michael P. DePallo
Chief Executive Officer

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

APPROVED AS TO FORM:

APPROVED AS TO FORM:

By: _____
Don O. Del Rio
General Counsel

By: _____
Carol Greene
Legal Counsel

ITEM # E9

DATE: December 4, 2013

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

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

FROM: Jennifer M. Sims, Director of Procurement

SUBJECT: **AUTHORIZE ADDITIONAL SPEND AUTHORITY, CONTRACT IPMO14-116, AS NEEDED SCHEDULING SERVICES**

FORM MOTION

Authorize additional spending authority to Contract IPMO14-116 with APSI Construction Management of Irvine, California, for the provision of As Needed Scheduling Services to support the sbX E Street Corridor BRT and Vehicle Maintenance Facility Projects in the amount of \$53,848, bringing the total contract amount to \$78,848, plus the addition of the 3.27% Cost Allocation Plan of \$2,578.33, that will be charged to the total project cost vested in the Omnitrans Interim CEO/General Manager.

This item was reviewed by the Administrative and Finance Committee at its November 12, 2013 meeting, and recommended to the Board of Directors for approval.

BACKGROUND

On August 14, 2013, Contract IPMO12-23 with APSI for the provision of Schedule, Utility and Environmental Support Consulting Services was terminated for convenience as part of corrective action required for the Federal Transit Administration's 2013 Procurement System Review. Each component of the scope of work requires different qualifications. As a result, Procurement determined that the most appropriate path forward is to unbundle the scope and issue three separate solicitations. The utility and environmental solicitations were presented to the Board for award, November 6, 2013 (IPMO14-103 On-Call Stormwater Prevention Pollution Plan (SWPPP) Oversight Services, and IPMO14-105 On-Call Environmental Support).

Staff released Request for Proposals (RFP) No. RFP-IPMO14-116 for As-Needed Scheduling Services to support the sbX E Street Corridor and Vehicle Maintenance Facility Projects, posted on Omnitrans' online bidding system, and distributed to fifty-one registered firms. The Independent Cost Estimate was \$71,680.

Four proposals were received electronically on October 28, 2013. Two of the proposals did not meet the minimum qualifications required as specified in the RFP. The remaining proposals were

found to be responsive and evaluated according to the criteria listed in the RFP. A total of 100 points were possible.

The following firms ranked from highest to lowest:

	Total Points Possible	APSI	Dabri
Responsiveness & General Understanding of Requirements	10	8.27	9.28
Quality of Work Plan or description of how the work will be performed	30	26.75	24
Experience in performing the work as described in the scope of work	40	38	33.67
Overall cost to Omnitrans	20	20	15.40
Total	100	93.02	82.35

To minimize impact to the project due to a lapse in scheduling services, Omnitrans entered into an agreement not to exceed \$25,000. Staff requests that the Board authorize the Interim CEO/General Manager increase the agreement as needed in an amount not to exceed amount of \$78,848 (ICE plus 10% contingency).

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

FUNDING SOURCE

FUNDING	GRANT	YEAR	PROJECT NAME	INTERNAL ORDER	AMOUNT
LTF	S-1205-49	2012	sbX E Street BRT	B0810101L	\$78,848

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

PSG:JS

ITEM # E10

DATE: December 4, 2013

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

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

FROM: Jennifer M. Sims, Director of Procurement

SUBJECT: AUTHORIZE AWARD - PURCHASE ORDER FOR SBX SERVICE TRUCK

FORM MOTION

Authorize the Interim CEO/General Manager to issue a Purchase Order to Fairview Ford Sales, Inc. of San Bernardino, CA, for the purchase of a sbX Service Truck in the amount of \$51,962.26.

BACKGROUND

On September 30, 2013, staff released RFQ-MNT14-14 for the purchase of a Marketing/sbX Service Truck. The RFQ was posted on Omnitrans' online bidding system and was distributed to eleven potential bidders.

Three bids were received by the deadline date of October 15, 2013, and all were found to be responsive. Listed below are the prices:

COMPANY	PRICE
Fairview Ford Sales, Inc.	\$51,962.26
Raceway Ford	\$55,083.35
Enterprise Fleet Management	\$61,172.19

The Independent Cost Estimate of \$51,800 was based on past pricing received by the Agency. Price is deemed fair and reasonable. Award recommendation is being made to the lowest responsive and responsible bidder.

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

FUNDING SOURCE

The cost associated with this procurement is budgeted in the sbX budget as follows:

FUNDING	GRANT	YEAR	PROJECT NAME	INTERNAL ORDER	AMOUNT
FTA	CA-90-Y775	2010	sbX E Street BRT	D1020602F	\$41,569.81
STA	13-10-OMN-B	2012	sbX E Street BRT	D101B602S	\$10,392.45

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

CONCLUSION

Approval of this purchase will allow Omnitrans to have a maintenance vehicle in place to ensure the sbX Green Line remains in working condition.

PSG:JMS:jc

2013 ANNUAL MEETING

Omnitrans Nears Completion of First BRT Line

Special to *Passenger Transport*

Omnitrans in San Bernardino, CA, is preparing to launch its first Bus Rapid Transit (BRT) line, known as "sbX," in spring 2014. The line will traverse a 15.7-mile corridor, including 5.4 miles of exclusive lanes, in the cities of Loma Linda and San Bernardino.

The agency is winding down construction activities at 23 station platforms and three park-and-ride lots as it gears up testing of station components and traffic signal priority equipment. Amenities at each station include ticket vending machines, security cameras, electronic message signs, and shelter from the elements. Complementing the

stations are drought-tolerant landscaping and public art selected to reflect the culture of the community.

"With travel times comparable to driving, we believe that sbX will attract new customers to transit," said Director of Planning Rohan Kuruppu, whose co-workers consider him the "father" of sbX. "Additionally, future transit-oriented development around station locations will be a boost for the local economy."

Omnitrans has already taken delivery of the 14 60-foot articulated New Flyer coaches that will operate on sbX. Powered by natural gas like the rest of the agency's fleet, the new vehicles have five doors to accommodate both side-running and center-running stations,

space on board for two wheelchairs and four bicycles, plus electrical outlets and Wi-Fi. The agency is making modifications to its maintenance facility to better accommodate the bigger buses.

The sbX line is the first of up to 10 BRT corridors identified for the San Bernardino Valley as part of a comprehensive intermodal system to enhance regional mobility and the environment. The study of another BRT corridor in the western end of Omnitrans' service area is already underway.



Omnitrans works to complete 23 station platforms along its sbX BRT route, which is scheduled to enter service in spring 2014.

THE PRESS-ENTERPRISE



EDITORIAL: Shut loophole in minor pension reforms

The federal government should not let public transit workers block California's pension reforms.

THE PRESS-ENTERPRISE
October 07, 2013; 05:16 PM

[Comments \(0\)](#)

The federal government should not obstruct California's public pension reforms. The state has sued to overturn a federal decision that would carve a large loophole in the state's modest pension

changes. And if the lawsuit fails, Congress should step in and change the law.

The state filed suit in federal court last week over the federal government's decision to block at least \$1.6 billion in transit funding for California. Public transit workers last year began objecting to federal transit grants under an obscure section of federal law, claiming that pension reforms state legislators enacted last year violated collective bargaining rights. The U.S. Labor Department agreed, forcing the state to go to court to protect the minor reforms.

Gov. Jerry Brown also last week signed AB 1222, which temporarily exempts public transit workers from the pension changes to keep the federal grants flowing in the meanwhile. Losing the federal money would have hit Inland agencies hard: Omnitrans faced the loss of almost \$30 million out of a total budget of \$84 million this year. Riverside Transit Agency would have seen \$31 million vanish from its \$79 million total budget.

But the federal government should not be interfering with the state's legitimate need to curb unsustainable pension burdens. Even after last year's slight reforms, the state still faces a funding shortfall of more than \$180 billion over the next 30 years for retirement payouts. State and local governments face a steady acceleration of pension costs, which will drain ever more money away from public services. The Legislature needs to do more to curtail upward spiraling expenses, not exempt a whole class of public workers from any changes.

The state Department of Finance estimates that the California Public Employees' Retirement System would lose \$1.2 billion to \$1.6 billion in savings over 30 years by exempting about 12,500 transit workers who belong to the pension plan. But the real cost to taxpayers would be higher, because about half of unionized public transit workers are members of local pension systems. And exempting the transit workers would invite every other public employee union to demand the same treatment.

Nor should anyone think last year's reforms abrogated collective bargaining rights, as the unions claim. Most of the changes do not even apply to existing workers, but only to new hires. And Californians will hardly view blocking schemes that artificially inflate pension payouts at public expense, or requiring workers to pay toward their own retirements, as trampling on labor rights.

Congress should intervene if the court does not. As the state's lawsuit notes, the Labor Department's interpretation of the law would in practice prevent state legislatures from amending any law that affects transit workers' contracts.

Such foolishness should not stand. Only mindless governance would give labor rights higher priority than public finances, public services and taxpayers' interests. The federal government should be aiding states' attempts to stabilize public finances, not blocking efforts to control runaway costs.

Metro

Monday, October 21, 2013



October 21, 2013

Calif.-based Omnitrans' Go Smart program a huge success



Earlier this month, San Bernardino, Calif.-based Omnitrans won a Clean Air Award from the South Coast Air Quality Management District (SCAQMD) for its "Go Smart" program, which is dedicated to transitioning local college students in the San Bernardino Valley to using public transit rather than driving to get to campus.

Omnitrans launched Go Smart as a pilot for the 2011-2012 school year by partnering with California State University, San Bernardino (CSUSB), Chaffey College, Crafton Hills College and San Bernardino Valley College to offer free, unlimited bus rides to more than 50,000 college students.

The pilot program was funded by partner colleges and each of the 15 cities and county in the Omnitrans service area, using monies earmarked for emission reduction projects. Approximately 1.4 million trips were made by over 13,500 individual students in pilot year.

"We believed we could get a bigger market share from the students enrolled if we had a program that was highly convenient for them," explained Wendy Williams, director of marketing at Omnitrans. "Highly convenient to us meant they didn't have to go to any special office way out off in the corner to get a bus pass. We had discounted passes for them for years and years and never really got more than about 4% market share."

When initially launched, 5,100 unique students rode Omnitrans, during a typical week, meaning more than 10% of students became regular transit riders, with more than 25% of enrolled students trying the program at least once. By taking public transportation instead of driving, it removed an estimated 129.2 tons of carbon monoxide from the air while also reducing the levels of reactive organic gases, nitrogen oxide and particulate matter — a major reason it won the SCAQMD award.



Accepting the Clean Air Award, from left, was Omnitrans Interim CEO/GM Scott Graham, Board Chair and Ontario Councilmember Alan Wapner, and Director of Marketing Wendy Williams.

Once the pilot was completed, ongoing self-funded Go Smart programs were established at each of the pilot program colleges and student ridership continues to increase over a year later.

"We established five-year programs with the three community colleges through student-passed referendums," said Williams. "The Cal State has not taken it to a referendum yet, but they have found other funding for now and hope to do a referendum some time in the future."

Over the last couple of years, the number of unique riders at each of the colleges and CSUSB has continued to grow, with ridership on some routes growing by as much as 40% year-over-year.

"There is a lot of turnover at colleges and universities, so you have to constantly promote public transit as an option," Williams said. "By partnering with the schools, it became a joint program. The schools saw the benefit; they were all dealing with overflow parking, in many cases, and they were also all tasked with sustainability goals. It was just a good partnership."

In addition to the community colleges and CSUSB, Omnitrans recently added a trade school and is testing a similar program at some charter high schools in the area.

"One of the benefits of focusing on the student market is they are much more receptive to try something new, and I think that is part of the success of the program," Williams said. "They are just at a time of their life where they are open to the unknown, so the fact they haven't ever taken a bus before doesn't faze them as much as someone who is a little older."

SAN BERNARDINO AMERICAN

Clean Air Award for Omnitrans Go Smart Program

College pilot program recognized as “Innovative Transportation Project”

• Thursday, 24 October 2013 00:00



Accepting the Clean Air Award, from left, is Omnitrans Interim CEO/General Manager Scott Graham, Board Chair and Ontario Councilmember Alan Wapner, and Director of Marketing Wendy Williams

(San Bernardino, CA)— A pilot program that more than doubled the number of local college students using public transit and eliminated an estimated 129 tons of pollution earned Omnitrans a Clean Air Award from the South Coast Air Quality Management District, presented on October 4, 2013.

In 2011-12, Omnitrans initiated the “Go Smart” pilot program dedicated to transitioning local college students in the San Bernardino Valley to using public transit rather than driving to get to campus. Omnitrans partnered with

California State University-San Bernardino, Chaffey College, Crafton Hills College, and San Bernardino Valley College to offer free, unlimited bus rides to over 50,000 college students. Approximately 1,450,000 trips were made by over 13,500 individual students in pilot year.

Students had unlimited access to the Omnitrans bus system with a simple swipe of their college ID card. During a typical week, 5,100 unique students rode Omnitrans which means that over 10% of students became regular transit riders, up from 4% prior to the program. Over 25% of enrolled students tried the program at least once. Subsequently, ongoing self-funded Go Smart programs were established at each of the pilot program colleges and student ridership continues to increase over a year later.

“Go Smart helps reduce transportation costs for students and removes lack of transportation as a barrier to education for some,” said Interim CEO/General Manager Scott Graham. “Gaining familiarity with public transit while a student also makes them more likely to use and support public bus service in the future.”

During the pilot year Go Smart student logged 8.7 million cumulative miles! By taking public transportation instead of driving, this removed an estimated 129.2 tons of carbon monoxide from the air while also reducing the levels of reactive organic gases, nitrogen oxide and particulate matter. Side benefits included reduced traffic congestion near the partner colleges and reduced parking demand on campus and in surrounding neighborhoods.

The pilot program was funded by partner colleges and each of the 15 cities and county in the Omnitrans service area, using monies earmarked for emission reduction projects.

THE PRESS-ENTERPRISE

LABOR: Omnitrans drivers getting impatient

Both sides in the Omnitrans contract talks are seeking help from a state mediator to reach a deal



William Wilson Lewis III/The Press-Enterprise

Some 400 bus drivers with San Bernardino county's Omnitrans have asked state mediators to help settle a contract negotiation.

BY JACK KATZANEK

October 25, 2013; 04:39 PM

Bus drivers in San Bernardino County say they're growing impatient with the slow pace of contract talks with regional carrier Omnitrans, and both sides say they are looking to a state mediator to help end the impasse.

But in the meantime, leaders of Local 1704 of the Amalgamated Transit Union say they are going to step up the pressure on Omnitrans with public demonstrations and informational picket lines at special events the bus company has planned in the next few weeks.

Local 1704 represents more than 400 drivers, Jeff Caldwell, president of the local, said on Friday, Oct. 25. The union opened negotiations with Omnitrans in January, but after about nine months, both sides gave up trying to reach an agreement and decided to ask for help.

"On Sept. 4, we decided it was an impasse," Caldwell said. "We're waiting for a mediator so we can proceed."

Caldwell said the drivers are not being offered any salary increase and have gotten no raises in the last five years. He said Omnitrans is offered a deal that would save drivers about \$30 on their insurance premiums, but he said that the family plan currently costs workers about \$600 per month. He said other issues revolve around surveillance cameras on buses and worker rules for express buses.

He said the members have yet to take a vote authorizing a strike, which would put additional pressure on management. "We're not there yet," Caldwell said.

Omnitrans, which carries an estimated 50,000 passengers a day in southern San Bernardino County cities and unincorporated areas, is a public agency that is under the jurisdiction of the county and 15 cities in the area. Representatives of each of those cities and the five members of the county's Board of Supervisors comprise the bus service's board.

Wendy Williams, director of marketing for Omnitrans, confirmed that the bus service and the drivers are at an impasse and that mediation is being set up. She declined further comment.

Public agency labor stalemates fall under the jurisdiction of the State Mediation and Conciliation Service. Loretta van der Pol, supervising conciliator for the agency, said that a mediator has been assigned and that they were in the process of scheduling sessions.

The situation between Omnitrans and Local 1704 is similar to contract negotiations six years ago. Talks started in January, but a deal was not reached until October after the union threatened a strike.

A different Amalgamated Transit Union local struck the Bay Area Rapid Transit system earlier this month; a four-day shutdown that snarled traffic in that area.

Big Bear Grizzly

Sunday Drives Off The Mountaintop



Grizzly file photo

At Your Service

MARTA expands its Off-the-Mountain service from Big Bear to San Bernardino beginning Nov. 10. Now, passengers can catch a bus to San Bernardino seven days a week in front of the DIY store in the Interlaken Center.

Posted: Wednesday, October 30, 2013 5:00 am
By KATHY PORTIE Reporter

The Mountain Area Regional Transit Authority has expanded its off-the-mountain service from Big Bear to San Bernardino. Two Sunday trips are being added to the schedule beginning Nov. 10, according to MARTA operations supervisor Sandy Benson.

The addition was made after a survey identified the Sunday service as one of the things desired by the community, Benson said. MARTA surveyed off-the-mountain passengers. The Sunday schedule is the same as Saturday with pickups at 6:30 a.m. and 3:30 p.m. in front of the DIY store in the Interlaken Shopping Center. Now, residents can take MARTA to San Bernardino and back every day of the week with connections in San Bernardino to numerous Omnitrans buses, the Greyhound Station, and Metrolink and Amtrak trains at Santa Fe Station.



NEWS

Buses, rail work together

Print Page

By Charles Roberts

Published: Thursday, October 31, 2013 2:51 PM PDT

Omnitrans, which serves 1.5 million people in its 456-square mile area, will work closely with the proposed Rail to Redlands Project to provide flexibility for mass transit customers from Pomona to Yucaipa/Calimesa.

Omnitrans has four basic services, according to Omnitrans Interim General Manager Scott Graham.

Speaking to the Rail to Redlands Working Group Wednesday, Oct. 30, Graham said the four services are:

- Bus Rapid Transit - Includes the planned SBX high speed route connecting Cal State University with Loma Linda University on a dedicated route down E Street in San Bernardino.
- Express - High speed bus service on freeways
- Community - Smaller buses with flexibility to provide services such as Lifeline service for seniors and the handicapped
- Fixed routes - Regular Omnitrans bus service

Mitch Alderman, director of transit/rail programs for the San Bernardino Associated Governments (SANBAG), updated the group on the proposed rail line connecting downtown San Bernardino to the University of Redlands, primarily along existing railway right of way.

He predicted that the necessary environmental work should be finished next year at a cost of over \$1 million.

Work has already begun on preliminary engineering for the project and should be finished in 18 months to two years.

The final price for the new line is estimated at \$200 million to \$300 million financed through a combination of federal and regional money.

Alderman said SANBAG also is working on a plan to have double rails to Los Angeles to provide better service for "reverse commuters" who live in the Los Angeles/Orange County area but work in the Inland Empire.



Highland Community News photo by Charles Roberts — Mitch Alderman, director of transit/rail programs at the San Bernardino Associated Governments, discusses the Rail to Redlands Project for the Rail To Redlands Working Group Wednesday, Oct. 30.

The next meeting for the Working Group is scheduled for Feb. 27, 2014.

Copyright © 2013 - Highland News

[\[x\] Close Window](#)

Highland Community News

Buses, rail work together

By Charles Roberts

Published: Saturday, November 2, 2013 8:51 AM PDT

Omnitrans, which serves 1.5 million people in its 456-square mile area, will work closely with the proposed Rail to Redlands Project to provide flexibility for mass transit customers from Pomona to Yucaipa/Calimesa.

Omnitrans has four basic services, according to Omnitrans Interim General Manager Scott Graham.

Speaking to the Rail to Redlands Working Group Wednesday, Oct. 30, Graham said the four services are:

- Bus Rapid Transit - Includes the planned SBX high speed route connecting Cal State University with Loma Linda University on a dedicated route down E Street in San Bernardino.
- Express - High speed bus service on freeways
- Community - Smaller buses with flexibility to provide services such as Lifeline service for seniors and the handicapped
- Fixed routes - Regular Omnitrans bus service

Mitch Alderman, director of transit/rail programs for the San Bernardino Associated Governments (SANBAG), updated the group on the proposed rail line connecting downtown San Bernardino to the University of Redlands, primarily along existing railway right of way.

He predicted that the necessary environmental work should be finished next year at a cost of over \$1 million.

Work has already begun on preliminary engineering for the project and should be finished in 18 months to two years.

The final price for the new line is estimated at \$200 million to \$300 million financed through a combination of federal and regional money.

Alderman said SANBAG also is working on a plan to have double rails to Los Angeles to provide better service for "reverse commuters" who live in the Los Angeles/Orange County area but work in the Inland Empire.

The next meeting for the Working Group is scheduled for Feb. 27, 2014.

THE SUN

Rail to Redlands project update shows increased costs

By [Greg Cappis](#), *Redlands Daily Facts*

POSTED: 11/03/13, 9:00 PM PST

As the Rail to Redlands project rumbles along, officials reported delays, rising costs and a bus system integrated with the commuter train line to expand public transportation opportunities in the East Valley.

Originally, the project extending the Metrolink from San Bernardino to three stops in Redlands was expected to cost around \$156 million. At a meeting of stakeholders Wednesday, officials said the extension project is now expected to cost between \$200 and \$300 million.

San Bernardino Associated Governments is leading the project that combines public and private funds.

Bids for the first mile of trackwork and a transit center in downtown San Bernardino have been sent out.

"We want to award (those two) contracts at our December board meeting," said Mitch Alderman, SANBAG transit director.

Final design plans will get underway next spring, before environmental reports are expected to be cleared — in mid-2014, according to Alderman.

He said the recent, partial government shutdown delayed part of the environmental review process, but "we're still anticipating environmental clearance sometime in the middle of next year."

Another mix up in required environmental documents cost \$1 million and a year's time, Alderman said.

Alderman presented the project update inside the San Bernardino County government building to other members of a steering committee formed by Third District Supervisor James Ramos to keep the project on track.

The group also heard a presentation from Omnitrans about new and altered bus lines, planned to coincide with the new train stops.

The easternmost stop is planned for the University of Redlands. Another stop will be located near downtown. The third stop will be near Esri's campus at New York Street and Redlands Boulevard before continuing to San Bernardino.

From there, the Metrolink can transport passengers to Los Angeles' Union Station where riders can hop on other lines or buses.

Omnitrans expects a rapid transit bus to run from Northern San Bernardino to the transit center in downtown San Bernardino before continuing southwest to Loma Linda. They're hoping thousands of employees and students take advantage of the two-prong transportation system.

Officials are working to adjust bus routes so people can take public transportation from their homes to work.

"Making sure to integrate the two systems is really important," said Larry Sharp of Inland Action, a nonprofit driven to improve the economic landscape of the Inland Empire.

For example, in downtown Redlands the current Omnitrans bus stop is a block or two from the proposed site of the train station, according to Alderman, who spoke of moving it closer to the train stop.

"If you're really going to have a viable system it would be best if you left your car at home," Sharp said.

The ad hoc committee is scheduled to reconvene Feb. 27.

The Sun
Monday, November 4, 2013

RAIL TO REDLANDS

Cost of train project is on the rise

By Greg Cappis

gregory.cappis@langnews.com
@TheFactsGreg on Twitter

As the Rail to Redlands project rumbles along, officials reported delays, rising costs and a bus system integrated with the commuter train line to expand public transportation opportunities in the East Valley.

Originally, the project extending the Metrolink from San Bernardino to three stops in Redlands was expected to cost around \$156 million.

At a meeting of stakeholders Wednesday, officials said the extension project is now expected to cost between \$200 million and \$300 million.

San Bernardino Associated Governments is leading the project that combines public and private funds.

Bids for the first mile of track-work and a transit center in downtown San Bernardino have been sent out.

"We want to award (those two) contracts at our December board meeting," said Mitch Alderman, SanBAG transit director.

Final design plans will get underway next spring, before envi-

ronmental reports are expected to be cleared — in mid-2014, according to Alderman.

He said the recent, partial government shutdown delayed part of the environmental review process, but "we're still anticipating environmental clearance sometime in the middle of next year."

Another mixup in required environmental documents cost \$1 million and a year's time, Alderman said.

Alderman presented the project update inside the San Bernardino County Government Center to other members of a steering committee formed by 3rd District Supervisor James Ramos to keep the project on track.

The group also heard a presentation from Omnitrans about new and altered bus lines, planned to coincide with the new train stops.

The easternmost stop is planned for the University of Redlands. Another stop will be located near downtown Redlands. The third stop will be near Esri's campus at New York Street and Redlands Boulevard before continuing to San Bernardino.

From there, the Metrolink can transport passengers to Los An-

geles' Union Station where riders can hop on other lines or buses.

Omnitrans expects a rapid transit bus to run from north San Bernardino to the transit center in downtown San Bernardino before continuing southeast to Loma Linda. They're hoping thousands of employees and students take advantage of the two-prong transportation system.

Officials are working to adjust bus routes so people can take public transportation from their homes to work.

"Making sure to integrate the two systems is really important," said Larry Sharp of Inland Action, a nonprofit driven to improve the economic landscape of the Inland Empire.

For example, in downtown Redlands the current Omnitrans bus stop is a block or two from the proposed site of the train station, according to Alderman, who spoke of moving it closer to the train stop.

"If you're really going to have a viable system it would be best if you left your car at home," Sharp said.

The ad hoc committee is scheduled to reconvene Feb. 27.

OmniGo Ridership Increases

OmniGo Route	Sept. 2013 Ridership	Gain from Sept. 2012
308-Yucaipa	1,762	+44.4%
309-Yucaipa	3,966	+24.4%
310-Yucaipa	1,212	+373.4%
325-Grand Terrace	1,834	+67.9%
365-Chino Hills	5,947	+32.9%
Total	14,721	+43.9%

PHOTO COURTESY OF OMNITRANS

OmniGo route usage has seen an increase in use over recent years in three cities.



PHOTO COURTESY OF OMNITRANS

(Left) High schoolers line up to use OmniGo. For many, it's a convenient way to travel between home and school, as these days many families run into conflicting transportation schedules.

School, even before the campus opened," explained Grand Terrace Mayor Walt Stanckiewicz, an Omnitrans Board member. "This year, student ridership has blossomed. OmniGo also is a great resource for our senior citizens."

Lee Roy Simmons, a resident of Blue Mountain Senior Villas in Grand Terrace, is a familiar face on OmniGo Route 325. "I ride the loop most mornings," he says. "I like the drivers. Most of them know me, and we talk during stop layovers." Lee is a former marine sergeant who fought in Vietnam. "I ride to the VA hospital in Loma Linda all the time for treatments."

With three shuttle routes (308, 309 and 310) operating in the city, Yucaipa generates the most OmniGo ridership. Route 310 boardings nearly quadrupled in September versus the same month in 2012.

OmniGo fares are the same as on regular Omnitrans buses: \$1.50 for a one-way trip or \$4 for a one-day pass. Regular riders can save with 7- and 31-day passes. Discounts are available for youth age 18 and under, persons with disabilities, and seniors age 62 and up.

OmniGo hometown shuttle routes serving Chino Hills, Grand Terrace and Yucaipa are more crowded these days, with September ridership up 44 percent compared to the prior year, mostly attributed to more middle school and high school students climbing aboard.

"We made a concentrated effort to reach out to potential student riders at the beginning of the school year," explained Omnitrans Director of Marketing Wendy Williams, "and it paid off. August ridership was up nearly 10 percent ahead of last year, but things really took off in September."

OmniGo routes travel to major destinations in each community, connecting residents to schools, civic centers, senior centers, medical facilities and shopping destinations. OmniGo utilizes 16-passenger buses that can more easily maneuver residential streets than typical transit buses. Each OmniGo route meets up with traditional Omnitrans bus routes at transfer hubs to reach destinations throughout the Inland Empire.

Conflicting family work schedules and limited transportation is a challenge for many families these days, especially with getting teens to school. "I just started taking OmniGo as a freshman last year," said Jessica, a student at Chino Hills High School. "Most of my friends ride too. Both of my parents work, so it's the only way I can get here."

Her friend Yahaira agreed.

"It gets really full sometimes but, aside from that, it's not bad. It's a short bus, so it's kind of fun. My mom works at a store in Chino and has to drive to work early in the morning, and there's no one else to give me a ride. Since the school is two or three miles from my house, I just take the bus."

"It's great that students are taking advantage of OmniGo's convenient connections at our schools," said Chino Hills Vice Mayor and Omnitrans Board member Ed Graham. "Fewer cars on the road benefit all of us."

In Grand Terrace, OmniGo attracted more than two-thirds as many riders this year. "Route 325 was designed to serve Grand Terrace High

BACHELOR AUCTION

COME JOIN US AT
380 ULTRA LOUNGE AT CASINO MORONGO ON
FRIDAY—NOVEMBER 15TH
FOR UNFORGETTABLE VIEWS OF THE INLAND VALLEY
AND THE MEN WHO LIVE THERE!

ALL PROCEEDS HELP BENEFIT

FOR MORE INFO: UNFORGETTABLES.ORG



Sun
Tuesday, November 12, 2013

THE SUN

Couple's adventures riding Omnitrans buses are filled with kindness



(Courtesy photo) Herman and Patricia Aldridge of San Bernardino began riding Omnitrans buses after he had to use a wheelchair. They began filling out commendations for drivers who have shown them acts of kindness.

By [Doug Saunders](#), *The Sun*

POSTED: 11/08/13, 6:26 PM PST | UPDATED: 3 DAYS AGO

SAN BERNARDINO - After severe diabetes confined him to a wheelchair, Herman Aldridge, with some persuading from his wife Patricia, began taking Omnitrans buses everywhere he needed to go.

But the couple said they soon realized that many people complained about the public bus service for the San Bernardino Valley.

That wasn't their experience, though.

It was just the opposite, and they wanted to tell the world about it. But the San Bernardino couple's story begins several years ago.

"One day my feet were extremely cold and I put a heating pad on them to try and warm them up," Herman said in a phone interview. "I ended up with ulcers on my feet and was bedridden for some time before I got my wheelchair."

Depression kicked in. For more than three years, Herman was afraid to leave his home.

Eventually, he left the security of his home with some prodding from his wife of 40 years, making the decision to go out in public.

That was four years ago. And since then, the public bus system has become vital.

"We decided to take the bus and the first bus driver was so kind to us we wanted to repay that with an act of kindness of our own," Patricia said. "So we decided to file a compliment letter telling his bosses how kind he was to us."

Frank Uribe, the couple's first bus driver, made them feel comfortable with his own kindness, and became the catalyst that prompted the couple to commend his actions to his superiors.

Since then the Aldridges have filed more than 105 commendations for drivers whose kindness and professionalism have affected the lives of one of their riders.

"People need to remember that for some drivers at Omnitrans this isn't just a job. It's a life," Patricia said. "Drivers get to know their regular riders, they have conversations during stops and breaks, they become intertwined in their lives before they end their shift and go home. It's a way of life."

Not every experience riding the bus has been great, according to the couple, but most have been pleasant and heartwarming.

"There have been times when a bus just kept going by without stopping, and I felt it was probably because of my chair," Herman said. "But that only happened a couple of times. Most drivers stop for us and are very kind and accommodating."

Herman, a retired carpet layer, had never ridden a bus until he became ill and couldn't drive anymore.

"When riders get on a bus, people need to take into consideration that drivers are people too," he said. "They have feelings, emotions and have the human nature to want to help people, and for that we're thankful."



ABOUT THE AUTHOR

Doug Saunders covers breaking news and public safety for The Sun. Reach the author at Doug.Saunders@inlandnewspapers.com or follow Doug on Twitter: [@crimeshutterbug](https://twitter.com/crimeshutterbug).

ITEM # F1

DATE: December 4, 2013

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

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

SUBJECT: CEO/GENERAL MANAGER'S REPORT

At the request of the Fontana Police Chief, the Director of Marketing and I met to discuss the City's successful re-entry program, FRST (Fontana Re-Entry Support Team) and possible partnership opportunities.

Mr. Daniel White is the new Quality Assurance Manager for the sbX Project, and we continue to recruit for a new Program Manager for the project.

MONTHLY STATISTICS

Ridership for October 2013 was 1,497,716 compared to 1,599,787 in October 2012. This is a 6.4 percent decrease from October of last year. Note: October 2012 was a record breaking month and even though ridership is down from 2012, October 2013 was our third best ridership month since 2003.

Year-to-date ridership through October 2013 was 5,424,618, which is a decrease of 3.6 percent from last year-to-date. Fixed route ridership decreased by 204,822 passengers year-to-date. Ridership on Access increased by 2,630 passengers, and OmniLink decreased by 163 passengers. OmniGo ridership was 55,230 year-to-date, which is up 17.6 percent.

Year-to-date pass outlet sales through October 2013 decreased by 23,980 units with 17,314 sold compared to 41,294 last year. This represents a decrease of 58.1 percent. Revenue from bus pass and ticket sales, combined with the Go Smart college program revenue, decreased 4.9 percent through October (\$1,772,139.19 vs. \$1,862,698.85 last year, a decrease of \$90,559.66).

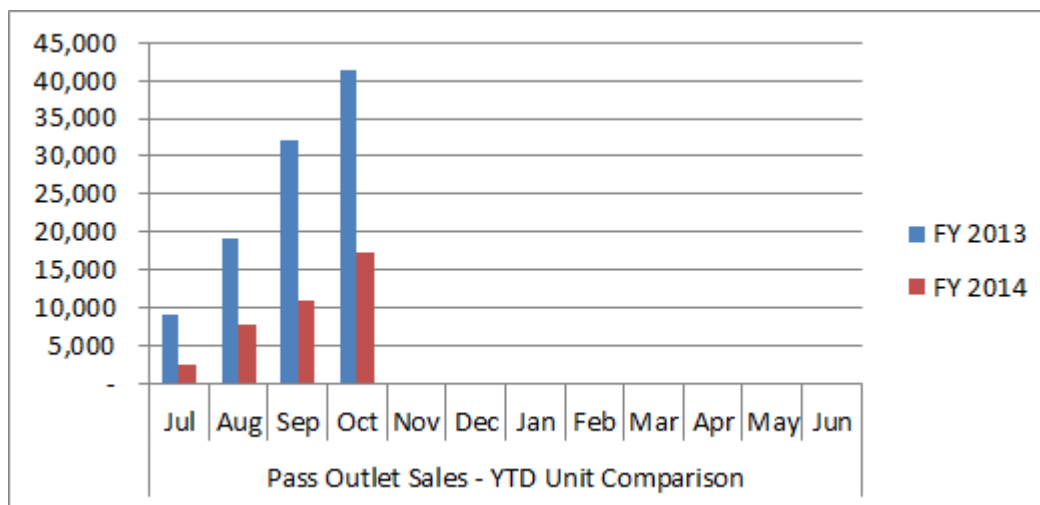
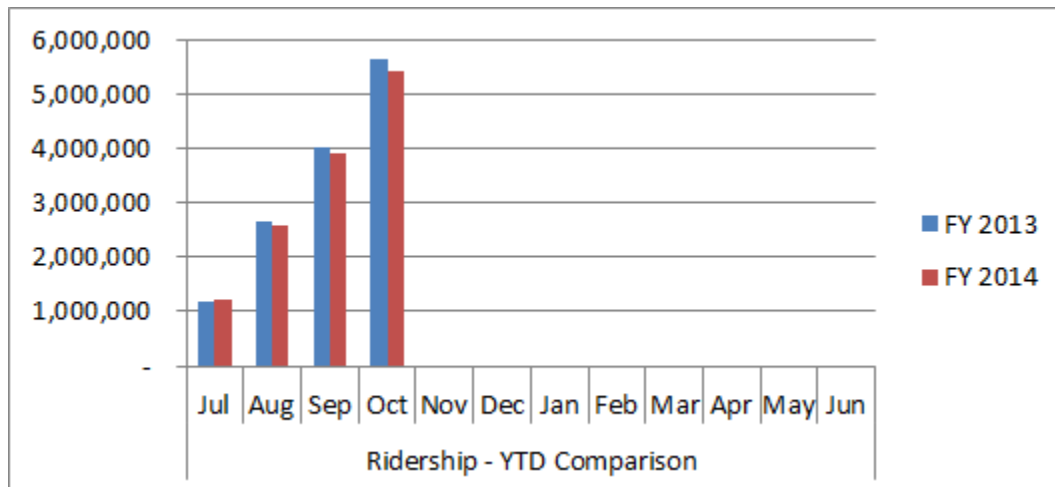
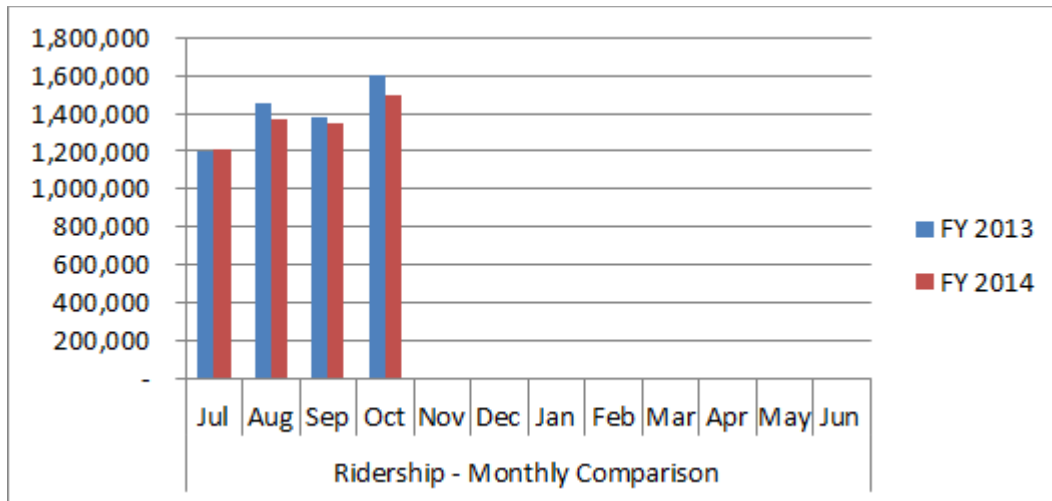
Year-to-date fixed route revenue through October 2013 was \$4,451,011 compared to \$4,405,188 last year, which is an increase of 1.04 percent.

On-time performance for October 2013 was 85.36 percent.

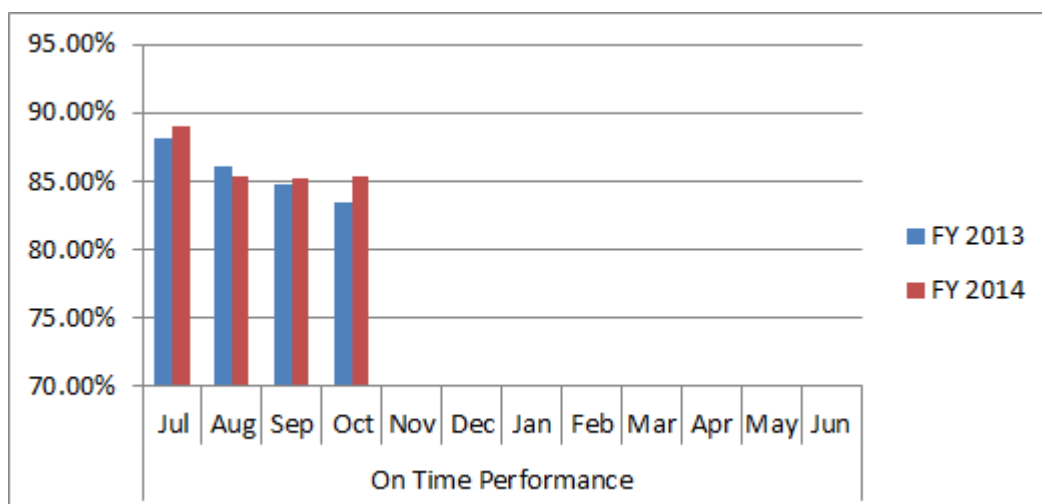
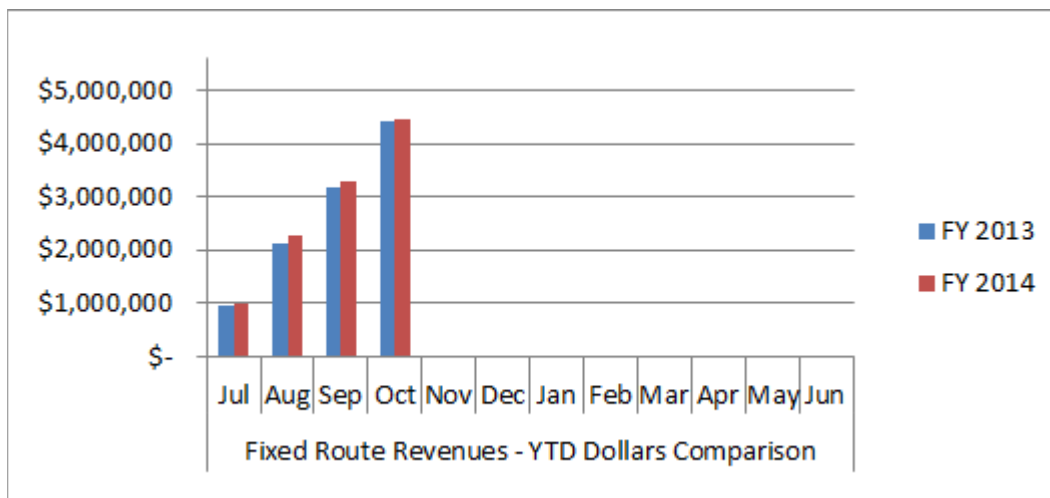
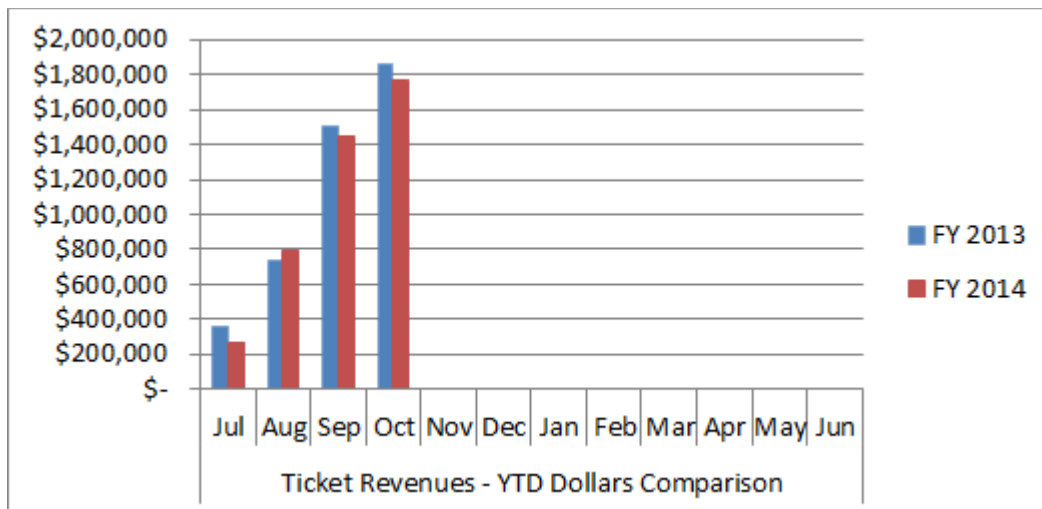
Outreach events in October included: CIM Employee Benefits Fair (Chino), Gibson Senior Wellness Fair (Upland), CTA Fall Conference, Highland Senior Center Fair, Disability Awareness Fair (Rancho Cucamonga), Travel Training Bus Presentation (Upland), and Transit Appreciation Day Transit Center Visits (Montclair and Rancho Cucamonga).

PSG:VD

CEO/General Manager Report - October 2014



CEO/General Manager Report - October 2014



ITEM # F2

DATE: December 4, 2013

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

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

**SUBJECT: OPERATIONS AND SAFETY BOARD COMMITTEE
PROPOSED CHARTER**

FORM MOTION

Approve the Proposed Charter for a new Board Operations and Safety Committee and appoint Board Members to Committee.

This item was reviewed by the Executive Committee at its November 1, 2013, meeting and recommended to the Board of Directors for approval.

BACKGROUND

At the October 2013 Board of Directors' meeting, the Board Chair announced that a new standing Board Committee, an Operations and Safety Committee, would be established at Omnitrans, with Vice Chair Sam Spagnolo appointed as Chair of the Committee.

A proposed charter was developed and reviewed by the Executive Committee, with a recommendation to move the matter forward to the Board of Directors for approval.

Once the Charter is approved, the Board Chair will appoint members based on expressed interest by Board Members. As of this writing, five members have expressed interest in serving on this new Committee: Supervisor Josie Gonzales, Supervisor James Ramos, Mayor Ray Musser, Mayor Pro Tem John Roberts, and Council Member Ed Palmer.

CONCLUSION

Establishment of an Operations and Safety Board Committee will provide policy oversight in areas of the Agency that are not already addressed by existing standing Board committees.

PSG:VD

AGENCY LOGO
OPERATIONS AND SAFETY BOARD COMMITTEE CHARTER
ADOPTED _____

SECTION 1 ESTABLISHMENT OF COMMITTEE

Committee is established by action of the Board of Directors.

SECTION 2 AUTHORITY OF COMMITTEE

Committee is established as an advisory unit and shall not act for or on behalf of the Board of Directors. Committee shall review and make recommendations to the full Board of Directors, which has the legal responsibility for making decisions and policies of the Agency.

SECTION 3 COMPOSITION AND BOARD STIPEND

Board Chair shall appoint the Committee Chair and its Members, up to a maximum of ten members. Committee Members shall be paid \$125 per committee meeting attended, up to a maximum of four meetings per month, including Board Meetings and other standing committee meeting attendance, as per the Board-adopted policy.

SECTION 4 QUORUM

A majority of the Committee shall constitute a quorum for the purpose of transacting business of the Committee. Matters heard by the Committee that require action by the Board of Directors may be recommended to the Board by the vote of a majority of the committee members present at a committee meeting. The Committee may, if not able to recommend approval of a matter, direct that the item be forwarded to the Board of Directors for action without a recommendation by the Committee. Any Board Member may attend and participate in Committee meeting; however only Committee Members in attendance count toward a quorum and can vote on Committee agenda items.

SECTION 5 MEETING SCHEDULE

The meeting schedule shall be recommended by the Agency and adopted by the Committee. If a regular meeting schedule is not adopted and Omnitrans determines a meeting of the Committee is necessary, with approval of the Committee Chair, Omnitrans shall poll Committee Members to select meeting date and time and

determine whether a quorum is achievable. A meeting will not be scheduled unless a quorum has been determined.

SECTION 6 OPEN MEETINGS

All Committee meetings are subject to the Ralph M. Brown Act and are open to the public, except the Committee may hold Closed Sessions for purposes authorized by State law.

SECTION 7 AGENDA REQUIREMENT

An agenda shall be prepared for each meeting and contain a brief general description of each item of business to be discussed. Items may be deleted from, but not added to, an agenda prior to a regular meeting, unless the addition is made prior to the 72 hour posting deadline for the agenda. No item shall be discussed during a meeting unless the subject is part of the posted agenda.

SECTION 8 AGENDA POSTING AND DISTRIBUTION

Agenda shall be posted 72 hours in advance of the meeting time at Omnitrans and on the Omnitrans website. The agenda packet shall also be mailed and/or emailed to the Committee members at least 72 hours prior to the set meeting time.

SECTION 9 MINUTES

All Committee meetings shall be recorded. Minutes shall be transcribed, distributed and approved at the next Committee meeting.

SECTION 10 COMMITTEE'S RESPONSIBILITIES

The Committee shall:

Provide policy oversight of the Agency's safety, security and emergency management programs to assure that facilities, equipment and operations are safe and secure for passengers, employees and the public.

Review and discuss Agency operational issues, processes and programs.

Monitor transportation performance indicators for fixed route and contracted service delivery.

ITEM # F3

DATE: December 4, 2013

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

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

FROM: Jennifer M. Sims, Director of Procurement

SUBJECT: **RATIFY AWARD – PURCHASE ORDER ITS14-113
TAPE BACKUP LIBRARY SYSTEM**

FORM MOTION

Ratify the action of the Interim CEO/General Manager's approval of the issuance of a Purchase Order to Dell Inc., of Round Rock, TX, to purchase a tape backup library system in the amount of \$33,121.74, including sales tax.

BACKGROUND

The Interim CEO/General Manager contacted the Board Chair for support of an emergency purchase of a tape backup library system. The Board Chair supported moving forward with the immediate replacement of the obsolete and failing system with presentation to the Board for ratification.

The backup system creates copies of the Agency's entire database system (including SAP, Trapeze, Kronos, etc.) and of all the share-drives. The backup tapes are used to restore files from SAP, Trapeze, Kronos, etc., should any system fail. If the backup system failed, Omnitrans would have to restore or recover files from the share-drive folders or application servers. Replacing the tape backup library system was critical to prevent major impacts attributed to loss data.

On October 23, 2013, staff released Request for Quotes (RFQ) RFQ-ITS14-113 for Tape Backup Library System. The RFQ was posted on Omnitrans' online bidding system, and was distributed to nineteen potential bidders. Three bids were received electronically by the deadline date of November 1, 2013, and all of the bids were found to be responsive and responsible.

Company	Price*
Dell, Inc.	\$33,121.74
Disk-O-Tape, Inc.	\$35,910.05
CB Technologies, Inc.	\$38,490.63

**Bid pricing includes tax and delivery*

Award recommendation is being made to the lowest responsive and responsible bidder. The Independent Cost Estimate of \$31,000 was based on previous purchases. Since Dell, Inc., submitted the lowest responsible and responsible quote, staff recommended them to the Interim CEO/General Manager for award.

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

FUNDING SOURCE

The funding for this purchase is budgeted in the Information Technology Department's Capital budget as follows:

FUNDING	GRANT	YEAR	PROJECT NAME	INTERNAL ORDER	AMOUNT
FTA	CA-90-2009	2014	ITS SOLUTIONS	D1322002F	\$26,497.39
STA	13-04-OMN-B	2014	ITS SOLUTIONS	D1322002B	\$ 6,624.34
					\$33,121.73

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

CONCLUSION

The ratification of purchase order 4500016432 for the purchase of a tape backup system ensured full system backups of all servers and share drives.

PSG:JMS:kt

ITEM # F4

DATE: December 4, 2013

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

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

FROM: Anna Rahtz, Acting Director of Planning and Development Services

**SUBJECT: SAN BERNARDINO TRANSIT CENTER - FUNDING AGREEMENT
WITH SANBAG**

FORM MOTION

Authorize the Interim CEO/General Manager to execute the attached Funding Subgrantee Agreement for the San Bernardino Transit Center Bus Facility with the San Bernardino Associated Governments (SANBAG) subject to any subsequent minor contract language changes approved by the Interim CEO/General Manager and Omnitrans' legal counsel and to act as Omnitrans' authorized representative for the term of this agreement.

Omnitrans' legal counsel has reviewed and approved the agreement. This item was discussed by the Administrative & Finance Committee on May 15, 2013 and forwarded to the Board of Directors with no recommendation.

BACKGROUND

The San Bernardino Transit Center (SBTC) will consist of an Omnitrans-owned and operated bus facility (the "Omnitrans Facility"); a separate rail station, which will contain platforms serving both the Downtown San Bernardino Passenger Rail Project and the Redlands Passenger Rail Project ("Rail Station") to be owned and operated by SANBAG and/or other agencies; and a joint use parking lot facility, together with certain other off-site improvements.

On October 5, 2011, the Omnitrans Board of Directors approved the San Bernardino Transit Center Planning, Design, Construction, Operating, and Maintenance Agreement with the San Bernardino Associated Governments (SANBAG), the City of San Bernardino, and the San Bernardino Economic Development Corporation (EDC). Under this agreement, Omnitrans passed through \$6.9 million of federal and local funds to SANBAG, and SANBAG took the lead on design and construction of the Omnitrans Facility, consisting of 22 bus bays, a transit building, and on-site and off-site improvements.

Since the above-named Agreement was executed, Omnitrans was awarded an additional \$8.3 million of FTA 5309 Bus and Bus Facilities grant funding for the Omnitrans Facility. Also since

the above-named Agreement was executed, the City has filed for bankruptcy and the EDC has been ordered divested of many of its assets and funds by the California Department of Finance. Accordingly, both agencies have renounced and/or failed to perform their respective obligations under the Agreement.

In the interest of not delaying the project, SANBAG and Omnitrans decided to contribute additional funding to make up for the losses caused by those defaults and to move forward with the project. However, the 2011 Agreement is still legally valid, and SANBAG and Omnitrans are still held to fulfilling the covenants and responsibilities outlined therein, as referenced in the new agreement.

The project is currently fully funded at \$23,517,283. SANBAG is contributing an amount not to exceed \$3,747,593, and Omnitrans is contributing an amount not to exceed \$19,769,690.

The project design is at 100% completion and bid documents are being prepared. Project completion is anticipated by late 2015. Prior to beginning operation of the completed SBTC, Omnitrans and SANBAG will enter into a separate agreement for operations, maintenance, and management of the SBTC, including but not limited to security, on-site maintenance, utilities, and other matters of joint concern.

FUNDING SOURCES

Omnitrans will be passing the following funding sources through to SANBAG for completion of design and construction of the Omnitrans Facility at the SBTC. The costs associated with this project are budgeted from capital funds and will have no impact on Omnitrans' ability to operate.

FUNDING	GRANT	YEAR	PROJECT NAME	INTERNAL ORDER	AMOUNT
FTA & LTF	Various	Various	SB Transit Center (Previous Agreement)	Various	\$6,943,261
FTA 5309	CA-04-0229	2012	SB Transit Center	TBD	\$8,300,000
LTF	Various	Various	SB Transit Center	Various	\$966,197
STAF	Various	Various	SB Transit Center	Various	\$153,896
Prop 1B*	TBD	TBD	SB Transit Center	TBD	\$3,406,336
			Total		\$19,769,690

*Public Transportation Modernization, Improvement, and Service Enhancement Account (PTMISEA)

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

CONCLUSION

Staff recommends that the Board authorize the Interim CEO/General Manager to execute the attached Planning, Design, and Construction Agreement with the San Bernardino Associated Governments (SANBAG) and to act as Omnitrans' authorized representative for the term of this agreement. The Agreement is needed in order for SANBAG to sign a construction contract by December 2013 in compliance with the terms of the grant funds.

PSG:AR

Attachment

SANBAG Contract No. R 14070

SAN BERNARDINO TRANSIT CENTER (SBTC)
FEDERAL FUNDING SUBGRANTEE AGREEMENT

BY AND AMONG

SAN BERNARDINO ASSOCIATED GOVERNMENTS
Acting in its capacity as the San Bernardino County Transportation Commission
1170 West 3rd Street, 2nd Floor
San Bernardino, California 92410-1715
DUNS 78-299-1368
CFDA 20.507

and

OMNITRANS
1700 West 5th Street
San Bernardino, California 92411

SAN BERNARDINO TRANSIT CENTER (SBTC)
FEDERAL FUNDING SUBGRANTEE AGREEMENT

This AGREEMENT, entered into as of _____, 2013, is by and between the San Bernardino Associated Governments (“SANBAG”), acting in its capacity as the San Bernardino County Transportation Commission, and Omnitrans, a Joint Powers Authority established pursuant to Chapter 5 (commencing with Section 6500) of Division 7 of Title 1 of the Government Code (“Omnitrans”), collectively referred to herein as the “Parties,” with reference to the following facts:

RECITALS

WHEREAS, the Parties are also among the parties to Contract C12117, “San Bernardino Transit Center (SBTC) Planning, Design, Construction, Operating and Maintenance Agreement” by and among the Parties, the City of San Bernardino (“City”) and the San Bernardino Economic Development Corporation (“EDC”) a true and correct copy of which is attached hereto as Exhibit A and hereby incorporated into this agreement by reference; and

WHEREAS, since Contract C12117 was executed, the City has filed for bankruptcy; the EDC has been ordered divested of many of its assets and funds by the California Department of Finance; and both have renounced and/or failed to perform their respective obligations under said Contract C12117, and the default of the City and EDC has put at risk the timing, cost and funding for the SBTC Project; and

WHEREAS, delaying design or construction of the SBTC Project while pursuing legal or equitable remedies for the City’s and EDC’s defaults under Contract C12117 would not be in the public interest, would jeopardize federal funding for this much needed public transportation project and would cause harm to the Parties’ own interests and public missions; and

WHEREAS, in order to mitigate damages caused by the defaults of the City and the EDC, and to move forward with the SBTC to meet the transportation needs of the public, the Parties have mutually agreed to move forward with design, right of way and construction of the SBTC, despite the defaults of the City and the EDC; to reserve any rights either or both Parties may have with respect to the City and/or EDC under Contract C12117; and to cooperate and mutually participate in the planning, design, and construction, of the SBTC; and

WHEREAS, the SBTC, generally located at the southwest quadrant of Rialto Avenue and “E” Street in the City of San Bernardino as shown on Exhibit B1 and B2, will be a transit hub for SANBAG passenger rail service between Redlands and San Bernardino, which will be established in the future through the Redlands Passenger Rail Project; for Metrolink passenger rail service between San Bernardino and Los Angeles and Orange Counties, which will be extended from the Santa Fe Depot to Downtown San Bernardino by the Downtown San Bernardino Passenger Rail Project; and for Omnitrans bus service within the San Bernardino Valley; and will also involve the construction of a surface parking lot; and other certain off-site improvements; and

WHEREAS, the SBTC, when fully completed, will consist of an Omnitrans-owned and operated bus facility as contemplated in Section 2.5 of Contract C12117 (the “Omnitrans Facility”); a separate rail station which will contain platforms serving both the Downtown San Bernardino Passenger Rail Project and the Redlands Passenger Rail Project (“Rail Station”) to be owned and operated by SANBAG and/or other agencies; and a joint use parking lot facility, together with certain other off-site improvements; and

WHEREAS, at the time of the execution of Contract C12117, funding sources had not been identified for full cost of the Omnitrans Facility, and since that time the SANBAG and Omnitrans have cooperatively worked to identify full funding for the project; and

WHEREAS, the Parties desire to specify herein the terms and conditions under which the Omnitrans Facility will be funded, undertaken, implemented, and constructed to its completion under the conditions created by the City’s and the EDC’s defaults, without modifying, excusing, releasing, waiving or otherwise affecting the obligations of the City and/or the EDC or the remedies available to the Parties under Contract C12117; and

WHEREAS, Omnitrans is the direct recipient, or grantee, of funds from the Federal Transit Administration; and SANBAG, as a subgrantee, or subrecipient, will use the funds for the planning, design, and construction of the Omnitrans Facility.

WHEREAS, this Agreement outlines the roles and responsibilities of SANBAG and Omnitrans related to the pass-through of federal and local funding from Omnitrans to SANBAG.

WHEREAS, the Parties recognize the potential need for an additional operations and management agreement (“O&M” agreement), in addition to this Agreement, to cover, but not be limited to, security, on-site maintenance, utilities, and other matters of joint concern regarding the joint use and/or co-location of the Omnitrans Facility, the Rail Station, and the parking lot. The O&M agreement is to be entered into by and between the Parties and/or others prior to beginning operation of the completed SBTC.

NOW, THEREFORE, SANBAG, and Omnitrans do hereby mutually agree as follows:

ARTICLE I GENERAL INFORMATION

Section 1.1 The Parties agree that the above referenced Recitals are true and correct in all respects and shall constitute a substantive part of this Agreement and are incorporated herein by this reference.

Section 1.2 To the extent feasible, and except as specifically modified herein, the obligations of the Parties contained in Contract C12117 shall remain in full force and effect and shall be implemented in accordance with Contract C12117 and this agreement. Nothing in this Agreement shall be construed to waive, release, rescind, modify, excuse performance or otherwise affect the obligations of the City and/or the EDC under Contract C12117.

Section 1.3 To the extent feasible without causing further delay to the SBTC; for the benefit and convenience of the Omnitrans Facility project and the Parties hereto; and in the best interests of the public due to the jurisdiction of the City in the permitting process and the location and property title issues involving the EDC and without affecting any rights or remedies related to the City or EDC default under Contract C12117, the Parties shall continue to include representatives of the City on the Project Development Team (PDT) as originally contemplated in Contract C12117 and shall consult with the EDC as needed for the benefit of the project.

Section 1.4 The total cost for the Omnitrans Facility, including planning, design, right-of-way and construction, is estimated at \$23,517,283.

ARTICLE II SANBAG COVENANTS AND RESPONSIBILITIES

Section 2.1 SANBAG shall continue to perform its Covenants and Responsibilities set forth in Article II of Contract C12117 and all other obligations and covenants it has to Omnitrans under Contract C12117, the terms of which are incorporated herein by reference, in addition to the obligations and covenants outlined in this Agreement.

Section 2.2 To permit the Omnitrans Facility Project to move forward despite the loss of funds and increased costs due to the defaults of the City and EDC, SANBAG shall provide, to the extent such funds are and remain available to SANBAG and budgeted for the Omnitrans Facility by SANBAG's Board of Directors, an amount not to exceed \$3,747,593 from the funding sources shown in the table below:

Fund Source	Grant Number	Amount
SANBAG FHWA Transportation Enhancement Funds	CA-90-Z121	\$ 992,000
SANBAG Local Transportation Funds		\$ 320,000
SANBAG State Proposition 1B Security		\$ 500,000
SANBAG State Transit Assistance Funds-Population		\$ 1,935,593
Total		\$ 3,747,593

Section 2.3 SANBAG shall provide to Omnitrans all information that is reasonably needed for the §5307 grant application submission referenced in Section 3.3 for the FHWA TE funds. To the best of SANBAG's knowledge, the submittal of the FTA §5307 application by Omnitrans on behalf of SANBAG will not constitute any violation of applicable law.

Section 2.4 Work that will be reimbursed under the terms of this Agreement may not be invoiced until the grant application is approved and funding is made available to Omnitrans by the FTA.

Section 2.5 SANBAG shall be responsible for all duties relative to the construction phase of the Omnitrans Facility including, but not limited to, complying with all FTA requirements and other requirements for bidding and contract administration, with all due diligence and in a skillful and competent manner. SANBAG and/or its contractors shall obtain all licenses, permits, qualifications and approvals of whatever nature that are legally required to perform the work required to complete the Omnitrans Facility. SANBAG and/or its contractors shall keep in effect all such licenses, permits, and other approvals during the term of this Agreement.

Section 2.6 SANBAG shall notify Omnitrans of any changes in the scope or description of the Omnitrans Facility, and shall obtain Omnitrans' prior approval of any material changes that impact the cost to construct or future operation of the Omnitrans Facility.

Section 2.7 SANBAG shall comply with all requirements of the FTA 2013 Master Agreement, found at <http://ftateamweb.fta.dot.gov/static/Agreements/2012-19-MASTER.pdf> ("FTA Master Agreement"). All FTA requirements and guidelines as summarized in the FTA Master Agreement are incorporated herein by reference. Such compliance shall include, but is not limited to, submitting to Omnitrans on a quarterly basis all reports that document the status of the Omnitrans Facility's implementation progress, including task completion status, budget status, and adherence to project schedule. SANBAG shall be responsible for complying with and flowing down all applicable FTA legal requirements and standard clauses in its contracts to be funded under this Agreement to the lowest tier required under the FTA requirements, including those requirements set forth in Exhibit "C" attached hereto and incorporated herein by reference. Exhibit "C" is not meant to be an exhaustive list of federal clauses that apply to this Agreement.

Section 2.8 SANBAG's contracts to be funded under this Agreement shall include a clause allowing SANBAG to terminate such contract for convenience, including for failure to receive sufficient federal funds to complete the work under such contract.

Section 2.9 SANBAG shall require its construction contractor to provide sufficient insurance for the work contemplated under the contract, and shall require that its contractor include Omnitrans as an additional insured and an indemnified party under such contract, with protection provided to Omnitrans to the same extent provided to SANBAG.

Section 2.10 SANBAG and its contractor(s) will provide Omnitrans the required signed Self-Certification Form by July 31 of each year, in accordance with FTA audit requirements.

Section 2.11 SANBAG will provide Omnitrans a copy of its annual single audit for each fiscal year, in accordance with FTA audit requirements.

Section 2.12 SANBAG shall provide all information needed for quarterly reporting and milestone updates on a timely basis to Omnitrans to prepare and submit to the FTA all required

or requested reports and updates, but in no event to be received later than fifteen (15) days prior to the required date of submission to the FTA of such report or update.

Section 2.13 SANBAG shall maintain all books, papers, records, and accounting records including but not limited to all direct and indirect costs allocated to the Omnitrans Facility, cost proposals with backup data, and all other material relating to the Omnitrans Facility. SANBAG shall, upon request, make all such materials available to Omnitrans or its designee at any reasonable time during the term of the Agreement and for three (3) years from the date of final payment by SANBAG, for the expenses and costs for auditing, inspection, and copying. Any contract entered into as a result of this Agreement, shall contain all of the provisions of this paragraph.

Section 2.14 All actions contemplated of SANBAG by this Agreement shall be taken in compliance with the terms of the grants which are being sought and with all applicable law.

Section 2.15 In the event of any failure of SANBAG to comply with federal contracting and procurement requirements on the part of SANBAG, SANBAG shall be solely responsible for any penalties, reimbursement of funds, costs of investigation and remedy of such failure.

Section 2.16 If it is determined pursuant to an FTA audit that any funds provided by Omnitrans pursuant to this Agreement have been improperly expended by SANBAG, SANBAG shall, at the direction of Omnitrans, reimburse, within thirty (30) days, the full amount of such improperly expended funds to FTA or Omnitrans, as directed by Omnitrans.

ARTICLE III OMNITRANS RESPONSIBILITIES AND COVENANTS

Section 3.1 Omnitrans shall continue to perform the OMNITRANS Responsibilities and Covenants set forth in Article V of Contract C12117, and all other obligations and covenants it has to SANBAG under Contract C12117, the terms of which are incorporated herein by reference, in addition to the obligations and covenants outlined in this Agreement.

Section 3.2 Omnitrans shall provide to SANBAG an amount not to exceed \$19,769,690 from the funding sources shown in the table below, to the extent that such funds are and remain available to Omnitrans and are budgeted to the Omnitrans Facility by Omnitrans' Board of Directors:

Fund Source	Fiscal Year	Grant Number	Amount
Contract C12117			\$ 6,943,261
Omnitrans Federal Transit Administration 5309	2011	CA-04-0229	\$ 3,000,000
Omnitrans Federal Transit Administration 5309	2012	CA-04-0229	\$ 5,300,000
Omnitrans Local Transportation Fund			\$ 966,197

Omnitrans State Transit Assistance Funds-Population			\$ 153,896
Omnitrans State Proposition 1B PTMISEA*			\$ 3,406,336
Total			\$ 19,769,690

* Public Transportation Modernization, Improvement, and Service Enhancement Account (PTMISEA)

Section 3.3 Omnitrans, as the FTA grantee, will submit a Fiscal Year 2014 §5307 grant application to the FTA for the \$992,000 of FHWA Transportation Enhancement (TE) funding referenced in Section 2.2. Upon approval from the Federal Highway Administration (FHWA) and Federal Transit Administration (FTA), this funding will be “flexed” from FHWA to FTA. Omnitrans, as the FTA grantee, will pass the \$992,000 of TE funds through to SANBAG along with Omnitrans’ other funding sources listed in Section 3.2.

Section 3.4 Omnitrans will sign the grant documents resulting from the foregoing grant application submittal, upon the receipt of such assurances from SANBAG as Omnitrans may reasonably require.

Section 3.5 Omnitrans shall participate in construction update meetings to be held on a weekly basis, or as needed, to coordinate construction activities and enhance mutual cooperation related to the Omnitrans Facility Project.

Section 3.6 Omnitrans will reimburse SANBAG for the Omnitrans Facility, provided the grant funds listed in Section 3.2 are available to Omnitrans, and in conformity with the following procedure:

- a. SANBAG shall submit a Disbursement Request to Omnitrans, which shall consist of a written invoice specifying the amount requested to be disbursed, an explanation of the purpose of the disbursement, and such additional supporting documentation and background information as Omnitrans may reasonably require (“Disbursement Request”), including the following:
 1. The total amount incurred, the amount from federal funds, and the amount from local funds;
 2. A detailed breakdown of work tasks completed; and
 3. A detailed breakdown of labor, material, direct, and indirect costs, including backup information such as time sheets, copies of checks, and copies of receipts, as necessary to satisfy FTA audit requirements.
- b. Each Disbursement Request shall be accompanied by a written certification by SANBAG’s Director of Transit and Rail that such Disbursement will not constitute any

violation of the terms of the grant, or of Applicable Law, and that SANBAG will use the Disbursement for the purpose indicated in the Disbursement Request.

c. Within five (5) business days of the receipt of a Disbursement Request and accompanying certification, Omnitrans shall notify SANBAG as to any additional supporting documentation and background information it requires.

d. If the Disbursement Request is submitted before the 15th day of each month, Omnitrans, not later than the fifth business day of the following month, shall: (i) disburse (including through electronic transfer of funds, if so requested, and if SANBAG provides the necessary information prior to the date of payment) all or that portion of the requested funds which it reasonably believes it can disburse without violating the terms of either the grant or of Applicable Law; and (ii) if applicable, notify SANBAG why it reasonably believes that it is unable to disburse all of the requested funds without violating the terms of either the grant or of Applicable Law.

e. Omnitrans may withhold disbursement of funds in the event that Omnitrans has a good faith and reasonable belief that such disbursement of funds would constitute a violation of the terms of the grant or of Applicable Law until such time as it is reasonably determined that such disbursement would not violate the terms of the grant or Applicable Law. Omnitrans, upon receipt of a determination by the FTA or other applicable agency, or of a legal opinion from an attorney acceptable to both Parties upon which Omnitrans can reasonably rely advising that the disbursement will not violate the terms of the grant or Applicable Law, will release the requested funds within five (5) days.

f. Omnitrans shall prepare and submit to the FTA on a timely basis all required periodic reports and milestone updates, so long as it timely receives all necessary information from SANBAG.

g. Omnitrans shall conduct itself so that any aspect of Omnitrans' participation in this Agreement and the actions required of it hereunder, will be in compliance with the terms of the grant which is being sought and with all Applicable Law.

h. Omnitrans shall comply with all requirements of the FTA Master Agreement, including submission to the FTA on a quarterly basis, of reports that document the status of the SBTC's implementation progress, including task completion status and budget status.

ARTICLE IV MUTUAL OBLIGATIONS

Section 4.1 Both Parties agree to cooperate in negotiating in good faith an operations and maintenance agreement (O&M agreement) for the SBTC that properly reflects each Party's role, responsibility and beneficial interest in the SBTC as a whole and its ongoing operations, maintenance, safety and security needs.

Section 4.2 The Parties acknowledge that due to a number of reasons beyond the Parties' control, including but not limited to, the defaults of the City and EDC, delays in funding availability, and normal delays in processing, permitting, right-of-way acquisition and governmental decision making, the Omnitrans Facility Project will not be completed before November of 2013 as originally estimated and agree to cooperate to achieve completion as soon as is reasonably feasible. SANBAG shall not be held responsible or liable to Omnitrans for delays from the original estimated completion date. The Parties will work cooperatively to establish, monitor and from time to time revise an updated project schedule and shall expend their best efforts to complete the Omnitrans Facility Project at the earliest reasonable time.

Section 4.3 In the event that any funds are recovered by either Party from the City and/or EDC with respect to their defaults or obligations under Contract C12117, whether voluntarily paid, received by way of settlement, or paid in satisfaction of judgment; such funds shall be applied first to repay any costs of collection incurred by SANBAG, including but not limited to attorney's fees and/or costs of litigation and preparation for litigation whether or not a lawsuit is actually filed, secondly to repay SANBAG for its additional contribution of funds under Section 2.2 above caused by the defaults of the City and EDC, and lastly to reimburse OMNITRANS for its additional costs or expenses for the Omnitrans Facility Project caused by the defaults of the City and EDC.

Section 4.4 In the event that actual Omnitrans Facility Project costs are in excess of the current budget of \$23,517,283, or that any of the funding sources listed in 2.2 or 3.2 above become unavailable, both parties shall work together to identify additional funding sources. If additional funding cannot be obtained, SANBAG reserves the right to redesign the Omnitrans Facility Project, with Omnitrans' concurrence, to fit within the existing budget as approved by both parties. If the Omnitrans Facility Project cannot be adequately redesigned to fit within the available funding to the satisfaction of both Parties, the Parties shall negotiate a mutually acceptable resolution. If no mutually acceptable resolution can be reached, SANBAG shall, to the extent feasible based on the remaining funding, complete portions of the Omnitrans Facility Project that have been commenced, and shall leave the work and facilities in a safe condition reasonably acceptable to Omnitrans. Following such actions by SANBAG, this Agreement shall terminate, and other than any payment already earned or payable in accordance with the terms of this Agreement and any terms surviving termination of this Agreement, including any requirements of the grant funding provided hereunder, both parties shall be excused from further performance.

ARTICLE V SELF-INSURANCE AND MUTUAL INDEMNIFICATION

Section 5.1 Insurance requirements and Indemnification shall be subject to and provided in accordance with the provisions of Article VI, Self-Insurance and Mutual Indemnification, of Contract C12117, the terms of which are incorporated herein by reference, shall govern any liability between the Parties arising under this Agreement, and shall survive termination of this Agreement.

ARTICLE VI DEFAULT AND REMEDIES

Section 6.1 Default and Remedies. Default and remedies under this agreement shall be subject to the terms and provisions of Article VII, Default and Remedies, of Contract C12117, the terms of which are incorporated herein by reference.

ARTICLE VII MISCELLANEOUS

Section 7.1 The term of this Agreement shall be from the date of execution of this Agreement by the Parties until the Omnitrans Facility's final acceptance has been determined by SANBAG, including submission of all required reports, unless earlier terminated pursuant to the provisions herein.

Section 7.2 All costs referred to throughout this Agreement shall include all direct costs attributable to such work, applied in accordance with the State of California's standard accounting procedures and with Federal Transit Administration regulations.

Section 7.3 No alteration to or variation of the terms of this Agreement shall be valid unless made in writing and signed by the Parties hereto, and no oral understanding or agreement not incorporated herein shall be binding on any of the Parties hereto. No waiver of any term, condition or covenant of this Agreement shall be a continuing waiver thereof.

Section 7.4 No Third Party Rights. Nothing contained within the provisions of this Agreement is intended to create duties or obligations to or rights in third parties not a Party to this Agreement or to affect the legal liability of any Party to the Agreement by imposing any standard of care with respect to the maintenance of facilities different from the standards of care imposed by law.

Section 7.5 Notice. All notices and correspondence, including invoices, between or among the Parties to this Agreement shall be in writing and shall be deemed to have been given when actually delivered, if given by hand delivery or transmitted by overnight courier service, or if mailed, three (3) business days after being deposited in the United States mail, postage prepaid, to the addresses noted below:

OMNITRANS
Attn: Anna Rahtz
Acting Director of Planning & Development
Services
1700 W. Fifth Street
San Bernardino, CA 92411-2499

SANBAG
Attn: Mitchell Alderman
Director of Transit and Rail Programs
1170 W. Third St, 2nd Floor
San Bernardino, CA 92410-1715

Any Party may change its address for receipt of written notice by notifying the other Parties in writing of a new address for delivering notice to each such other Parties.

Section 7.6 This Agreement shall be binding on the successors and assigns of the Parties, but may not be assigned by SANBAG without written approval from Omnitrans.

Section 7.7 Consent. Whenever review, consent, or approval of any Party must be given or where it can be withheld, that Party must not unreasonably review or unreasonably withhold such consent or approval.

Section 7.8 Entire Agreement. This Agreement and Contract C12117 constitute the entire understanding of the Parties with respect to the subject matter hereof, and there are no other representations, promises, warranties, covenants, or undertakings with respect thereto.

-----SIGNATURES ON THE FOLLOWING PAGE-----

In witness thereof, the Parties have caused this Agreement to be executed by their respective officers as of the date indicated in the introductory paragraph of this Agreement.

OMNITRANS

SAN BERNARDINO ASSOCIATED
GOVERNMENTS

By: _____
P. Scott Graham
CEO/General Manager

By: _____
W.E. Jahn
President

Date: _____

Date: _____

APPROVED AS TO FORM:

APPROVED AS TO FORM:

By: _____
Carol Greene
Omnitrans Counsel

By: _____
Eileen Monaghan Teichert
SANBAG General Counsel

Exhibit “A”

Contract C12117

Exhibit B1

Overall San Bernardino Transit Center Site Plan

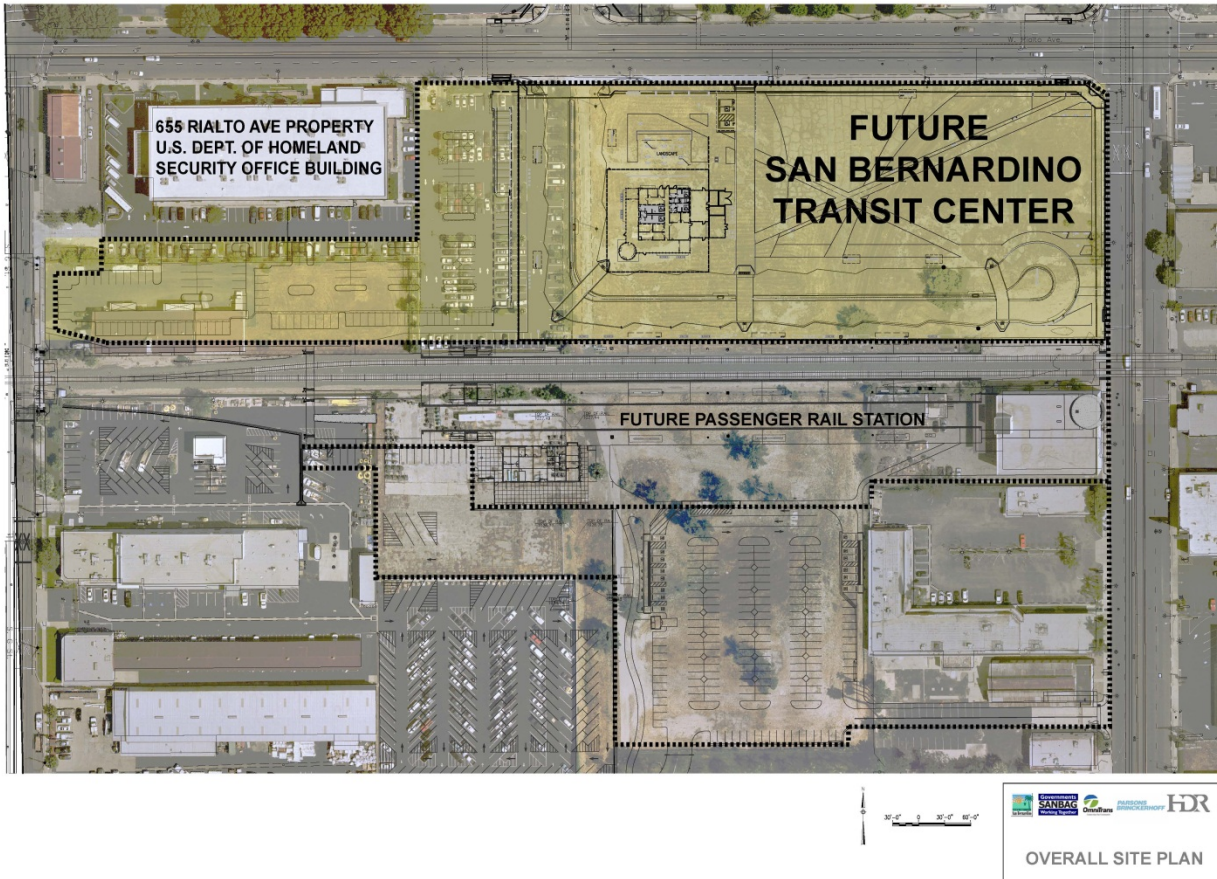


Exhibit 2

San Bernardino Transit Center Site Plan



Exhibit “C”

Flowdown of Federal Requirements

As used herein, “Contractor” shall refer to any contractor of SANBAG to be reimbursed with federal funds provided under this Agreement.

All SANBAG procurement transactions to be funded under this Agreement shall be conducted in a manner that provides full and open competition, and shall be conducted in accordance with applicable state and federal requirements, including the FTA requirements set forth in FTA Circular 4220.1F. The provisions below, as applicable, shall be included in the procurement documents and resulting contracts.

1. BUY AMERICA REQUIREMENTS

49 U.S.C. 5323(j) ; 49 CFR Part 661

a. Applicability to Contracts

The Buy America requirements apply to the following types of contracts: Construction Contracts and Acquisition of Goods or Rolling Stock (valued at more than \$100,000).

b. Buy America

SANBAG shall comply and shall require its Contractors to 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 CFR 661.7. Note: General waivers for small purchases do not apply to Contractor equipment purchases when Contractor’s contract value exceeds \$100,000 in value.

A Bidder or offeror must submit the appropriate Buy America certification with all Bids on FTA-funded contracts, except those subject to a general waiver. Bids or offers that are not accompanied by a completed Buy America certification must be rejected as non-responsive. This requirement does not apply to lower tier subcontractors.

2. CARGO PREFERENCE REQUIREMENTS

46 U.S.C. Appx 1241; 46 CFR Part 381

a. Applicability to Contracts

The Cargo Preference requirements apply to all contracts involving equipment, materials, or commodities which may be transported by ocean vessels.

b. Flow Down

The Cargo Preference requirements apply to all subcontracts when the subcontract may be involved with the transport of equipment, material, or commodities by ocean vessel.

c. Cargo Preference - Use of United States-Flag Vessels

SANBAG agrees to comply and to ensure that its Contractors will comply with 46 U.S.C. § 1241 and 46 CFR Part 381, regarding use of United States-Flag Vessels for equipment, materials or commodities transported by ocean vessel.

3. ENERGY CONSERVATION REQUIREMENTS

42 U.S.C. 6321 et seq.; 49 CFR Part 18

a. Applicability to Contracts

The Energy Conservation requirements are applicable to all contracts.

b. Flow Down

The Energy Conservation requirements extend to all Contractors and their contracts at every tier and sub recipients and their sub agreements at every tier.

c. Energy Conservation

SANBAG shall comply and shall require its Contractor to 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.

4. CLEAN WATER REQUIREMENTS

33 U.S.C. 1251 et seq.

a. Applicability to Contracts

The Clean Water requirements apply to each contract and subcontract which exceeds \$100,000.

b. Clean Water

1. SANBAG shall comply and shall require its Contractor to comply with all applicable standards, orders or regulations issued pursuant to the Federal Water Pollution Control Act, as amended, 33 U.S.C. 1251. The Contractor agrees to report each violation and understands and agrees that Omnitrans, will, in turn, report each violation as required to assure notification to FTA and the appropriate EPA Regional Office.

2. The Contractor shall include these requirements in each subcontract exceeding \$100,000 financed in whole or in part with Federal assistance provided by FTA.

5. LOBBYING

31 U.S.C. 1352; 49 CFR Part 19 49 CFR Part 20

a. Applicability to Contracts

The Lobbying requirements apply to Construction/Architectural and Engineering/Acquisition of Rolling Stock/Professional Service Contract/Operational Service Contract/Turnkey contracts.

b. Flow Down

The Lobbying requirements mandate the maximum flow down, pursuant to Byrd Anti-Lobbying Amendment, 31 U.S.C. § 1352(b)(5) and 49 C.F.R. Part 19, Appendix A, Section 7.

c. Byrd Anti-Lobbying Amendment, 31 U.S.C. 1352, as amended by the Lobbying Disclosure Act of 1995. P.L. 104-65 [to be codified at 2 U.S.C. 4 1601., et seq.]

SANBAG and its 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." Each tier certifies 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, officer or employee of Congress, or an employee of 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 are forwarded from tier to tier up to Omnitrans.

6. ACCESS TO RECORDS AND REPORTS

49 U.S.C. 5325; 49 CFR 18.36 (i) 49 CFR 633.17

1. SANBAG and its Contractors shall 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 his authorized representatives including any PMO 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.

2. Where SANBAG or its Contractor or a sub grantee of Contractor in accordance with 49 U.S.C. 5325(a) enters into a contract for a capital project or improvement (defined at 49 U.S.C. 5302(a)1) through other than competitive Bidding, said entity shall make available records related to the contract 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.

3. SANBAG shall permit and shall require its Contractor to permit any of the foregoing parties to reproduce by any means whatsoever or to copy excerpts and transcriptions as reasonably needed.

4. SANBAG shall maintain and shall require its Contractor to 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 SANBAG and its Contractor shall 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. Reference 49 CFR 18.39(i)(11).

5. FTA does not require the inclusion of these requirements in subcontracts.

7. FEDERAL CHANGES

49 CFR Part 18

a. Applicability to Contracts

The Federal Changes requirement applies to all contracts.

b. Flow Down

The Federal Changes requirement flows down appropriately to each applicable changed requirement.

c. Federal Changes

SANBAG and its Contractor shall at all times comply with all applicable FTA regulations, policies, procedures and directives, including without limitation those listed directly or by reference in the Agreement (Form FTA MA (10) dated October, 2003) between Omnitrans and FTA, as they may be amended or promulgated from time to time during the term of this contract. Contractor's failure to so comply shall constitute a material breach of this contract.

8. CLEAN AIR

42 U.S.C. 7401 et seq.; 40 CFR 15.61; 49 CFR Part 18

a. Applicability to Contracts

The Clean Air requirements apply to all contracts exceeding \$100,000, including indefinite quantities where the amount is expected to exceed \$100,000 in any year.

b. Flow Down

The Clean Air requirements flow down to all subcontracts which exceed \$100,000.

c. Clean Air

1. SANBAG and its 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. The Contractor agrees to report each violation to Omnitrans and understands and agrees that Omnitrans, in turn, report each violation as required to assure notification to FTA and the appropriate EPA Regional Office.

2. The Contractor also agrees to include these requirements in each subcontract exceeding \$100,000 financed in whole or in part with Federal assistance provided by FTA.

9. RECYCLED PRODUCTS

42 U.S.C. 6962; 40 CFR Part 247

a. Applicability to Contracts

The Recycled Products requirements apply to all contracts for items designated by the EPA, when the Contractor procures \$10,000 or more of one of these items during the fiscal year, or has procured \$10,000 or more of such items in the previous fiscal year, using Federal funds.

b. Flow Down

These requirements flow down to all to all contractor and subcontractor tiers.

c. Recovered Materials

SANBAG and its Contractor agree 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.

10. DAVIS-BACON ACT

40 U.S.C. 3142 et seq. (2003); 29 CFR § 5 et seq. (2003)

SANBAG agrees to include applicable provisions of the Davis-Bacon Act, as amended, 49 U.S.C. § 5333(a), the Davis-Bacon Act, 40 U.S.C. §§ 276a - 276a(7), and Department of Labor Regulations, 29 CFR Part 5 in all construction contracts in excess of \$2,000. As between Davis-Bacon and California prevailing wage rates, the higher of the two shall apply.

11. CONTRACT WORK HOURS AND SAFETY STANDARDS ACT

40 U.S.C. §§ 3701 -3708 (2003); 29 C.F.R. § 5 (2003); 29 C.F.R. § 1926 (2003)

a. Applicability to Contracts

Section 102 of the Act, which deals with overtime requirements, applies to:

1. All construction contracts in excess of \$2,000 and;

Section 107 of the Act, which deals with OSHA requirements applies to construction contracts in excess of \$2,000 only. The requirements of this section do not apply to contracts or subcontracts for the purchase of supplies or materials or articles normally available on the open market.

b. Flow Down

Applies to third party contractors and subcontractors.

c. Pursuant to Section 102 (Overtime)

These clauses are specifically mandated under DOL regulation 29 C.F.R. § 5.5.

1. **Overtime requirements** - No contractor or subcontractor contracting for any part of the contract work which may require or involve 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 clause set forth in paragraph (1) of this section the contractor and any subcontractor responsible therefore shall be liable for the unpaid wages. In addition, such 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 section, in the sum of \$ 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 section.

3. **Withholding for unpaid wages and liquidated damages** - SANBAG 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 moneys payable on account of work performed by the contractor or subcontractor under any such contract or any other Federal contract with the same prime contractor, or any other federally- assisted contract subject to the Contract Work Hours and Safety Standards Act, which is held by the same prime contractor, such sums as may be determined to be necessary to satisfy any liabilities of such contractor or subcontractor for unpaid wages and liquidated damages as provided in the clause set forth in paragraph (2) of this section.

4. **Subcontracts** - The contractor or subcontractor shall insert in any subcontracts the clauses set forth in this section and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The prime contractor shall be responsible for compliance by any subcontractor or lower tier subcontractor with the clauses set forth in this section.

5. **Payrolls and basic records** - 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.

d. Section 107 (OSHA)

1. Contract Work Hours and Safety Standards Act

SANBAG shall require that is Contractor comply with the following:

A. The Contractor agrees to comply with section 107 of the Contract Work Hours and Safety Standards Act, 40 U.S.C. section 333, and applicable DOL regulations,” Safety and Health Regulations for Construction” 29 C.F.R. Part 1926. Among other things, the Contractor agrees that it will not require any laborer or mechanic to work in unsanitary, hazardous, or dangerous surroundings or working conditions.

B. Subcontracts - The Contractor also agrees to include the requirements of this section in each subcontract. The term “subcontract” under this section is considered to refer to a person who agrees to perform any part of the labor or material requirements of a contract for construction, alteration or repair. A person who undertakes to perform a portion of a contract involving the furnishing of supplies or materials will be considered a “subcontractor” under this section if the work in question involves the performance of construction work and is to be performed: (1) directly on or near the construction site, or (2) by the employer for the specific project on a customized basis. Thus, a supplier of materials which will become an integral part of the construction is a “subcontractor” if the supplier fabricates or assembles the goods or materials in question specifically for the construction project and the work involved may be said to be construction activity. If the goods or materials in question are ordinarily sold to other customers from regular inventory, the supplier is not a “subcontractor.” The requirements of this section do not apply to contracts or subcontracts for the purchase of supplies or materials or articles normally available on the open market.

12. COPELAND ANTI-KICKBACK ACT

40 U.S.C. § 3145 (2003); 29 C.F.R. § 3 (2003); 29 C.F.R. § 5 (2003)

a. Applicability to Contracts

All construction contracts in excess of \$2,000.

b. Flow Down

Applicable to all third party contractors and subcontractors. The language can be found at § 5.5(a)(5) of the Davis-Bacon clause 16.

c. Compliance with Copeland Act requirements

SANBAG shall require that is Contractor comply with the requirements of 29 CFR part 3, which are incorporated by reference in this contract.

13. NO GOVERNMENT OBLIGATION TO THIRD PARTIES

a. Applicability to Contracts

Applicable to all contracts.

b. Flow Down

This concept should flow down to all levels to clarify, to all parties to the contract, that the Federal Government does not have contractual liability to third parties, absent specific written consent.

c. No Obligation by the Federal Government

1. SANBAG and its Contractor acknowledge and agrees that, notwithstanding any concurrence by the Federal Government in or approval of the solicitation or award of the underlying 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 Contractor, or any other party (whether or not a party to that contract) pertaining to any matter resulting from the underlying contract.

2. The Contractor agrees to include the above clause in each subcontract financed in whole or in part with Federal assistance provided by FTA. It is further agreed that the clause shall not be modified, except to identify the subcontractor who will be subject to its provisions.

14. PROGRAM FRAUD AND FALSE OR FRAUDULENT STATEMENTS AND RELATED ACTS

31 U.S.C. 3801 et seq.; 49 CFR Part 31; 18 U.S.C. 1001; 49 U.S.C. 5307

a. Applicability to Contracts

These requirements are applicable to all contracts. SANBAG shall require that its Contractor comply with the following.

b. Flow Down

These requirements flow down to contractors and subcontractors who make, present, or submit covered claims and statements.

c. Program Fraud and False or Fraudulent Statements or Related Acts

1. The Contractor acknowledges that the provisions of the Program Fraud Civil Remedies Act of 1986, as amended, 31 U.S.C. §§ 3801 et q. and U.S. DOT regulations, "Program Fraud Civil Remedies," 49 C.F.R. Part 31, apply to its actions pertaining to this Project. Upon execution of the underlying contract, the 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 to the underlying contract or the FTA assisted project for which this contract work is being performed. In addition to other penalties that may be applicable, the 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 the Contractor to the extent the Federal Government deems appropriate.

2. The Contractor also acknowledges that if it makes, or causes to be made, a false, fictitious, or fraudulent claim, statement, submission, or certification to the Federal Government under a contract 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, the Government

reserves the right to impose the penalties of 18 U.S.C. § 1001 and 49 U.S.C. § 5307(n)(1) on the Contractor, to the extent the Federal Government deems appropriate.

3. The Contractor agrees to include the above two clauses in each subcontract financed in whole or in part with Federal assistance provided by FTA. It is further agreed that the clauses shall not be modified, except to identify the subcontractor who will be subject to the provisions.

15. GOVERNMENT-WIDE DEBARMENT AND SUSPENSION

49 CFR Part 29; Executive Order 12549

a. Applicability to Contracts

Executive Order 12549, as implemented by 49 CFR Part 29, prohibits organizations that have been suspended or debarred from receiving Federally-assisted contracts. SANBAG will not enter into contracts over \$100,000 with suspended or debarred contractors and that will require their contractors (and their subcontractors) to make the same certification to them. SANBAG will include appropriate debarment and suspension certifications in its procurement documents.

b. Flow Down

Contractors are required to pass this requirement on to subcontractors seeking subcontracts over \$100,000. Thus, the terms “lower tier covered participant” and “lower tier covered transaction” include both contractors and subcontractors and contracts and subcontracts over \$100,000.

16. PRIVACY ACT

5 U.S.C. 552

a. Applicability to Contracts

When SANBAG 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.

b. Flow Down

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

c. Contracts Involving Federal Privacy Act Requirements

The following requirements apply to SANBAG and its 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.

17. CIVIL RIGHTS REQUIREMENTS

29 U.S.C. § 623, 42 U.S.C. § 2000 d; 42 U.S.C. § 6102, 42 U.S.C. § 12112; 42 U.S.C. § 12132, 49 U.S.C. § 5332; 29 CFR Part 1630 et seq., 41 CFR Parts 60-1 et seq.

a. Applicability to Contracts

The Civil Rights Requirements apply to all contracts.

b. Flow Down

The Civil Rights requirements flow down to all third party contractors and their contracts at every tier.

c. Civil Rights

The following requirements apply to SANBAG and its Contractor (both “Contractor” below):

1. **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, the Contractor agrees that it will not discriminate against any employee or applicant for employment because of race, color, creed, national origin, sex, age, or disability. In addition, the Contractor agrees to comply with applicable Federal implementing regulations and other implementing requirements FTA may issue.

2. **Equal Employment Opportunity.** The following equal employment opportunity requirements apply to the underlying contract:

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, the Contractor agrees to 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 m. ., (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 construction activities undertaken in the course of the Project. The Contractor agrees to 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, the Contractor agrees to 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, the Contractor agrees to refrain from discrimination against present and prospective employees for reason of age. In addition, the Contractor agrees to comply with any implementing requirements FTA may issue.

C. Access Requirements for Persons with Disabilities. Contractor agrees to comply with the requirements of 49 U.S.C. § 5301(d), which states the Federal policy that the elderly 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. The Recipient also agrees to comply with 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, with 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, and with 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. In addition, the Recipient agrees to comply with all applicable requirements of the following regulations and any subsequent amendments thereto:

i. U.S. DOT regulations, “Transportation Services for Individuals with Disabilities (ADA),” 49 C.F.R. Part 37;

ii. 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;

iii. Joint U.S. Architectural and Transportation Barriers Compliance Board/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;

iv. U.S. DOJ regulations, “Nondiscrimination on the Basis of Disability in State and Local Government Services,” 28 C.F.R. Part 35;

v. U.S. DOJ regulations, “Nondiscrimination on the Basis of Disability by Public Accommodations and in Commercial Facilities,” 28 C.F.R. Part 36;

vi. U.S. General Services Administration (U.S. GSA) regulations, “Accommodations for the Physically Handicapped,” 41 C.F.R. Subpart 101-19;

vii. U.S. Equal Employment Opportunity Contractor, “Regulations to Implement the Equal Employment Provisions of the Americans with Disabilities Act,” 29 C.F.R. Part 1630;

viii. U.S. Federal Communications Contractor regulations, “Telecommunications Relay Services and Related Customer Premises Equipment for the Hearing and Speech Disabled,” 47 C.F.R. Part 64, Subpart F;

ix. FTA regulations, “Transportation for Elderly and Handicapped Persons,” 49 C.F.R. Part 609;

x. Architectural and Transportation Barriers Compliance Board regulations, “Electronic and Information Technology Accessibility Standards,” 36 C.F.R. Part 1194; and

xi. Any implementing requirements FTA may issue.

18. STATE AND LOCAL LAW DISCLAIMER

a. Applicability to Contracts

This disclaimer applies to all contracts.

b. Flow Down

The Disclaimer has unlimited flow down.

19. INCORPORATION OF FEDERAL TRANSIT ADMINISTRATION (FTA) TERMS

FTA Circular 4220.1F

a. Applicability to Contracts

The incorporation of FTA terms applies to all contracts.

b. Flow Down

The incorporation of FTA terms has unlimited flow down.

c. Incorporation of Federal Transit Administration (FTA) Terms

The preceding provisions include, in part, certain Standard Terms and Conditions required by DOT, whether or not expressly set forth in the preceding contract provisions. All contractual provisions required by DOT, as set forth in FTA Circular 4220.1F, dated November 1, 2008, 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 Agreement. The 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.

20. METRIC REQUIREMENTS

15 U.S.C. §§205a et seq.

As required by U.S. DOT or FTA, Contractor agrees to use the metric system of measurement in its Project activities, pursuant to the Metric Conversion Act, as amended by the Omnibus Trade and Competitiveness Act, 15 U.S.C. §§ 205a *et seq.*; Executive Order No. 12770, “Metric Usage in Federal Government Programs,” 15 U.S.C. § 205a note; and other U.S. DOT or FTA regulations, guidelines, and policies. To the extent practicable and feasible, the Contractor agrees to accept products and services with dimensions expressed in the metric system of measurement.

21. NATIONAL INTELLIGENT TRANSPORTATION SYSTEMS (ITS) ARCHITECTURE AND STANDARDS

23 U.S.C. §502

Contractor agrees to conform, to the extent applicable, to the National Intelligent Transportation Systems (ITS) Architecture and Standards as required by section 5206(e) of TEA-21, 23 U.S.C. § 502 note, and with FTA Notice, ‘PTA National ITS Architecture Policy on Transit Projects’ 66 Fed. Reg. 1455 *et seq.*, January 8, 2001, and other subsequent Federal directives that may be issued.

22. FEDERAL MINIMUM WAGE REQUIREMENTS

29 U.S.C. § 201 et seq.

The Fair Labor Standards Act of 1938, as amended 29 U.S.C. 201, *et seq.* (“FLSA”). The FLSA establishes minimum wage, overtime pay, recordkeeping, and youth employment standards affecting employees in the private sector and in Federal, State, and local governments. Covered nonexempt workers are entitled to a minimum wage of not less than \$7.25 per hour effective July 24, 2009. Overtime pay at a rate not less than one and one-half times the regular rate of pay is required after 40 hours of work in a workweek.

FLSA Minimum Wage: The federal minimum wage is \$7.25 per hour effective July 24, 2009. Many states also have minimum wage laws. In cases where an employee is subject to both state and federal minimum wage laws, the employee is entitled to the higher minimum wage.

FLSA Overtime: Covered nonexempt employees must receive overtime pay for hours worked over 40 per workweek (any fixed and regularly recurring period of 168 hours — seven consecutive 24-hour periods) at a rate not less than one and one-half times the regular rate of pay. There is no limit on the number of hours employees 16 years or older may work in any workweek. The FLSA does not require overtime pay for work on weekends, holidays, or regular days of rest, unless overtime is worked on such days.

Hours Worked: Hours worked ordinarily include all the time during which an employee is required to be on the employer's premises, on duty, or at a prescribed workplace.

Recordkeeping: Employers must display an official poster outlining the requirements of the FLSA. Employers must also keep employee time and pay records.

Youth Employment: These provisions are designed to protect the educational opportunities of minors and prohibit their employment in jobs and under conditions detrimental to their health or well-being.

For additional requirements and guidelines, Contractor must visit the website for the U.S. Department of Labor at: <http://www.dol.gov/esa/whd/Flsa/>

Applicable Laws and Regulations

29 U.S.C. 201, et seq.

29 CFR Chapter V

See the Federal Web site, <http://www.dot.ca.gov/davisbacon>

23. DISADVANTAGED BUSINESS ENTERPRISE (DBE) REQUIREMENTS

a. **Discrimination:** SANBAG shall not discriminate and shall ensure that its Contractors shall not discriminate on the basis of race, color, national origin, or sex in the award and performance of subcontracts.

c. SANBAG shall comply with its adopted FTA DBE program in implementing this Agreement.

ITEM # F5

DATE: December 4 , 2013
TO: Board Chair Alan Wapner and Members of the Omnitrans Board of Directors
THROUGH: P. Scott Graham, Interim CEO/General Manager
FROM: Jennifer M. Sims, Director of Procurement
SUBJECT: **AUTHORIZE AWARD - CONTRACT MNT14-79
 PERSONAL PROTECTIVE EQUIPMENT**

FORM MOTION

Authorize the Interim CEO/General Manager to award Contract MNT14-79 to Magid Glove and Safety Manufacturing Company, LLC, of Chicago, IL, for the provision of Personal Protective Equipment (PPE) for a one year period ending December 9, 2014, in the amount of \$19,679.16, and the authority to exercise two (2) single option years to extend the contract to no later than December 9, 2016, in the amount of \$60,382.72, plus a 10% contingency of \$6,038.27, bringing the total not to exceed amount to \$66,420.99, should all options be exercised.

BACKGROUND

On September 23, 2013, staff released Request for Quotes (RFQ) RFQ-MNT14-79 for Personal Protective Equipment. The RFQ was posted on Omnitrans' online bidding system, and was distributed to fifty-one potential bidders. Six bids were received electronically by the deadline date of October 23, 2013. Five bids were deemed responsive. Listed below are the bid prices:

Company	Not-to-exceed Amounts*
Magid Glove and Safety Manufacturing Company, LLC	\$60,382.72
All Safe Industries, Inc.	\$61,222.53
Abatix	\$67,262.28
Morton Safety Co.	\$56,895.00**
Calolympic	\$57,969.66**

**Bid pricing includes tax and delivery*

***Vendors did not bid on all items*

Award recommendation is being made to the lowest, responsive, and responsible bidder. Price is deemed fair and reasonable as the bid is \$29,617.28 less than the Independent Cost Estimate of \$90,000, based on previous purchases.

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	504230

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

CONCLUSION

Approval of this contract will allow Omnitrans to continue to provide required personal protective equipment for the benefit of employees in performing their daily job duties.

PSG:JMS:kt



ATTACHMENT C
SAMPLE CONTRACT

CONTRACT AGREEMENT

between

CONTRACTOR
Magid Glove and Safety Manufacturing
Company, LLC
2060 N. Kolmar Avenue
Chicago, IL 60639

(hereinafter "CONTRACTOR")
Telephone:
Fax:

And

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

CONTRACT DOCUMENTS

CONTRACT NO. RFQ-MNT14-79

Personal Protective Equipment

Contract Amount: \$19,679.16

Omnitrans Project Manager:

Name: Frank Flores
Title: Interim Materials Supervisor
Telephone: (909) 379-7204
Fax: (909) 379-7404
Email: xxxxx.xxxx@omnitrans.org

Contract Administrator:

Name: Krystal Turner
Title: Contracts Review Analyst
Telephone: (909) 379-7202
Fax: (909) 379-7402
Email: xxxx.xxxx@omnitrans.org



TABLE OF CONTENTS

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

21.	SUBMITTAL OF CLAIMS BY CONTRACTOR.....	14
22.	EQUAL OPPORTUNITY.....	14
24.	NOTIFICATION OF EMPLOYMENT OF OMNITRANS BOARD MEMBERS/ALTERNATES AND EMPLOYEES	15
25.	DISQUALIFYING POLITICAL CONTRIBUTIONS	15
26.	COMPLIANCE WITH LAW	15
27.	COMPLIANCE WITH LOBBYING POLICIES.....	15
28.	PUBLIC RECORDS ACT.....	16
29.	WAIVER/INVALIDITY	16
30.	FORCE MAJEURE.....	16
31.	CONFIDENTIALITY	17
32.	CONTRACTOR'S INTERACTION WITH THE MEDIA AND THE PUBLIC	17
33.	GOVERNING LAW	17
34.	MODIFICATIONS TO AGREEMENT	18
35.	LICENSING, PERMITS AND INSPECTION COSTS.....	18
36.	PRECEDENCE	18
37.	ENTIRE AGREEMENT.....	18

This Agreement is made and entered into as of this 8th day of December, 2013 by and between Omnitrans (hereinafter referred to as "OMNITRANS") and Magid Glove and Safety Manufacturing Company, LLC (hereinafter referred to as "CONTRACTOR").

RECITALS

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

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

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

1. SCOPE OF WORK

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

2. PERIOD OF PERFORMANCE

The term of this Agreement shall be from the date of execution of this Agreement and continue in effect through December 9, 2014, unless terminated as specified in Section 8 and 9 of this Agreement. Omnitrans has no obligation to purchase any specified amount of products/services. All applicable indemnification provisions in this Agreement shall remain in effect following the termination of this Agreement.

Omnitrans' election to extend the Agreement beyond the 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 December 8, 2013 Through December 9, 2014, which period encompasses the Initial Term.

3. COMPENSATION

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

OMNITRANS' maximum cumulative payment obligation under this Agreement shall not exceed Nineteen Thousand Six Hundred Seventy Nine Dollars and 00/16 (\$19,679.16), including all amounts payable to CONTRACTOR for all costs, including but not limited to direct labor, other direct costs, subcontracts, indirect costs including, but not limited to, leases, materials, taxes, insurance, and profit.

4. INVOICING AND PAYMENT

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

CONTRACTOR shall submit invoices in duplicate to:

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

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

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

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

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

5. AUDIT AND INSPECTION OF RECORDS

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

6. NOTIFICATION

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

To OMNITRANS:

To CONTRACTOR:

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

7. OMNITRANS' AND CONTRACTOR'S REPRESENTATIVES

A. OMNITRANS' Project Manager

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

Project Manager: xxxxxx xxxxxxxx.

- 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>

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

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

8. DISPUTE RESOLUTION

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

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

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

9. TERMINATION FOR CONVENIENCE

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

10. TERMINATION FOR BREACH OF AGREEMENT

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

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

11. ASSIGNMENT

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

12. SUBCONTRACTING

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

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

13. INDEPENDENT CONTRACTOR

CONTRACTOR's relationship to OMNITRANS in the performance of this Agreement is that of an independent Contractor. CONTRACTOR's personnel performing Work under this Agreement shall at all times be under CONTRACTOR's exclusive direction and control and shall be employees of CONTRACTOR and not employees of OMNITRANS. CONTRACTOR shall pay

all wages, salaries and other amounts due its employees in connection with this Agreement and shall be responsible for all reports and obligations respecting them, such as social security, income tax withholding, unemployment compensation, workers' compensation and similar matters.

14. INSURANCE

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

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

Additional Insured:

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

15. INDEMNITY

CONTRACTOR shall indemnify, defend and hold harmless OMNITRANS, and its member agencies, and their officers, directors, employees and agents from and against any and all liability, expense (including, but not limited to, defense costs

and attorneys' fees), claims, causes of action, and lawsuits for damages of any nature whatsoever, including, but not limited to, bodily injury, death, personal injury or property damage (including property of CONTRACTOR) arising from or connected with any alleged act and/or omission of CONTRACTOR, its officers, directors, employees, agents, Subcontractors or suppliers. This indemnity shall survive termination or expiration of this Agreement and/or final payment thereunder.

16. REVISIONS IN SCOPE OF WORK

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

17. RIGHTS IN TECHNICAL DATA

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

18. OWNERSHIP OF REPORTS AND DOCUMENTS

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

19. OWNERSHIP RIGHTS

- A. In the event OMNITRANS rightfully obtains copies of Proprietary Data under the terms of the separate License Agreement and Escrow Agreement that govern rights in Documentation, Software and Intellectual Property created and/or developed by Contractor, its Third Party Software Contractors and its Suppliers as part of the Project, any derivative works and associated documentation created by or on behalf of OMNITRANS by Permitted Programmers (as defined in the License Agreement) shall be the sole and exclusive property of OMNITRANS (collectively, "OMNITRANS Intellectual Property"), and OMNITRANS may use, disclose and exercise dominion and full rights of ownership, in any manner in OMNITRANS Intellectual Property in connection with the use, operation and maintenance of a transportation system administered by OMNITRANS. No use of OMNITRANS Intellectual Property shall be made for any purpose other than in conjunction with a transportation system administered by CONTRACTOR, and OMNITRANS shall not sell, lease, rent, give away or otherwise disclose any OMNITRANS Intellectual Property to any outside third party other than Permitted Programmers. To the extent there may be any question of rights of ownership or use in any OMNITRANS Intellectual Property, Contractor shall require all of its subcontractors and suppliers (including without limitation its Third Party Software Contractors) to assign to OMNITRANS, all worldwide right, title and interest in and to all OMNITRANS Intellectual Property in a manner consistent with the foregoing terms of this paragraph. Contractor shall execute any documents as OMNITRANS may from time to time reasonably request to effectuate the terms of this paragraph.
- B. All documentation and Software which predates this Contract and which otherwise owned by Contractor or its Third Party Software Contractors, and all Documentation and Software which is created by Contractor or its Third Party Software Contractors shall be Licensed Software or Licensed Documentation, as appropriate. All Licensed Software and Licensed Documentation shall be governed by the License Agreement by and between the parties of event date herewith.

20. WORK FOR HIRE

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

21. SUBMITTAL OF CLAIMS BY CONTRACTOR

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

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

22. EQUAL OPPORTUNITY

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

23. STANDARD OF PERFORMANCE

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

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

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

25. DISQUALIFYING POLITICAL CONTRIBUTIONS

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

26. COMPLIANCE WITH LAW

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

27. COMPLIANCE WITH LOBBYING POLICIES

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

28. PUBLIC RECORDS ACT

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

29. WAIVER/INVALIDITY

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

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

30. FORCE MAJEURE

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

31. CONFIDENTIALITY

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

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

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

33. GOVERNING LAW

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

34. MODIFICATIONS TO AGREEMENT

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

35. LICENSING, PERMITS AND INSPECTION COSTS

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

36. PRECEDENCE

Conflicting provisions hereof, if any, shall prevail in the following descending order of precedence: (1) the provisions of this Agreement, (2) Attachment A, Scope of Work, (3) provisions of RFQ-MNT14-79 and (4) CONTRACTOR's proposal dated October 23, 2013.

37. ENTIRE AGREEMENT

This Agreement, and any attachments or documents incorporated herein by inclusion or by reference, constitutes the complete and entire agreement

between OMNITRANS and CONTRACTOR and supersedes any prior representations, understandings, communications, commitments, agreements or proposals, oral or written.

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

OMNITRANS

MAGID GLOVE AND SAFETY
MANUFACTURING COMPANY, LLC

P. SCOTT GRAHAM
Interim CEO/General Manager

Ian Quan
Government Sales and Bids Specialist

DATE

Federal Tax I.D. No. 36-4057654

Attachment B

REGULATORY REQUIREMENT

Table of Contents

Contents

ADMINISTRATIVE CODE	2
DISCRIMINATION	2
WHISTLEBLOWER REQUIREMENTS	3
PUBLIC RECORDS ACT	3
ACCESS TO RECORDS	4
FEDERAL FUNDING, INCORPORATION OF FEDERAL TRANSIT ADMINISTRATION (FTA) TERMS, AND FEDERAL CHANGES	4
ENERGY CONSERVATION REQUIREMENTS	5
CIVIL RIGHTS REQUIREMENTS	5
NO GOVERNMENT OBLIGATION TO THIRD PARTIES	6
PROGRAM FRAUD AND FALSE OR FRAUDULENT STATEMENTS OR RELATED ACTS.....	7
SUSPENSION AND DEBARMENT.....	7
RECYCLED PRODUCTS	8
CLEAN WATER AND CLEAN AIR REQUIREMENTS	8
COMPLIANCE WITH FEDERAL LOBBYING POLICY	9
BUY AMERICA	9
CARGO PREFERENCE	10
FLY AMERICA	11
CONTRACT WORK HOURS AND SAFETY STANDARDS ACT.....	11
DISADVANTAGED BUSINESS ENTERPRISE (DBE) 49 CFR Part 26.....	13
ADA ACCESS	14
ALCOHOL AND DRUG-FREE WORKPLACE PROGRAM.....	15
TRANSIT EMPLOYEE PROTECTIVE ARRANGEMENTS	16
BONDING REQUIREMENTS	18
DAVIS-BACON AND COPELAND ANTI-KICKBACK ACTS	18
PRIVACY ACT - 5 U.S.C. 552.....	25
TERMINATION 49 U.S.C. Part 18 FTA Circular 4220.1F.....	26
SEISMIC SAFETY REQUIREMENTS 42 U.S.C. 7701 et seq. 49 CFR Part 41	28
BREACHES AND DISPUTE RESOLUTION 49 CFR Part 18 FTA Circular 4220.1F.....	28
VETERANS PREFERENCE	29

REGULATORY REQUIREMENTS

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

RR-01

ADMINISTRATIVE CODE *

A. Applicability

This Article applies to all contracts.

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

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

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

C. Campaign Contributions

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

RR-02

DISCRIMINATION *

A. Applicability

This Article applies to all contracts.

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

RR-03

WHISTLEBLOWER REQUIREMENTS *

A. Applicability

This Article applies to all contracts.

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

RR-04

PUBLIC RECORDS ACT *

A. Applicability

This Article applies to all contracts.

- B. Except as otherwise provided herein, all records, documents, drawings, plans, specifications, and all other information relating to the conduct of Omnitrans business, including all information and documents submitted by Contractor ("Records"), shall become the exclusive property of Omnitrans and shall be deemed public records. Said Records are subject to the provisions of the California Public Records Act (Government Code §6250 et. seq.). Omnitrans use and disclosure of its records are governed by this Act. Omnitrans will use its best efforts to inform the Contractor of any request for any financial records or documents marked "Trade Secret", "Confidential" or "Proprietary" provided by Contractor to Omnitrans. Omnitrans will not advise as to the nature or content of documents entitled to protection from disclosure under the California Public Records Act.
- C. In the event of litigation concerning the disclosure of any Records, Omnitrans sole involvement will be as a stakeholder, retaining the Records until otherwise ordered by a court. The submitting party, at its sole expense and risk, shall be fully responsible for any and all fees for prosecuting or defending any action concerning the Records and shall indemnify and hold Omnitrans harmless from all costs and expenses including attorney's fees in connection with any such action.

RR-05

ACCESS TO RECORDS *

A. Applicability

This Article applies to all federally funded contracts.

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

RR-06

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

A. Applicability

This Article applies to all federally funded contracts.

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

Contract. Contractor shall not perform any act, fail to perform any act, or refuse to comply with any Omnitrans requests which would cause Omnitrans to be in violation of the FTA terms and conditions.

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

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

RR-07

ENERGY CONSERVATION REQUIREMENTS

A. Applicability

This Article applies to all federally funded contracts.

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

RR-08

CIVIL RIGHTS REQUIREMENTS *

A. Applicability

This Article applies to all federally funded contracts.

- B. Nondiscrimination - In accordance with Title VI of the Civil Rights Act, as amended, 42 U.S.C. § 2000d, section 303 of the Age Discrimination Act of 1975, as amended, 42 U.S.C. § 6102, section 202 of the Americans with Disabilities Act of 1990, 42 U.S.C. § 12132, and Federal transit law at 49 U.S.C. § 5332, Contractor shall not discriminate against any employee or applicant for employment because of race, color, creed, national origin, sex, age, or disability. In addition, Contractor shall comply with applicable Federal implementing regulations and other implementing requirements FTA may issue.
- C. Equal Employment Opportunity

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

RR-09

NO GOVERNMENT OBLIGATION TO THIRD PARTIES *

A. Applicability

This Article applies to all federally funded contracts.

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

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

RR-10

PROGRAM FRAUD AND FALSE OR FRAUDULENT STATEMENTS OR RELATED ACTS *

A. Applicability

This Article applies to all federally funded contracts.

- B. The provisions of the Program Fraud Civil Remedies Act of 1986, as amended, 31 U.S.C. § 3801 et seq. and U.S. DOT regulations, "Program Fraud Civil Remedies," 49 C.F.R. Part 31, shall apply to actions pertaining to this Contract. Upon execution of this Contract, Contractor certifies or affirms the truthfulness and accuracy of any statement it has made, it makes, it may make, or causes to be made, pertaining this Contract or the FTA assisted project for which this Contract work is being performed. In addition to other penalties that may be applicable, Contractor further acknowledges that if it makes, or causes to be made, a false, fictitious, or fraudulent claim, statement, submission, or certification, the Federal Government reserves the right to impose the penalties of the Program Fraud Civil Remedies Act of 1986 on Contractor to the extent the Federal Government deems appropriate.
- C. Contractor also acknowledges that this Contract is connected with a project that is financed in whole or in part with Federal assistance originally awarded by FTA under the authority of 49 U.S.C. § 5307 and if it makes, or causes to be made, a false, fictitious, or fraudulent claim, statement, submission, or certification to the Federal Government, the Government reserves the right to impose the penalties of 18 U.S.C. § 1001 and 49 U.S.C. § 5307(n)(1) on Contractor, to the extent the Federal Government deems appropriate.
- D. Contractor shall include this Article in each subcontract financed in whole or in part with Federal assistance provided by FTA. Contractor shall not modify the Article, except to identify the Subcontractor who will be subject to the provisions.

RR-11

SUSPENSION AND DEBARMENT*

A. Applicability

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

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

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

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

RR-12 RECYCLED PRODUCTS

A. Applicability

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

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

RR-13 CLEAN WATER AND CLEAN AIR REQUIREMENTS*

A. Applicability

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

B. CLEAN WATER REQUIREMENTS

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

C. CLEAN AIR

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

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

RR-14

COMPLIANCE WITH FEDERAL LOBBYING POLICY *

A. Applicability

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

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

RR-15

BUY AMERICA *

A. Applicability

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

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

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

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

RR-16

CARGO PREFERENCE*

A. Applicability

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

B. USE OF UNITED STATES FLAG VESSELS

Contractor shall use privately owned United States-Flag commercial vessels to ship at least 50 percent of the gross tonnage (computed separately for dry bulk carriers, dry cargo liners, and tankers) involved, whenever shipping any equipment, material, or commodities pursuant to this Contract to the extent such vessels are available at fair and reasonable rates for United States-Flag commercial vessels.

Contractor shall furnish within 20 working days following the date of loading for shipments originating within the United States or within 30 working days following the date of leading for shipments originating outside the United States, a legible copy of a

rated, "on-board" commercial ocean bill-of-lading in English for each shipment of cargo described in the preceding paragraph to the Division of National Cargo, Office of Market Development, Maritime Administration, Washington, DC 20590 and to the Omnitrans (through Contractor in the case of a subcontractor's bill-of-lading.)

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

RR-17
FLY AMERICA

A. Applicability

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

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

RR-18
CONTRACT WORK HOURS AND SAFETY STANDARDS ACT *

A. Applicability

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

- B.** Pursuant to the Labor Standards Provisions Applicable to Non-construction Contracts subject to the Federal Contract Work Hours and Safety Standards Act, 40 U.S.C.A. § 327 through 332 as implemented by U.S. Department of Labor regulations, 29 CFR 5.5 (b) and (c) Contractor and Subcontractor's contracting for any part of the Contract work shall comply with the following:

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

DISADVANTAGED BUSINESS ENTERPRISE (DBE) 49 CFR Part 26

Disadvantaged Business Enterprises

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

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

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

- D. Contractor is required to pay its subcontractors performing work related to this contract for satisfactory performance of that work no later than 7 days after the contractor's receipt of payment for that work from the Omnitrans. In addition, Contractor is required to return any retainage payments to those subcontractors within 30 days after the subcontractor's work related to his contract is satisfactorily completed.

- E. Contractor must promptly notify Omnitrans whenever a DBE subcontractor performing work related to this contract is terminated or fails to complete its work, and must make good faith efforts to engage another DBE subcontractor to perform at least the same amount of work. Contractor may not terminate any DBE subcontractor and perform that work through its own forces or those of an affiliate without prior written consent of Omnitrans.

RR-20

ADA ACCESS

A. Applicability

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

B. Access Requirements for Persons with Disabilities

Contractor shall comply with:

1. The requirements of 49 U.S.C. § 5301(d), which states the Federal policy that elderly persons and persons with disabilities have the same right as other persons to use mass transportation service and facilities, and that special efforts shall be made in planning and designing those services and facilities to implement that policy;
2. All applicable requirements of section 504 of the Rehabilitation Act of 1973, as amended, 29 U.S.C. § 794, which prohibits discrimination on the basis of handicaps;
3. The Americans with Disabilities Act of 1990 (ADA), as amended, 42 U.S.C. § 12101 et seq., which requires that accessible facilities and services be made available to persons with disabilities, including any subsequent amendments to that Act;
4. The Architectural Barriers Act of 1968, as amended, 42 U.S.C. §§ 4151 et seq., which requires that buildings and public accommodations be accessible to persons with disabilities, including any subsequent amendments to that Act; and
5. All applicable requirements of the following regulations and any subsequent amendments thereto:
 - (1) U.S. DOT regulations, "Transportation Services for Individuals with Disabilities (ADA)," 49 C.F.R. Part 37;

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

RR-21

ALCOHOL AND DRUG-FREE WORKPLACE PROGRAM *

A. Applicability

This Article applies to federally funded contracts for transit operations.

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

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

C. Certificate of Compliance

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

D. Drug and Alcohol Testing Program

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

E. Alcohol and Drug Free Workplace Program

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

RR-22

TRANSIT EMPLOYEE PROTECTIVE ARRANGEMENTS *

A. Applicability

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

B. General Transit Employee Protective Requirements

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

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

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

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

If FTA has determined that this Contract involves transit operations financed in whole or in part with Federal assistance authorized by 49 U.S.C. § 5311, Contractor shall comply with the terms and conditions of the Special Warranty for the Nonurbanized Area Program agreed to by the U.S. Secretaries of Transportation and Labor, dated May 31, 1979, and the procedures implemented by U.S. DOL or any revision thereto.

E. Indemnity

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

RR-23

BONDING REQUIREMENTS

Applicability to Contracts

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

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

RR-24

DAVIS-BACON AND COPELAND ANTI-KICKBACK ACTS

Background and Application

The Davis-Bacon and Copeland Acts are codified at 40 USC 3141, *et seq.* and 18 USC 874. The Acts apply to grantee construction contracts and subcontracts that "at least partly are financed by a loan or grant from the Federal Government." 40 USC 3145(a), 29 CFR 5.2(h), 49 CFR 18.36(i) (5). The Acts apply to any construction contract over \$2,000. 40 USC 3142(a), 29 CFR 5.5(a). 'Construction,' for purposes of the Acts, includes "actual construction, alteration and/or repair, including painting and decorating." 29 CFR 5.5(a). The requirements of both Acts are incorporated into a single clause (*see* 29 CFR 3.11) enumerated at 29 CFR 5.5(a) and reproduced below.

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

Clause Language

Davis-Bacon and Copeland Anti-Kickback Acts

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

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

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

- (1) Except with respect to helpers as defined as 29 CFR 5.2(n)(4), the work to be performed by the classification requested is not performed by a classification in the wage determination; and
- (2) The classification is utilized in the area by the construction industry; and
- (3) The proposed wage rate, including any bona fide fringe benefits, bears a reasonable relationship to the wage rates contained in the wage determination; and

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

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

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

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

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

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

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

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

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

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

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

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

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

(2) **Withholding** - Omnitrans shall upon its own action or upon written request of an authorized representative of the Department of Labor withhold or cause to be withheld from the contractor under this contract or any other Federal contract with the same prime contractor, or any other federally-assisted contract subject to Davis-Bacon prevailing wage requirements, which is held by the same prime contractor, so much of the accrued payments or advances as may be considered necessary to pay laborers and mechanics, including apprentices, trainees, and helpers, employed by the contractor or any subcontractor the full amount of wages required by the contract. In the event of failure to pay any laborer or mechanic, including any apprentice, trainee, or helper, employed or working on the site of the work (or under the United States Housing Act of 1937 or under the Housing Act of 1949 in the construction or development of the project), all or part of the wages required by the contract, Omnitrans may, after written notice to the contractor, sponsor, applicant, or owner, take such action as may be necessary to cause the suspension of any further payment, advance, or guarantee of funds until such violations have ceased.

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

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

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

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

(2) That each laborer or mechanic (including each helper, apprentice, and trainee) employed on the contract during the payroll period has been paid the full weekly wages earned, without rebate, either directly or indirectly, and that no deductions have been made either directly or indirectly from the full wages earned, other than permissible deductions as set forth in Regulations, 29 CFR part 3;

(3) That each laborer or mechanic has been paid not less than the applicable wage rates and

fringe benefits or cash equivalents for the classification of work performed, as specified in the applicable wage determination incorporated into the contract.

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

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

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

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

classification. If the Administrator of the Wage and Hour Division of the U.S. Department of Labor determines that a different practice prevails for the applicable apprentice classification, fringes shall be paid in accordance with that determination. In the event the Bureau of Apprenticeship and Training, or a State Apprenticeship Agency recognized by the Bureau, withdraws approval of an apprenticeship program, the contractor will no longer be permitted to utilize apprentices at less than the applicable predetermined rate for the work performed until an acceptable program is approved.

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

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

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

(6) **Subcontracts** - The contractor or subcontractor shall insert in any subcontracts the clauses contained in 29 CFR 5.5(a)(1) through (10) and such other clauses as the Federal Transit Administration may by appropriate instructions require, and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The prime contractor shall be responsible for the compliance by any subcontractor or lower tier subcontractor with all the contract clauses in 29 CFR 5.5.

(7) **Contract termination: debarment** - A breach of the contract clauses in 29 CFR 5.5 may be

grounds for termination of the contract, and for debarment as a contractor and a subcontractor as provided in 29 CFR 5.12.

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

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

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

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

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

RR-25 PRIVACY ACT - 5 U.S.C. 552

Applicability to Contracts

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

Flow Down

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

Model Clause/Language

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

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

- (1) The Contractor agrees to comply with, and assures the compliance of its employees with, the information restrictions and other applicable requirements of the Privacy Act of 1974,

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

RR- 26

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

Applicability to Contracts

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

Flow Down

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

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

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

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

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

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

If, after termination of the Contractor's right to proceed, it is determined that the Contractor was not in default, or that the delay was excusable, the rights and

obligations of the parties will be the same as if the termination had been issued for the convenience of Omnitrans.

RR – 27

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

Applicability to Contracts

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

Flow Down

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

Model Clauses/Language

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

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

RR-28

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

Applicability to Contracts

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

Flow Down

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

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

to offer evidence in support of its position. The decision of Omnitrans Project Manager shall be binding upon the Contractor and the Contractor shall abide by the decision.

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

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

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

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

RR-29

VETERANS PREFERENCE

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

END OF REGULATORY REQUIREMENTS

ITEM # F6

DATE: December 4, 2013

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

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

FROM: Jennifer M. Sims, Director of Procurement

SUBJECT: **AUTHORIZE AWARD - CONTRACT MNT13-100
BUS TIRE LEASE AND TIRE SERVICES**

FORM MOTION

Authorize the Interim CEO/General Manager to award Contract MNT13-100 to Bridgestone Americas Tire Operations, LLC, of Nashville, TN, for the provision of Bus Tire Lease and Tire Services for a three-year period ending January 31, 2017, in the amount of \$1,489,351.49, and the authority to exercise two (2) single option years in the amount of \$1,147,358.46 to extend the contract to no later than January 31, 2019, for a total contract amount of \$2,636,709.95, plus a 10% contingency of \$263,670.99, bringing the total not to exceed amount to \$2,900,380.95, should all option years be exercised.

BACKGROUND

On May 1, 2013, Omnitrans' Board of Directors authorized the release of Invitation for Bids (IFB) IFB-MNT13-100 for bus tire leasing and tire services. Staff released the IFB, published notices in two newspapers of general circulation, and posted it on Omnitrans' online bidding system.

Two bids were received electronically on June 14, 2013. However one was deemed non-responsive due to their bid being conditioned with eighteen exceptions to Omnitrans' terms and conditions. In order to avoid deficiencies in the next Procurement System Review for awarding a single source bid, staff met with the Federal Transit Administration (FTA) to discuss an alternative solution. With the FTA's support, staff cancelled the IFB and worked with County Counsel to develop terms and conditions that the tire manufacturers would find more favorable without significantly increasing liability to Omnitrans.

On September 10, 2013, staff invited the two bidders from the initial solicitation to participate in a negotiated procurement, RFP-MNT13-100. Over fifty contractual elements were addressed and resolved through the addendum process resulting in the receipt of two responsive and responsive proposals on October 2, 2013.

<u>Criteria:</u>	Weight Factors	Bridgestone	Michelin
		Weighted Average	Weighted Average
1. Overall responsiveness	10	7.33	8.00
2. Quality of Workplan	25	17.50	20.00
3. Experience	25	20.00	19.17
4. Overall Cost	40	40.00 *40.00	34.43 *32.69
Total Group Scores:		84.83 *84.83	81.59 *79.86

*With Full Time Service Provider

The proposals were evaluated in accordance with the criteria listed in the RFP. Addendum 4 added an option for Omnitrans to consider adding Full-time Tire Services to the scope of work. As required by the FTA, the full-time tire service option was evaluated with the rest of the proposals. Staff is not recommending the option to include full-time tire service be exercised at this time and will seek guidance from County Counsel if advantageous to do so at a later date.

Staff is recommending award to the highest ranking and lowest cost firm. The Independent Cost Estimate (ICE) for all five years was \$3,552,564, and was based on current rates, plus a 2% escalation (sales tax not included). The single responsive bid from the cancelled IFB totaled \$3,520,219.88, including tax and service, for a total cost avoidance of \$883,509.93.

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 512400

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

CONCLUSION

By awarding this agreement, Omnitrans will realize a cost avoidance of \$833,509.93 over the next five years.

PSG:JMS



CONTRACT AGREEMENT

between

CONTRACTOR

Bridgestone Americas Tire Operations, LLC
535 Marriott Drive
Nashville, TN 37214
(hereinafter "CONTRACTOR")
Telephone: (800) 543-8530
Fax: (330) 572-5030

And

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

CONTRACT DOCUMENTS

CONTRACT NO.
MNT13-100

Bus Tire Lease and Tire Services

Contract Amount:

\$1,489,351.49

Omnitrans Project Manager:

Name: Omar Bryant
Title: Maintenance Manager
Telephone: (909) 379-7482
Email: Omar.Bryant@omnitrans.org

Contract Administrator:

Name: Joanne Cook
Title: Contract Administrator
Telephone: (909) 379-7198
Email: Joanne.Cook@omnitrans.org



TABLE OF CONTENTS

1.	SCOPE OF WORK.....	3
2.	PERIOD OF PERFORMANCE.....	3
3.	COMPENSATION.....	4
4.	INVOICING.....	4
6.	PRORATED CHARGES	5
7.	PROPORTIONATE RATE AND VALUE OF TIRES	6
8.	TITLE TO TIRES	6
9.	EXCLUSIVITY OF LEASED TIRE USAGE	6
10.	INVENTORY BUY-OUT.....	6
11.	INVENTORY RUN-OUT	7
12.	AUDIT AND INSPECTION OF RECORDS.....	8
13.	NOTIFICATION	8
14.	OMNITRANS' AND CONTRACTOR'S REPRESENTATIVES.....	9
15.	TERMINATION FOR CONVENIENCE	10
16.	TERMINATION FOR BREACH OF AGREEMENT	10
17.	ASSIGNMENT.....	11
18.	SUBCONTRACTING.....	11
19.	INDEPENDENT CONTRACTOR.....	11
20.	INSURANCE	12
21.	INDEMNITY.....	12

22.	REVISIONS.....	13
23.	RIGHTS IN TECHNICAL DATA [this section intentionally left blank]	13
24.	OWNERSHIP OF REPORTS AND DOCUMENTS.....	13
25.	OWNERSHIP RIGHTS [this section intentionally left blank].....	14
26.	WORK FOR HIRE	14
27.	SUBMITTAL OF CLAIMS BY CONTRACTOR.....	14
28.	EQUAL OPPORTUNITY.....	14
30.	NOTIFICATION OF EMPLOYMENT OF OMNITRANS BOARD MEMBERS/ALTERNATES AND EMPLOYEES	15
31.	DISQUALIFYING POLITICAL CONTRIBUTIONS	15
32.	COMPLIANCE WITH LAW	16
33.	ADDITIONAL REGULATIONS.....	16
34.	COMPLIANCE WITH LOBBYING POLICIES	16
35.	PUBLIC RECORDS ACT.....	16
36.	WAIVER/INVALIDITY	17
37.	FORCE MAJEURE.....	17
38.	CONFIDENTIALITY	17
39.	CONTRACTOR’S INTERACTION WITH THE MEDIA AND THE PUBLIC	18
40.	GOVERNING LAW	18
41.	MODIFICATIONS TO AGREEMENT	18
42.	PRECEDENCE	18
43.	ENTIRE AGREEMENT.....	19

ATTACHMENT A – SCOPE OF WORK/TECHNICAL SPECIFICATIONS

ATTACHMENT B – REGULATORY REQUIREMENTS

ATTACHMENT C – PRICING SCHEDULE

This Agreement is made and entered into as of this fourth day of December, 2013 by and between Omnitrans (hereinafter referred to as "OMNITRANS") and BRIDGESTONE AMERICAS TIRE OPERATIONS, LLC (hereinafter referred to as "CONTRACTOR").

RECITALS

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

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

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

1. SCOPE OF WORK

- A. CONTRACTOR will perform the Work and related tasks as described in Exhibit A, Scope of Work hereto and is incorporated by reference into and made a part of this Agreement.
- B. This is a non-exclusive Agreement, whereby OMNITRANS may, at its sole discretion, augment or supplant the Work with its own forces. CONTRACTOR shall cooperate fully with OMNITRANS' staff 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 January 31, 2017, unless terminated as specified in Paragraphs 15 and 16. All applicable indemnification provisions in this Agreement shall remain in effect following the termination of this Agreement.

Omnitrans reserves the right to unilaterally exercise two (2) one-year options with no obligation to purchase any specified amount of product/services.

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 January

31, 2017 through January 31, 2019, which encompasses the Initial Term and any Option Years.

3. COMPENSATION

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

FIRM FIXED UNIT PRICING

OMNITRANS' maximum cumulative payment obligation under this Agreement shall not exceed one million, four hundred eighty-nine thousand, three hundred fifty-one Dollars and forty-nine cents (\$1,489,351.49), including all amounts payable to CONTRACTOR for all costs, including but not limited to direct labor, other direct costs, subcontracts, indirect costs including, but not limited to, leases, materials, taxes, fees, insurance, and profit in accordance with Attachment C, Pricing Schedule.

4. INVOICING

- A. Omnitrans will submit the Mileage Accounting to the Contractor monthly for invoice preparation.
- B. Contractor shall submit invoices monthly in duplicate to:

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

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

C. Each invoice shall include, at minimum, the following information:

- Contract number
- Invoice number
- Description of delivery
- Delivery Date
- Miles operated
- Unit Price, extended price and applicable taxes and fees
- Information as requested by OMNITRANS
- Purchase Order Number

5. PAYMENT

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.

6. PRORATED CHARGES

A. Prorated Charges must apply in the following circumstances:

- 1) Lost, Sold, or Auctioned Tires (Omnitrans' fault)
- 2) Irreparable Damage (caused by outside or mechanical forces)
- 3) Pre-Mature Wearing (caused by improper maintenance)

B. Computing Prorated Rates and Charges

- 1) Tires must be prorated according to the actual remaining life of the tire.
- 2) Prorated Rate will be computed by dividing the average tread depth of the individual tire tread by the average tread depth of a new tire.
- 3) Prorated Charges will be computed by multiplying the prorated rate against the manufacturer's 32nd cost of the tire.

C. Omnitrans shall pay for mileage remaining thereon at the rate then in effect for bus tires which are damaged beyond repair by an accident, fire, vandalism, or have been sold or purchased. If a tire is unavailable for

inspection to prorate the remaining life, then Contractor may charge Omnitrans not more than 50% of the current value of a similar tire, unless the Contractor can provide an auditable accounting of the tire's accurate mileage prior to the loss. Omnitrans shall pay for a lost tire on a case-by-case basis if the Contractor can adequately demonstrate that Omnitrans was directly responsible for losing the tire.

7. PROPORTIONATE RATE AND VALUE OF TIRES

A separate but negotiated rate and value will apply to any other make and model vehicles not listed in the IFB, which are put in service during the term of the resultant contract, or vehicles requiring a different size and or construction type of tire.

If, during the term of the contract, OMNITRANS purchases new buses with leased tires, Contractor shall deliver to the North American bus manufacturer or port of demarcation, the new tires required, if in contractor's product line. OMNITRANS shall give Contractor not less than a sixty (60) day written notification of tire quantities and delivery dates. If any such buses equipped with tires furnished by the Contractor shall be driven over land instead of being shipped, OMNITRANS shall pay the Contractor the following month for use of the tires. Any tires lost, stolen or damaged while in the possession of the bus manufacturer, dealer or seller, or while the bus is being delivered shall be paid for by OMNITRANS.

8. TITLE TO TIRES

Contractor or its assignees retains title to all tires that are provided under the contract, until such time that Contractor has received full payment from Omnitrans according to the terms and conditions of the contract, at which time the title to all tires will transfer to Omnitrans.

9. EXCLUSIVITY OF LEASED TIRE USAGE

Omnitrans agrees to use the tires provided by Contractor exclusively, however, Omnitrans may use tires from other manufacturers on its vehicles up to 5% of its fleet for test purposes.

Omnitrans will not transfer, sublet, or lend the tires furnished by, or permit the tires to be used by anyone other than Omnitrans, without the prior written consent of Contractor.

10. INVENTORY BUY-OUT

A. Inventory of Remaining Leased Tires

- 1) Within 30 days after the expiration of the contract, a complete inventory of the remaining leased tires will be conducted by the Contractor and an Omnitrans representative.

- 2) Each leased tire will be measured for remaining average tread depth.
- B. Inventory Buy-Out
 - 1) The leased tire inventory and the remaining average tread depth will be used to determine the Inventory Buy-Out amount.
 - 2) The Inventory Buy-Out amount will be computed according to the Prorated Rates and Charges.
 - 3) Omnitrans will pay the contractor for the Inventory Buy-Out within 30 days after receipt of invoice.
- C. Contractor Obligations
 - 1) Contractor shall continue to provide warranty service for materials and workmanship.
 - 2) Contractor's obligations may be negotiated by Omnitrans and the Contractor during the Inventory Buy-Out phase.

11. INVENTORY RUN-OUT

- A. Omnitrans' Rights and Obligations
 - 1) Omnitrans reserves the right to run-out the remaining inventory of leased tires for up to 24 months in lieu of the Inventory Buy-Out by notifying Contractor thirty (30) days prior to contract expiration of its intentions. No additional tires or services are to be furnished by the Contractor during such extension unless requested by Omnitrans and agreed to by the Contractor. The rates per tire miles in effect during such 24-month period shall be the rates in effect immediately preceding the start of such 24-month period.
 - 2) Omnitrans will continue to pay the last contract year's lease rate for the use of the remaining leased tires for up to 24 months.
 - 3) At the end of the 24-month Run-Out, Omnitrans will pay for any mileage remaining according to the Prorated Charges.
- B. Contractor Rights and Obligations
 - 1) Should any tire fail because of Manufacturer's defects during the Inventory Run-Out period, Contractor must pick up the defective tire at Contractor's sole expense and will charge Omnitrans only for the used mileage, Omnitrans will have no obligation to pay for any remaining life of the tire.
 - 2) At the end of the 24-month run-out, Omnitrans shall pay for any mileage remaining thereon in accordance with the prorated rate set out in the contract.
 - 3) Upon receipt of full payment from Omnitrans for remaining inventory of leased tires, Contractor will transfer title for each such

used tire as is, and Contractor makes no warranties as to the condition or fitness for continued use of such tires, however, Contractor is responsible for any manufacturer's defects for the remaining life of the tire.

12. AUDIT AND INSPECTION OF RECORDS

During normal business hours, 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.

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.

Contractor shall permit any of the foregoing parties to reproduce excerpts and transcriptions as reasonably needed.

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.

13. NOTIFICATION

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

To OMNITRANS:

To CONTRACTOR:

Omnitrans
1700 West Fifth Street
San Bernardino, CA 92411

Attn: Joanne Cook, Contract Administrator

Bridgestone Americas Tire Operations, LLC
10 E. Firestone Blvd. – Mileage Sales
Akron, OH 44317

Attn: Janet M. Bragg, Contract Administrator

14. 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: Omar Bryant

- 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 in accordance with and subject to the terms and conditions of this Agreement.
 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.

15. TERMINATION FOR CONVENIENCE

OMNITRANS may terminate this Agreement in whole but not in part for OMNITRANS' convenience. Omnitrans' CEO/General Manager shall terminate this Agreement by a thirty (30) days prior 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 other than those damages allowed in Exhibit E regarding inventory buyout. Force Majeure shall apply.

Contractor shall promptly submits termination claim for unrun miles remaining on tires in accordance with Section 10 Inventory, Buy-out.

16. 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 ten (10) calendar days permitted by OMNITRANS, then OMNITRANS may terminate this Agreement due to CONTRACTOR's breach of this Agreement.
- B. If a federal or state proceeding for relief of debtors is undertaken by or against CONTRACTOR, or if CONTRACTOR makes an assignment for the benefit of creditors, then OMNITRANS may immediately terminate this Agreement.
- C. If CONTRACTOR violates Section 26, Compliance with Lobbying Policies, of this Agreement, then OMNITRANS may immediately terminate this Agreement.
- D. In the event OMNITRANS terminates this Agreement as provided in this Section, OMNITRANS may procure, upon such terms and in such manner as OMNITRANS may deem appropriate, Work similar in scope and level of effort to those so terminated for a reasonable period of time during the re-procurement process, and the CONTRACTOR shall be liable to OMNITRANS for all of its reasonable costs and damages.

- E. Upon payment in full for leased tires on buses and spare stock, all finished documents and materials procured under this Agreement shall become OMNITRANS' property upon date of such termination. Notwithstanding the foregoing, Bidder retains any and all intellectual property rights that may be contained in such documents and materials that may be procured hereunder.
- F. If, after notice of termination of this Agreement under the provisions of this Section, it is determined for any reason that CONTRACTOR was not in default under the provisions of this Section, or that the default was excusable under the terms of this Agreement, the rights and obligations of the parties shall be the same as if the notice of termination had been issued pursuant to Section 8, Termination for Convenience.
- G. The rights and remedies of OMNITRANS provided in this Article shall not be exclusive and are in addition to any other rights and remedies provided by law or under this Agreement.

17. 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.

18. 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

19. 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.

20. INSURANCE

Throughout the duration of this Agreement, CONTRACTOR shall maintain the following minimum insurance coverage. CONTRACTOR shall not of its own initiative cause such insurance to be canceled or changed in such a way that the coverage afforded to OMNITRAN's will be materially altered 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; *Omnitrans shall be named as Additional Insured; provide sufficient documentation for Omnitrans to guarantee coverage.*
- B. **Automobile Liability:** \$1,000,000 combined single limit bodily and property damage liability per accident; *Omnitrans shall be named as Additional Insured; provide sufficient documentation for Omnitrans to guarantee coverage.*
- 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 occurrence.

Additional Insured:

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

21. INDEMNITY

Except to the extent of negligence on the part of Omnitrans, and its member agencies, and their officers, directors, employees and agents, CONTRACTOR shall to the fullest extent permitted by law, 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), third party claims of liability, expense (including but not limited to, reasonable 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 out of, or resulting from any act, omission, fault, or negligence of CONTRACTOR, its officers, directors, employees, agents, Subcontractors or suppliers in the performance of this contract. This indemnity shall survive termination or expiration of this Agreement and/or final payment thereunder.

22. REVISIONS

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

Price Adjustments:

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

23. RIGHTS IN TECHNICAL DATA [this section intentionally left blank]

24. 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.

25. OWNERSHIP RIGHTS [this section intentionally left blank]

26. 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.

27. 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.

28. 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.

29. 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.

30. 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.

31. 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).

32. 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.

33. ADDITIONAL REGULATIONS

- A. Additional regulatory requirements may be contained in the other contract sections and attachments hereto.
- B. Other regulations contain additional requirements for the Contractor regarding transportation services. Those include, but are not limited to:
 - 1) California State Department of Transportation (DOT);
 - 2) Department of Motor Vehicles; and
 - 3) Department of Highway Patrol;
- C. The preceding list of requirements is not all-inclusive and the Contractor is required to stay up-to-date on regulations and must abide by any future regulations.

34. 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.

35. 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.

36. 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.

37. 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, lockouts, riots, acts of war or terrorism or from other similar causes beyond CONTRACTOR's or OMNITRANS' control.

38. 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.

39. 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.

40. 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.

41. 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.

42. PRECEDENCE

Conflicting provisions hereof, if any, shall prevail in the following descending order of precedence: (1) the provisions of this Agreement, (2) Exhibit A, Scope of

Work, (3) provisions of Solicitation No. RFP-MNT13-100 and (4) CONTRACTOR's BAFO dated October 23, 2013 and (5) CONTRACTOR's proposal dated October 2, 2013.

43. ENTIRE AGREEMENT

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

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

OMNITRANS

CONTRACTOR

P. Scott Graham
Interim CEO/General Manager

D. Warren Dickenson
Manager Mileage Sales

Date

Date

Federal Tax I.D. No. _____

ATTACHMENT A

SCOPE OF WORK – TECHNICAL SPECIFICATIONS

1. BACKGROUND

- A) Omnitrans' bus fleet is driven on city streets, highways, and freeways in the areas described above. The buses make frequent starts, stops, and turns at bus stops, stop signs, traffic signals, and the like.
- B) The road conditions in which the tires will be operated are typical for a metropolitan area: the Temperature Extremes are from 40° to 105° Fahrenheit, occasionally reaching the 110° bracket; Rainfall is typical for the Southern California area; Snow is rare in the service area. Buses only operate when roads are open and clear of snow.
- C) Omnitrans' current bus fleet: (11) Thomas Built Low Floor 32-foot buses, (162) New Flyer Low Floor 40-foot buses and (14) New Flyer Low Floor 60-foot articulating buses.
- D) Over the next five years, the Tire Mileage is projected to increase from 8,516,357 to 9,422,088 tire miles. Omnitrans makes no usage guarantee and Omnitrans is not obligated to pay for more than the actual mileage used.

2. TIRE SPECIFICATIONS

A. General

- 1) Tires must be suitable for city and highway public transportation, able to withstand sustained operation of 65 mph for not less than one hour, able to withstand exposure to the elements (except road hazards), and able to withstand braking, accelerating, and turning requirements of the buses.
- 2) Tires must comply with applicable laws and regulations of the Federal government, the State of California, and the various municipalities in which Omnitrans regularly operates. Contractor must certify such compliance on request by Omnitrans.

B. Minimum Tire Specifications

- 1) The tires must be Speed Rated and Load Rated to meet or exceed the bus manufacturers' Gross Vehicle Weight Rating (GVWR).
- 2) Tires must be New, Load Range H, 16-ply rating tires (City-Suburban type), 275/70R22.5, 245/70R19.5, and 305/70R22.5.

3. NO-VALUE TIRES

A. Definitions

- 1) “No-Value Tire” is any tire with at least 4/32nd of tread remaining on front position and 2/32nd on rear position under the Contract, for tires provided by Contractor for Omnitrans’ Obsolete or Out-of-Service vehicles.
- 2) “Obsolete or Out-of-Service Vehicle” is any vehicle that Omnitrans has determined to be unfit for further service that was furnished with “No-Value Tire” provided by Contractor.

B. Contractor’s Rights and Responsibilities

- 1) Contractor makes no warranties as to the condition or fitness for continued use of “No-Value Tires.”
- 2) Contractor may designate “No-Value Tires” with its nomenclature and corresponding documentation.
- 3) Contractor will provide “No-Value Tires” to Omnitrans for the sole and exclusive purpose of equipping the obsolete or out-of-service vehicles if available from Omnitrans’ unserviceable tires.

C. Omnitrans’ Rights and Responsibilities

- 1) Omnitrans agrees to use the “No-Value Tires” provided by the Contractor for the sole and exclusive purpose of equipping Omnitrans obsolete or out-of-service vehicles.
- 2) Omnitrans will acquire each “No-Value Tire” **as-is without warranty.**
- 3) Omnitrans assumes all liability for use, possession, or disposal of any “No-Value Tires.”
- 4) Omnitrans will not to file or assert against Contractor any claim, action or cause of action for loss, liability or damage arising out of Omnitrans’ use, possession, or disposal of “No-Value Tires.”
- 5) Omnitrans will indemnify, defend, and hold Contractor harmless against all claims of any party for loss, liability, damage, injury, any and all costs, legal fees, expenses and attorney’s fees resulting from Contractor providing “No-Value Tires” to Omnitrans.
- 6) Omnitrans agrees to dispose of each “No-Value Tire” in full compliance with applicable Federal, State, and local laws, rules and regulations.

- 7) Omnitrans will take title and other incidents of ownership to the “No-Value Tire” when Contractor delivers the “No-Value Tires” to Omnitrans.
- 8) Contractor or Omnitrans, separately from any other portion of the contract, may, at their option, without prejudice to any other rights and remedies, decline in writing to further provide or utilize “No-Value Tires”.
- 9) Omnitrans’ Rights and Responsibilities regarding “No Value Tires” shall survive termination of the Contract Agreement.

4. OTHER RESPONSIBILITIES

A. Contractor Responsibilities:

- 1) Contractor shall conduct a physical inventory semi-annually based on an inventory method that is acceptable to the Contractor and Omnitrans.
- 2) Contractor shall provide inflatable tires with at least 4/32nd of tread remaining on front position tires and 2/32nd on rear position tires and that have no value to be used on buses that will be auctioned or removed from service.
- 3) Contractor shall remove all tires that are no longer suitable for service from Omnitrans property the first and fifteenth of each month, or the next working day if these days fall on the weekend or a holiday. Disposal of tires must meet, at a minimum, environmental, regulatory and fire-safety requirements. It shall be the contractor’s responsibility to pick up the tires as stated above. If the contractor fails to pick up the scrap tires within that timeframe, an outside vendor will be hired to pick up the tires and remove them. All fees incurred will be charged to the contractor and subtracted at the next billing cycle.”
- 4) If contractor fails to supply sufficient tire stock or any direct tire related cause that negatively affects bus revenue service occurs during the course of this contract, Contractor shall be assessed \$100.00 per day, per bus, per occurrence.

B. Omnitrans Responsibilities:

- 1) Omnitrans will maintain the suspension, steering, and braking systems in accordance with the bus manufacturer’s specifications, and properly inflate tires to recommended pressures.
- 2) Omnitrans will maintain a sufficient number of mounted spare tires to insure continuous operation of its fleet.

- 3) Omnitrans will furnish Contractor, by the tenth (10th) working day of each month, a list of all buses operated during the previous month, the mileage of each bus, and the number of Contractor's tires on each bus.

In the event of a change in supplier, where tires from the previous Contractor and new Contractor are both running in the Omnitrans system, additional information will be provided:

- a. Number of Contractor's newly applied or removed tires by vehicle during the previous month
 - b. Total spare stock tire inventory of Contractor's tires as of the end of such month by size, type, and, if applicable, location; and
 - c. The date of receipt of tire deliveries during such month.
- 4) Omnitrans may inspect and verify the condition of each tire being received and/or shipped.
- 5) Omnitrans will provide, at its sole expense, all necessary equipment, supplies, wheels, enclosed secured storage space.
- 6) Omnitrans will service and maintain all tires with exception to manufacturer's defects, for which the Contractor shall remain responsible.
- 7) Omnitrans will not regroove or accept regrooved tires.
- 8) Omnitrans shall notify Contractor prior to any sale or disposition of any of Omnitrans' vehicles equipped with Contractor's tires. Omnitrans' shall purchase the unused mileage in each leased tire and for any leased tires which remain in stock after such vehicles have been sold or disposed of which cannot be used on other vehicles in Omnitrans' fleet. Payment for the unused tire mileage acquired by Omnitrans shall be in accordance with the Contract Agreement.

5. PROJECTED MILEAGE

- A. Projected Mileage is not a guarantee by Omnitrans or an obligation of Omnitrans to pay for Actual Mileage that is less than the Projected Mileage.
- B. Projected Mileage is provided as information only.

Start Date	End Date	Vehicles	Projected Mileage
07/01/2013	06/30/2014	187	8,516,357
07/01/2014	06/30/2015	187	9,116,357

07/01/2015	06/30/2016	187	9,298,088
07/01/2016	06/30/2017	187	9,422,088
07/01/2017	06/30/2018	187	9,422,088

6. TEST TIRES

Omnitrans reserves the right to install test tires of a make other than the Contractor's on its buses. The number of buses equipped with such test tires shall not exceed 5% of the total number at any one time. With Omnitrans' prior written approval, a reasonable number of tires, not to exceed 5% may also be tested by the Contractor on Omnitrans' vehicles provided such tires are being tested for the purpose of determining their operational benefits for potential use on transit applications. The final results shall be provided, in writing, to Omnitrans, Director of Maintenance, within 30 days upon completion of test.

7. WARRANTIES

- A. Contractor warrants that all tires, excluding scrap tires and mileage tires sold on expiration or termination or at the conclusion of runout, and services shall:
- 1) Be fit for the particular purpose of public transportation;
 - 2) Conform to the more restrictive specifications contained in either this RFP or the Tire Manufacturer's specifications or both, if any;
 - 3) Be free of defects in material and workmanship; and
 - 4) Not infringe any United States patent.
- C. Tires shall be of a quality as to achieve at minimum 25,000 miles each before reaching 4/32nd of tread life.
- D. Without limiting the warranties, Contractor must pay Omnitrans the cost of repair (labor and materials) for any damage to buses resulting solely from defects in tire material and workmanship.
- E. 2012 Fiscal Year Annual Miles operated by Make/Model of vehicle:

Year	Make	Model	Series Description		Quantity	Tire Size	GVWR	Miles
2003	Thomas	SLF232G	500		11	245/70R 19.5	28,580	422,232
2005	New Flyer	C40LF	0180	SR-842	23	305/70R22.5	42,540	1,021,043
2003	New Flyer	C40LF	0150	SR-813	22	275/70R22.5	37,920	1,088,008
2001	New Flyer	C40LF	0130	SR-709	11	275/70R22.5	37,930	

								507,455
2000	New Flyer	G40LF	Hybrids	SR-654	3	275/70R22.5	37,950	17,464
2001	New Flyer	C40LF	0100	SR-674	27	275/70R22.5	37,950	1,492,445
2000	New Flyer	C40LF	0000	SR-585	12	275/70R22.5	37,930	1,651,386
2009	New Flyer	C40LFR	1201	SR1337	27	305/70R22.5	42,540	1,533,063
2011	New Flyer	C40LFR	1231	SR1563	9	305/70R22.5	42,530	261,615
2011	New Flyer	C40LFR	1241	SR1564	8	305/70R22.5	42,530	279,650
2012	New Flyer	XN40	1251	SR1677	20	305/70R22.5	42,540	
2012	New Flyer	XN60	6001	SR1565	14	305/70R22.5	66,790	
Total	Estimated	Miles:						8,274,361

8. DELIVERY

- A. Contractor must give Omnitrans at least a 24-hour notice before delivering the tires.
- B. Contractor must deliver tires as required to the following locations:
 - 1) 1700 West Fifth Street, San Bernardino, CA 92411;
 - 2) 4748 Arrow Highway, Montclair, CA 91763;
- C. Contractor must deliver new tires as required to the North American bus manufacturer by the required delivery date in the quantities required whenever Omnitrans makes new bus purchase; Omnitrans will give Contractor at least a 60-day written notice.
- D. Contractor must deliver and unload the tires at Contractor's sole expense. Tailgate delivery of tires is acceptable. Title to and ownership of all tires and equipment furnished by Contractor shall not pass to transit upon delivery, but will remain with Contractor unless and until Omnitrans has made complete payment therefore.
- E. Contractor must deliver stock orders within 21 calendar days and emergency orders within 7 calendar days after receipt of order.

9. TIRE SERVICES

Services may be requested of the Contractor when Omnitrans' certified tire service technician is not available in such situations as vacation relief or extended absence.

- A. Contractor to provide tire services, labor only, on a temporary/as-needed basis.
 - 1) Rates to include per hour for one certified service person as needed for 40 hours a week.
 - 2) Contractor will be provided 30 days' notice for vacation relief; Contractor will provide a service person to cover extended absences due to illness or injury within 14 business days.
 - 3) The tire service personnel work schedule will be tailored to support the needs of the Agency.
 - a. Contractor shall discuss with Omnitrans its general work schedule at each facility, including scheduled days off, start and stop times and any changes thereof.
- B. Equipment, Tools and Materials supplied by Omnitrans.
- C. Duties may include, but are not limited to, the following:
 - 1) Mounting and dismounting tires.
 - 2) Perform fleet check of tires for cracks, damage; tread depth and uneven wear of tread, flat spots, balding, deterioration, etc.
 - 3) Examines wheels and rims of tires for cracks, damaged or bent surfaces, corrosion, deterioration, clean rims as needed, etc.
 - 4) Removes, repairs (Flats) tires and tubes.
 - 5) Check assemblies and adjusts wheels for proper balance.
 - 6) Maintains necessary records on conditions, use and maintains inventory of tires.
- D. Mounting and Dismounting Tires*

The following are guidelines are for servicing, repairs and maintenance of tires. Contractor is responsible for maintaining tires consistent with industry standards and practices and manufacturer requirements.

- 1) Beads should be well lubricated before applying the tire to rim.
- 2) Replace the rubber valve stem on every wheel before mounting new tires. If any looseness, cracking or otherwise damaged conditions of the valve stem is noted at any time, replace the rubber stem. Replace the valve core and grommet on all metal stems each time a tire is dismounted.
- 3) A new valve cap made of metal should be applied to the valve. Do not use plastic valve caps.
- 4) Safety inspection of each rim will be done at every mount and dismount for any discrepancy. If a discrepancy is found, that rim will be set aside, a new rim installed, and a Maintenance Supervisor notified.
- 5) Lug holes shall be inspected for excessive wear, out-of-round condition or damage and defects reported to the on duty Maintenance Supervisor.
- 6) All wheels installed shall be torqued to manufacturer Specifications. Wheel nuts can be pre-torque using a pneumatic impact torque wrench. All wheel nuts will be hand-torqued with a Ratchet Head (click type) torque wrench.

E. Tire Inflation*

- 1) Initial Inflation
 - a. Recommended operation air pressure should be in accordance to the load per tire as recommended by the tire manufacturer.
 - b. Recheck valve stem for proper seat and tightness. Reapply metal valve cap.
- 2) Inflation Maintenance
 - a. A cold inflation schedule should be maintained according to recommendation.
 - b. If inflation is checked while tires are warm or hot, allowance should be made for pressure build-up due to heat.
- 3) Do not bleed hot or warm tires.
- 4) Gauge checking of all tires on all vehicles should be done on a regular weekly schedule during Tread depth and tire wear Inspection.
- 5) Remove and repair any tire found to have pressure below recommended pressure than other tires on the same vehicle.

- 6) Contractor shall keep all tires properly inflated to conform to approved standards of the Tire and Rim Association of America, Inc., and the vehicle manufacturer's recommendations.
 - 7) Each time a tire is checked:
 - a. Check valve core.
 - b. Check valve cap for proper seal.
 - c. Check valve and valve cap threads.
 - d. Make sure valve cap is tightened properly.
 - e. Check condition of tire for wear, cuts, curb snags, etc.
- F. Valve Caps and Cores*
1. When a new stem is applied, use core which is supplied.
 2. Replace valve core each time a new tire is mounted.
 3. Make certain valve stem is properly seated and tight.
 4. Do not reuse old valve cores.
- G. Tire Application*
- 1) Front Tires
 - a. New tires shall be applied to fronts in pairs.
 - b. Make sure tire pressure is same on both positions and at the proper recommended pressure.
 - c. Unusual wear patterns reflecting front end alignment problems must be reported to the on duty Maintenance supervisor any time a new set of front tires are mounted.
 - d. Balancing of front tires is mandatory when new tires are applied.
 - e. Check and adjust tire pressure previous to being reapplied or being placed in spare stock.

- 2) Rear Tire Servicing
 - a. If rib design tires are used on front and rear positions, rear tires should be rotated from front positions.
 - b. The need for rear tires should determine when front tires are removed and reapplied to rear positions.
- 3) All tires, whether applied to front or rear positions should have adequate tread design.
- 4) Any work Order that is referred to the tire shop must be completed in a timely manner and before the end of the shift. If unable to do so, proper notification must be made to the Maintenance supervisor on duty before the end of the shift.

**Applicable when tire services are being provided by Contractor*

10. OPTIONAL SERVICES – FULL TIME TIRE SERVICES

- A. If Option is exercised, Contractor is to provide tire services, labor only, on a full time basis in accordance to the scope detailed in section 9.
 - 1) Firm Fixed Monthly Rate to provide for one certified service person forty (40) hours a week.
 - 2) The tire service personnel work schedule will be tailored to support the needs of the Agency.

Contractor shall discuss with Omnitrans its general work schedule at each facility, including scheduled days off, start and stop times and any changes thereof.
- B. Omnitrans will have the unilateral right in the contract by which Omnitrans may elect to purchase Optional Services listed above. The requirements below apply:
 - 1) Any options requested by Omnitrans and/or contained in the Offeror's proposal will be evaluated in making the contract amendments prior to exercising any such options.
 - 2) Offeror shall not be allowed to increase its proposed rates for the optional work for the duration of the contract upon contract award except as approved by Omnitrans.
 - 3) Exercise of an option must be in accordance with the terms and conditions of the option stated in the initial contract award.

- 4) Any Optional Services requested by Omnitrans must be exercised by written amendment and signed by Omnitrans. The offeror shall be liable for all costs resulting from any change not properly ordered by written Amendment signed by Omnitrans.

****End of Scope of Work - Technical Specifications****

Attachment B

REGULATORY REQUIREMENT

Table of Contents

Contents

ADMINISTRATIVE CODE	2
DISCRIMINATION	2
WHISTLEBLOWER REQUIREMENTS	3
PUBLIC RECORDS ACT	3
ACCESS TO RECORDS	4
FEDERAL FUNDING, INCORPORATION OF FEDERAL TRANSIT ADMINISTRATION (FTA) TERMS, AND FEDERAL CHANGES	4
ENERGY CONSERVATION REQUIREMENTS	5
CIVIL RIGHTS REQUIREMENTS	5
NO GOVERNMENT OBLIGATION TO THIRD PARTIES	6
PROGRAM FRAUD AND FALSE OR FRAUDULENT STATEMENTS OR RELATED ACTS.....	7
SUSPENSION AND DEBARMENT.....	8
RECYCLED PRODUCTS	8
CLEAN WATER AND CLEAN AIR REQUIREMENTS	9
COMPLIANCE WITH FEDERAL LOBBYING POLICY	9
BUY AMERICA	10
CARGO PREFERENCE	10
FLY AMERICA	11
CONTRACT WORK HOURS AND SAFETY STANDARDS ACT.....	11
DISADVANTAGED BUSINESS ENTERPRISE (DBE) 49 CFR Part 26.....	13
ADA ACCESS	14
ALCOHOL AND DRUG-FREE WORKPLACE PROGRAM.....	15
TRANSIT EMPLOYEE PROTECTIVE ARRANGEMENTS	17
BONDING REQUIREMENTS	18
DAVIS-BACON AND COPELAND ANTI-KICKBACK ACTS	18
PRIVACY ACT - 5 U.S.C. 552.....	25
SEISMIC SAFETY REQUIREMENTS 42 U.S.C. 7701 et seq. 49 CFR Part 41	26
BREACHES AND DISPUTE RESOLUTION 49 CFR Part 18 FTA Circular 4220.1F	27
VETERANS PREFERENCE	27

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 during normal business hours 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 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.

RR-25

PRIVACY ACT - 5 U.S.C. 552

Applicability to Contracts

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

Flow Down

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

Model Clause/Language

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

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

- (1) The Contractor agrees to comply with, and assures the compliance of its employees with, the information restrictions and other applicable requirements of the Privacy Act of 1974,

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

RR- 26 THIS SECTION INTENTIONALLY LEFT BLANK

RR – 27

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

Applicability to Contracts

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

Flow Down

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

Model Clauses/Language

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

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

RR-28

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

Applicability to Contracts

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

Flow Down

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

Disputes - The Parties shall use their best efforts to resolve disputes under the Contract by submission of the dispute to Omnitrans' Contract Manager and the Contractor's Contract Manager. If a dispute cannot be resolved at this administrative level, the Parties may mutually agree to utilize an alternative dispute resolution (ADR) process such as arbitration, mediation, or other recognized ADR process for settling a dispute..

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

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

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

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

RR-29

VETERANS PREFERENCE

Veterans Employment. Contractors working on a capital project funded using FTA assistance shall give a hiring preference, to the extent practicable, to veterans (as defined in section 2108 of title 5) who have the requisite skills and abilities to perform the construction work required under the contract. This subsection shall not be understood, construed or enforced in any manner that

would require an employer to give preference to any veteran over any equally qualified applicant who is a member of any racial or ethnic minority, female, an individual with a disability, or former employee.

END OF REGULATORY REQUIREMENTS

ATTACHMENT "C"
PRICING SCHEDULE

*40 Foot Buses - Rate Per Mile					
	Base Years			Option Years	
Tire Size	Year 1	Year 2	Year 3	Year 4	Year 5
245/70R19.5	\$0.0079	\$0.0082	\$0.0085	\$0.0089	\$0.0092
305/70R22.5	\$0.0080	\$0.0083	\$0.0086	\$0.0090	\$0.0093
275/70R22.5	\$0.0074	\$0.0077	\$0.0080	\$0.0083	\$0.0086

*Articulated Buses - Rate Per Mile					
	Base Years			Option Years	
Tire Size	Year 1	Year 2	Year 3	Year 4	Year 5
305/70R22.5	\$0.0080	\$0.0083	\$0.0086	\$0.0090	\$0.0093

*Prices above do not include sales tax of 8.25%

Estimated Tire Miles					
40 Foot Buses (6 tires per bus are calculated in the quantities below)					
	Base Years			Option Years	
Tire Size	Year 1	Year 2	Year 3	Year 4	Year 5
245/70R19.5	3,354,522	3,354,522	3,522,240	3,522,240	3,522,240
305/70R22.5	19,069,476	19,069,746	19,637,178	19,637,178	19,637,178
275/70R22.5	27,474,144	27,474,144	27,829,110	28,573,110	28,573,110

Estimated Tire Miles					
Articulated Buses (6 tires per bus are calculated in the quantities below)					
	Base Years			Option Years	
Tire Size	Year 1	Year 2	Year 3	Year 4	Year 5
305/70R22.5	2,000,000	8,000,000	8,000,000	8,000,000	8,000,000

As Needed Tire Services – Hourly Rates				
Base Years			Option Years	
Year 1	Year 2	Year 3	Year 4	Year 5
\$50.00	\$52.00	\$54.25	\$56.50	\$59.00

**Optional Full Time Tire Services – Monthly Rates				
Base Years			Option Years	
Year 1	Year 2	Year 3	Year 4	Year 5
\$4,896.09	\$5,091.93	\$5,295.61	\$5,507.44	\$5,727.73

**Requires Board approval and written contract amendment in order to exercise this option.

ITEM # F7

DATE: December 4, 2013

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

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

FROM: Jennifer M. Sims, Director of Procurement

**SUBJECT: AUTHORIZE RELEASE - IFB-MNT14-24
TOWING SERVICES**

FORM MOTION

Authorize the Interim CEO/General Manager to release Invitation for Bids IFB-MNT14-24 for the provision of Towing Services for a two year base period with three single option years.

BACKGROUND

Omnitrans will begin its new sbX Green Line Service in April 2014 and will put into service the 60-foot articulated buses. Omnitrans utilizes contract services to provide towing services on an as-needed basis. Rather than have two contracts for towing services and to benefit from economies of scale, staff requests that IFB-MNT14-24 be released to provide towing services for the 40 foot and 60 foot articulated buses, as well as the service vehicles.

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 \$165,000.

FUNDING SOURCE

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

Department	1200
Expenditure Code	503110

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

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

CONCLUSION

By proceeding with this solicitation, Omnitrans will ensure continued availability of towing services for its service vehicles and fleet of buses.

PSG:JMS:JC

ITEM # F8

DATE: December 4, 2013

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

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

FROM: Jennifer M. Sims, Director of Procurement

**SUBJECT: AUTHORIZE RELEASE – IFB-MNT14-106
WIRELESS MOBILE COLUMN LIFTS**

FORM MOTION

Authorize the Interim CEO/General Manager to release Invitation for Bids IFB-MNT14- for the provision of up to ten (10) Wireless Mobile Column Lifts.

BACKGROUND

Omnitrans utilizes vehicle lifts at West Valley and East Valley facilities. Three of the six vehicle lifts at the West Valley facility have developed underground hydraulic leaks and are shut down indefinitely to avoid environmental impacts. Existing lifts are obsolete and no longer manufactured, and repairs are made using aftermarket components, if available.

The Agency's long term goal is to replace all existing vehicle lifts. Purchasing mobile column lifts is an interim solution to meet current lifting requirements. Mobile column lifts are readily available, portable, and can be configured in multiple ways. The purchase of mobile lifts will satisfy an immediate need, and affords the Agency the time needed to complete a larger capital project solicitation. Once the lift replacement project is complete, the mobile lifts will be used to supplement lifting capability in the maintenance facility's open bays for 40' and 60' buses.

In accordance with the Procurement Policy 2000, Section 2.3.5.1.3 and FTA Circular 4220.1F, Board authorization and use of a formal procurement procedure is required to release Invitation for Bids for procurements for goods/services exceeding \$100,000. The Independent Cost Estimate (ICE) for this project is \$110,000.

FUNDING SOURCE

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

FUNDING	GRANT	YEAR	PROJECT NAME	INTERNAL ORDER	AMOUNT
FTA	CA-90-7333	2005	Maintenance Bus Hoists	D05REO03F	80%
STA	12-11-OMN-B	2012	Maintenance Bus Hoists	D12REO03S	20%

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

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

CONCLUSION

By proceeding with this solicitation, Omnitrans will provide an interim solution to meet current lifting requirements.

PSG:JMS:AA

ITEM # F9

DATE: December 4, 2013

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

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

FROM: Jennifer M. Sims, Director of Procurement

SUBJECT: **AUTHORIZE RELEASE – IFB-MNT14-133, BATTERIES**

FORM MOTION

Authorize the Interim CEO/General Manager to release Invitation for Bids IFB-MNT14-133 for the provision of Batteries for a three (3) year base contract, and two (2) one-year options.

BACKGROUND

A variety of batteries are required to maintain Omnitrans' fleet of buses, staff and maintenance vehicles.

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 is required to release an Invitation for Bids for procurements for good/services exceeding \$100,000. The Independent Cost Estimate for this project is \$349,137 for the base period and option years.

FUNDING SOURCE

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

Department Number	1200
Expenditure Code	504010

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

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

CONCLUSION

By proceeding with this solicitation, Omnitrans will benefit by economies of scale.

PSG:JMS:aa

ITEM # G1

DATE: December 4, 2013

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

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

FROM: Maurice A. Mansion, Treasury Manager

SUBJECT: PUBLIC HEARING ON FEDERAL FINANCIAL ASSISTANCE FOR FISCAL YEAR 2014

FORM MOTION

Close the public hearing concerning the Federal Transit Administration (FTA) §5307 and §5339 for Fiscal Year 2014, to be held at 8:00 a.m., December 4, 2013, at the Omnitrans Metro Facility, 1700 West Fifth Street, San Bernardino, CA 92411.

SUMMARY

The date and time was set with due notice for the federally required public hearing allowing comment on projects involving Federal assistance.

A public hearing affords the opportunity to obtain views of officials and citizens regarding the proposed use of Federal assistance and community support for the amended program of projects.

BACKGROUND

To qualify for Federal assistance through the FTA, Omnitrans is required to hold a public hearing on the proposed use of Federal funds. FTA also requires that Omnitrans give the public sufficient notice, that any comments be incorporated into the grant application and that the notice include language which indicates that in the absence of substantive comments, Federal assistance will be sought.

The projects shown in the Public Hearing Notice (attached) are included in the Fiscal Year 2014 budget and were approved at the May 1, 2013 Board of Director's meeting.

FINANCIAL IMPACT

All projects described are fiscally constrained and are contained in past-approved Omnitrans budget.

PSG::mm

Attachment: Exhibit A: §5307 and §5339 – FY 2014

NOTICE OF PUBLIC HEARING

OMNITRANS, the regional mass transportation carrier in San Bernardino County, will hold a public hearing to obtain comments regarding the proposed Federal Transportation Administration grant applications for capital assistance for Fiscal Year 2014, which has been programmed for the following projects:

CAPITAL PROJECTS – FY 2014

Project Description	Total Cost	Federal Share
		FTA 5307
Management Information Systems	\$ 3,385,000	\$ 2,708,000
Facility Improvement	\$ 1,506,640	\$ 1,246,040
Replacement of Revenue Vehicles	\$ 5,197,506	\$ 5,197,506
Replacement of Revenue Vehicles	\$ 1,500,000	\$ 1,200,000
Replacement/Lease of Service Vehicles	\$ 565,000	\$ 452,000
1% Transit Enhancements	\$ 250,000	\$ 200,000
Stops & Zones	\$ 297,000	\$ 237,600
Capitalization of Tires	\$ 499,015	\$ 399,212
Capitalization of Security	\$ 192,440	\$ 153,952
Capitalization of Leases	\$ 138,000	\$ 104,396
Capitalization of ACCESS Service Costs	\$ 3,200,000	\$ 1,600,000
Capitalization of Preventive Maintenance	\$ 10,800,000	\$ 8,640,000
Downtown SB Passenger Rail Project-SANBAG	\$ 15,000,000	\$ 12,000,000
San Bernardino Transit Center - SANBAG	\$ 1,240,000	\$ 992,000
Total	\$ 43,770,601	\$ 33,942,706
		FTA CMAQ
Replacement of Revenue Vehicles	\$ 5,197,506	\$ 5,197,506
Downtown SB Passenger Rail Project-SANBAG	\$ 12,882,500	\$ 10,306,000
Total	\$ 18,080,006	\$ 15,503,506
		FTA 5339
Replacement of Heavy Duty Coaches	\$ 3,525,294	\$ 3,525,294
Total	\$ 3,525,294	\$ 3,525,294
TOTAL FEDERAL SHARE		\$ 52,971,506

Said public hearing will be held in conjunction with the Omnitrans Board of Directors' Meeting, as follows:

Wednesday, December 4, 2013
Omnitrans Metro Facility Board Room
1700 West Fifth Street
San Bernardino, California 92411

At this meeting, all interested persons or agencies will be afforded an opportunity to be heard. Any persons or agency may mail comments to Omnitrans at the address listed above. Detailed information will be available at the Finance Department of Omnitrans. In the absence of any

substantive comments, the proposed grant applications for capital assistance for Fiscal Year 2014 will become the final grant applications.

ENVIRONMENT

No adverse environmental impact is anticipated as a result of these projects.

P. Scott Graham, Interim CEO/General Manager